

**TAIEX Peer Review on Reforms in Judiciary, Penitentiary and Prevention of Torture  
and III-Treatment in Armenia,  
Yerevan 6 - 10 March 2017**

**Report Dr. Stefan von der Beck**

I. Probation in Armenia:

1. Legal provisions / Foundation of “State Probation Service”

On the 17th of May 2016 the new “Law on Probation” was adopted. Two months later, in July 2016, the “State Probation Service” was established by first founding its Head Office in Yerevan. It is now working with its 13 subdivisions in the whole country (3 subdivisions in Yerevan) and altogether 38 probation offices. The “State Probation Service” is operating with currently 65 staff (77 positions), among them 44 probation officers.

These achievements are completely in line with 4.3. of the “Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia” (“Programme”): “Establishing a probation service independent and separate from the penitentiary service under the Ministry of Justice” / 4.3.1 “Drafting a legal act regulating the activities of the probation service” and 2.3./2.3.1 of the original “List of Measures deriving from the 2012-2016 Strategic Programme” (“original list of measures”): “Drafting a legal act regulating the activities of the probation service”.

It has to be mentioned that activities of the probation service are not only regulated in the new “Law on Probation”. Main aspects of the assignment of the State Probation Service will be stipulated in the future “Penitentiary Law” which is currently drafted. In this respect the activities of the probation service are not entirely regulated yet. Beyond this currently not all regulations in the Law on Probation are in force. They will be in January 2018.

Obviously it was important for the Government of the Republic of Armenia, to build a probation service which is under the Ministry of Justice and separate and independent from the penitentiary service. This decision should be respected and approved because it is emphasizing the intention to create a new and modern organization which is aiming at resozialization of convicts and which is in a way silhouetted against the traditional penitentiary system which has its origins in a soviet style military structure. On the other hand it also has to be mentioned that the State Probation Service actually is not a really new institution in terms of staff. 37 out of the 44 probation officers are former correctional staff

from the penitentiary department (“Division Alternative Sanctions”). They are former lawyers in the service of the penitentiary system and therefore not originally qualified to work as probation officers. The State Probation Service currently has no social workers and no psychologists. All probation officers are male.

## 2. Vocational Training System

Keeping this in mind it is of outstanding importance to qualify the staff and to implement a sufficient vocational training system. It is 4.3.2 of the “Programme”: “Developing an ongoing vocational training system for the officers of the probation service” and 2.2. / 2.2.1 of the new “List of Measures Deriving from the Programme 2012-2017” (“Measures”) which are targeted on this aspect: “To build the capacities of the Probation Service” / “Developing an ongoing professional training system for Probation Service Officers”.

Unfortunately the action implementation deadline for this measure (March 2017) is **not observed**.

According to the comments by the State Probation Service management there have been some trainings in cooperation with the Council of Europe (“train the trainers”) and some probation officers have received certificates. The probation officers also have received a two days training on a new risk and needs assessment tool which is planned to be used in future. But an ongoing professional training system has not yet been implemented and currently there are no detailed plans for the nearer future to do this. Representatives of the State Probation Service were obviously unhappy about this and emphasized, that the training system has to be implemented by the Ministry of Justice.

It is obvious that the vocational training system as a system which is providing basic knowledge of probation work is needed urgently. It should initially be started as soon as possible but not later than July 2017 (one year after launching the probation service). All 44 probation officers should receive at least basic training till the end of 2017.

## 3. Standards of Probation Work

It will be necessary to continuously adapt the content of this training system to the special needs and expanding tasks of the probation service (for example mediation / electronic

monitoring / enforcement of all “alternative” sanctions and measures). On these grounds I propose also to start a continuous work on probation work standards and add this to Nr. 10 in the now drafted “List of Measures to be encompassed in the Strategic Plan of Legal and Judicial Reforms of the Republic of Armenia for 2018 - 2021): “Start a continuous work on probation work standards” The activity implementation deadline should be December 2017 with the need of finish a first version by December 2018. The probation work standards could be in this way a continuously developing natural curriculum of the vocational training system.

#### 4. Human Resources Concept

Beyond this it will be necessary to think about concepts of hiring new staff. State Probation service is aiming at an average caseload of about 50 clients. During the preparation of the launching of the probation service in 2015/2016 the number of needed 200 probation officers was discussed which is realistic looking forward to rising numbers of clients and an enormous burden of future tasks. Since there are currently only 44 poorly qualified probation officers it is obvious, that the hiring of new staff will be an important issue for the State Probation Service in the next five to ten years in order to meet these needs and also to replace retiring staff. It will also be the chance to hire the urgently needed social workers and by doing this really build the intended new and advanced probation service. The State Probation Service meets various challenges and questions in this context and it is