



**HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA**



AD HOC REPORT

**MONITORING OF THE ACTIVITY OF THE STATE
PROBATION SERVICE
OF THE REPUBLIC OF ARMENIA**

YEREVAN 2018

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Introduction

The purpose of the current hoc report is to study the activity of the State Probation Service of the Republic of Armenia. This Service has been operating for already two years, and although research has been published about Probation service so far, this is the first comprehensive report which reflects upon the activity of the Probation Service from its establishment to the current report. Thus, the report provides a complete description of the operation of the Service from September 2016 to October 2018.

Several types of punishments not related to deprivation of liberty were defined by the Criminal Code adopted in 2003. In order to establish supervision over their implementation, Units of Execution of Alternative Sentences of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia were created in the penitentiary system in 2005 (Units of Execution of Alternative Sentences (UEAS) hereinafter). They aimed at ensuring the execution of punishments not related to deprivation of liberty and defined by RA Criminal Code - fine, deprivation of the right to hold a certain post or engage in certain activities, public works, or deprivation of a special or military rank, degree or a qualification class. By the Republic of Armenia Government Decree 1561-N dated 26 October, 2006 (“On approving the Operational Procedure of the Territorial Subdivisions of the Units of Execution of Alternative Sentences of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia”) the powers of UEAS were expanded and included the supervision over convicts on parole due to conditional non-execution of the sentence, supervision of persons granted early conditional release, and supervision of pregnant women or persons looking after a child under the age of three, who have had their sentence execution deferred. Social, psychological and law enforcement subdivisions were established in penitentiary institutions. At the same time, the UEAS system was still far from being a rehabilitation justice system.

With point 4.3 of the Republic of Armenia President executive order N NK-96U dated 30 June, 2012 (“On approving the 2012-2016 program of the legal and judicial reforms of the Republic of Armenia and the event list derived from the program), it was decided to establish an independent and separate State Probation Service (Service or Probation Service hereinafter) within the structure of the Ministry of Justice of the Republic of Armenia, which would be outside the spectrum of the penitentiary system

(Service - hereinafter). The new Service was meant to replace the Unit of Execution of Alternative Sentences operating in the penitentiary system since 2005.

The creation of the Service was due to the necessity of moving from punishing policy to rehabilitation justice in criminal justice in which the rehabilitation of the offender and his/her reintegration in the society is considered as a compulsory component. A penitentiary institution should not only ensure the execution of punishment toward a person, but also his/her reintegration into the society the aim of which is, from the one hand, to decrease the repetition of crime, thus promoting public safety and human rights protection, and from the other hand, to provide a person with a chance for re-socialization, self-development and self-reliance. However, it cannot be denied that during the last decades, penitentiary justice in Armenia contained only punishing elements, and while ensuring the execution of prison sentences the administrations of penitentiary institutions stressed the provision of regime, prevention of escapes and discipline only while serving a sentence in the penitentiary institution. There was almost no work done with the prisoner in the direction of re-socialization, their risks and needs were not identified and assessed, and no rehabilitation programs were implemented. As a result, imprisonment contributed to repetition of crime more than preventing it. According to research, among the causes and factors of repeated offense in the Republic of Armenia were not only, for example, social insecurity, family violence and other unfavorable conditions for the person's upbringing, but also the prisoner's environment in the penitentiary institution, the existence of criminal ideology and subculture as well as its penetration into the society, non-sufficient support of state and public bodies to offenders, absence of effective measures to prevent crime and its repetition.¹ These tendencies continue today. With its structure and functions the UEAS were unable to solve such strategic problems. A new policy promoting rehabilitation justice was necessary.

The operation of the Probation Service as the most important part of the rehabilitation justice system is directly connected both to the right of the members of society for protection from criminal abuse, and to ensuring the rights of Probation beneficiaries, particularly in terms of respecting personal freedom and Inviolability of Private and Family Life. At the same time, from the point of view of effective solution

¹Qualitative and quantitative research of factors promoting crime and its repetition in Armenia, "Institute of Civil Society" NGO, 2014

Available in the following link <http://hra.am/i/up/qq-arm.pdf>

of the problems facing the Probation Service, the guarantee of the employees' labor rights is a necessary precondition.

Thus, the Human Rights Defender, being endowed with the function of observing the maintenance of human rights and freedoms, has conducted a comprehensive observation of the operation of the Probation Service, taking the issues related to human rights in the operation of the Service as a subject of research. This is the reason why the Human Rights Defender initiated the current research.

Methodology

During the preparation of the current hoc report priority was given to its practical importance not only for specialists but also for other members of the society. All the reports of the Human Rights Defender had that purpose. Thus, we tried to write down the results of the monitoring as clearly as possible, in narrative style avoiding complex legal expressions and thoughts. With the same principle we tried to make the structure of the report simple, too.

The report consists of six sections which depict the scope of the study - the structure of the Probation Service, its legal regulation, material and technical as well as professional resources, the description and assessment of its operation by means of pointing out the issues it has raised and ways to tackle these issues. Each section has subsections with a special subject of study, a special thematic scope each in accordance with the logic of individual functions of the Probation Service. The content of the subsections includes a brief description of direct results of the monitoring, analysis of applicable legal provisions and practice, identification of problems as well as assessments and recommendations.

This structure makes the use of the report easy because it provides the reader with an opportunity to get acquainted with recommendations without being distracted from its content.

The data reflected in this report were obtained as a result of interviews, surveys, visits and after studying and analyzing various reports, publications and research, as well as legal and judicial acts.

During the preparation of the report visits were paid to all central, Yerevan and regional bodies of the service, interviews were conducted with all the employees of all the subdivisions of Yerevan and regional bodies, with the exclusion of special cases

when employees were not at work or were on holiday. Visits to the regional subdivisions were of great importance, since it was necessary not only to assess the operation of Probation employees in terms of content but also to see and form an idea in which conditions the Probation employees worked and make an assessment of their needs. If it was possible, interviews were conducted with the beneficiaries of Probation Service. These visits were important, too, because specialists had a chance to figure out how prisoners accept the role and meaning of the Probation Service. A separate subdivision of this report is dedicated to this topic.

Interviews were mainly conducted with Probation employees as a main target group of the monitoring. All the interviews were anonymous and were transcribed. Interviews were conducted also with the officials of the Ministry of Justice, the Service and other state bodies. Lawyers, judges and prosecutors whose work was connected to the Probation Service were also interviewed as a separate target group. Advocates' motions and judicial acts were also studied. In some subdivisions experts had interviews with volunteers. Quotations from interviews have been used in this report in order to represent the systematic nature of the problem. In this sense, even if some thoughts may sound unfriendly to readers, they were not aimed at presenting the person in a negative light.

A questionnaire was specially designed for the interviews. The questionnaire was filled in by the beneficiary or by the interviewer himself. After finishing the interviews in each region, the experts summed up the information and data of the questionnaires.

During the monitoring, meetings were held with the representatives of the civil society who supported the Service within the framework of different programs or conducted research about the Probation Service. The results and expert opinions obtained from this research were also used during the monitoring.

Separate subjects of study were legislative, sub-legislative and internal legal acts regulating the sphere as well as judicial acts. The reason is that during the research there were often opinions that some normative regulations related to the operation of the Service were not legitimate, so the purpose of the research was to provide recommendations about the improvement of the normative acts that cause concern, and to study the current judicial practice. In the same way samples of many blanks used by Probation employees, such as personal file, registration card, notice, solicitation, advisory report forms together with corresponding regulation and guidelines have been

studied. The electronic software of risk assessment was also studied and this report reflects on it.

The publications of the mass media about different spheres of the research have also been studied, particularly in relation to the latest events when the procedures of the new system of early conditional release were applied since September 2018.

During the interviews personal files of beneficiaries, their structure, included documents, ways of compiling them and gathering necessary information as well as problems related to them were also studied without getting acquainted with personal data.

Thus, the current report was prepared based on data and information obtained from direct sources which have been properly recorded and summed up by experts. Of course, this fact raises the reliability of this report and hence, the confidence towards it.

We are hopeful that the report will be helpful and will have practical significance.

Abbreviations used in the report

UEAS	Units of Execution of Alternative Sentences
CE	Council of Europe
EU	European Union
RAMJ	Republic of Armenia Ministry of Justice
NGO	Non-Governmental Organization
CES	Compulsory Enforcement Service
UN	United Nations
ECHR	European Convention on Human Rights
ECHR	European Court of Human Rights
PI	Penitentiary Institution
BMIS	Electronic Border Management Information System

Section 1 The system of Probation Service

1.1. Legal grounds of the establishment and operation of the Probation Service

On 30 April, 2015, with its Decree N19 RA Government approved the concept of introducing the Probation Service in RA. Based on the Concept and the Republic of Armenia President Executive Order N NK-96-U dated 30 June, 2012 (“On Approving the 2012-2016 Program of the Legal and Judicial Reforms of the Republic of Armenia and the List of Measures Derived from the Program) a bill regulating the operation of the Probation Service was developed - RA bill on “Probation Service”, which was adopted by the National Assembly on May 17, 2016.

The adoption of the bill was also grounded by the commitment to fulfill the recommendations of the Committee of Ministers of the Council of Europe to member states on probation. As such, the following recommendations have been taken as basis: Recommendation CM/Rec(2010)1 on the “Council of Europe Probation Rules”, Recommendation CM/Rec(2014)4 on “Electronic monitoring”, Recommendation N R(92) 16 on “European rules on community sanctions and measures”, Recommendation Rec(2000)22 on “Improving the implementation of European rules on community sanctions and measures”, Recommendation Rec(2003)22 on “Conditional release (parole), Recommendation Rec(2006)2 on “The European prison rules”. The necessity for the adoption of the bill was also justified by the United Nations Organization (UNO) “Standard Minimum Rules for Non-Custodial Measures” (The Tokyo Rules).

By the Republic of Armenia Government Decree 555 dated 26 May, 2016, the State Probation Service, independent from penitentiary service, was formed in the structure of the Republic of Armenia Ministry of Justice.

RA law “On Probation” defined the purpose, objectives, principles, basics of organization and operation of the service, alternative preventive measures, ensuring the supervision of punishments not related to deprivation of liberty, procedure of providing advisory reports, peculiarities of probation supervision exercised over juveniles, as well as relationships related to the operation of the Service.

The first chapter of the law outlines the areas of operation of the Probation Service - ensuring the implementation of alternative preventive measures, punishments not related to deprivation of liberty, implementation of security measures, ensuring

supervision over persons in probation period as a result of conditional non-execution of the sentence, cancellation of punishment, early conditional release, as well as report submission.

By the Republic of Armenia Government Decree N 742 dated 14 July, 2016, the charter of the Service was approved which defined its structure - the bodies, their structural subdivisions and regional bodies. The Service started its operation in September 2016.

Unlike many European countries such as Germany, France, Finland, Georgia², in Armenia the involvement of Probation was not initiated at trial stage in terms of providing the court with the characteristics of the offender when imposing a penalty. However, its importance is obvious particularly when dealing with cases with juvenile involvement. Many of the employees of RA Probation Service have also pointed out that the effectiveness of the operation of the Probation Service would considerably increase if their opinion was taken into consideration at trial stage before the verdict and imposing a penalty.

The choice of a State Probation Service with a status independent of the penitentiary service was not accidental: it was meant not only to ensure the implementation of penalty but also to teach a person to live in the society without committing a crime, to re-socialize, reintegrate a person who has committed a criminal offense into the society, as well as to provide a service of ensuring the security of members of society. That was the reason why the State Probation Service was given a status of a civic service.

In order to bring the Probation Service to life as soon as possible, the Service was formed on the basis of UEAS of the Ministry of Justice penitentiary department mainly including the workers of that department (nearly 70% of the actual staff are former workers of the alternative sentence implementation unit of the penitentiary department) without ensuring additional sufficient personnel, material and service resources, and this in its turn resulted in the perception that Probation Service is

² Information on the Probation Service of the mentioned countries is available in the English language at the following links .

<https://www.cep-probation.org/wp-content/uploads/2015/03/Summary-information-on-Germany.pdf>;

<https://www.cep-probation.org/wp-content/uploads/2015/03/Summary-information-on-France.pdf>;

<https://www.cep-probation.org/wp-content/uploads/2015/03/Probation-in-Europe-2013-Chapter-Finland.pdf>;

<https://www.cep-probation.org/wp-content/uploads/Georgia-2017.pdf>.

identical to alternative service (both among beneficiaries and the personnel of the Probation Service). Certainly, this solution pursued another goal as well: to replenish the newly formed Probation Service with the personnel who had experience in one of the functions of the Service - in the sphere of implementation of alternative means of imprisonment.

However, the selected solution led to a number of problems: the employees included in the Probation Service from the UEAS of the RA Ministry of Justice penitentiary department and the newly hired employees of the Probation Service which already had a civil service status, appeared on different levels of social protection: making a transition to the Probation Service, the former maintained their salary in the alternative sentence implementation unit of RA Ministry of Justice penitentiary department (according to Article 67 of RA law "On Probation"), which was nearly twice as much as the salary of the newly hired staff. Such a differential approach in case of the same volume of work, the same level of qualification, and identical overload is not justified.

At the same time, part 2 of Article 68 of the same law defined that *"Upon entry into force of this law, after being appointed in the post of a probationer (after being considered as a civil servant) the public official of alternative sentence implementation unit of the corresponding ministry penitentiary department enjoys the right to receive long term service military pension as defined by RA law on "State Pensions", for a three-year term. In this case the period of occupied position is considered a military service"*. The presence of such a formulation also puts an unjustified distinction among the employees of the Probation Service, moreover, by mentioning the "three year term" a differential approach is demonstrated among the social protection of people appointed to the position of Probation servants from UEAS.

The operation of the Probation Service is directly linked to the implementation of the provisions of RA criminal, criminal proceedings, penitentiary codes, and the procedure of the operation is regulated in accordance with the provisions of RA law on "Probation".

Nevertheless, in order to quickly bring the Probation Service to life, it was impossible to ensure harmonization between RA law "On Probation" and RA Criminal Code and Code of Criminal Procedures, as a result of hasty legislative regulation of its operation. In particular, RA law "On Probation" defines functions to be enforced from 1 January, 2018. These functions refer to the implementation of safety measures and

home arrest, while these institutions are fixed not in current Criminal Code and Code of Criminal Procedure.

Particularly, Article 16 of RA law “On Probation” defines that “1. The implementation of the security measure defined by RA Criminal Code is ensured by the territorial body of the Probation Service of the permanent place of residence of a Probation beneficiary (territorial body hereinafter in this chapter), and in case of people with no permanent place of residence, foreign citizens or people with no citizenship the implementation of the security measure is ensured by the territorial body of his/her actual place of residence, place of operation of a corresponding medical institution or the one mentioned in the judicial act”. In Articles 17-22 of the above mentioned law the legislator defines peculiarities of the implementation of the ban on visiting certain places, commitment to psychological assistance, behavior control, enrollment in a special educational institution, involvement in educational, cultural, sporting or other events. The mentioned security measures were planned in the preliminary version of the Draft Criminal Code of the Republic of Armenia, but they not only haven’t been adopted so far, but also the majority of them are not even planned in the current draft version.

The wide range of issues facing the Probation Service - in the absence³ of sufficient logistics and resource provision, as well as in the conditions of discrepancy between separate provisions of RA law “On Probation” and the provisions of RA Criminal Code, Code of Criminal Procedure and Penitentiary Code (for example, in terms of institutions of home arrest and security measures), led to the impossibility of the implementation of certain functions defined by RA law “On Probation”. Specifically, until September, 2018 the Probation Service has practically made unique advisory reports of early conditional release, the functions of the Service connected to home arrest, security measures and mediation haven’t been fulfilled, although, according to Article 60 of the above mentioned law they should have started being implemented from 1 January, 2018⁴.

One of the obstacles to the full exercise of the powers of the Probation Service is also the gaps and shortcomings in other legal acts. First of all, it concerns the regulation of the punishment system including the fine implemented by the Probation, the deprivation of the right to hold certain posts or engage in certain activities, public

³ See more details about this in Section 2 of this report

⁴See more details about it in Section 6 of this report.

works. However, the shortcomings of their legal regulation will be pointed out in corresponding chapters of the report.

1.2. International standards of Probation Service

Probation Service activities should be consistent with the international standards and comply with the regulations of international documents regulating that field. In this sense United Nations “Standard Minimum Rules for Non-Custodial Measures” (The Tokyo Rules)⁵, regulate the application of alternative means not related to deprivation of liberty basic principles, are of primary importance.

However, in terms of clarifying the Probation Service activities a key role plays Recommendation CM/Rec(2010)1 of the Committee of Ministers to the member states on the “Council of Europe Probation Rules”, which serves as a guide for the effective operation of probation services.

The presented document defines the possible principles on which the operation of the Service should be based, that is to say the Probation Service should seek to the decrease of crime repetition by means of forming good relationship with prisoners, supporting and orienting them and ensuring their effective socialization in the society. Meanwhile, the operation of the Probation Service should promote to ensuring public safety and the implementation of justice. In this sense the issues and goals posed in front of RA Probation Service are consistent with the issues presented.

According to the formulations in the document under discussion, regardless of whether it is a prisoner or a person affected by crime, the operation of Probation should be realized strictly adhering to the principle of respect for human rights, despite the person is offender or victim, taking into account the personal characteristics and needs of the individual, in close cooperation with society and other institutions. The activities of the Probation Service, the rights and responsibilities of the employees should be clearly regulated at the legislative level and the state should take responsibility for the implementation of the functions of the Probation Service, even if volunteers and other institutions are involved in this process.

⁵United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990).

There are already some reservations regarding the compliance of RA Probation Service to the presented standards because the analysis of the current situation of RA Probation Service testifies that there is still no close institutional cooperation with other structures. The principle contained in point 10 of Recommendation CM/Rec(2010)1 of the Committee of Ministers to the member states on the “Council of Europe Probation Rules” is not maintained, which recognizes the need for probation service (enjoying authority) and adequate resource provision

Principles of probation activities with juveniles are enshrined in Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the “European Rules for juvenile offenders subject to sanctions and measures”, one of the key principles of which is that the measures taken towards the juvenile convict should be based on the child's best interests, should be defined by the minimum required period, the prescribed measure of exposure should be proportionate to the offense committed by the child, take into account the age, his/her physical and mental state, the level of development, and personal circumstances.

Recommendation 2017/3 of the Committee of Ministers to member states on “Community Sentences and Measures” is of particular importance, which replaced Recommendation N R(92) 16 on “European rules of alternative sanctions and measures” and Recommendation Rec(2000)22 on “Improving the implementation of European rules of community sanctions and measures”. This document not only sets out the precise principles of the Probation Service activity but also interprets their essence. Particularly, the proportion of public work by the danger of the act committed by the convict is highlighted; it is prescribed that it should never include such medical or psychological intervention which is not in line with internationally recognized ethical standards. The use of public works should be based on the principles of respect for dignity and privacy of beneficiaries, members of their families, and others.

Recommendation Rec(2003)22 of the Committee of Ministers to member states on “Conditional release (parole), Recommendation CM/Rec(2014)4 on “Electronic monitoring” are also related to the implementation of the functions of the Probation Service .

1.3. The status and powers of servants

It is defined by part 2 of Article 52 of RA law “On Probation”, that the Probation servants are civil servants which implies that the provisions of RA law on “Civil Service” apply to them⁶. Both the occupation of Probation Service servants or their dismissal and training, encouragement and bringing to responsibility of Probation personnel are defined by this law.

Such a regulation causes problems in terms of effectiveness of the Probation Service. Thus, according to part 1 of Article 8 of RA law on “Civil Service”, “*1. Civil service positions are occupied for an indefinite term by the results of competition or as a result of reorganization and/or structural change or from the reserve before the expiry of the age defined by this law; positions are occupied for a definite term with a term employment contract, as a result of a transfer or a business trip*”.

Although part 8 of Article 10 of the discussed law states that in order to occupy a vacant civil service position, in case of testing as part of the competition, tests of different content can be compiled on the basis of the peculiarities of civil service positions, but in practice joint testing is mainly held for the majority of applicants. As a result of this regulation, people with no skills and qualification necessary for carrying out work with convicts appear in the Probation Service. Specifically, the study of professional education of Probation servants testifies that people with a qualification of, for example, a veterinarian or an economist currently work as Probation servants, who did not undergo proper training. Meanwhile, the existence of a lawyer, psychologist, social worker, chemist, or related qualification is crucial to the goals and objectives of the Probation Service

Issues related to the Probation servant's activities are regulated by RA law “On Probation”, RA Code of Criminal Procedure, Penitentiary Code, Republic of Armenia Government Decree N 395-N dated 5 April, 2018 on “Annulling RA Government Decree N1561-N Dated 26 October, 2006, Approving the Internal Regulations of the Probation Service of RA Ministry of Justice”, and other legal acts. The analysis of these legal acts evidently proves that the powers of the Probation Service employees are inadequate to solve the problems facing them.

⁶ RA Law on “Civil Service” adopted on 23.03.2018

Particularly, point 2 of the internal regulations of the Probation Service states to ensure the implementation of alternative measures of restraint provided by RA Code of Criminal Procedure, security measures provided by RA Criminal Code, punishments not related to deprivation of liberty, provide advisory reports, submit reports and motion about Probation beneficiaries, conduct supervision over people in probation period as a result of conditional non-execution of the sentence, exemption of punishment, early conditional release, people whose sentence has been delayed, carry out mediation, re-socialization measures, other powers defined by law.

Firstly, the Probation Service cannot objectively carry out a part of the powers mentioned above; particularly the ones connected with security measures and mediation proceedings. In addition, problems arise in terms of effective implementation of other powers as well, which in separate cases is conditioned by incomplete regulation of the Probation servant's powers, by the absence of adequate levers for the solution of their problems. For example, the internal regulation of the Probation Service points out that it is the Probation Service to take responsibility for the implementation of the penalty, however, unlike the Compulsory Enforcement Service, the scope of power of the Probation servant does not include the extradition of confiscation of the property of the convict. At the same time, it should be mentioned that the Probation Service in Armenia also has a duty of ensuring the enforcement of the punishment, and fixing the mechanisms (including those with compulsory elements) for its effective use is a practical necessity.

Similarly, the internal rules of the Probation Service define the Probation servant's power connected with the implementation of the punishment of depriving the right to hold certain posts or engage in certain activities. However, the Probation servant's powers are strictly limited in terms of ensuring this punishment. In particular, interviews with servants revealed that there were cases in practice when the beneficiary violated the prohibition imposed on him and engaged in prohibited activities (for instance, a person deprived of the right to drive a vehicle has driven a vehicle), and the Probation servant, having noticed the violation personally, was unable to react promptly and effectively. In such cases the maximum the Probation servant can do is to apply to other agencies through mediation (for example, to the Traffic Police) to record the violation and to take further action on that basis. Taking into account the timing of applying and responding to appropriate structures, the mentioned violations are impossible to record in some cases.

Probation servants do not have the right to appeal in the event if their motion (for example, to replace a fine with public works or to replace public works with detention) has been rejected in the court. In the opinion of some servants, the problem of not having authority to appeal is practically solved by appealing to the prosecutor's office with a request to exercise the power to appeal the judicial act.

In case of rejection of their motions the issue of obtaining a right to appeal judicial acts was raised by almost all employees of the Service. At the same time, the latter also mentioned their limited powers as a reason for rejecting most of the motions submitted to the court. Particularly, when submitting a motion for replacing public works with imprisonment, courts in some cases demanded to clarify what that necessity is grounded by, whether forensic examination has been appointed which would substantiate that the beneficiary is able to work but avoids the implementation of public work. However, the Probation servant does not have the authority to appoint such a forensic medical examination

Moreover, a Probation servant pointed out the case when it was obvious to him that the beneficiary was ill and was unable to conduct public work but he did not have the authority to appoint forensic medical examination in order to justify that the impossibility of carrying out public work by the beneficiary and to submit a motion to discharge the beneficiary of public work on the basis of illness. Nevertheless, the necessity of such a legislative regulation is also based on the logic of part 7 of Article 113 of RA Penitentiary Code, according to which *the motion for relieving the further serving of punishment in connection with mental or other serious illness is submitted to the court by the head of the penitentiary institution. The conclusions of the relevant medical commission and the personal file of the convict are presented simultaneously with the motion.*

The issue of clarifying the scope of the Probation servant's power also increases in terms of possible limitation of the right of the beneficiary to move freely. It is especially about importing those persons' data (impose restriction of mobility or eliminate such a restriction) into border electronic management information system (BMIS hereinafter) or about gaining access to that system. In particular, according to point 2 of Annex N1 of RA Government Decree N884-N dated 22 June, 2006 ("On Creating Republic of Armenia Border Electronic Management Information System and Defining the Procedure of Its Exploitation and the List of System Users"), among the sources of data required for the operation of the BMIS system are the data of the wanted persons,

information on the application of restraint measures of “signature not to leave” imposed by criminal prosecution authorities.

Point 15 of the above mentioned decree defines that the “BMIS system is used by the public authorities listed on the BMIS system's users list as well as in the cases of international treaties of the Republic of Armenia, the bodies referred to therein”.

The list of users of the BMIS system is defined in the above mentioned N2 Annex of RA Government, from which it follows that among the users of RA BMIS system are RA Ministry of Justice, RA Ministry of Defense, National Security Service adjunct to RA Government, State Revenue Committee adjunct to RA Government, RA Police adjunct to RA Government, RA General Prosecutor's Office, RA First Instance, Appellate and Cassation Courts. Consequently, the Service cannot use the BMIS system directly, obtain information, and take immediate steps to limit a person’s exit from RA or eliminate the existing exit restriction.

The overwhelming majority of the Probation Service employees have touched upon the issue of access to the BMIS system highlighting the following issues:

1. The convict fully served the sentence imposed by the court verdict but when leaving Armenia, he found out that his exit is blocked in the BMIS system. The convict applied to the Probation Service in order to give a solution to the revealed problem, but Probation Service does not possess such authorities under RA legislation. Moreover, according to the observation of servants, there are practical difficulties to clarify the responsible body for solving the problem, to ensure the process as quickly and effectively as possible⁷.

⁷ On the basis of the application of RA Human Rights Defender, in its decision DCC-1360 dated 4 April 2017 the Constitutional Court of the Republic of Armenia touched upon the constitutionality of issues related to the limitation of the person's right to leave the country using the BMIS system. The Constitutional Court, in particular, stated that *“in the case of such a regulation and in the case of limiting the freedom of movement through such a mechanism, it should be **exceptionally realized on the condition that the competent authority realizes its clear obligation to post the information on abolishing the preventive measure on the same system, and on the condition that obstacles to the right of free movement of a person are eliminated**”*.

As a systematic solution to the problem, in the annual report on the activities of the RA Human Rights Defender during the year 2017, the status of human rights and freedoms protection, it was stated that it is necessary to subject to legislative regulation the mechanisms of posting the information on BMIS system in case of elimination of restrictions on the right of free movement of a person, and clearly define the specific responsibility of the competent authority.

2. Article 70 of the RA Criminal Code has been applied to the convict - conditional non- execution of the sentence, a probation period was set but in the absence of proper information entry into the BMIS system, the convict left the country freely. RA Probation servants also pointed out cases when the convict has repeatedly stepped in and out of the territory of Armenia, but they were unaware of that.

3. Exit ban was imposed on the convict in the BMIS system and it was impossible to take steps to fulfill the request to RA Probation Service to temporarily remove that ban for participating in the funeral of a deceased parent abroad.

The issue of clarifying the scope of competences of the Probation servant also arises when discussing the issue of release from punishment not related to deprivation of liberty due to expiry of the accusatory court sentence (concerns on this issue were expressed by Kotayk and Vayots Dzor Service territorial body employees). In particular, such a problem arose in connection with the decision of RA Constitutional Court of April 23, 2013 “On the Case Concerning the Conformity of Article 51 Part 1 and Article 54 Part 5 of the Criminal Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the Basis of the Application of the Human Rights Defender of the Republic of Armenia”.

According to this decision, *“1. Article 51, Part 4 of the Criminal Code of the Republic of Armenia is in contradiction with Article 18 of Constitution of the Republic of Armenia, in so far as the counting made for substituting the fine or unpaid part of thereof with public works consequently does not equivalently guarantee the legal opportunity of application of public works less than two hundred seventy hours for the persons who has no possibility to pay the fine, blocking the implementation of their right to effective legal remedy, as well as there was no differentiation between the impossibility to pay the fine and the circumstances in which the payment was avoided”*. As a result, in case of non-payment of a fine, it was practically impossible to replace it with public works.

On March 1, 2017 amendments were made to RA Criminal Code by which the concepts of ill-faith evasion of fines and the impossibility of paying a fine were clarified and it was possible to replace the fine with public works. For most of the fines imposed during the period from 2013 until the entry into force of the law on March 1, 2017 there appeared a necessity to release convicts from the punishment on the basis of expiry of the accusatory court sentence. The Probation Service, however, has problems

with implementing this process as the Probation Service does not have such authority, and the courts refuse to apply this institution to sentences not related to deprivation of liberty pointing out that they have no such authority either.

Article 81 of the Criminal Code of the Republic of Armenia defines the institution of release from punishment on the basis of the expiry of the accusatory court sentence envisaging the timing of their execution by crime classification groups. At the same time, part 4 of the above-mentioned article states that “*4. The court decides the issue of application of the expiry date to the person who was convicted as a lifeserver. If the court does not find possible to apply the expiry date, then this punishment is replaced with an imprisonment for a certain term*”.

From the formulation it follows that regarding the application of the institution under discussion, the legislator has clarified the participation of the court only in respect of a person sentenced to life imprisonment. However, the Penitentiary Code of Armenia has not clarified either who is responsible for the release of the punishment on the basis of the expiry of the accusatory court sentence which in practice has caused problems.

In terms of the full realization of the tasks facing the Probation servant limited access to attracting an interpreter is also a legislative issue. Particularly, by the Republic of Armenia Government Decree N1383-N dated 15 December 2016 (“On Establishing the Procedure of Attracting an Interpreter by a Probation Sservant”) only those cases are regulated when the Probation beneficiary does not know the Armenian language whereas such a need may arise when talking to other people, for example, the victim of the crime, family members and the employer of the beneficiary, particularly in the preparation of the early conditional release advisory reports.

In terms of the legal status and responsibilities of the servants, the specification of the functions of the structure of the Probation Service's central apparatus according to structural units, is also a problem. Thus, the Central Probation Body of the Probation Service consists of Organizational-Methodological, Electronic Monitoring and Information Technology, Accounting and Statistics, General, Material Supply and Operation Departments. The study of the functions of these departments testifies that in some cases they are very abstract or in the absence of technical support, practically impracticable. For example, it is envisaged that the Organizational-Methodical Department of the Probation Service “...2. **organizes re-socialization** as a whole of processes of social and psychological work with the Probation beneficiaries, their

reintegration into society and demonstrating law-abiding behavior...". But it is not clear who realizes re-socialization since a separate department responsible for it, such as in Georgia, is not envisaged. At the same time, though, the Probation Service is intended to have Electronic Monitoring and IT Department, however, the electronic monitoring system has not yet been implemented in Armenia

1.4. Cooperation with partner institutions

Point 12 of the Council of Europe Probation Rules⁸ sets out one of the most important requirements of the Probation Service: "*Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety*". In essence, this claim was reflected in Part 1 of Article 7, of the RA Law "On Probation" which defines that "*The operation of the Probation Service is based on cooperation with state, local self-governing bodies, public and other organizations...*"

According to information provided by RA Ministry of Justice, the Probation Service collaborates with Ministry of Labor and Social Affairs, Ministry of Culture, Ministry of Territorial Administration, Ministry of Sport and Youth Affairs, Ministry of Education and local governments. It is assumed that such cooperation should be aimed at meeting the needs of beneficiaries, neutralization of the negative impact of the factors causing crime, re-socialization of convicts in the society. In this respect, cooperation with the Employment Center of the Ministry of Labor and Social Affairs is of particular importance, taking into account the fact that the when presenting the needs of beneficiaries the improvement of their social status is given a priority.

According to the Probation Service employees, during the first meeting with beneficiaries they identify their needs including unemployment, and direct them to employment center by all means. Employees of Probation Service both in Yerevan and in all provinces without exception shared the same opinion that such guidance is ineffective in the vast majority of cases, since either beneficiaries do not come to the center of employment, fearing that if they are registered they will be deprived of social

⁸ Recommendation CM/Rec(2010)1 of the Committee of Ministers to the member states on the "Council of Europe Probation Rules"

benefits, or there is no real result in case of applying, because they are not offered any jobs at all, or they are offered very low-paid jobs. More often the solution of the beneficiary's employment issue is possible through personal contacts of the Probation servant. Moreover, if the employment center in Yerevan organizes unemployed person's professional training, such opportunities are not available in the regions.

During the visit to the State Employment Agency of the Ministry of Labor and Social Affairs, it turned out that prisoners are treated as representatives of a non-competitive group in the market, lack necessary qualification, furthermore, being aware of the fact that a person is convicted employers avoid taking him/her to work. Taking this into account, the government has established certain incentive measures for employment of uncompetitive people, for example, by providing one-time compensation to the employer for the employment of skills and abilities of uncompetitive individuals. However, to be included in the group of persons who are uncompetitive, it is necessary that the agency be informed of the person being convicted. If there is such cooperation with RA Ministry of Justice penitentiary service and they are informed about the person being exempted from punishment, then there is no clear institutional cooperation with RA Ministry of Justice Probation Service. Moreover, according to the representative of the agency they even cannot identify the beneficiaries of the Probation Service, since the latter are guided to them verbally without any accompanying document

The staff of the Probation Service also noted the lack of effective cooperation with the Ministry of Culture, Sport and Youth Affairs, Ministry of Health whereas the involvement of the latter is a necessary precondition for supporting the beneficiaries. For example, the Probation Service staff voiced concern that before the contact the Ministry of Health with official requests to support the beneficiary and receive feedback, the beneficiary no longer needs this help. As for cooperation with the Ministry of Culture certain cases of such cooperation exist mainly in Yerevan, but in the majority of regions such cooperation is absent. The staff of the Probation Service, especially the regional authorities, pointed out that they have no opportunity to engage beneficiaries in sports or handicraft groups because they are either absent or operate solely on a paid basis, and in several regions (for example, in Vayotsdzor) they mentioned that there are no permanent cultural centers. The deficiencies in cooperation with the Probation Service units at regional level were also highlighted by

the representative of RA Ministry of Culture who said they were ready to support the Probation Service if they show concrete cooperation initiatives.

During the operation of the Probation Service, problems also arise when there is a need to provide psychological care for beneficiaries: they either function on a paid basis or just do not exist. In some cases, non-governmental organizations come to an aid, but not in all regions (in Syunik, Aragatsotn and Ararat non-governmental organizations providing such service do not operate).

To ensure the re-socialization of juvenile beneficiaries, the representative of the Gegharkunik region Probation Service highlighted the existing cooperation with the staff of RA Police Division of Juvenile Cases.

Cooperation with the Ministry of Defense of the Republic of Armenia have been registered in Territorial Bodies of Probation Service in Lori and Tavush regions. Particularly, there was a problem when the juvenile beneficiary was drafted to army after turning 18. In such a case only the copy of a personal file of a person has been sent to the appropriate military unit without needs assessment or control plan. There was no other real cooperation.

The Probation Service employees have also pointed to issues that testify to gaps in the cooperation between them and the court. In particular, examples were presented when a beneficiary's case was sent from the court in which the beneficiary's passport was absent, or transferring information about the beneficiary, they have not been provided with the actual address of the prisoner, his telephone number which caused additional workload and waste of time. In terms of ensuring the effectiveness of the fine as penalty they need cooperation with the Compulsory Enforcement Service which is not currently institutionalized.

According to the Probation Service employees, cooperation with local self-government bodies is not successful. For example, during the visit to Aragatsotn regional Probation Service, information was provided about a homeless beneficiary who was over 80: local self-governing bodies and social services did not react in any way to their request to support him and accommodate in a nursing home. It was mentioned in Syunik region that when supervising the performance of public works they often apply for the help of the local self-governing body but the latter often ignores the requirements for the beneficiary, does not inform them that the beneficiary has failed to perform public works.

Armavir and Ararat Probation Service employees mentioned that close cooperation has been established with Armenian Apostolic Church, in particular, clergymen talk with beneficiaries while beneficiaries are involved in the improvement of the territories adjacent to the church. Such cooperation contributes to the reintegration of beneficiaries in society.

As for the cooperation with non-governmental organizations, they are mostly regulated in Yerevan. Most of the provinces mentioned absence of NGOs or lack of willingness to cooperate with them. Employees of Probation Service most frequently mentioned the names of "Social Justice", "Civil Society Institute" and "Caritas" NGOs

The involvement of NGOs in the process of continuous retraining of Probation servants is great. For example, the organization "Project Harmony" is currently working out the development (adaptation) of modules to formulate abilities and skills of Probation servants and preparation of people capable of teaching them⁹.

Taking into account the insufficient staff and resource availability of the Probation Service at the present stage, NGOs are attempting to fill in the gap in providing socialization services to beneficiaries.

The creation of the "Support for Probation" National Network is an important initiative in combining the efforts of non-governmental organizations¹⁰.

While, it should be noted that point 9 of Recommendation CM/Rec(2010)1 of the Committee of Ministers to the member states on the "Council of Europe Probation Rules", defines the imperative requirement: "*Probation shall remain **the responsibility of the public authorities**, even in the case when services are delivered by other agencies or volunteers*".

During interviews with the service staff in the regions of the Republic of Armenia, their close cooperation with members of society was mentioned. It is also contributed by the fact that in smaller settlements, for example, Probation servants are mostly local residents who have strong personal ties with the community and the absence of

⁹ For details, see:

<http://probation.am/hy/news/30112018?fbclid=IwAR0NIXhRovY7-MFuCPpVcKUP8QDI75cavYjVuPMYj0NkaT6BbfWN2hVvnCA>

¹⁰<https://iravaban.net/194522.html>

institutional arrangements is sometimes supplemented by the existence of such personal relationships. In some cases, before the beneficiary applies to the Probation Service, they are already well informed of the latter through such community contacts.

At the same time, the strong relationship between the community and the Probation servant often helps to address the social issues of the beneficiary. In some cases, they can be effectively replaced by the need for a social psychologist, as a result, promoting the trust of the beneficiaries' towards the Probation Service and its servant, and all this ultimately contributes to the re-socialization of the beneficiary.

The beneficiary, who was serving a penalty of public work in one of the provinces, called the Probation servant and informed that he had problems with the employer and asked "to go and intercede" to solve the problem. Though the Probation servant was on vacation, nevertheless he went to the employer, whom he personally knew, and presenting the beneficiary's personality, his being in a difficult life situation, asked to be lenient towards the employee for violation of labor discipline because otherwise he could "break" and lose faith in him. At the same time he promised to explain the worker to change his attitude towards the work and the employer. Then he informed the beneficiary that he did not justify his actions, that the employer was right but the latter was ready to forget the problems and work with him right up to providing him some help if he was conscientious about his work. He also encouraged the beneficiary to think well, as the work was "the only source of his income". The problem was thus settled, and the Probation servant no longer received a complaint from the employer.

One of the Probation Service servants mentioned the necessity of cooperation with the Probation structures operating in other countries. Such necessity arises especially when citizens of other states are convicted of a crime committed in the Republic of Armenia

Particularly, when spending his holiday in Armenia, a Russian citizen committed an offense under Article 242 of the Criminal Code of the Republic of Armenia for which Article 70 of RA Criminal Code was been applied and a probation period was set. The beneficiary came to the Probation Service, informed in the written form that he was going to leave for Russia, after which he left. Consequently, the Probation Service of the Republic of Armenia is unable to conduct supervision over him.

Despite the aspirations of the Probation Service staff to assist the Probation beneficiaries in any way, the conducted interviews and monitoring visits have shown that the work of the Probation Service with NGOs and social services is not regulated and systematized, rather, it is a gesture of good will to cooperate.

1.5. Recommendations

1. It is necessary to clarify the legislation underlying the Probation activities in order to clarify the status and powers of Probation servants, determine the competences necessary for the performance of their responsibilities.
2. It is necessary to fix the requirements reflecting the Service's features during the employment to the Probation Service and ensure their application in practice.
3. It is necessary to prescribe the competence to appeal the judicial acts delivered upon the motions of Service.
4. The authorization of the Probation Service to submit a motion for expertise to determine the beneficiary's health status must also be defined by law.
5. In practice, the requirements of the Constitutional Court decision DCC-1360 should be respected. As a legislative solution to the problem, in case of elimination of restrictions on the right of free movement of a person, mechanisms for placing information in the BMIS system should be provided clearly defining the specific responsibility of the competent authority.
6. In RA Criminal Code it is necessary to fix a provision on release from punishment as a result of expiry of the term of validity, on the basis of a judicial act.
7. On the institutional level it is necessary to ensure effective cooperation with the Probation Service and state bodies, local self-governing bodies, and civil society representatives clarifying the degree of involvement of each party in the engagement of the work with the beneficiary. In each case, the timely and proper response of the authorized body in the field to the issues raised by the Probation Service should be ensured.
8. The legislative requirements for the protection of the beneficiary's personal data and the conditions and guarantees envisaged by law to transfer them to third parties, should be ensured.
9. The significant difference between the salaries of servants relocated from UEAS and the newly recruited servants can lead to a substantial claim regarding

discriminatory treatment. Therefore, it is necessary to take measures to eliminate this unequal situation.

Section 2: Material resources of the Probation Service

2.1. Location of offices

The principle of Point 10 of recommendation CM/Rec(2010)1 of the Committee of Ministers to the member States on the “Council of Europe Probation Rules” considers necessary the status of the Probation Service (standing), recognition and adequate resource provision¹¹.

The interpretation of the recommendation reveals the essence of this principle according to which the Probation work should be perceived as a key element of a just and humanitarian justice system. This kind of work requires considerable knowledge and skills and the status reflecting the value of that work and the experience of its legal user. Obviously, the service should have enough resources to solve its problems. As in many countries, overloading of penitentiary institutions endangers the rights of persons deprived of liberty and limits their ability to work constructively, Probation can be "overloaded", restraining the successful execution of its functions of social protection and re-socialization of offenders¹².

The effectiveness of the Probation Service is largely conditioned by adequate material resources. Along with the logistics facilities of the service offices, the location of offices or seats has become a subject of immediate consideration, bearing in mind the circumstance that the Service is still in the developmental stage and that there is an unequivocal perception of its functions. In other words, experts directly monitored not only the availability of offices in the regional seats (allocated space or office), the basis of providing Probation servants with office space, but also their separation from other state bodies.

2.1.1.Placement of Probation servants in buildings of other state bodies

¹¹ The English language text is available at the following link:

https://www.pmscr.cz/download/mezdoken_European_Probation_Rules.pdf

¹²Recommendation comments are available at the following link:

https://www.cep-probation.org/wp-content/uploads/2015/03/CommentaryRec_2010_1_E.pdf

The observations show that all regional offices are located in the buildings of different state bodies (in some cases non-state). In our opinion, the absence of allocation of a separate building to the regional units of the Probation Service is not a problem. At the same time, in some cases it is problematic both in terms of effective organization of work and in terms of the establishment of the Probation Service, correct public perception of its functions and its role, and particularly in terms of preventing the identification of the Probation Service with other state bodies by Probation beneficiaries.

Experts' immediate observations have revealed the following picture. All the employees of the offices in Tavush region are provided with rooms in other public buildings. In the town of Dilijan, the Service servant's office was located in the Prosecutor's Office building which left an impression of an abandoned building, in Ijevan the office was in the building of the Judicial Acts Compulsory Enforcement Service building, in Berd the employee was given a room adjacent to the investigator's room, and in Noyemberyan - in the office of the Compulsory Enforcement Service servant (CES) in the community building. That is, the Probation was allocated a separate room not in the territory of the CES, rather CES employee's room was also used by the Probation servant. This situation was also recorded in Meghri where the Probation servant and the employee of the Agency for State Registration of Legal Entities used the same office. In the case of Noyemberyan, the Probation servant's desk touched the desk of the CES employee and under these conditions it could not even be said that these were the working areas of employees representing separate state institutions. Such a work organization is unacceptable both in terms of the Probation servant's unimpeded work with the beneficiary and in terms of the other people's easy access to personal files and documents provided to the Service.

It is no coincidence that under these conditions, in the above-mentioned places the Probation Service is identified with the Prosecutor's Office, the CES or the court.

In Armavir region the workers of Armvir and Ejmiatsin were provided with offices in courts. In Echmiadzin, the Territorial Body of the Service had a separate entrance with the sign State Probation Service which was a special case compared to other territorial bodies visited within the frame of the monitoring.

In Kotayk region, the office was on the first floor of the Police building, in Hrazdan the office was in the building of the regional administration.

The seat in Artashat is also in the building of the regional administration, in Vedi - in the City Hall. The territorial body of Vayots Dzor was in Yeghegnadzor and was located in the building of gas service.

Sisian's office in Syunik region was in VTB Bank building: there was no sign outside. The office of the Goris Territorial Body was located in the former Executive Committee building near which there were other buildings. At the time of the visit, it was stated that the office was provided in Goris about five months ago and before that the Probation officer had received the beneficiaries in his personal car. The office of Meghri Territorial Body, as it was mentioned above, was located in the City Hall building in the State Registry officer's room at one corner of which, near the entrance, there was a table and two chairs. The space was allocated to him by the State Registry officer purely based on friendship. In the building and at the entrance to the room there was no sign of the Probation servant's office. According to State Registry officer, when the Probation servant accepts beneficiaries he left the room, similarly, the Probation servant left the room when he was accepting visitors.

The office in Kapan was in a three-story building next to the Police, which belonged to the Ministry of Justice, and previously the seat of the court was in this part of the building. The staff members of different bodies were located in the building including the State Registry under the jurisdiction of the Ministry, the CES, the regional Probation Service, as well as the regional office of the Real Estate Cadastre Committee. The rooms had one main entrance with an old paper sign with the note State Probation Service.

The seat of Ashtarak Regional office of Aragatsotn region is located on the first floor of CES building. The Talin office was in the court building in which there were also the CES and the State Registry Agency of Legal Entities. There was a Talin Probation Service sign on the door, but not at the entrance to the building.

There was no separate building for Lori regional office as well and the offices of the servants were located in other public buildings. Thus, in Spitak the office of the Probation servant was in the City Hall together with the regional bodies of the Real Estate Cadastre Committee, the Civil Acts Registration Agency and the Social Security Service, in Vnadzor the Probation office was in in the Compulsory Enforcement Service building, in Tashir and Alaverdi - in the first-instance courts buildings, and the office of Stepanavan has no separate seat area. It is noteworthy that at the entrance of

the office of the Tashir regional office of the Service “Prosecutor” and in Alaverdi regional office - “Lawyer” signs was still hanging.

In Shirak region the Probation Service of Gyumri was in the building of the common jurisdiction court. The two offices of the regional Probation Service were located behind the building near the CES and CARA with whom the office had a common access to the court building.

In Artik the Service Office was located in a four-story building where many private companies leased office space. The Probation servant occupied a one-room apartment rented by his business partner on the third floor. Near the entrance to the building there was no sign that the Probation Service was located in that building. Meanwhile, at the front of the building only the name "Building material" was visible, which was also confusing as the only visible signboard for the visitors at the front of the building was the large signboard “Building material”. Also, some bewilderment was caused by the fact that in Artik, there were rooms for children near the Service room including a playroom, logotype service.

The absence of separated seats somewhat hinders the establishment of the Probation Service and the formation of a correct public perception of its role in the sense that the Probation Service is identified with the government agencies of its location.

This is a remarkable fact especially in the case of Probation Service, taking into account that it is still an institution in its development phase in Armenia and the correct perception of its role by the public and particularly the beneficiaries greatly determines the solution to the Service's challenges. According to the employees whose seats are in the courts, for example, some beneficiaries consider going to the Probation Service according to the set schedule as a duty to “appear in the court and sign”. There have been cases when the Probation Service was identified as police, or when in the perception of the beneficiary, in comparison with the former service, only the name and the lack of uniform have changed. This approach, according to the servants' observation, is largely conditioned by insufficient awareness about the Probation Service activity. Often the beneficiaries can not pronounce the word "probation" as well and instead use the words "prophylaxis", "provocation". Most Probation professionals have noted that Probation is still poorly perceived by the beneficiaries: some of them consider it as a penitentiary service for alternative punishments, others - as a court. In spite of this, it is interesting that most Probation servants do not perceive

the deployment on the territory of state bodies as a problem. Moreover, in some cases the Probation servants have interpreted it as an alerting factor, when for example a beneficiary enters the building of the court. At the same time, it cannot be denied that beneficiaries perceive Probation Service as, for example, a service related to the court that has served an indictment, that is, purely a service ensuring the execution of punishment.

2.1.2. The basis of locating the Service in Buildings belonging to other state bodies or entities

In some regional offices, officials were worried that the offices were provided not as a territory allocated to the Ministry of Justice but on the basis of personal contacts, arrangements or requests without proper legal formulation, which means that at any moment they may be required to leave the area. Examples of offices that were obtained as a result of personal arrangement were, as we have already mentioned, the office areas of Artik, Meghri and Noyemberyan territorial bodies. In Masis, the probation servants, who was dismissed from work as of the date when the report authors paid the visit, used a room provided by one of his acquaintances, and it was not known if it would still be provided to the Service Territorial Body after the dismissal of the given employee. Interestingly, in some provinces (eg. Aragatsotn), the area allocated to the Probation servants belongs to the CES, which can be taken if necessary and this is when both CES and Probation Services are separate subdivisions of the Ministry of Justice. In Ararat region as well, there were no relevant contracts with the community and government agencies for the use of offices. In contrast to this, Sevan's seat, for example, was in a private building, but the Ministry of Justice allocated funds to rent the premises. Offices of Abovyan and Hrazdan of Kotayk region did not have a contract to occupy the territory, all arrangements were made verbally. There was also no written arrangement for utility bills. The same situation was reported in the town of Talin in Aragatsotn region, where the servant located in the court building pointed out that he could be asked to leave building at any time. In the office of Vayots Dzor region, in Yeghegnadzor, the area used by the territorial body was rented by the Ministry of Justice from a private company engaged in gas services on a contractual basis, at the expense of the Ministry of Justice. Nevertheless, the scope of the rights towards that area, according to the servicemen, is limited. The Probation servants mentioned during

the interviews that in that area they feel as guests, they even do not have the right to use the heater, as the ministry does not pay for heating. Thus, the fact that many territorial bodies have not signed a contract with the owners of the areas puts Probation servants into uncertainty about the conditions of using the area -terms, utility bills, and other essential conditions.

2.1.3. Absence of offices in some regional seats

In terms of location, the lack of actual workplaces in some seats is alarming which means that first, the Service servants have to make office work in another location of the regional office (regional center), and leave for service area for visits to places of residence. Additionally, the lack of a staff member who serves their area causes a problem of road distance for beneficiaries. Thus, for example, according to the results of the visit, Charentsavan seat in Kotayk region did not have space and the servant's seat was in Hrazdan. Similarly, there were no territorial offices in Aparan, Stepanavan, Ashotsk, Maralik, Akhuryan and Baghramian. The situation was alarming in Gegharkunik region in terms of the organization of the work of the Service servants in Gavar and Martuni. The point is that as a result of the monitoring, the servicemen serving those territories interviewed their beneficiaries in courtrooms, without having offices allocated to them. Under these circumstances each time they apply to the court staff (such as the court bailiff room or the lawyer's name) with the request to provide them with a room.

Such a situation is the result of the fact that the deployment of these employees has not been achieved through an arrangement with the Ministry of Justice but rather on personal contacts and requests. Moreover, the servants expressed concern that in those court buildings permits will start being used for entry, in which conditions they will no longer be able to enter. As a solution to the problem servants pointed out the example of the Police or Investigative Authorities - the deployment of staff on the basis of contracts between state bodies.

As a result of the surveys it was found out that it was only in Shirak region that the employer indicated that the absence of a place of service does not cause dissatisfaction for beneficiaries, as it is easier for them to come to Gyumri. Intercity transportation works well and the beneficiary may show up when, for example, he comes to Gyumri on business.

2.2. Office facilities and property

The working conditions and material and technical facilities are the necessary conditions for the full functioning of the Probation Service. Each Probation servants should be equipped with an office space with minimum facilities, at least one computer, ability to print documents, access to the Internet, stationery required for the performance of his/her duties - stamps, envelopes, etc. However, the data collected as a result of the immediate monitoring of the expert group indicates that almost all departments of the Service lack sufficient material resources. In some places even minimum material and technical facilities were lacking, in such circumstances it was no point speaking about the effectiveness of the servant's work.

2.2.1. Sufficient material and technical equipment

The study of the working conditions of the servants in the regions proves that the absence of a necessary number of properly working computers, printers and copying equipment was a common problem during the visits. In some regions, printers and copying devices were missing, so the service providers are forced to either use the equipment of other public servants in the building or print out their service papers in other private places for money. The problem of the Internet access has also been recorded in a number of regions. During the interviews almost all servants mentioned that copying documents were made "outdoors" and they paid for that service from their personal resources. Insufficient number of provided service cars and their poor technical condition are widespread.

At the same time, it should be noted that the problems recorded during the monitoring visits have had a certain solution so far. Thus, according to the information provided by the Probation Service¹³, 40 new computers, 30 used computers and 10 printers have been allocated to the Yerevan City and regional departments, providing 2-4 computers in the regions and one printer in each of the six regions. The following data reflect the results of monitoring conducted in July and August of the current year.

¹³ The information was provided as of October 10, 2018:

Thus, according to the recorded data, there were two computers in the Ijevan seat of Tavush region, which are intended for all five servants of the region. This also creates additional difficulties for servants who have to leave for Ijevan to file documents. Noyemberyan Probation servant's desk was lacking any equipment. He goes to Ijevan for computer work.

There was one computer in Echmiadzin, which was not in a good condition and this made the work of the Service servants complicated. There was an incident in the region when the entire computer information was destroyed. They had no printer, no internet access. Only 1 computer in Sevan and 1 computer in poor condition was intended for 5 employees assigned to Gegharkunik region. In Ashtarak office of Aragatsotn region there were 2 computers for 4 servants, who, according to the servants, were not working properly. There was only one printer but there was no Internet access.

Technical equipment in Syunik region did not meet the minimum requirements either. The offices did not have computers, printers, and copiers. Kapan's office computer was a 90s model with a large monitor by which modern computer software could not be used. That's why Kapan's Probation servant, who is also the head of the division, used his own computer. There was no equipment in Meghri's office, and only a few packs of printed papers were put on the only desk. For this reason, the Probation servant leaves for Kapan for computer work.

As a result of the immediate observations of the Service seats in Lori region, it turned out that only three computers were allocated to the Regional Division (in Vanadzor City Hall), and in the offices of Spitak, Tashir and Alaverdi, the staff did not have a computer. In order to do computer work the latter have to leave for Vanadzor and use another servant's computer. According to the latter's observations, I leave for Vanadzor at least once a week on mail delivery days, as well as if necessary, when receiving a new case, to prepare a motion or other document on computer.

In Gyumri only six computers and one printer was provided for 6 servants, and the Internet was provided by the head of the department. Because of the lack of necessary number of computers, the servants did computer work in turn. In Artik, the servant did not have a computer, there was no connection to the Internet. The problem of non-compliance of computers, printers and copiers with the number of servants was recorded in all the divisions. Under such conditions, computer work is mostly done in the regional centers, causing additional difficulties for employees serving separate

areas. In addition, the prioritized solution of the problem of computers is conditioned by the legal requirement of complete implementation of the service functions. The point is that assessing the risks and needs of the beneficiary, drawing up a control plan on that basis is a pivotal stage of the work done by the Service with beneficiaries and their re-socialization. While such an assessment is done on computer software. In addition, the introduction of the Mulberry electronic document management system is intended to be applied to ensure effective business administration and accountability.

Though the servants' concerns about the lack of computers were basically justified in terms of organizing their work and performing their service duties, justifying such concerns it should also be taken into consideration that under such conditions problems connected with the security of the beneficiary's personal data and accessibility of business documents may arise. In this regard, a positive step would be the allocation of computers and printers to the Probation Service which must be continuous, ensuring the material and technical basis necessary for the Services functioning for all the servants of the Yerevan City body and the regional departments.

The solution of the problem of transport deficiency is also a priority in terms of the logistics of the service. A similar picture has been recorded in all the observed regional departments: each of the regions is equipped with one Soviet-type official car, which is in poor technical condition. For example, one car ("Niva") was allocated to Tavush region, which, however, was not used. In Armavir the service car was also in poor technical condition. In Lori, the entire regional division was assigned a single service car (Soviet model), which, according to the servants, was in an inadequate technical condition. In Ararat region, the service car was a VAZ 21-06 car that was technically in a very bad condition.

As a result of interviews with servants, it was found out that because of inadequate number of service cars and their unfit state, many had to make use of personal vehicles at their own expense especially for carrying out visits to places of residence of beneficiaries. This problem is directly related to the frequency of visits by the Probation servants to the places of residence, places of public work implementation of beneficiaries, especially taking into account that given the geographical location of some regions there are problems with distance and roads impedance.

With regard to material-technical saturation a number of regional offices also have a problem of storing and archiving documents due to the lack of safe deposit boxes. Some seats did not even have locked drawers, and in such conditions the retention of

the beneficiaries' personal files was simply not safe. As a solution to the problem, according to servants, they leave the personal files in the regional centers or even take them home. Thus, for example, due to the absence of a safe in Meghri's seat, the Service servants kept personal files in the common cabinet with the State Register. In Artik, a servant did not have a shelf to keep personal files.

In some regions, servants mentioned that there is also a problem with the lack of envelopes, stamps, and folders as they are provided these items in an amount not corresponding to the number of cases.

Servants of Tavush point out that they are not provided with a sufficient amount of stamps and envelopes. In the same way, in Armavir region, they noted that they had received only 40 envelopes in two years. Stamps also do not correspond to the number of cases (at least 4 notifications are sent when receiving each case, and other 4 when finishing it, in the case that they receive 4 cases each week). In Charentsavan, there are few folders and envelopes, sometimes they use the former Alternative Sentence Department folders on which the current name of the Service is glued and thus the folder is used.

2.2.2. Building and room conditions

Within the framework of the provision of conditions for the Probation workers, the building and room conditions of individual seats were also reviewed. In general, the observations in the regions showed that the rooms had either old renovations or were improved by private means. For example, the office of Artashat region was in good condition and was renovated by the efforts of its employees. The office of Vedi was at the stage of reconstruction at the time of the visit, almost finished, only the outer cosmetic work was done. The renovation was also done by the servant's means. Renovation of the room in Charentsavan was also done by the servants' means.

In contrast, some of the provinces have severe unsatisfactory conditions, in some cases - unacceptable, because working under such conditions itself violates the requirements of the law. For example, in Dilijan, the servant's office did not have electricity. In general, almost all the rooms in the two-story building were locked, and the ones that were open were in an extremely bad condition, the building seemed to be in an emergency condition and only one room on the first floor was occupied by the Prosecutor's Office.

In Noyemberyan, as mentioned above, the servant did not have his own room, but occupied the room of the Compulsory Service officer. He stated that he has “been working in the field for 13 years, but he still has no office”. Because of the small size of the room, the servant took personal files home or kept them together with the files of the CES. According to the servant’s observation the room was so small that his table had a common edge with the table of the Compulsory Enforcement Service officer. This means that the Probation servant holds all his meetings with the beneficiary in the presence of the Compulsory Enforcement Service officer. The room in Ashtarak was in a poor condition, although the area was not small. The heating system was absent, which would cause a major heating problem in the winter, given the size of the room and high ceiling. As a solution, the staff suggested that they be able to connect their room to the main heating of the CES. According to the service servants, they had just moved to the room, formerly they were located on the second floor which was in a better condition, but the CES demanded them to leave the area and they moved to the large room with old renovation on the first floor with poor condition. Only the table was provided by the Service, and the rest of the equipment was obtained by servants at their own expenses.

There was a small room for two servants in Armavir, without ventilation, under which conditions it was difficult to organize work with beneficiaries. The room was not renovated.

Inadequate work conditions were also registered in the town of Tashir. The point is that the Probation servant's "office" was a jail - like room in the urban residence of Lori Court of First Instance, near the security room, which was separated by glass windows, had no windows. As it was discovered during the visit, it was a separate room for the prosecutor and due to glass walls, beneficiary-Probation staff meetings are conducted in the corridor, under the visual and auditory perception of security personnel.

Working conditions at Gyumri's seat can not be considered even less favorable. There were not enough chairs and tables, employees "were sitting in turn", only one room was provided for 6 servants.

Particularly bad conditions were at Tchambarak's seat, which resembled an abandoned room, extremely poor, without heating and electricity, and the room was furnished with a table and a chair, under which circumstances the work with the beneficiary can not be imagined.

In terms of working conditions, it was worrying that in Vanadzor four servants were allocated one common room where meetings with beneficiaries were also held. According to the head of the department, in case of simultaneous presence of several beneficiaries, the working process may be disrupted and there have been cases when the latter has provided his own office for the organization of the Probation servant's meeting with the beneficiary.

In this regard, it should be noted that the lack of opportunity to hold private interviews with the beneficiaries is problematic not only in terms of organizing the work technically, but also in terms of the effectiveness of such conversations, the confidence towards the servant as well as the protection of the personal data provided by the person.

It is a principal matter to ensure the quantitative right correlation between offices and servants from the point of view of Probation servant-beneficiary personal communication and personal data protection, excluding the problem of using the computers in turns and the fact that during a private conversation with the beneficiary, the other employees have to leave the office.

2.3. Additional expenses spent on the organization of the work

The results of the monitoring and private talks prove that there is no territorial body, whose expenditures are fully compensated at the expense of state funds. Almost all the respondents mentioned that from their own expenses they pay for office, utility and additional costs related to work duties. It is a result of the lack of the necessary logistical resources for organizing work that the servants pay extra costs at their own expenses. These additional costs, according to the servants' observation, make at least 10-15% of their salaries, and in some cases more (up to 70% of salaries).

Additional costs are mainly expenses for the Internet, electricity, office supplies, cleaner, telephone, transportation and fuel. The issue of additional expenses has been raised in all regional departments. For example, when traveling to the beneficiaries' place of residence (when making home visits), the servant of Dilijan uses his personal car (the latter also serves nearby villages), the telephone connection is also provided at his own expense. He pays off petrol and car depreciation expenses from his own resources. He also pays for the cleaner, the computer operator, and the office supplies from his own resources. In Ijevan, too, the cost of an additional employee, a cleaner, a

computer specialist, the Internet, and car fuel are extra expenses for the organization of the work. In Berd, the servant pays for the cleaner, travel expenses (at least once a week to Ijevan), telephone connection fee, at his own expense, and he has no computer. In Noyemberyan, the servant again uses his own car at his own expense. He mentioned that he pays a considerable amount of money from his own resources for a number of expenses which he does not have to pay, but rather they should be provided at the expense of state funds. In terms of resource constraints, he also mentioned that until recently, he used the previous folders with UEAS when preparing personal files, on which the name of the current institution (Probation Service) was glued. In Echmiadzin, additional expenses include those for the internet, cleaner, phone, extra envelopes, stamps, and copying. In Charentsavan office and utility costs are covered by the resources of the employees: they pay for envelopes, computer repairs, copying. According to the servant's observation, last year the regional administration installed a heating system in the building for which they do not pay, but the expenses are covered by the regional administration. Artashat officials say office costs are paid from their resources. The computer is old, the printer does not work and about 2000-3000 AMD is paid for the copy of each document. Servants in a number of regions mentioned that though 110 liters of petrol was monthly allocated to the regional offices, it was not enough, and transport and fuel are provided by personal means of the servants.

The Kapan office servant, who also heads the regional office, uses his own computer, pays for the internet and printer cartridge. Currently there is no way for hiring a cleaner. According to the latter, he uses his own car to move around and he cares for these expenses, because petrol is provided but it is not enough. Talin's servant goes to Ashtarak for computer work because of the lack of computer and printer, sometimes he asks others to make writs, which also creates additional expenses. As a problem requiring an urgent solution the latter marked the issue of transport, copying machine and the issue of ownership certificates for the electricity meter.

In Gyumri, also the refill of the printer's paint, the internet and stationery are provided at the expense of personal means. In regional departments, with some exceptions (eg, Gyumri), there are no office phones, and servants use their own cellphones to maintain contact with the beneficiary and to make other work related phone calls.

Along with additional expenses, servants in some regions, referring to the social vulnerability of Probation beneficiaries, mentioned that they sometimes have to pay

the beneficiary's transportation costs so that the latter can come to the office and sign the required documents.

2.4. Recommendations

The following steps are proposed to be deployed in the regional offices of the Service.

1. Provide offices in each region's territorial body.
2. Provide Probation Service signboards in the offices of all regional bodies.
3. In order to minimize the likelihood of identifying the Probation Service with another state body or institution, measures should be taken to ensure that the Probation Service units are not located, in particular, in courts, in the Police, in the Compulsory Enforcement Service, and in the Prosecution buildings.
4. Exclude the general use of the offices by the Probation Service and other public servants.
5. Ensure that the use of territories owned by other entities by the Probation servants has appropriate legal (contractual) reservation.

In terms of ensuring material and technical facilities and favorable conditions for the Probation staff it is necessary to:

1. Provide each servant a computer, printer and copier meeting up-to-date technical requirements, access to the internet and telephony.
2. Provide each servant with necessary amount of office supplies (envelopes, stamps, folders, etc.) for the proper organization of work.
3. Take steps to ensure the provision of means of transportation to the Service which directly implies the proper implementation of the Probation servant's function to make visits to beneficiaries' place of residence.
4. Take steps to improve the room conditions of the staff, ensuring room renovation, heating.

Section 3 Professional resources of Probation Service

3.1. Staffing

3.1.1. Positions

In order to fully utilize the Probation functions and on the basis of the load factor of an average of 50 cases per employee, the concept of introducing a Probation Service was envisioned to have up to 200 employees in the Service¹⁴. Nevertheless, by RA Prime Minister Decree N706-A dated 11 June, 2018, the Probation Service was provided with 108 staff positions, 3 of which are administrative positions, 1 is for the Service Head, 2 for deputy chiefs of the Service, and 5 are positions for IT specialists.

Except for the leader of the Service - the Head and his two Deputies, all the positions are occupied by civil servants. Civil servants occupy the positions of the Head of Division, Deputy Head (only in Yerevan City Council), chief specialist or leading specialist in the central body and territorial bodies. An exception is only the position of an IT specialist in the central body. In the territorial bodies, civil servants hold three positions: positions of Head of Division (subdivision), chief specialist and leading specialist. Chief and leading specialists are the servants who conduct the cases and deal with the beneficiaries. Of the 84 staff positions of Yerevan and regional territorial staff, 71 (85%) are provided for the chief or leading professionals, that is to say, the servants who conduct the cases and deal with the beneficiaries. According to the information provided to the Ombudsman, it is planned to add 31 new staff positions in relation to the significant increase in the volume of work for the preparation of alternative reports, but there is no clear timetable when the new positions will be added.

As of October 10, 2018, according to the Service data, 2 administrative posts, positions of 20 civil service providers and 4 IT service specialists are vacant. Four out of 20 positions are vacant in Yerevan City Body, 2 in Aragatsotn regional division, 2 in Ararat regional division, 1 in Armavir regional division, 2 in Lori regional division, 2

¹⁴Concept on introduction of Probation Service in the Republic of Armenia. See Chapter 3. The structure and personnel of the probation service, paragraph. 3. Available at the following link: <http://moj.am/legal/view/article/598>

in Kotayk region, 3 in Syunik region and 1 in Tavush. There are no vacant positions in Gegharkunik, Shirak and Vayots Dzor regional divisions.

It is noteworthy that the Service, combining the functions of supervision over the execution of sentences not related to deprivation of freedom and the basic Probation functions, has fewer positions (staffing resources) than the previously existing UEAS. The issue of staffing is one of the issues of the Probation Service requiring an urgent solution. In fact, at present, the Service has about two times fewer employees than intended by the concept of introduction of the Probation Service in which the number of employees -200, was identified based on the workload criteria of 50 beneficiaries/cases per employee. However, most of the staff currently serves a much larger number of beneficiaries than mentioned above.

Central or regional subdivisions do not have positions of a psychologist, sociologist (or social-psychologist), social worker and computer operator.

3.1.2. Need for a psychologist and social worker

Most respondents noted that there is no need for a psychologist because frequent contacts with beneficiaries, including long-term work experience at the UEAS, helped them to gain some skills of a psychologist. Respondents often mentioned that as a result of their work they have also become "psychologists". One of the respondents described it in the following way:

“ . . . As soon he opens the door and gets into the room I already know who he is, what kind of person he is, whether he is good or bad, and if necessary, I can quickly get information about him when I get the case. I quickly collect information from the district police officer, head of community. I can even ask the district police officer to bring my beneficiary to my office with him”.

Only a small number of respondents mentioned that they needed a social psychologist during their work, or that the presence of a psychologist or social psychologist was objectively required in the Probation Service. Some respondents mentioned that it would be desirable to have a social psychologist at the first interview.

Among the respondents, there was a Probation servant who had the profession of both a psychologist and a lawyer.

In the absence of a psychologist's position, the problem is somehow solved by the involvement of volunteers and psychologist of non-governmental organizations with whom some regional divisions, such as in Lori and Shirak regions, cooperate. According to the Head of Lori Regional Body Division, psychologists from "Crossing Paths" NGO are involved in the work with the beneficiaries working within the framework of a one-year program organized by "Social Justice" NGO. According to this program, they provide psychological support to beneficiaries whose ages range from 18 to 30. In addition, there was a volunteer with a psychologist's higher education involved in the regional body; however, he did not have the opportunity to work in the Probation Service because of the lack of work experience.

As regards the organization of the psychologist's work on a permanent basis, it is difficult to arrange, as the latter is not a staff member of the Service, which is why his meetings with beneficiaries are conducted at a schedule preferred by the psychologist. Meetings with a psychologist are usually held in groups rather than individually. For instance, such meetings were held in Vanadzor for all beneficiaries of the region. Tashir's servant mentioned that group work with psychologist was organized in his residence at the seat of the Court of General Jurisdiction of Lori region, that is to say, in the court building.

Some regional units, for example, Armavir regional subdivision has involved psychologists in the various Probation processes for a short-term as volunteers, who, together with the Probation Service servant visited places of detention and courts. And Shirak's territorial body officials also reported that there were two female beneficiaries who were directed to a psychologist and had a positive outcome.

Although the support of non-governmental organizations is welcomed, solution of staffing issues should be given by providing psychologist and social worker staff positions as permanent Probation servants.

3.1.3. The need in workers specialized in juvenile cases and the need in female workers

No regional subdivision has a trained specialist on juvenile issues. There were cases when the Probation servant, who never had a juvenile beneficiary, was going to receive four cases of juvenile beneficiaries and that was a serious concern for him because he had no special training for working with juveniles.

Frequently respondents indicated that they need women servants to carry out clerical work. This, of course, is the result of stereotypical thinking about women's working relationships. However, some of the servants said that the presence of female workers could be deterrent, especially during visits to penitentiary institutions. There were also opinions that the presence of female workers would be needed to reduce the risk of contact with people with criminal background.

3.1.4. The need of a clerk

Documentation in the Probation Service is handled only in the paper form. There is no electronic database or e-work system. The data are filled in the form of spreadsheets in Excel computer program, in working order. Also, no archive work is conducted, although a special position is provided.

Territorial subdivisions do not have a clerk's staff position. Surveys have shown that the overwhelming majority of employees, especially those who are working overloaded, want to have a clerk, for example, to prepare personal files, do computer-related activities, and other organizational activities. According to the servants, they waste a considerable portion of their working hours on office work and it does not allow focusing on content, such as preparing advisory reports, assessing the risks and needs, compiling various types of protocols, procedural documents and other content documents. In some subdivisions volunteers are involved in clerical work.

3.1.5. The need of a computer operator

Some regional bodies have hired freelance employees as computer operators to compile computer texts, and pay their monthly salary from their own recourses. For example, in the office of the regional seat of Ijevan, a separate room is provided for the computer operator, who, as a freelance worker, compiles electronic texts for employees of all the subdivisions of the region. The Probation servants pay the operator from their own means - AMD 26,000 per month. This initiative has two reasons: first, the majority

of servants have no computer skills, and text typing can take some noticeable effort and time which cannot be afforded given their workload, second, most offices lack computers and printers. As a rule, they are located in the central office of the regional center, in the office of the Division Head. That is why territorial office specialists often have to go to the central office of the regional body to compile computer texts. For example, Noyemberyan, Berd and Dilijan specialists mentioned that they often have to travel to the regional center Ijevan to perform computer-related work. Meghri's employee often has to go to Kapan to compile computer texts, while Aragatsotn regional servant goes to Ashtarak. Usually these are motions submitted to judicial bodies, appeals and reports, letters directed to state bodies and other documents. The respondents mentioned that the inconvenience caused by the lack of computers is the main obstacle in their work at present. The initiative of the territorial bodies to hire a computer operator from their own resources is conditioned by this obstacle.

3.1.6. Involvement of volunteers

With RA Government Decree N 189-N dated 23 February, 2017, it was allowed to involve volunteers in the Probation Service. The decision also establishes the procedure for involvement of volunteers. The goal of involving volunteers is to complete the lack of psychologists, social workers, criminologists and other professionals. In this sense, it is worth noting that 80% of the employees are lawyers.

According to the provided data, 32 volunteers have so far been involved in the Service, and as of October 2018, 12 volunteers were involved in different units. Volunteers performed various organizational and content works. For example, a person volunteered in the regional office of Artashat who partly performed clerk duties, also participated in meetings with beneficiaries, communicated with them, studied personal files and organized them. The Head of Armavir regional division mentioned that 9 volunteers - psychologists, social workers and lawyers are involved in the department's work. Volunteers have been involved in the office work, visited prisons and courts with Probation servants, and psychologists participated in risk assessment and needs assessment. According to the head of the division, for the solution of the problem of staffing, the division cooperates with Armenian State Pedagogical University and has obtained an agreement with the Scientific Council that 10% of university students (psychologists, social workers, lawyers, pedagogues) shall pass their practicum in the

Service. A volunteer with the higher education of a psychologist has been involved in Probation work in Lori region. It was also mentioned that the volunteers also participated in the training, and one of them was even rewarded for a good job.

3.1.7 Problems with staffing vacant positions

During the study conducted to compile this report, two key issues were identified, which the Service faces during the recruitment process. The first is the provision of social guarantees for employees. As mentioned, the overwhelming majority of the Service specialists have been relocated from the UEAS, where they received about two times more salary. Based on the principle of not worsening the person's situation, the former employees who have been transferred from the UEAS continue to be rewarded with former high coefficients. Meanwhile, civil service coefficients of salary calculations are applied for newly hired staff, in which case there is a significant difference between the salaries of these two groups, although they do the same work. Low salaries are a barrier to filling vacant positions.

The second problem is that the Probation Service is a civil service, which means that the majority of the service staff are civil servants and the principles of civil service are applicable to their recruitment process. The competition for employment in the Service and retraining of employees is carried out in accordance with the Law on "Civil Service". Such regulation prevents the recruitment of the newly graduated candidates by the Service based on the legal requirement for the length of experience, on the other hand, recruitment is carried out on the basis of general checklist of the Civil Service, without taking into account the peculiarities of the Probation Service. As a result, the requirements for recruitment in the Service are high and this, along with the above mentioned social security factor, essentially hinders finding new personnel and engaging them in the Service as employees. Many positions remain vacant for months for the above mentioned two reasons. For example, as mentioned by the head of Kapan regional body, from December, 2017 it is not possible to fill the vacant position of the employee in Goris territorial body mainly because the candidates do not have the status of civil servant or the required length of experience. Otherwise, that is to say, if not the requirement of the law to have the status of civil servant of the Probation servant, or the requirement of professional experience, it would be possible to find an employee with this low salary (120,000-140,000 AMD). As a result, the workload is carried by

the head of the territorial division whose seat is in Kapan but often has to go to Goris and serve the area's beneficiaries for a number of days, in addition to his basic job responsibilities.

3.2 The workload of Probation servants

As already mentioned above, the Probation system was intended to be implemented with the thought that one Probation servant would serve 50 beneficiaries. The workload was considered reasonable according to the Concept of Implementing the Service System. According to our surveys, Probation servants consider serving 35-40 beneficiaries as normal monthly workload. In this context, the current working load is substantially different from the above-mentioned figures. Below we present a table on the workload of Probation servants in the regions according to the number of beneficiaries and types of punishment per employee (Table 1). Each territorial body is mainly served by one employee.

Table 1

	Number of beneficiaries	Fine	Public work.	Deprivation of a certain post	Early conditional release	Probation period	Cancellation of punishment
Aragatsotn							
Ashtarak	140	31	20	8	3	77	
Aparan							
Talin							
Ararat							
Artashat	99	55	37		20	113	
Ararat	23						
Vedi	26						
Masis	89						
Armavir							
Armavir/ Baghramyan	165	27	14	5	15	83	

Ehjniatsin	204	55	20	8	99		
Gegharqunik							
Sevan	20	2	4	1	3	10	-
Martuni	34	9	4	3	1	17	-
Vardenis	83	40	19	4	5	15	-
Jambarak	12	3	1	1	-	7	-
Gavar	33	8	3	1	4	17	-
Lori							
Vanadzor							
Spitak	31	13	5		2	10	1
Alaverdi	43	20	5		2	16	
Stepanavan							
Tashir	26	5				21	
Kotayq							
Hrazdan/Charentsavan	43	14		3	2	24	
Abovyan	170						
Yeghvard							
Shirak							
Gyumri	69	19		5	42		1
Akhuryan							
Maralik	53	15	17	4	1	16	
Artik	70						
Ashotsk							
Syunik							
Kapan	104	70	31	12	15	112	
Qajaran	84						
Goris	28						
Sisian Meghri	24						
Vayots Dzor							
Yeghegnadzor	46	18	-	3	5	22	
Tavush							
Ijevan	42	20	1	6	3	15	
Dilijan	73	25	16	9	4	25	

Noyemberyan	24	7	1	2	0	14 ¹⁵	
Berd	31	6	3	1	3	19	

As you can see from the list, the workload of Probation servants in territorial units varies dramatically from one another. The number of beneficiaries per servant in Yerevan ranges from 120 to 200, and beginners can have up to 70 beneficiaries. The average workload in terms of 7 servants makes a proportion about 1 employee - 157 beneficiaries. In Noyemberyan and Kapan 23 beneficiaries fall per servant, 26 in Tashir and 186 in Kapan, as Goris area was also served by the servant of this territorial body. The largest load is in Armavir region, 369 cases served by Echmiadzin and Baghramian territorial bodies (Echmiadzin Probation servant notes that they receive an average of four cases per week), while the least load is in Vayotsdzor, 46 cases¹⁶. In all cases, most of the employees are overloaded more than it was planned by the concept.

The workload of Probation servants has different reasons. This is primarily due to insufficient number of staff positions. This is described in detail in the first sub-section of this section. The second reason is that the number of beneficiaries is constantly growing. In 2017-2018 the number of beneficiaries has increased by 1000. The rapid pace of growth may increase the load of servants several times. For example, an employee serving Dilijan seat said that in September 2016, when the Probation system began to function and he was just admitted to work, there were 13 cases in his proceedings and in the summer of 2018 the number of cases in his proceedings was 85. In Kapan the expert witnessed a situation when there were so many completed cases that employees were not able to make liberals, and personal files were put in large numbers on the table, and it would still take a lot of time for Probation servants to serve them.

In order to get the picture of the workload, the number of beneficiaries should be compared with the workload of the content work conducted with them as the workload is not always directly proportional to the number of beneficiaries. For example, the average workload of the employee serving Spitak and nearby 20 villages is about 25-40 beneficiaries per month. Such a workload was normal by the employee's

¹⁵The total number of beneficiaries may not be equal to the sum of other data as one beneficiary may be sentenced to two sentences simultaneously.

¹⁶The data were received as a result of the surveys conducted in July 2018.

assessment as it gave the opportunity to do proper job with beneficiaries. At the same time, it should be noted that at the time of the experts' visit, one out of 31 beneficiaries of the employee serving Spitak territorial body was involved in public works, since one beneficiary was sentenced to imprisonment for committing a new crime, one was detained, the punishment imposed on two beneficiaries was exempted on the basis of illness, and 13 beneficiaries were fined. This means that with overwhelming majority of beneficiaries, as such, no work was done. It turns out that the actual workload on re-socialization and beneficiary supervision was less - 14 beneficiaries. A similar example is the statistics of the Probation employee of Alaverdi territorial body. At the time of the experts' visit, Alaverdi employee had 43 personal files but the workload was relatively low as 29 of the beneficiaries were sentenced to alternative punishment, 20 of which was a fine.

The extent to which the Probation servants are loaded should also be measured by other factors specific to the area. There were 23 cases in the proceedings of Noyemberyan Probation Service servant, 7 of which were fine, and 15 implementation of probation period. 1 out of 7 fines were replaced by public work, the same motion was still in progress in respect of 1, the fine was imposed on 2, 3 were postponed for one year. The beneficiaries under probation period showed up in the territorial body twice a month and signed up for presentation. In such conditions the employee mentioned that he does not consider that he has a high load. At the same time, however, he noted that his burden was noticeably increased by a geographical factor; in particular, the settlements served by him were far from one another, such as Debedavan, Ayrum, or Voskepar, and the congestion of resources significantly overloaded his time. The representative of Berd regional body also expressed the same opinion, noting that the spread of the territory served by him is 45-50 kilometers, and Talin territorial body employee noting that he serves 40 villages and the problem is not the number of villages but in the fact that the villages of Aragatsotn region are not near each other, but are at a great distance, which creates additional difficulties.

Additional load problems are caused also by weekly trips to the regional center for getting mail, doing computer work, and other practical purposes, which, in the case of resources, would be possible to organize on-site.

Also, aggravation of the situation in border areas contributes to the burden. For example, Tavush region has a 180-kilometer border line, and often fights or clashes occur, which often result in road closures and employees are unable to make home

visits, their working schedule, timeframe established by the law is interrupted which creates additional workload.

As a factor increasing the burden, it should also be noted that the Probation Service division heads – the heads of departments, do not carry out immediate work with the beneficiaries, as a result of which the employees' burden increases. However, there are exceptions as well. In some units division heads often replace the vacant position of the employee and, in addition to their responsibilities, also serve the beneficiaries of the missing employees. Such a situation was, for example, in Kapan territorial body, where the head of the division also served Goris beneficiaries, as the position of Goris seat employee was vacant.

There was a negative impact on the workers' burden by the one employee –one seat structure of territorial units. Currently, 38 seats are functioning in 10 regions of Armenia, most of which are served by one employee, such as Spitak, Tashir, Alaverdi, Meghri, etc. When the employee makes home visits, or leaves the seat to visit prison, court, regional center, or for any other reason, there is no other employee remaining in the office, due to which the seat is, in fact, closed and it is not possible to ensure continuity of the service on the spot, respond to requests, accept beneficiaries, ensure uninterrupted circulation of documents and other urgent actions. Therefore, it is necessary that at least two employees are appointed in each territorial unit. The service sometimes performs structural adjustments to minimize workers' workload. For example, three divisions of Yerevan City Body were reorganized into one division with the aim of securing equal distribution of cases in Yerevan

According to the information provided by the Ministry of Justice to the staff of the Human Rights Defender, the Ministry envisages legislative amendments to optimize the Probation Service functions. Particularly, it is envisaged to reduce the burden of servicemen through access to information on supervision over punishments not related to deprivation of libertyx by implementing punishment supervision through documentary checks.

3.3 Professional readiness

3.3.1 Perception of the role of the Probation servant, his/her knowledge and experience

Probation workers still have a perception or mentality that Probation work is a penitentiary service. During the interviews, the staff often expressed thoughts which were inherent in the penitentiary sphere. This can be partly due to the fact that most employees are either former servants of the UEAS or police, or lawyers who have long years of work experience in power structures and law enforcement agencies. They, as a rule, have professional experience, but at the same time most of them continue to view the State Probation Service as a "force" structure or find it desirable for it to become such a structure and that when communicating with beneficiaries, it is sometimes necessary to speak from the position of the force.

We decided to record some of the figurative expressions voiced by the Probation servants during interviews that we believe are common and maybe even stereotypical about beneficiaries. Let us introduce some of them:

"Convicts in Armenia will not become beneficiaries".

"Let us give your psychologists to our beneficiaries and they will make them crazy".

"We have to wear a pile of clothes, and we' willl become priests"

"Speak with the people with criminal subculture in your human rights language, and you will be put in a porringer."

The above mentioned thoughts were expressed more brightly when talking about the need for uniforms. The overwhelming majority of the surveyed Probation servants expressed an opinion that there is a need for uniforms as it will increase the effectiveness of their service, and it is especially necessary during their home visits. According to them, the lack of uniforms causes beneficiaries a desire to resist, show ambitions, and underestimate the service employees. According to one employee, without a uniform they are sometimes perceived as social workers, and hence, are not treated seriously, they do not pay the penalty, sober only when we submit a motion to the court to replace the punishment. One employee voiced an opinion that the prisoners in the alternative punishment department used to take account of officers with uniforms, while Probation servants are now "ignored both by investigative bodies and by courts." According to him, they should be perceived as a power structure because they are working with convicts. From a conversation with some beneficiaries

it was clear that beneficiaries viewed the Probation servant as, a representative of a controlling, lever-based structure; although at the same time there were opinions that Probation servants essentially supported them in re-socialization. As a rule, the employees who expressed this opinion stated that they did not understand the role of socio-psychologist in the Probation Service, although some of them mentioned at the same time that the population in general and beneficiaries, in particular, were conflict-prone in their area.

It should be noted that there were also contradictory opinions, in particular that they had a good understanding of the role of the Probation Service, the difference between the Service and the priorities of the former UEAS, that the task of the Service is to "*return the convict to society*" and that is how "*the ideology of their work differs from the role of the Prosecutor's Office, which is punitive, while the role of Probation is rehabilitative*". At the same time, the person who voiced the same opinion said that uniforms keep beneficiaries alert because we work with "*people with criminal subcultures*". Probation servants also expressed opinions that they clearly understand the purpose of re-socialization of the Probation Service but the lack of minimal resources does not allow focusing on that goal, because they somehow manage to do their minimal responsibilities in terms of registration of beneficiaries, payment of fines, organization of public works and office work.

The dual approach of perceiving the beneficiary as a convict is also noteworthy. Some employees have expressed conviction that they actually deal with perpetrators, who, however, are not in a penitentiary but in freedom, and in some regions it was mentioned that there are so-called "bearers of criminal subculture" who also have a certain danger for the Probation servant. At the same time, some employees observed that the majority of beneficiaries committed crimes through certain circumstances - severe social conditions (mainly in case of non-violent offenses against property), without condemning such cases even morally. It is impossible for such perceptions not to be reflected on the content of the work done with the beneficiary.

The crime committed by a person, his/her attitude towards the perpetrator of the crime and the circumstances, in moral, psychological and social aspects, of course cannot have no role, nevertheless, we believe that the problem of personalization and identification of the actions of the beneficiary's re-socialization process, and the actions making their control plan, remains unsolved in practice.

There is also the problem of not realizing or overlooking the importance of their own work by Probation servants, which conditions the need in the prospect of sufficient social guarantees, career promotion and motivation. Some employees mentioned that "they do not have a clear idea of re-socialization." Besides, there is a lack of specialists in the field of social and psychological work, and this gap is partially supplemented by the involvement of volunteers, according to the order set by the Government Decree No. 189-N dated 23 February 2017, but the number of volunteers is not large and their involvement does not make any significant changes yet.

During the interviews, there were concerns that the procedure for selection and appointment of the Service Specialists did not meet the Probation requirements. Such an opinion was justified by the fact that the Probation Service is a civil service, so Probation professionals should have a civil servant status, and in order to receive them, they must pass through complex and extensive procedures, in particular, to take the test assignments prescribed by law to the civil servant which are not tailored to the object and purpose of the Probation Service. As a result, candidates who qualify for a civil service and have successfully passed tests but have bad professional skills in terms of performing the duties of the Probation servant may be admitted to the Service. This circumstance was highlighted by some interviewees as the main reason for the discrepancy between the Service specialists and the position held.

Some respondents found that the majority of the Probation Service employees had to be lawyers, and some felt that it was not necessary for the them to be lawyers.

3.3.2 Professional courses

The employees pass professional trainings "Legal Education and Rehabilitation Center Programs Implementation Center" SNCO. However, these courses are aimed not at the development of narrow professional skills of the Probation servants but are conducted within the framework of the general program for other public servants. There is no uniform training program available. Parallel to this, international organizations have organized professional training courses for Probation servants. However, they were not continuous and there was no uniform study program, the topics were chosen based on the situation. Most Probation servants noted that they participated in one or two such courses.

From March, 2018 "Project Harmony" non-governmental organization together with US Embassy's International Narcotics and Low Enforcement Office (INL) and the Ministry of Justice's has implemented a professional skills and abilities formation and development program of the Service staff, which is expected to be completed in February, 2019 and within the framework of which it is planned to develop training modules and prepare trainers with these modules. Five international experts (3 adults, 2 specialized in juvenile cases) and 2 local experts (one psychologist and one social worker on juvenile cases) are involved in the project implementation. In the first phase of the project, up to September, 2018, it is envisaged to develop and adapt modules to the needs of the service. The development of these modules is carried out by localization of 21 modules based on Criteria of European Probation (CEP). It was anticipated that their earlier version would be ready in August, 2018, after which they were to be finalized through final discussions in October, 2018. It is positive that within the framework of the program, constant contact is maintained with the Ministry of Justice representatives who provide appropriate advice on localization, topics and methodology of the program. In the second phase of the project it is envisaged to implement a trainer training program for 15 trainers, five of which will be representatives of non-governmental organizations, and ten employees of the Legal Education and Rehabilitation Programs Center Implementation SNCO of RA MJ and the Organizational-Methodical Division of the Service. It is envisaged to implement 10 days trainings for them (cascade training).

Within the framework of this program it is envisaged to provide logistic support to the Service, in particular, a laptop, a printer (scanner, printer) and a projector which, in the case of successful implementation of the program, will be provided to all the Yerevan and regional offices of the Service (16).

According to the director of the organization "Project Harmony", the program will give an opportunity to provide a material basis for the training, to provide the Probation Service staff with guidelines for their implementation of their activities. In particular, as a result of the project (in October), it was intended to have brief material-guidelines in two thematic areas, namely, a guideline for probation employee-beneficiary relationships, which, for example, will contain guidelines for preparing an advisory report, risk and needs assessment report, and other documentation, second, guideline on working and organizational-legal relations in the Service System (superior-

employee, regulation of internal labor relations between employees). It is expected that the developed materials will contain samples of forms, examples of advisory reports, and more.

3.4 Recommendations

1. It is essential to fill the Service with permanent staff members of psychologists or social workers, or, alternatively, involve social – psychologists or social workers on a temporary contract basis.
2. It is necessary to involve trained staff specialized in juvenile service in the Service System. As an alternative, it is recommended to select volunteers from the Probation staff and prepare them with advanced knowledge on juvenile issues who in their territorial or regional bodies will also perform the duties of a juvenile specialist.
3. It is proposed in the territorial bodies where the workload is high, to provide the position of an office worker that will enable Probation servants to focus on content work. In areas where the load is not large, it is recommended that Probation servants combine their responsibilities with the work duties of a clerk. It is also suggested that the clerk performs the duties of a computer operator on a joint basis.
4. It is necessary to develop a joint training curriculum for continuous professional education of Probation servants whose methodology will be based on the principles of adult learning methodology of the Council of Europe HELP program. If the educational / training program has already been developed by partner companies, the methodology of the program should be adapted to the HELP project methodology. The main direction of adult learning methodology is interaction and the experimental learning method. Accordingly, the course should exclude the method of lecture and focus on the development of such skills as preparation of advisory reports, conflict resolution, and more.

Section 4 Supervision over punishments not related to deprivation of liberty and re-socialization

4.1. The fine

4.1.1. Implementation of fine supervision procedures

The bases for the enforcement and supervision of the fine are defined by the Penitentiary Code of the Republic of Armenia and the Law “On Probation” and supervision procedures are defined by part 3 of the Annex to Republic of Armenia Government Decree N 395-N dated 5 April, 2018 (on “Annulling RA Government Decree N1561-N Dated 26 October, 2006, Approving the Internal Regulations of the Probation Service of RA Ministry of Justice”). Accordingly, the territorial body of Probation of the place of permanent residence of the convict ensures the execution of the fine. Upon receipt of a valid legal act on assigning the fine, the Probation servant within one business day clarifies the location of the beneficiary, contacts him, informs the territorial body, then makes a personal file and fills in the registration card. When a beneficiary goes to a territorial body, the Probation servant clarifies to him the procedure and conditions for serving the punishment in the form of a fine, the rights and obligations of the Probation beneficiary, as well as liability prescribed by law in case of their non-compliance. If the payment of the fine is deferred on the basis of the judicial act or it is decided to pay the penalty by installments, the Probation servant makes a control plan. After the registration of the beneficiary the probation servant sends a report to the territorial police department within three days. Upon payment of the fine the beneficiary submits the receipt of payment to the Probation servant.

In the case of failure to submit a receipt to the territorial body within the timeframes established by law, the territorial body submits a motion to the court on replacing the fine imposed by a court act on the beneficiary of Probation or its unpaid part with public works with the exception of cases provided by part 3 of Article 51 of RA Criminal Code. After the full payment of the fine, the territorial body issues a certificate to the beneficiary of the Probation that he served the sentence and informs the court and the police information center about that. The supervision process is considered to be complete with this step.

The survey showed that all of the above procedures are generally done properly by the Probation servant. They have at their disposal all the required forms for the above-mentioned actions approved by the Government decision. These forms are: Form N1 – Personal file, Form N 2 -Registration card, Form N 3 - Reference on serving a sentence, Form N 4 - Protocol on signing a signature, Form N5 - whereby the beneficiary is notified of his/her rights and responsibilities, a notice to show up at territorial body of the Probation Service, Form N 7 - a form of sending a report within three days to the Territorial Police Department, Form N 9 - Attendance Schedule, and Form N 10 - Control Plan.

4.1.2. Disobliging the property status of the convict by the court when assigning the fine

The fine is the most moderate punishment imposed by in the Criminal Code of the Republic of Armenia, which is defined in Article 51 of the Criminal Code of the Republic of Armenia: “*1... financial punishment..., which is imposed for minor and medium gravity crimes in the cases envisaged in the Special Part of this Code, and within the limits prescribed by this Code, in the amount of 30 to 3000 minimal salaries (hereinafter, the minimal salary) as established by law of the Republic of Armenia at the moment of fining . 2. The court determines the amount of the fine, taking into account the nature and gravity of the crime, as well as, the property status of the convicted person.*” From the formulation it follows that the court takes into consideration the property status of the convict, not when choosing a fine as punishment but when determining its size. Meanwhile, from conversations with the staff of the Probation Service (for example, in Abovyan, Kapan, Artik) it has become apparent that often the implementation of the fine imposed by the court is impossible due to the lack of property or income of convicts and there is a need to replace it with public works. Consequently, in terms of efficient functioning of the justice system, saving time and resources it would be more expedient that **prior to the verdict and choosing the fine the court drew attention to the solvency factor of the convict.** Moreover, the legislator has envisaged such a mandatory requirement under part 1 of Article 87 of RA Criminal Code, which prescribes the possibility of imposing the fine on a juvenile; it is particularly defined that: “*1. Fines are used if the minor has*

individual income or in the case of such property, to which confiscation can be extended. ...”.

4.1.3. The Limited opportunity for alternative basic punishments

During the application of punishment, the negligence of the court to consider the property status of adult convicts often has other objective reasons: in the penal system provided by the Criminal Code of the Republic of Armenia the possibility of applying alternative basic punishments is strictly limited. According to the current Criminal Code, basic punishments may be imposed as a fine, deprivation of the right to hold certain posts or engage in certain activities, public works, restrictions on military service, detention, keeping in disciplinary battalion, imprisonment for a certain period and life imprisonment. From the mentioned penalties, public works can be applied only as an alternative to imprisonment. In the case of a request for replacement of a imprisonment by public works, deprivation of the right to hold certain posts or engage in certain activities it is possible not in all cases (it is connected with the nature of the offense), the restriction on military service is applicable only to military servicemen. The rest of the basic punishments are related to deprivation of liberty, which leads to the fact that the court often does not see an alternative to the fine.

Additionally, part 1 of Article 61 of RA Criminal Code defines: “*1. A fair punishment is assigned in relation to the person found guilty in the committal of a crime which is determined within the limits of the appropriate article in the Special Part of this Code, taking into account the propositions of the General Part of this Code. ... 3. The most strict punishment for the crime is assigned only when the less strict type can not serve for the purposes of the punishment*”. Meanwhile, the current Criminal Code of the Republic of Armenia contains articles describing offenses for which only the fine is specified (for example, art. 146 part 1, art. 148, art. 152, art. 164 part 1, art. 173, art. 174, art. 186 part 1). That's why the court has no other option than the application of the fine. Therefore, to increase the effectiveness of the fine it is also necessary to clarify the conditions of its application.

4.1.4 The basis for determining the size of the fine

One of the problems of the application of the fine is also the basis for determining its size: the Criminal Code of the Republic of Armenia as such considers the minimum salary established in RA, and Article 3 of RA Law on “Minimum Monthly Wages” dated 17 December, 2003, states that not 55 000 AMD, but 1000 drams should be considered as minimum wage if it refers to the Criminal Code.

During the interviews with beneficiaries, the latter raised the issue of the **size of the fines imposed on them and its sharp discrepancy with their social status**, in particular, they noted that, in case of the fine, their families are left without the satisfaction of their basic needs. In this regard, it should be noted that the criminal codes of many European countries, when determining the amount of the fine, link it with the income of the person rather than the amount of the prescribed fine. This arrangement provides the principle of justice on the one hand and, on the other, does not violate the social protection of the convict and his family members. Particularly, Article 34 of the Swiss Criminal Code determines the amount of the penalty according to the person's daily income¹⁷, similar regulations are also included Article 1 of the 25th chapter of the Swedish Criminal Code¹⁸, Article 50 of the Spanish Criminal Code¹⁹. Moreover, these codes also indicate the criteria for the assessment of the penalty determined by the daily income. For example, Article 2 of Chapter 25 of the Swedish Criminal Code states: “... *Fines should be determined having regard to what is judged to be reasonable with account taken of the income, wealth, obligations to dependants and other economic circumstances of the accused*”²⁰. The same regulation is included in Article 47 of the Bulgarian Criminal Code²¹, Article 68 of the Czech Criminal Code²²,

¹⁷ The Swiss Criminal Code is available at the following link: <https://www.admin.ch/opc/en/classified-compilation/19370083/201803010000/311.0.pdf>

¹⁸ The Swedish Criminal Code is available at the following link: <https://www.government.se/contentassets/5315d27076c942019828d6c36521696e/swedish-penal-code.pdf>

¹⁹ The Spanish Criminal Code is available at the following link: https://www.legislationline.org/download/action/download/.../Spain_CC_am2013_en.pdf

²⁰ The emphasis is ours

²¹ Bulgaria's Criminal Code: available at the following link: https://www.legislationline.org/download/action/download/id/7578/file/Bulgaria_Criminal_Code_1968_am2017_ENG.pdf

²² Czech Republic Criminal Code is available at the following link: https://www.legislationline.org/download/action/download/id/6370/file/Czech%20Republic_CC_2009_am2011_en.pdf

and Article 50 of the Danish Criminal Code²³. While Article 51 of RA Criminal Code states that in determining the amount of the fine, the court takes into consideration the property status of the convict, but the criteria for determining the individual's property status are not clear. Moreover, both Probation servants and beneficiaries have pointed out cases when, while still publishing a verdict, and in some cases, even before that, a person claimed that he was unable to pay the fine, but this statement did not receive any response.

4.1.5 *The fine payment terms*

Certain problems arise in connection with the fine payment terms. Part 2 of Article 24 of the RA Penitentiary Code states: “***After obtaining a valid judicial act***²⁴ on imposing a fine, the Probation servant makes up a control plan.... The beginning of supervision is counted from the moment the convict is registered ”, whereas part 3 of the discussed article states: “*The convict shall be obliged to pay without delay, completely and after the judgment of conviction of the court takes legal effect*²⁵ the amount imposed as a fine upon the judgment of conviction, submitting the payment receipt to the body executing the sentence within ten working days”. In fact, parts 2 and 3 of Article 24 of the Penitentiary Code of Armenia consider differently the starting point for the penalty fee, the starting point for the Probation servant is the moment he receives the judicial act, and for the convict the moment the judicial acts enters into legal force. Under this legislative regulation, the Probation servant is obliged to file a motion to the court as soon as the ten working days of judicial act’s entry into legal force expire, with a request to replace the fine with a public work, as the latter is an ill-faith evader. In this regard, the main problem is that, according to a number of regional observations, there are cases when the case is received rather late, even a month after the judicial act came into force. As a result, the Probation servant had to inform the beneficiary of his immediate responsibility to pay the fine. According to the employees' observation, it is justified to set the beginning of the calculation of the lawful

²³ Denmark's Criminal Code: available at the following link:

https://www.legislationline.org/download/action/download/id/6372/file/Denmark_Criminal_Code_am_2005_en.pdf

²⁴ Emphasis is ours.

²⁵ Emphasis is ours.

punishment for 10 days not the entrance into legal force of the judicial act but the receipt of the case by the Probation Service. In addition, the servants considered justified setting a longer term instead of the ten-day evaluation period for avoiding payment of fine – 20-30 days. It is more appropriate to legislatively clarify that the convict has to pay a fine after being informed that the Probation servant has received the judicial act.

The most common phenomenon is the non-payment of fines, the cancelation of the payment of fines, the delay of payment for a variety of reasons, or the avoidance of payment. In some regions, it was even mentioned that non-payment or delay in payment makes the overwhelming majority of cases. This is mainly due to poor economic conditions of convicts or their families, although there were also exceptions.

One prisoner refused to pay a fine, and in court he stated that he would also refuse public work (most likely to clean up a community club) because such work was considered shameful. The court decided to impose a penalty of imprisonment on him. In another case, the convict refused to pay the fine before leaving for compulsory military service, but during military service he also refused to pay the fine and the Probation Service had to wait until he was discharged.

Part 3 of Article 51 of the Criminal Code of the Republic of Armenia defines: «3. *If the convicted person, due to personal or financial situation, is incapable of immediately paying the fine in full, the court establishes a payment deadline, up to 1 year, or allows to pay the fine on installment within the same period. This privilege is null and void, if the convicted person fails to pay the portions of the mentioned amount on time. In case of impossibility to pay the fine, the court can substitute the fine or unpaid part thereof with public works in the manner prescribed in part 4 of this Article*».

From this regulation it follows that in the event of impossibility to pay a fine in time, the convict has two options for solving the issue - pay the amount within one year or engage in public works. During the interviews with the beneficiaries, the concern was that the term of partial installment of the fine was short; in the current socio-economic situation of Armenia it becomes almost impossible to meet the needs of their families. For example, one of the beneficiaries in Tavush province (by profession, driver) mentioned that he had been fined for an amount of 500,000 AMD

and was unable to pay the mentioned amount immediately, a schedule to pay the fine in part (AMD 50000 per month) was set. But he was unable to pay that amount on time, as he has little children under his care, his wife does not work, the whole amount earned was hardly enough to solve the problem of family food. As a result, the fine was replaced with imprisonment. However, in case of a longer payment schedule, he would be able to pay the fine. There were also cases when the beneficiary paid part of the fine, and the other part was replaced by public works, with a maximum of 2200 hours. In other words, it turns out that the convict has paid a portion of the fine and has been sentenced to a maximum sentence of public work.

The issue of prolongation or partial installation of the fine payment, for example, up to 2-3 years, was also mentioned by the Probation Service staff.

Moreover, such approach exists also in the criminal law of foreign countries. In particular, according to Article 50 of the Spanish Criminal Code, the penalty may be settled in up to two year, taking into account the property status of the convict.

The Probation Service staff also expressed concern about point 11 of Republic of Armenia Government Decree N 395-N dated 5 April, 2018 (on “*Annuling RA Government Decree N1561-N dated 26 October, 2006, Approving the Internal Regulations of the Probation Service of RA Ministry of Justice*”), according to which if a Probation beneficiary fails to submit the fine payment receipt to Probation territorial body within the timeframe established by law, it is necessary to submit a motion for replacing the fine or the unpaid part thereof with public works. The above mentioned regulation defines that the beneficiary must submit the receipt to the Probation Service within ten working days upon expiry of the term specified in the payment schedule. The Probation Service staff (in Vayotsdzor, Lori, Syunik) stated that although in many cases they realize that the prisoner is in a socially vulnerable position and is therefore delaying the payment, they themselves are required to file a motion to the court, whereas according to part 5 of Article 51 of the Criminal Code, the convict is considered to be evading the payment of penalties in an ill-faith manner. At the same time, cases have been reported when the Probation servant has applied to the court with a motion to replace the fine with public works, but before the investigation of the case or the court's decision, the beneficiary has paid the fine. As a result, both the Service and the Court were unnecessarily overloaded.

In practice there is some uncertainty in determining the impossibility of paying a fine. Part 4 of Article 51 of RA Criminal Code states: “4. *In case of impossibility to pay*

the fine, the court can substitute the fine or unpaid part thereof with public works counting 3 hours of public works as minimal salary and in case of maliciously evading paying the payment of the fine, five hours of public works as minimum salary²⁶. If the result of the calculation of replacing the fine or the unpaid part thereof with public works exceeds two thousand two hundred hours, then two thousand two hundred hours are appointed. Rounding up time values as a result of replacement of the fine or the unpaid part of the fine for public works is done in favor of the convict”.

In case of impossibility to pay the fine the possible consequences are also presented in the RA Penitentiary Code, Article 25 of which defines that: “1. A judge shall, upon the motion of the convict, taking into account the circumstance of impossibility of payment without delay or completely of a fine by the convict, fix for him or her a term of payment of maximum one year or permit the payment of the fine in instalments within the same term. The mentioned privilege shall be repealed, where the convict fails to pay in time the instalment or instalments of the amount imposed, and the remainder of the sentence shall be replaced with community service as prescribed by Article 26 of this Code. 2. When applying to court with a motion of providing for deferred payment of a fine or its payment by instalments, the **convict shall substantiate the circumstance of impossibility of payment of the fine²⁷**, as well as, where appropriate, give relevant clarifications with the purpose of verifying his or her property status”.

The analysis of Part 1 of the article also indicates that the criteria for impossibility to pay a penalty and to evade maliciously its payment are not clarified. From conversations with Probation servants, it was clear that they filed a motion for replacing fine with public works in any case of non-payment, even though the courts not always satisfy them. At the same time, the Probation servants complained that there was a not unified judicial practice in terms of satisfying motions. For example, Gegharkunik Probation Service servants argued that the judges easily satisfied the motion, while in Tavush region it was mentioned that some of the judges satisfied the motion, while others rejected. From conversations with judges it became clear that the main reason for the rejection of motions was insufficient steps taken by the Probation employee to find out the defendant's insolvency. Meanwhile, Probation servants condition this circumstance by the absence of sufficient levers to determine the solvency of the person under RA legislation.

²⁶ The emphasis is ours.

²⁷ The emphasis is ours.

According to Gegharkunik region observer, in one case, the Probation servant applied for an annulment of penalty based on the expiry date of the accusatory sentence, but the court did not satisfy the motion with the justification that the Service should have checked the beneficiary's property status while the Service had no such authority.

4.1.6 Replacing a fine with public work

Until March 1, 2017, Part 4 of Article 51 of the Criminal Code did not provide an adequate opportunity to replace the fine with public works if the court had assigned public works that lasted less than 270 hours as a punishment. Thus, the legislator had set a minimum threshold for the possibility of replacing the fine with public work. This restriction was abolished by the decision of RA Constitutional Court DCC-1082 dated April 23, 2013, which states “*1. Article 51, Part 4 of the Criminal Code of the Republic of Armenia is in contradiction with Article 18 of Constitution of the Republic of Armenia, in so far as the counting made for substituting the fine or unpaid part of thereof with public works consequently does not equivalently guarantee the legal opportunity of application of public works less than two hundred seventy hours for the persons who has no possibility to pay the fine, blocking the implementation of their right to effective legal remedy, as well as there was no differentiation between the impossibility to pay the fine and the circumstances in which the payment was avoided*”. With the legal position of the Constitutional Court, Part 4 of Article 51 of the Criminal Code was amended and the minimal threshold was removed, thereby allowing public work to be imposed on convicts who had no ability to pay the fine.

The decision of the Constitutional Court was made on 23 April, 2013 and Part 4 of Article 51 of the Criminal Code was amended on 1 March, 2017. During that period in the absence of a new legislative regulation, the courts were guided by the Constitutional Court's decision until the anti-constitutional and void norm was replaced by a new regulation. This circumstance is welcomed as this was how the courts provided the rule of law when it was necessary to allow the convict to perform public work instead of the fine because he/she had no opportunity to pay the fine because of a socially insecure situation.

The current judicial practice of replacing the fine with public work is not admitted definitely by its users. Lawyers and judges find that Probation servants often file

groundless motions to the court for replacing the fine with public work even when there is obviously no apparent reason to do so, for example, when the court refused a similar application a few days ago, and no new fact or circumstance has changed in that short period of time. According to them, the real reason for this practice is that the Probation servants often fail to achieve the payment of penalties by convicts and try to compensate for this failure by replacing the fine with public work.

As the cases of non-payment of penalties are widespread, in this respect Probation servants have made suggestions that enforcement mechanisms of enforcement of punishment should be applied such as the charging of administrative fines by the CES. However, the authority of the Service is limited only to verifying the payment of the fine and filing a motion with mediation to replace it with public works.

During the interviews, Probation servants reported cases when a convicted person paid a fine but later was unable to continue the payment. The unpaid portion of the fine was replaced by public works and the calculation resulted in a maximum of 2200 hours, the maximum allowable threshold for public works, which would be set against the individual even if the fine was not paid at all. From the point of view of ensuring the principle of justice this definitely contradicts the idea that has been formulated in part 3 of Article 26 of the Criminal Procedure Code of the Republic of Armenia which provides: “3. *Where the fine has been paid in part, the term of community service shall be determined taking into account the paid part of the fine.*”. It is assumed that in case of the existence of the paid part of the penalty, the application of the maximum term for public works against the person is not justified, but the current legislation of the Republic of Armenia does not provide any limitation in this regard.

Moreover, the Probation servants have presented examples when after the fine was replaced with public works, the beneficiary applied to them asking to allow him/her to pay the entire penalty. Nevertheless, RA legislation does not provide such a possibility either. Meanwhile, criminal law in a number of Western European countries directly regulates such an opportunity. For example, Article 106 of the Swiss Criminal Code states that if, in the case of non-execution of the sentence, it has been replaced with deprivation of liberty, the person is released in the event if the fine is then paid.

The staff of the Probation Service of RA also expressed the concern that with current Criminal Code of the Republic of Armenia it is possible that in case of impossibility of payment of the fine, it will be replaced by public works, and in case of avoiding it, with imprisonment, whereas the sanction of the norm defining

responsibility for the actions of the beneficiary imposes no other punishments, especially imprisonment, except for a fine. Such a case has already been registered. A person was convicted under Part 1 of Article 243.1 of the Criminal Code of the Republic of Armenia, which was replaced with public works due to impossibility to pay, and later with imprisonment on the grounds of evading. Replacement of public works with imprisonment has resulted in a prison term exceeding one year, in the case where imprisonment was not initially imposed as punishment. However, in case of non-payment of the fine, the practice of replacing it with imprisonment exists in Western European countries, such as in Switzerland, Spain and is considered legitimate. The problem is different in Armenia, where the non-payment of fines is usually conditioned not by avoiding payment, but with insolvency.

4.1.7 Reforms aimed at increasing the effectiveness of supervision over the fine

During the interviews, the Probation servants frequently made comparisons between themselves and the CES staff. In terms of fines, they often point out that their main "weapon" was interviews with beneficiaries when the latter are explained, persuaded and urged to pay fines. According to them, the same actions are taken by the staff members of the CES but with the difference that "*CES also has coercion tools, inventory, arrest of property, closure of BMIS, while their only tool is "the word"*". In the light of this, it was suggested that the Service be given the opportunity to seize a person's property, such as the CES. It was suggested, like in the example of the CES, to impose penalties for late payment, with the condition of transferring up to 5% of the fee to the Service. It was also suggested that the legislative regulation allows the Probation servants to provide information to the judge about the financial means of the person. In that way, verdicts will be more accurate and Probation servants will not have to file a motion in the future to replace the fine with public work, which is often done. According to their opinion, the provision of information by the Probation servants to find the solvency of the person at the stage of the imposition of punishment could be more effective in terms of resources than filing motions for replacing fine with public works at the stage of serving the sentence. There have also been opinions that there is a need to impose duty to ensure the payment of fines on the CES and that it is inexpedient for such functions to be imposed on the Service.

The Ministry of Justice envisages legislative amendments to optimize the Probation Service functions, in particular, to reduce the burden of servicemen over the supervision of non-custodial sentences. For fines, it is envisaged that the supervision of the Service will be carried out through a documentary checking, thereby excluding direct communication between the Probation servant and the beneficiary, which would significantly escalate the Probation servant's time because the supervision over the execution of punishment overloads them too much. To do so, it will be necessary to ensure the availability of payment information to the Probation servant, which is intended to be done in a computerized and online manner. If, under the current regulation, within the timeframe established by law, the beneficiary is obliged to submit the receipt of payment of the penalty to the territorial body and if the receipt is not submitted to the territorial body within the prescribed time limit, the latter files a motion to the court on the replacement of the fine imposed by the court act or its unpaid portion on the beneficiary of the Probation with public works, then, with legislative amendments, it is suggested to check the payment of the fine through an online database. It is understandable that such a method of supervision will significantly reduce the Probation servant's working time, which he spends for documentary supervision over the payment of fines.

The online supervision system is planned to be implemented on the unified platform e-probation.am. The conceptual approaches of the system have already been developed at this stage. Within the framework of the same initiative, it is planned not only to automate the fines system, but also to digitize penitentiary cases, which would greatly facilitate their use by Probation servants in the exercise of their functions under the early conditional release proceedings.

4.2. Public works

4.2.1. Implementation of procedures for supervising the execution of public works

The procedures of control over the execution of public works are implemented by the Penitentiary Code of the Republic of Armenia and by the proceedings defined by RA Government Decree N1019 dated 17 August, 2017 ("On Determining the Procedure and Timing of Engagement of Public Works").

Upon receipt of a valid judicial act on public works, the Probation servant of the given Territorial Body within one day clarifies the location of the Probation beneficiary, contacts him, and then informs the territorial body about his presentation with a written notification using form N3 after which the employee makes the personal file and registers him in accordance with form N1 and N2. These procedures are properly implemented by Probation servants. In spite of this, the servants noted that the defined one-day period should be reviewed and extended because for objective reasons it is often impossible to identify a beneficiary within a day, contact him, form and send a notice, make a personal case and a beneficiary's card.

Upon arrival of the Probation beneficiary to the territorial body, the Probation servant clarifies to him the procedure and conditions for the performance of the public works discipline, the rights and obligations of the beneficiary, and the liability prescribed by the law, in case of their non-compliance, after which forms a control plan according to form N4.

During the first visit of the beneficiary, the interview lasts 15-20 minutes; the second visit is shorter, up to 10 minutes. A reference is made about the relationships between the beneficiary and family members, his behavior at the workplace, with the neighbors, but the description is actually superficial. Usually it is marked "normal or not normal" with a short score. Beneficiaries are invited twice a month. When registering, the beneficiary is required to bring a photo, a copy of the passport, a reference on the composition of the family, from the workplace and educational institution. As a current issue it was mentioned that if the beneficiaries have debts (for example, unpaid property tax), the issuance of a certificate is rejected by the local self-governing body. In those cases, they require information themselves via a telephone call or an official note.

Another problem with the document collection process is the dissatisfaction of beneficiaries with additional costs, such as photographing. There have been cases when the probation servant has paid for the photograph of the beneficiary or for other expenses (for example, for travel) so that he can complete the procedures prescribed by law, compile a personal file, fill in the registration card and other documentary requirements.

These procedures are generally maintained by probation servants, with some exceptions described above. Time requirements are mainly violated when the Probation servant is forced to make home visits to remote settlements.

4.2.2. Duration and hours of public works

According to part 2 of Article 54 of RA Criminal Code, "*2. Public works may be imposed on persons sentenced to imprisonment of up to a maximum of two years for crimes of mild or medium-gravity. 2.1 The duration of assigned public works shall amount to 270-2200 hours ...*"

The current regulation of public works creates problems, first of all, in terms of their duration. Both the Probation Service staff and beneficiaries have voiced concern over their overly long duration (270 to 2200 hours). The most alarming situation is when we deal with the use of public works imposed to juveniles. The current Criminal Code of the Republic of Armenia considers the use of public works imposed to teenagers aged over 16, envisaging the same duration and conditions of public works applicable to adults. This contradicts to point 3 of Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, according to which the measures imposed against a juvenile offender should be imposed for a minimum necessary period.

Beneficiaries expressed an opinion that such duration of public work as well as their organization during the period coinciding with the hours of operation of Probation does not leave them the opportunity to care for their family because they have to be involved in public works instead of earning money during working hours. The residents of the regions were more vulnerable to the situation, because due to their involvement in public works they could not perform fieldwork from spring to autumn, while this ensures the survival of their family. The Probation servants have also offered to reduce the maximum duration of public works to 700 hours.

The length of public works in the current RA Criminal Code is too long, as compared with the maximum period established by the legislation of the European countries. In particular, according to Article 33 of the Spanish Criminal Code, the period is calculated in days and is set from 1 to 180 days (in case of RA, if the hours are converted into days it will make from 33 to 275 days), Article 2A of Chapter 28 of the Swedish Criminal Code defines that public works are defined for a period of 40 to 240 hours, part 1 of Article 63 of the Czech Criminal Code sets out from 50 to 300 hours, part 2 of Article 44 of the Criminal Code of Georgia - from 40 to 800 hours.

It is necessary to reconsider the approach introduced during the definition of public works in RA Criminal Code and reduce their duration.

As regards the organization of public work during working hours, point 18 of the Annex “On Determining the Procedure and Timing of Engagement of Public Works” to RA Government Decree N1019 dated 17 August, 2017 (“On Determining the Procedure and Timing of Engagement of Public Works”, it is fixed that: “18. *Public work time cannot exceed the working time schedule and duration established by the Labor Code of the Republic of Armenia*”. However, the same labor legislation provides, in some cases, the ability to demonstrate flexibility and to set a working schedule in compliance with individual requirements, which, we believe, would be appropriate to apply also when designing a public work schedule for the beneficiary. This requirement is also set out in point 3 of Recommendation 3 (2017) of the Committee of Ministers to member States on “European Rules on Community Sentences and Measures”, according to which the nature and duration of public works shall both be in proportion to the seriousness of the offence for which persons have been sentenced or of which they have been accused and shall take into account their individual circumstances. This principle is further clarified in point 22 of the same recommendation, which states that the nature and duration of public works shall also be in proportion to the harm done to victims, and shall take into account any risks assessed as well as the individual’s needs and circumstances.

4.2.3. Determining the place of public works

During interviews with Probation servants, opinions were voiced that the concept of "useful work for the public" needs clarification. Thus, point 7 of the Annex to the above mentioned Decision N 1019-N of the Government of the Republic of Armenia defines: “*In order to ensure the execution of public works, the territorial body cooperates with state bodies, commercial and non-commercial organizations, institutions and local self-governing bodies with a view to determining places of public works, with which appropriate contracts may be signed in accordance with Form N 5...*” It follows from the interpretation of this provision that in order to serve the sentence of public works the convict may be sent both to state bodies, and commercial and non-commercial organizations, institutions, local self-governing bodies. At the same time, an impression is created that commercial organizations can also be non-

state-control, which does not derive from the requirements of public works and as punishment, their purpose and logic.

Points 39 and 40 of Recommendation 3 (2017) of the Committee of Ministers to member States on “European Rules on Community Sentences and Measures”, clearly indicate: “39. *Tasks assigned to offenders doing community service shall be socially useful and meaningful and make use of and/or enhance the offender’s skills as much as possible.* 40. *Community service shall not be undertaken for the purpose of making profit for the implementing authorities, for their staff, or for commercial profit*”. From interviews with Probation servants, it became clear that Probation servants mainly direct beneficiaries to state or community bodies. We were able to clarify several cases when the beneficiary was admitted to a private enterprise, for example, as a guard at the mining enterprise. The Church also has a role in organizing public works. Nearly 10% of the beneficiaries in Armavir are serving their sentence on the church territory. The same territorial body also has an agreement with the Union of Yerkrpah Volunteers for beneficiaries to carry out public works on private land plots of deceased or disabled military servicemen. One case was also recorded when the beneficiary's public work was carried out in a non-governmental organization. “Civil Society Institute” NGO has organized felting classes and then one beneficiary was involved in public work with a work schedule of 2200 hours.

The staff of the Probation Service (for example, in Syunik) expressed opinions that it would be more expedient to organize beneficiaries' public works in such a way that they would be directed, for example, to help single elderly people, families of deceased freedom fighters who are in need. The proposed proposal does not contradict the requirements of Recommendation 3 (2017) of the Committee of Ministers to member States on “European Rules on Community Sentences and Measures”, provided that the nature of their usefulness to the public is obvious. For example, such a settlement exists in Article 79a of the Swiss Criminal Code, part 3 of which defines that: “Community service is work that benefits social institutions, public works or persons in need. The work is unpaid.”

It is also important to clarify the content of public works. Point 12 of the Annex to RA Government Decree N1019 dated 17 August, 2017 (“On Determining the Procedure and Timing of Engagement of Public Works” defines that: “12. *The following activities may be proposed to Probation beneficiary by the regional authority: 1) workmanship (yard improvement, renovation of roofs of high-rise buildings, fence dumping,*

cosmetic repair of buildings and constructions), 2) irrigation works, 3) landscaping work, 4) land reclamation works, 5) Road signs painting and erection, 6) cleaning and renovation of historical and cultural sites”.

The formulation indicates that, regardless of an individual's educational level, skills and abilities, if a beneficiary is sentenced to public works, he/she must be involved exclusively in workmanship and work requiring low professional qualification. It turns out that the possibility of performing public work of a professional nature is limited at the level of the sub-act. In these cases, problems arise not only from the point of view of the beneficiary's avoidance based on the nature of the public works, but also in the case of persons with professional education, is not effective in terms of implementing the objectives of the punishment. The public would benefit more if the beneficiary with the musician's profession, for example, had free concerts in elderly homes, a beneficiary with a doctor's profession provided free medical assistance to the needy. Moreover, the provision of such an exhaustive list of public works does not correspond to the provisions of RA Criminal Code in that the definition of public works given by the code does not provide such a restriction.

Such exhaustive description of public works does not enable the requirement of point 39 of Recommendation No. (2017)3 of the Committee of Ministers to member States of the Council of Europe, according to which the tasks assigned to offenders doing community service shall be socially useful and meaningful and make use of and/or enhance the offender's skills as much as possible. Moreover, identifying such a list of public works creates a biased approach in beneficiaries according to which they have to do "shameful", non-publicly assessed work, and therefore they feel humiliated when engaging in such activities, do their best to avoid their performance. It is no coincidence that a minor percentage of those convicted of public works in Armenia have been involved in their implementation willingly.

4.2.4. Involving beneficiaries in public works and supervision over them

Article 54 of the RA Criminal Code envisages two types of public works involvement: first, public works are designated as alternative punishment for a certain term of imprisonment within twenty days after receiving the order of enforcement of the sentence, in the case of a written application by the convict, second, public works

are assigned instead of a fine or its unpaid part, in the event of a malicious payment of a penalty or a ill-faith evasion thereof.

From interviews with Probation servants and Probation beneficiaries, it was followed that there are unique cases when beneficiaries were involved in public works willingly. Moreover, even those unique persons who have agreed to engage in public work, have not formed a clear understanding in the court what the essence of the sentence is, what responsibilities they will have.

Whereas point 30 of Recommendation 3 (2017) of the Committee of Ministers to member States on “European Rules on Community Sentences and Measures”, defines that decisions about the implementation of a community sanction or measure shall be explained clearly to the suspects or offenders in a language they understand. It is natural that in such circumstances, convicts do not perceive the purpose of public works as punishment, which occupies a special place in the system of punishment; therefore, practically the number of people avoiding public work is large.

In general, Probation servants try to be flexible when engaging beneficiaries in public works and exercising supervision over them. For example, those who have basic work are given the opportunity to combine public work with basic work. Servants explain that it is necessary to meet the request of the beneficiaries and enable them to "make money for their families" which are often in a difficult economic situation. Second, according to the Probation servant's review, this does not contradict the general objective of re-socialization, just the opposite, contributes to the strengthening of trust of the beneficiary towards the Service.

One of the beneficiaries mentioned that at the moment of imposing the sentence, he had no opportunity to pay a fine of 500,000 drams. The payment of the fine was postponed making AMD 50,00 a month, but he was still unable to pay it. The fine was replaced with 1,500 hours of public work, with 7 hours of daily workload. At the same time, he found a paid job, but it is difficult to combine it with public work. He has little children in care. The Probation servant noted that he can cut the daily workload to 4 hours every day and does not have any other power.

Other service providers also point out that the beneficiaries' work time is reduced to four hours in order to enable them to do paid work. It is important to note that the

acquisition of arrangements to combine the beneficiary's basic paid work with public work, in their entirety of solving organizational issues are mostly solved through personal contacts of Probation servants in the community, that is to say, they are not institutionalized, there are no relevant regulatory norms and mechanisms. It most often becomes possible due to the fact that in small communities, villages, towns and small towns, Probation workers are mostly local residents who have strong personal ties with the community and the lack of institutional arrangements are supplemented by the existence of such personal relationships.

One respondent mentioned that he knows about 70 percent of the residents of the community, and if there is anyone whom he does not know, it is enough to "ask one or two of his acquaintances" and get a lot of information about him, his family, his relatives, some episodes of the beneficiary's life, his preferences, and other similar information about the beneficiary.

Sometimes, Probation servants solve a problem connected with a beneficiary based on the situation because being guided by the prescribed procedure can seriously damage the beneficiary.

In one of the regions, the Probation servant, on the basis of the procedural requirement, asked the beneficiary to submit a reference from his place of work. The beneficiary refused, saying that if the employer knows who the reference is for, he will be fired from his job because of his conviction. The Probation servant did not insist on claiming a statement, and said that he would "think of another thing".

In the above-mentioned episode, the Probation servant realized that there is discrimination in the community against the convicted and that the employer would really fire the beneficiary from work if he was informed that the beneficiary had a criminal record. Such a situation is almost widespread: employers often do not want to employ convicted people, and beneficiaries do not want the employer to be informed about his/her conviction. This is due to the fact that stereotypical mentality, prejudice, in fact, discriminatory attitude towards convicts is widespread among the population.

In order not to harm the beneficiary's interests, the Probation servant has decided not to insist on his claim and apparently bypassed the procedures.

As mentioned above, the strong interpersonal relationships between the Probation servant and the community can sometimes effectively replace the need for a socio-psychologist, thereby promoting beneficiaries' confidence building towards the Probation Service and servant, and such approaches eventually contribute to the re-socialization of the beneficiary.

Probation servants have some skepticism about the effectiveness of public work as a punishment and about the effectiveness of its supervision. A number of reasons have been brought for it. First, employers are unwilling to cooperate with the territorial servants of the Service; especially in the private sector there is a stereotypical and consequently discriminatory attitude towards the sentenced. Second, it is difficult to periodically monitor the performance of the work. The Probation servants supervise the performance of public works by visiting the place of punishment once or twice a month while this frequency of supervision is insufficient. Although the community leader assumes responsibility to exercise supervision over a public worker, this supervision is generally non-periodic and not frequent. There are separate visits to supervise the performance of public works, but this is not enough.

Geographical scattering and resource insufficiency are key obstacles for effective supervision. The strictly limited resources of the Service are not comparable to those large distances that Probation servants are forced to go to visit their beneficiaries or their employers. One employee believes that public work is "*an absurd punishment, you cannot supervise it every day, it has a bit fictitious character*". Probation servants have difficulty finding jobs for beneficiaries, and sometimes searches may take from several days to two months. As already mentioned, Probation servants generally use their personal connections to find a job, and mainly accommodate beneficiaries in state or community bodies. The long duration of the work is also problematic. One employee mentioned that there was a case when the fine imposed on the beneficiary was replaced by public works, but the latter approached and asked to "return his fine" because he was willing to pay, but no such legislative procedure is envisaged.

4.2.5 Replacement of unserved part of public works by arrest or imprisonment

One of the most alarming issues for the Probation Service staff is the motions filed by them on the replacement of the unperformed part of public works by arrest or imprisonment in the case of avoiding public works.

Point 5 of Article 54 of RA Criminal Code defines: “5. *In case of ill-faith evasion from performing public work, the court replaces the unperformed part of the public work by arrest or imprisonment of a certain period, within the time periods one day of arrest or a certain period of imprisonment for three hours of public works*”.

Part 3 of Article 35 of RA Criminal Code it is presented who is considered maliciously evading the serving of the sentence in the form of community service: “A convict shall be considered maliciously evading the serving of the sentence in the form of community service, if he or she 1) *has performed, during one month, less than 90% of the service provided for under the community service time log, without a good reason, 2) has grossly violated the work discipline rules more than twice during a month when performing community service, 3) has failed to appear, two or more times upon notification or when provided for by law, before the Subdivision for Execution of Noncustodial Sentences*”.

From the formulation, however, it is unclear which cases of non-performance of works should be considered well grounded, who will determine it, by what criteria, and therefore this provision provides a basis for a discretionary approach. Likewise, there can be good reasons in cases of failure to appear being notified. However, in practice, more problems arise in situations where the beneficiary refuses to do public work.

According to the Probation Service servants, in such cases they apply to the court with a motion to replace public works by arrest or imprisonment, but often, because of unknown reasons, courts reject their motions. For example, a Tavush Probation servant mentioned that he had six times interceded for the replacement of the public works imposed on the beneficiary by imprisonment, but was denied by the court as, in a number of cases, the court stated that there were gaps in the paperwork, the necessary justifications were not presented, or the court, being pity, decided to give the beneficiary a chance for correction.

Interviews with judges revealed that the main reason for rejecting such motions was that the motions filed by the Probation servant did not confirm that the reason for his/her refusing public work was his/her disability. Particularly, the Court verifies from the Probation Service staff whether an expertise has been assigned to determine the

beneficiary's workability status, if the beneficiary is refusing to perform public work in general or the specific type of work he/she is involved in.

Particularly, one of the judges gave an example when a person with mental disorder was convicted of a fine and was unable to pay it. The Probation servant submitted a motion to replace the unpaid fine with public works which was satisfied by the First Instance Court of General Jurisdiction, although the convict had previously informed the Probation servant that he was unable to perform the work that meets the requirements of point 12 of the Annex “On Determining the Procedure and Timing of Engagement of Public Works” to RA Government Decree N1019 Dated 17 August, 2017 (“On Determining the Procedure and Timing of Engagement of Public Works”). A Probation servant has filed a motion to the court to replace them with imprisonment based on refusal to perform public works. Moreover, the Probation servant disregarded that the beneficiary had repeatedly mentioned the impossibility of performing specific work due to his/her mental disorder, and did not take steps to find out his/her working capacity.

It should be noted that, in in case of the current regulation of RA legislation, the Probation Service employees have no opportunity to assign expert examinations, which hinders the collection of necessary justifications for their motions.

4.2.6 Exemption form the performance of public works

In the current regulation of RA legislation, there is a gap in that the legislator does not envisage a clear mechanism that will determine the possibility of discharging public work for persons who were able to work at the time of sentencing but when serving the sentence, they appeared in such an irreversible situation that made the further performance of public work impossible.

Article 79 of the current Criminal Code of the Republic of Armenia defines possible options for exemption for illness, these are: “1. *If the person develops a mental disease during the period of serving the sentence, which deprived him from the ability to realize the nature and significance of his actions (inaction) or from governing his actions, then the court exempts him from serving punishment. The court can assign an enforced medical treatment of such a person.* 2. *If the person develops another severe disease after committing the crime or after the issuance of the sentence, which prevents him from serving the sentence, the court can exempt him from serving the sentence,*

taking into account the gravity of the committed crime, the personality of the convict, the nature of the disease and other circumstances. 3. Persons defined by part one or part two of this article can be subject to criminal liability or punishment in case of recovery, if expiry dates set forth in articles 75 and 81 of this Code have not passed. 4. A serviceman is exempted from serving the punishment in the disciplinary battalion in the case of an illness as a result of which he is considered not eligible for military service.”

In fact, Article 79 of the current Criminal Code does not provide an option (except for prisoners held in a disciplinary battalion) when a person is exempted from punishment not in serious illness but in case of illness or condition, though not considered serious, that makes the performance of punishment imposed on him impossible. However, from interviews with the staff of the Probation Service it was evident that in their practice they do deal with such cases.

4.3. Deprivation of the right to hold certain posts or engage in certain activities

The supervision over the punishment in the form of deprivation of the right to hold special posts or engage in certain activities is also exercised in the manner prescribed by RA Government above mentioned Decree N395 dated 5 April, 2008. According to the Decree, after receipt of the valid judicial act, the head of the territorial body of the Probation Service subscribes the judicial act to the Probation servant who has to determine the location of the beneficiary within one business day, contact him and invite him to the territorial body. Then the Probation servant makes a personal file and a beneficiary's card thus registering the convict, of which he/she sends a report to the police within three days. After the beneficiary appears before the territorial body, the Probation servant clarifies the terms and conditions of the punishment with signature, the rights and responsibilities of the beneficiary, and the responsibility prescribed by law in case of their non-compliance in accordance with form No. 4, after which the control plan is drawn up in accordance with form N 10. The beginning of the supervision is calculated from the moment of registration of the Probation beneficiary.

After registration the Probation servant requires the beneficiary to submit a reference from workplace about the position he/she holds every month, and when moving to a new job submit a reference from the workplace about the new position

within 5 days, in case of not working or not being engaged in prohibited activities, submit a signed written statement about it to the territorial body every month. After the expiry of the term of sentence the territorial body issues a reference to the beneficiary of the Probation about his/her serving the punishment in accordance with form N 3 and informs the court that made the judicial act and the Information Center of RA Police about it.

This type of punishment does not significantly overload the Service. As a rule, they comprise 5-10% of the Probation servant's total workload. Nevertheless, there were concerns about the ineffectiveness of supervision over the execution of this type of punishment, especially in terms of deprivation of driving license. The supervision of the Probation servants has a passive character, the beneficiary is only required to visit the probation servant once a month and sign. In essence, the supervision is concluded through this. In one area a case was recorded when a person deprived of the driving license drove a car. The territorial body of the Service reported this to the police.

The other issue raised by the Probation Service staff refers to the lack of legal regulations for the Probation Service to respond to violations of the requirements of the imposed punishment. While Article 52 of the current RA Criminal Code defines what this type of punishment manifests, for what time period it can be applied, how it should be applied in case of being accompanied with other punishments, but there is no clarification on what legal consequences may arise in case, for example, if the fact is confirmed that a person deprived of the fishing license was engaged in fishing. The legislator has not envisaged any mechanisms which would enable to toughen the punishment imposed on the convict or to substitute the imposed penalty with another type.

Part 5 of Article 27 of RA Penitentiary Code defines: *"5. On the basis and within its framework of the Judicial Act, as well as based on the assessment of the risks and needs of the convict, the Probation servant in the supervisory plan defines the actions of the convict subject to supervision, their deadlines, rights and responsibilities, **the responsibility prescribed by law for violating them**"*²⁸.

The only provision regulated by the legislator is probably the formulation referred to in Article 243.1 of RA Criminal Code which imposes responsibility for driving a vehicle by a person deprived of the right to drive vehicles. Meanwhile, the punishment

²⁸ The emphasis is ours.

provided in Article 52 of the Criminal Code of the Republic of Armenia implies more meaningful coverage and is not limited only to depriving the right to drive a vehicle. Consequently, the Criminal Code of the Republic of Armenia should provide a possibility of a legal consequence in case of avoiding the execution of the punishment under discussion²⁹.

4.4. Recommendations

1. It is proposed to develop a concept of systemic change by which it would be possible to ensure the involvement of a Probation servant when imposing a sentence on a defendant by a court, especially in terms of the fine, for the judge to be able to obtain information from the Probation servant and form an opinion on the defendant's solvency before the imposition of the fine.
2. In the context of the above mentioned, it is necessary to clarify the legislative regulation on the cases of ill-faith evasion from the payment of the fine by the beneficiary. The law should also prescribe the possibility for a competent body to conduct proceedings in order to determine whether the convict is maliciously evading paying penalties, or whether he/she is insolvent or there are other circumstances.
3. A concept of legislative change should be developed that in determining the amount of the fines, the courts be guided not by the size of the prescribed amount but by the property status of the convict, and also elaborate criteria be developed to evaluate the property status of the convict.
4. There is a need to make a legislative amendment, according to which the obligation of the convict to pay a fine will arise from the moment the Probation servant notifies about receiving the judicial act.
5. There is a need to make a legislative amendment by which, a longer period, for example, 20-30 days are defined instead of the ten day period for the evaluation of the circumstance that the beneficiary has evaded paying a fine.
6. It is proposed to make a legislative amendment according to which, in case of impossibility of immediate and complete payment of the penalty, the one year

²⁹ The insufficient capabilities of the Probation servant to ensure the performance of this punishment type were touched upon in the subsection of the current report entitled: "1.3 The status and powers of the servants".

- period for the partial installation of the fine is prolonged, for example, for two or three years.
7. It is necessary to establish a regulation by legislation, according to which the beneficiary will have the opportunity to repay the entire fine after replacing the fine with public work. The current legal regulation does not give this opportunity.
 8. It is necessary to revise the legislative regulation according to which the Criminal Code establishes the same duration and standards of public work for juveniles over 16 as for adults in pursuance of the requirement of point 3 of CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures.
 9. It is necessary to reconsider the terms of public works in RA Criminal Code and reduce their maximum duration of 2200 hours.
 10. It is necessary to revise the regulation fixed in point 18 of the Annex“On Determining the Procedure and Timing of Engagement of Public Works” to RA Government Decree N1019 dated 17 August, 2017 (“On Determining the Procedure and Timing of Engagement of Public Works”, according to which *public work duration cannot exceed the working time schedule and duration established by the Labor Code of the Republic of Armenia*. There is a need to make such a regulation which would provide the Probation staff and employers with the opportunity to demonstrate flexibility and adjust the schedule of public works in accordance with the individual needs of the beneficiary.
 11. The concept of "useful work for the public" needs to be clarified, excluding the performance of public works in private profit-making organizations.
 12. It is necessary to provide a proceeding by which the content of the public works and the process of their implementation are explained to the convict in a clear and explicit way when imposing an alternative punishment.
 13. The list of permitted public works also needs to be modified, which does not enable the beneficiary to engage in professional public activities.
 14. It is necessary to legislate a procedure according to which, if the convict was capable of working during the issuance of the sentence, but develops a disease during the period of serving the sentence, which makes the serving of sentence in the form of public works impossible, procedures and material and legal bases releasing the convict from public work are established.

15. It is proposed to establish legal grounds in the Criminal Code of the Republic of Armenia about what legal consequences the violation of the requirements of the penalty of deprivation of the right to hold certain posts or engage in certain activities can arise.

Section 5 Supervision over alternatives means of punishment and re-socialization

5.1 Conditional non-execution of the sentence

The cases of conditional non- execution of the sentence make a large share in the workload of the Probation Service. The legal basis for non- execution of the sentence is Article 70 of RA Criminal Code, Chapter 22 of RA Penitentiary Code (Articles 128-132), Articles 24 and 25 of RA law “On Probation Service”, points 27 and 43 of Republic of Armenia Government Decree N 395-N dated 5 April, 2018 on “Annuling RA Government Decree N1561-N dated 26 October, 2006, Approving the Internal Regulations of the Probation Service of RA Ministry of Justice”.

According to the above-mentioned regulations, in case of conditional non-execution of the sentence, the supervision of a person in probation period is exercised by the territorial body of his/her place of permanent residence, and in the case of a person without a permanent residence or in the case of a foreign citizen or a person with no citizenship, by the territorial body of the place of his/her actual residence or the one mentioned in the judicial act.

Upon receipt of a judicial act, the Probation servant within one working day identifies the location of the Probation beneficiary and establishes contact with him/her, and, in case of failure to find the beneficiary, he/she properly notifies the beneficiary to go to the territorial body, makes a personal file, fills in a registration card. During interviews with the Probation Service staff, the concern was expressed that the one-day deadline is sometimes impossible to meet as the documents sent from the court lack the beneficiary's phone number and, in some cases, indicate the address of not his/her actual residence but the registration address.

A particular problem arises when the Probation servant is sent not the beneficiary's passport but the identification card, as it does not indicate the address of residence. Problems also arise when the address mentioned in the passport as the place of residence of the beneficiary is renamed or the building does not exist. For example, such a problem exists in communities affected by the 1988 earthquake, particularly in Shirak region.

In the case if the Beneficiary appears before the Probation Service, the Probation servant clarifies the rights and responsibilities of the beneficiary by signing, the liability prescribed by law in case of their non-compliance, as well as his/her obligation to come to the territorial body every two weeks after registration for every fact of failure to fulfill the obligations imposed on him/her.

According to point 39 of Republic of Armenia Government Decree N 395-N dated 5 April, 2018 on “Annulling RA Government Decree N1561-N dated 26 October, 2006, Approving the Internal Regulations of the Probation Service of RA Ministry of Justice”, *“After registering the Probation beneficiary, the territorial body assesses the risks and needs of the Probation beneficiary on the basis of which a decision is made to determine the frequency of visits by the Probation beneficiary to the territorial body within a month which included in the control plan. Risk and needs assessment can be revised every three months or in case of positive or negative changes in the life of the Probation beneficiary”*. However, visits to Probation Service bodies, interviews with staff at the Probation Service revealed that although Civil Society Institute NGO developed an electronic risk and needs assessment tool, due to the lack of logistical resources, it is used only in Yerevan, Lori and Armavir. At the same time, the Probation Service employees noted that the developed tool was not tested at the state level and needs to be elaborated. The other regional Probation servants clarified that they assess a beneficiary's risks and needs through interviews, based on their experience.

At the first meeting with the Beneficiary, the Probation servant requests him/her to provide the Probation Service with copies of his passport, military service book, marriage, pension, disability certificates, a picture, references from place of residence, educational institution, workplace, and on family composition. The Probation Service employees have noted that the list of these documents has caused dissatisfaction among many beneficiaries, for example, due to the lack of material resources required for photography. In some cases, Probation servants have paid for the photograph, just not to interrupt the process of the beneficiary's registration. Problems arise when collecting

the required references: cases have been reported when the employer has dismissed the beneficiary being informed that he deals with a convicted person, or the representative of the local self-government body has refused to provide a reference to the beneficiary, noting that the latter did not pay the property tax. In such cases, Probation Service servants have to interfere in order to collect necessary references.

According to the Probation Service employees, the duration of the beneficiary's first visit varies from a minimum of 10 minutes to a maximum of 40 minutes, and the next visits last shorter - 5-10 minutes. Such a differentiated approach by the Probation Service staff was explained by the fact that during the first visit they identify the needs of the beneficiary, and the subsequent visits do not have such a need and they limit themselves only by short interviews and signing the necessary document of the beneficiary's presentation. It is natural that under such circumstances it is difficult to speak of the effectiveness of re-socialization activities.

The beneficiary's visit frequency is typically every 2 weeks, but there are also deviations from that. In particular, in most regions it was noted that in winter, beneficiaries face difficulty showing up in the Service because some of the roads are becoming impassable, especially for those living in high rural areas. There are delays in summer months when the beneficiary is in the mountains for haying. The Probation Service employees have noted that in such cases they try to demonstrate flexibility and not to deprive the beneficiary of the opportunity to care his or her family needs because of the formal maintenance of the requirements of the law. Other factors, such as shooting in border areas, have been mentioned in Tavush region, because of which the beneficiary cannot show up on time for objective reasons time, or the lack of means for travel.

A component of the supervisory process over the beneficiary is also a visit by the Probation servant to the beneficiary's place of residence or place of work, as a result of which a protocol is made. Interviews with Probation servants revealed that such visits are rare; most often are made to the place of residence of those beneficiaries who broke the schedule showing up in the Probation Service. According to servants\ 4/8 in case of juveniles, they visit their place of residence, place of study at least once a month, talk with their parents or other legal representatives, or the custody and guardianship body, about which a relevant protocol is drawn up. There were cases when a visit to the beneficiary's place of residence was not made at the request of the

beneficiary, as he was worried that he would be dishonored by the village, his family would be destroyed people in the community find out that he has been convicted.

The process of Probation, especially re-socialization, is seriously hindered by public stereotypes towards convicts, especially women convicts.

A Probation servant presented a case when a female beneficiary threatened to commit suicide if the servant visited her home because if family members knew that she had been convicted, that would be a public stigma for a lifetime.

Another Probation servant told that when a woman beneficiary was sent a notification to show up in the Probation Service, her husband divorced because he had been unaware of the woman's conviction before.

When visiting beneficiaries' homes, descriptions are made as a result of conversations with family members and neighbors. The study of the content of some of them showed that these characteristics are limited to "*calm, caring, characterized as positive, hardworking, intelligent young person*", the behavior is "*normal*" in general terms, which is conditioned by the absence of clear standards, and the absence of a practice to present the obtained information in a comprehensive and professional manner and, accordingly, determine the main directions of the work with the beneficiary.

The staff of the Probation Service voiced the concern that certain difficulties arise in relation to home visits, in particular, they have not been able to enter the building as the "domofon" was installed, it was not possible to ensure the presence of neighbors because of their involvement in field work or when neighbors refused to give information, come with a passport or sign a document.

In order to ensure beneficiaries' re-socialization process, Probation Service employees are trying to involve them in organized sports or cultural events. For example, in Vayots Dzor region it was mentioned that they organized a volleyball competition for beneficiaries and planned to organize campaigns. They noted that the Probation Service in Yerevan organized computer classes but the beneficiaries were not able to participate because they had to cover the costs of getting to Yerevan.

Nevertheless, Tavush and Gegharkunik Probation Service staff, in case of Article 70, considered the activity of the Probation Service in the direction of the re-

socialization of the beneficiary law, viewing it as more an extra overload. Two factors were mentioned as the main reason for this approach:

1. staffing, material-technical resource insufficiency, lac of re-socialization measures and services and
2. Absence of influential levers in the supervision process.

Point 5 of part 1 of Article 70 of RA Criminal Code defines that: “5 *When deciding not to apply the punishment conditionally, the court **can** oblige the convict to carry out certain duties: not to change the place of permanent residence without notification of the body in charge of his supervision, to take a treatment course against alcohol, narcotic drugs, VD or toxicomania, to support the family financially. By motion of a competent body supervising the convict’s behavior, or without, the court **can** also impose other duties on the convict which will promote his correction or change them*”.

In fact, there may be situations in which the court may apply the institution of conditional non- execution of the sentence toward a person, may define a probation period, but may not pose any obligation including change of the place of residence. In this case, serious problems arise with the Probation Service in terms of implementation of work with the person as the beneficiary can simply leave the territory of Armenia in the absence of any restrictions.

It is no coincidence that with the current regulation of conditional non- execution of the sentence of RA Criminal Code, convicts who have committed a crime of small or medium gravity, rather than engaging in public work prefer to be sentenced to imprisonment, which, based on the current judicial practice, most probably was conditionally not applied upon them.

Moreover, from part 5 of Article 70 of RA Criminal Code it follows that by motion of the Probation Service or without, the court can impose other duties on the convict which will promote his correction or change them. Consequently, the Probation Service employees are restricted by the scope of responsibilities set out in the judicial act.

The probation service employees also pointed out the need to clarify the notion of "permanent place of residence" as practically there are situations when at the time of committing an offense a person was registered and lived in one region and later found work in another region of Armenia and moved, stay in the previous address continuing to be registered at the previous address. Moreover, in the case of non-clarification of

this notion, the Probation Service has problems with ensuring adequate notification to beneficiaries.

One of the concerns expressed by the Probation Service employees was the lack of a ban on the application of Article 70 of the Criminal Code to the same person three or four times, especially if the beneficiary had already violated its requirement. Discussion of the raised issue during the conversation with the judges, it was clear that such an approach of courts was largely due to the poor regulation of the penal system, especially when it was necessary to impose a sentence on juveniles.

In the case of the regulation of the current Criminal Code, there are no alternative sanctions applicable to juveniles, especially those aged 14-16 (public works may be applied to a person older than 16, a fine - in the case of a minor's individual income or such property to which confiscation can be extended), so often the courts have no other choice but to impose imprisonment, and the only option to avoid its negative impact on the child is its conditional non-execution.

Due to the unclear legislative regulation, a problem arises when the institution of conditional non-execution of the sentence is applied to the person with which forced medical measures - outpatient surveillance by a psychiatrist, forced medical treatment have been assigned. Particularly, such a problem arose with regard to an alcohol addict beneficiary to whom no obligation was assigned when applying Article 70 of the Code to him, including treatment course against alcohol, but rather he was assigned forced medical measure. At the request of the Probation servant the beneficiary regularly showed up in the Probation Service but avoided the exercise of the forced medical measure. In such cases, the Probation servant has no right to petition for the elimination of a conditional non-execution of the sentence, which seems illogical.

5.2. Conditional exemption from serving a punishment

One of the most important challenges facing the Probation service is the provision of advisory reports of early conditional release exemption from serving a punishment, which was launch in September 2018.

Part 1 of Article 76 of RA Criminal Code defines: *“After serving the minimum period of punishment provided by part 3 of the current Article, the person sentenced to imprisonment or disciplinary battalion can be released on parole, if, as a result of consideration of the petition of the penitentiary service and Probation Service on*

circumstances envisaged by part 1.1 and 1.2 of the current Article or the petition of the commander of the disciplinary battalion, the court finds that for his correction there is no need to serve the remaining part of the punishment... ”.

Article 115 of the Penitentiary Code of the Republic of Armenia states that the application for early conditional exemption from punishment is submitted by the convict, after which the administration of the institution executing the sentence officially inform the Probation Service about it within 3 working days. The latter makes and submits to the advisory report within 80 days after receipt of the official notice.

The report presented by the Probation Service is of utmost importance as the Penitentiary Code of the Republic of Armenia states that the administration of the institution executing the sentence submits the issue of the release of the convict based on Article 76 of the RA Criminal Code to the court if both the Probation Service and the Penitentiary Service give positive reports. If these two services give negative reports, the issue is not be submitted to court. In cases where one of the mentioned structures gives a positive, the other one a negative report the issue is submitted to the court only on the consent of the convict.

Preparation of the advisory report is a responsible function, the implementation of which implies the necessity of continuous targeted trainings. Such unique trainings have been provided by the Probation Service, but not all of the Probation Service employees had the opportunity to participate in them. As a target group, the priority was given to the employees of those regions (for example, Kotayk, Syunik, Armavir, Shirak, Aragatsotn) who have the obligation to make a report on early conditional release on persons serving sentences in penitentiaries located in their service area. Meanwhile, representatives of other regions just have to support the preparation of these reports as needed by visiting the family members of the detainee registered in their region, the person affected by crime and conducting interviews with them. Gegharkunik region has been involved in the service process of Sevan Penitentiary Institution as a result of overload redistribution by the Probation Service: initially they have not been trained in terms of the preparation of an advisory report, but according to the clarification provided by the Central Apparatus of Probation Service, they have conducted training for these employees.

However, the conducted one or two trainings are not enough to provide Probation servants with the skills to prepare advisory reports. For example, employees of Kotayk Probation Service mentioned that though they are going to serve "Hrazdan", "Abovyan"

penitentiary institutions, as of August they had only one attempt of preparing an advisory report.

There are concerns about receiving reliable information by the Probation Service employee, both among the service staff and the Penitentiary Service of the Ministry of Justice of the Republic of Armenia. According to the latter, the Probation servant will not be able to get objective information about the personality of the convict by interviewing him/her and make a real, objective report. Seeing them, the convicts will behave as if they were "saint", will provide only positive facts about their personality and other related circumstances, will hide all the negative facts as the convict's sole purpose is to get to freedom.

The convicts, seeing them, will behave as if they were as "saint", submit only positive facts about their personality and other related circumstances, and hide all the negative facts as the convict's sole purpose is to get to freedom. Problems arise when collecting information about convicts from their family members and neighbors, who orally present the Probation servant their concern about possible conflicts in case if the prisoner is set free, but at the same time they warn that in the written form they will express only positive thoughts fearing the prisoner's revenge. Such a situation creates serious problems for the Service servant in making an unbiased and well-grounded report.

The Probation Service employees find that there is a need for a guidebook to prepare advisory reports. Meanwhile, **the Probation Service does not have clear methodological basis for gathering the required volume of information for compiling the report, and comparing them with the circumstances fixed by the Criminal Code.** This refers, in particular, both to the correct reflection of the information provided, its formulation (for example, instead of recording the fact the evaluation criterion is used), and to the tool for assessing the circumstance enshrined in the law, which is taken into account when determining the issue of early conditional release - the possibility of a new offense committed by the convict. In relation to the latter, it should be noted that a risk and needs assessment program has already been developed to formulate a plan of the work done with the Probation beneficiary and supervision. There is also a need for such a tool within the framework of early conditional release. At the same time, it is important to note that the use of guidelines and tools should not imply the standardization of the Probation Service reports - the use of identical and general formulations. **The logic and international requirements of the early conditional release**

system suggest that it should bear a personalized, taking into account the individual risk of a specific prisoner and other personal circumstances. In this regard, we believe that the implementation of the 2018 legislative amendments on early conditional release is largely conditioned by the provision of legislative, methodological and organizational (including logistical) complex measures to prepare reports by the Probation Service. In systemic terms, the state criminal policy has a crucial role in carrying out individual activities with a person who has committed a crime and is serving a punishment, by means of implementation of the obligations to promote the re-socialization of the latter from the very first day of entry into the penitentiary.

The Penitentiary service noted that other problems also arise in the process of preparing a consultative report by the Probation Service staff. First of all, the procedures for entering the penitentiary institution and visiting the detainees by the Probation Service staff are not yet regulated, so, these procedures should be regulated first. Entry into the penitentiary also requires the involvement of the security personnel, provision of a separate room, while at present the service has a lack of both security personnel and properly furnished separate rooms.

The preparation of advisory reports by the Probation Service involves an increase of workload not only the for the Probation Service but also for the penitentiary service staff, especially if we consider that the Probation servant may need to meet the prisoner several times.

The definition of the function of the Probation Service on the preparation of advisory reports under Article 76 of the Code, in addition to workload, also brings forth the issue of additional material costs associated with visiting the penitentiary institution, family members of the convict, person affected by crime and collecting other information.

5.3. Replacement of the punishment with a milder punishment³⁰

³⁰ Though the formulation replacing a punishment with a more lenient punishment is used in the regulation of RA law “On Probation”, in RA Criminal Code this institution is fixed as replacing the unserved part of the punishment with a more lenient punishment

According to RA law “About Probation”, the participation of the Probation Service is also envisaged by preparing an submitting an advisory report when replacing the unserved part of the punishment with a more lenient punishment defined by Article 77 of RA Criminal Code.

In particular, part 1 of the mentioned law defines: “1. *The court can replace the unserved part of the imprisonment for a not grave or medium-gravity crime with a more lenient punishment, taking into account the circumstances mentioned in part 1.1 and 1.2 of Article 76 of the current Code ad the the Penitentiary service and Probation Service reports about them. When replacing the unserved part of imprisonment with a lenient punishment the convict is not exempted from the supplementary punishment imposed on him*”. The same requirements are presented for the preparation of the above-mentioned advisory report as in the case of conditional early exemption from serving a punishment.

As of August 2018, such reports have not yet been made by RA Probation Service staff.

In general, the issue of the ineffectiveness of the practical application of the institution of replacing the unserved part of imprisonment with a more lenient punishment has been raised by RA Human Rights Defender in the conditions of the procedures of early conditional release from serving a punishment operating until 2018 amendments, when the issue of the application of these institutions was discussed by the Independent Commission³¹.

The matter is that separate procedures of the institutions of early conditional release from serving a punishment and replacing the unserved part of imprisonment with a

³¹ In the Annual Report on the activities of the Human Rights Defender as the National Preventive Mechanism in 2017 it is particularly mentioned that, even though the legislation provides for mandatory requirements for the Independent Commission to consider, if there are appropriate grounds, both early conditional release and commuting the sentence to a more lenient form of punishment, the lack of clear and explicit regulations prevent from practical realization of these institutions in question. Nevertheless, the lack of clear and definite regulations creates problems during practical application of the institutions under discussion **Therefore, there is a need to find appropriate solutions to practically ensure the consideration and decision making not only on the sentenced persons’ cases for early conditional release but also on the commuting the sentence to a more lenient form of punishment.**

The report is available at the following link:

<http://pashtpan.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfd92a8.pdf>, pages 136-139:

more lenient punishment are not envisaged by applicable legal regulations. Meanwhile, early conditional release from serving a punishment and replacing the unserved part of imprisonment with a more lenient punishment are basically different institutions and the circumstances underlying their application are also different. Consequently, if there are corresponding grounds both for early conditional release of a person from serving a punishment and replacing the unserved part of imprisonment with a more lenient punishment, these two institutions should be subject to discussion in the Probation Service reports

5.4. Quashing the criminal record

The institution of criminal record as well as the real regulation for its quashing and withdrawal are fixed in Article 84 of RA Criminal Code. According to part 6 of the mentioned Article, *“If after having served the sentence the person has manifested impeccable behavior, then at his request the court can quash the criminal record before the deadline of quashing the criminal record, but no sooner than after half of that deadline has elapsed. When quashing the criminal record the court may also take into account the advisory report quashing the criminal record by State Probation Service upon court request.”*

In contrast to the report on early conditional exemption from serving the punishment and replacing the unserved part of imprisonment with a more lenient punishment, the Probation Service submits the report on quashing criminal record only upon court request. As a result of conversations with Probation servants, it became clear that they had never prepared reports on quashing criminal record.

5.5. Postponement of punishment

According to the RA Law “On Probation”, participation of the Probation Service is also envisaged in case of the postponement of the punishment of pregnant women and women with children under 3 years of age sentenced to imprisonment.

The supervision over Probation beneficiary pregnant women, women with children under 3 years of age, persons exempted from punishment or whose punishment was postponed due to an illness or other extraordinary circumstances is exercised by the

Probation Service of his/her permanent place of residence and, in the case of persons without permanent residence or foreign citizens or persons with no citizenship, by the Service of their actual place of residence or by the Probation Service of the place mentioned in the judicial act. In such cases RA legislation defines the same registration procedure as in the case of the application of the institution defined by Article 70 of RA Criminal Code.

In case if the pregnant woman or the woman with children under 3 years of age evades child-care and rearing, the Probation servant promptly but not later than within three-days term from the moment of the detection of the infraction, warns the beneficiary in written form about the possibility of annulling the postponement of punishment.

The beneficiary of the Probation is considered to be evading the child-care and rearing if, without officially rejecting the child, she leaves the child in the maternity hospital or sends the child to orphanage, or pursues an immoral lifestyle and doesn't care about the child's care and rearing, or for a period of more than one month leaves the child with relatives or other persons and doesn't personally engage in his/her rearing, or conducts other activities that testify the evasion from the child's rearing.

If, after the announcement of the warning, the Probation beneficiary continues evading child-care and rearing or officially rejects the child, or at the request of the Probation Service without an excuse doesn't show up in the territorial body twice consecutively, then the Probation Service makes a protocol about it and submits a motion to the court on annulling the postponement of punishment and exercising the punishment assigned in the sentence.

During supervision, taking into account the behavior of the Probation beneficiary, the nature of the offense and the level of public danger, the attitude towards the child's rearing and the unserved part of the punishment, the Probation servant submits a motion to the court on exempting the beneficiary from the unserved part of punishment or replacing the unserved part of punishment with a more lenient punishment.

As a result of interviews with Probation employees, it became clear that they did not see a significant difference in terms the process of establishing supervision over the persons of the mentioned category.

5.6. Recommendations

1. There is a need to clarify the scope of responsibilities imposed on a person when assigning probation period, moreover, it is also necessary to regulate the issue of the possibility of anuling probation period in case of evading the exercise of enforced medical treatment measures imposed on a person.
2. The punishment system to be applied to juveniles, especially those aged 14-16, needs to be revised.
3. Targeted trainings for Probation employees should be conducted in terms of the preparation of the advisory report, which is the basis for the application of Article 76 of the RA Criminal Code
4. It is necessary to apply clear methodological guidelines and questionnaires in practice to draw up advisory reports.

Section 6 The Powers of the Probation Service which are not implemented

Within the scope of the study of the condition of the Service operation, it is also necessary to address the functions imposed on the Service, which are not implemented due to the absence of legal grounds. In particular, it refers to the implementation of alternative measures of restraint, security measures, mediation, and execution of electronic supervision.

The reference to these functions of the Service is conditioned by the fact that their implementation is directly related to organizational, financial, logistic, servant retraining and other issues raised in this report. Additionally, the operation of the Probation Service is currently restricted to the stage of serving the punishment, with the provision of punishments not related to deprivation of liberty, supervision of persons in probation period or with postponement of punishment, while the discussing functions will include both pre-trial and trial stages, punishment and postoubushment stages of criminal proceedings. It turns out that in case of the fullest extent of the

implementation of the Service powers, the role of the latter increases, involving different stages of the trial

6.1. Provision of the enforcement of alternative measures of restraint

The existing legislative bases of the power of the Probation Service of the enforcement of alternative measures of restraint, are restricted only by the regulations of RA law “On Probation”. The point is that Chapter 3 of the law fixes the responsibilities of the Probation servant, the actions to be taken in the process of enforcing alternative measures of restraint. At the same time, the law establishes the peculiarities of the enforcement of two measures of restraint - home arrest and administrative surveillance, and the issue of involvement of the Service in connection with other alternative measures of restraint is conditioned by the fact of being envisaged by the Criminal Procedure Code. Meanwhile, the current Code of Criminal Procedure provides pledge, the signature not to leave, personal guarantee, organization's guarantee, passing to control, and passing to the control of the commander as measures of restraint not linked to deprivation of liberty. That is to say, current procedural regulations do not provide home arrest and administrative surveillance as measures of restraint, and in the case of the remaining restraints, there is no provision on the participation of the Probation. In other words, the provisions of the law “On Probation” on the enforcement of alternative measures of restraint which came into force on 1 January, 2018 lack the criminal-procedural bases which itself implies that these functions of the Probation Service can not be implemented.

The issue of sufficient legislative grounds comes forth from the fact that the regulations subject matter of the Law have been fixed by the logic of solutions of the new draft Criminal Procedure Code of the Republic of Armenia. Meanwhile, the new criminal-procedural regulations are still in the design phase while the provisions of the Law have already come into force.

6.2. Provision of the enforcement of security measures

One of the functions of the Probation defined by law is the enforcement of security measures, which is also practically not implemented due to the lack of criminal-

procedural bases for the application of the security measure. Thus, part 1 of Article 16 of the law “On Probation”prescribes that *the enforcement of security measures provided by the Criminal Code of the Republic of Armenia* is ensured by the territorial body of the Probation Service of the Probation beneficiary’s permanent place of residence. This means that the duty imposed by the law on the Service refers to the security measure as a criminal-law enforcement measure applied towards a person who has committed a forbidden act with threat of punishment and the term "security measure" is not defined by the current Criminal Code of the Republic of Armenia. The criminal justice institution of security mrovisions is envisaged by RA new draft Criminal Code³². It turns out that the legislative provisions on the provision of the enforcement of security measures are not currently viable, as long as the new regulations of RA Criminal Code have received legal force.

6.3. Electronic monitoring

One of the functions of the Probation Service is electronic monitoring. According to the first part of Article 41 of the law “On Probation”, electronic monitoring is applied in the stage of pre-trial and trial stages of criminal proceedings as combined intervention with alternative measures of restraint and security measures, or in the stage of execution of the punishment as a supervision measure combined with the execution of the punishment, or in the post-punishment stage. The essence of electronic monitoring as a measure of minimal interference with a person's rightsy is that by the use of electronic technical means supervision is established over the location of a person, his locomotion and behavior, in accordance with the limitations prescribed by the judicial act.

The introduction of electronic Probation surveillance in Armenia is conditioned by the fact that it is an alternative to the execution of punishment related to deprivation of liberty – punishments related to detention and imprisonment thus contributing to the introduction of elements of rehabilitation justice into the criminal justice sphere. Additionally, according to the Ministry of Justice's position, it should also implement a savings function, since in the case of electronic monitoring, the daily amount spent per person is around 2000 AMD, and this is the in case when 4500 AMD from state means

³² The draft is available at the following link: <https://www.e-draft.am/projects/496>

is daily spent on the detainee which includes both costs for food, clothing, medications, utility costs, bedding, sanitary and hygienic items, and the salaries of penitentiary institution staff and construction costs³³. At the same time, electronic monitoring is a means of interfering with the right to free movement of a person, the use of which implies not only the existence of legal basis but also the creation of organizational preconditions to exclude any technical errors by causing negative consequences for the individual.

Currently, electronic monitoring is not applied by the Probation Service at least for the fact that both alternative measures of restraint and security measures have not received appropriate criminal-procedural and criminal-justice record. Additionally, the uninterrupted use of electronic monitoring is related to the availability of the necessary amount of resources functionally adapted to the location. Unlike the Probation functions of ensuring alternative measures of restraint that may be applied in the presence of criminal-procedural grounds, electronic monitoring presupposes also the existence of logistical and organizational prerequisites. In this regard it should be noted that, according to the information received, currently the use of electronic monitoring measures is at the test stage.

There is a need to procure technical equipment, especially considering their subsequent enforcement in case of home arrest and administrative supervision. The point is that according to the results of the interviews both with the Probation Service management and individual servants, the electronic surveillance measures have been tested within the framework of the Probation Pilot Program which, however, resulted in certain technical problems due to the specificity of some areas in Armenia. In addition, not all servants participated in the pilot program. Not being aware of the terms of use of electronic monitoring measures, as well as possible technical problems due to geographical features and mountainous conditions are justifiable concerns of Probation servants. Thus, interviews with Probation servants revealed that in the city of Yerevan an incorrect data was given about the person's location during the operation of the electronic device because of being out of control sight of the technical equipment, and in some regional areas, this problem would be more difficult to solve in a sense that

³³ Reduction of penalties related to deprivation of liberty in accordance with European standards. Cost and Social efficiency of punishments related to deprivation of liberty and Probation. Research. Yerevan 2014, page 13:

Available at the following link: [https://rm.coe.int/16800ccb5c:](https://rm.coe.int/16800ccb5c)

many settlements do not have access to the internet. Interviews with civil society representatives revealed that in the opinion of a foreign expert on the introduction of Probation in Armenia also reflected upon electronic monitoring, suggesting cautiousness in introducing electronic monitoring. The expert suggested not starting the operation of the Probation Service with the introduction of electronic monitoring, as it creates problems in European countries with such experience, and as a result of technical failures, probation work becomes time-consuming and costly.

In addition, international practice of electronic monitoring proves that both technical and social-psychological problems occur during its implementation. As a result, there may be situations where, for example, the Probation beneficiary appears in prison as a result of a technical error due to a breach of the restrictions imposed on him. Due to restrictions imposed on a person with electronic monitoring, the issue of lawfulness of the restriction of the rights of third parties, in particular the family members of the supervised person may also raise³⁴. Therefore, we believe that at the initial stage of use of electronic monitoring, it is crucial to clearly define the scope of use, both in the procedural phases and in terms of the framework of beneficiaries, taking into account all possible organizational and technical risks.

Additionally, in terms of effective use of the electronic monitoring system, besides the legal grounds, the continuous training of law enforcement agencies involved in the process is crucial. Thus, according to Recommendation CM/Rec(2014)4 of the Committee of Ministers to member states on “Electronic monitoring”, the staff should be regularly trained both on technical features of the implemented equipment and on their impact on persons, as well as have sufficient skills to inform persons under electronic monitoring in an understandable and accessible language of the implementation of such control, its impact on private and family life, and possible consequences for breaking the conditions of monitoring.

The recommendation also emphasizes proper public awareness on the technical and ethical issues of electronic monitoring, the value of the goal it pursues, effectiveness, monitoring as a measure of freedom restriction of suspects (accused) or offender.

³⁴ <https://www.mpicc.de/files/pdf1/albrecht.pdf>
<http://28uzqb445tcn4c24864ahmel.wpengine.netdna-cdn.com/files/2016/06/EMEU-Creativity-and-effectiveness-in-EM-Long-version.pdf>

In terms of integrity and legitimacy of the use of electronic monitoring, it is also important to incorporate international legal standards of the sphere, guidelines revealing their content both legislative and law enforcement levels³⁵.

6.4. Mediation

Mediation is also one of the functions of Probation defined by law but never implemented. Part 2 of Article 29 of RA law “On Probation” *states that mediation is the conduction of negotiations appointed by the court at the court trial stage, by the personal initiative of the head of the Probation Service in case of execution of punishments not related to deprivation of liberty and at the post punishment stage or by the motion of the party which is aimed at reconciling the Probation beneficiary and victim (victim's legal successor).*

The process of mediation by Probation can be conditionally divided into two main directions. The first is the process appointed by the court at the stage of court trial which presupposes that the procedural issues of these proceedings should be enshrined by the Law of Criminal Proceedings, and the result should have certain procedural consequences. Unlike mediation at the court trial stage, mediation process at punishment enforcement and post punishment stages can be initiated by the Probation Service or by the mediation of the party and the consent of both parties is a compulsory precondition. It is assumed that if at the court trial stage mediation can have a decisive role in the further investigation of the case and its consequences in respect of the punishment imposed on an offender, then at the penitentiary and post-penitentiary stages it pursues the goal of establishing friendly relations with other members of society, particularly with the victim, and thus promoting the beneficiary's re-socialization.

During the trial process, the mediation process has not received enshrinement under the existing Criminal Law in spite of being carried out within the framework of criminal proceedings. The procedural provisions on mediation relate only to the institute provided by the Criminal Code of the Republic of Armenia of release from

³⁵ See, in particular, the Council of Europe handbook on standards and ethics in electronic monitoring, available at the following link:

<https://rm.coe.int/handbook-standards-ethics-in-electronic-monitoring-eng/16806ab9b0>

criminal liability on the basis of reconciliation with the victim as a criminal proceeding, to the exclusion of criminal prosecution circumstance, as well as to cases of private accusation. At the same time, the Procedural Law uses the formulation of "reconciliation with the victim", and there is no reference to whether the organizer and responsible of the process of reconciliation is the body conducting the proceedings or other subject non-participant in the proceedings. In other words, the legislative enshrinement of the Probation function of mediation has not led to a change in the criminal procedural regulations, which means that at the court trial stage mediation may be initiated if the body conducting the proceedings, in the person of the court, makes a decision on mediation, on the basis of regulations of RA law "On Probation".

The initiation of mediation at punishment enforcement and post punishment stages depends on the decision of the head of the Service or the party's initiative. The conducted interviews revealed that no mediation is conducted at this stage either. As it has already been mentioned, according to the information provided by the Ministry of Justice, it is envisaged to narrow the scope of the Probation functions as a result of legislative amendments, including the role of Probation in the sphere of mediation. At the same time, it should be noted that still in 2013, in the concluding observations³⁶ about Armenia, the UN Committee on the Rights of the Child reflected on the necessity of the full implementation of juvenile justice system, with the introduction of alternative referral mechanisms, legislative basis of mediation. In this regard, an extraordinary public report on the status of the Human Rights Defender, the UN Convention on the Rights of the Child and the accompanying protocols has also been documented in the imperfection of the legislation of the mediation, the provisions of the Law on Probation, with no criminal and criminal-procedural the impossibility of using the bases of isolation, by implementing the appropriate balance of law union processes of juvenile proceedings

In regards to this, in RA human rights defender hoc report on the state of implementation of responsibilities on children's rights defined by the UN convention and other adjacent protocols by the Republic of Armenia, the imperfection of legislative regulations of mediation, impossibility of isolated application of the regulations of RA law "On Probation" without criminal judicial and criminal-procedural grounds, was also enshrined proposing to implement the mediation process

³⁶ Available at the following link:

<https://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ARM-CO-3-4.pdf>

in proceedings on juvenile cases providing appropriate legislative mechanisms³⁷. Consequently, we believe that the role of the Probation in process of mediation should be maximum maintained as international commitment of the state to invest the alternative to formal justice - the process of reconciliation of the offender and the victim within the framework of the criminal proceedings.

6.5. Recommendations

For the full application of the probation service functions, we find it necessary to:

1. Enshrine criminal-justice and criminal-procedural grounds for the execution of alternative measures of restraint and security measures.

2. In the legislative amendments of the role of Probation in the field of mediation should be taken into account to a maximum extent the international commitments of the RA in the sphere of juvenile justice, particularly in terms of the application of the 2013 concluding observations of the UN Committee on the Rights of the Child about Armenia.

3. At the initial stage of using the electronic monitoring system, determine the extent of its application, both in terms of the procedural phases and in the spectrum of beneficiaries.

4. Ensure the provision of the required amount technical equipment functionally adapted to the location.

5. Ensure the regular training of law enforcement bodies as regards both to technical issues of electronic monitoring, legality conditions of restriction of the right and legal and ethical aspects of the contact with the person under monitoring.

6. Ensure the investment and application of international standards and guidelines on electronic monitoring.

³⁷<http://pashpan.am/resources/ombudsman/uploads/files/publications/25916e056fa49cb25bdba4ffde02141f.pdf>, pages 147-148: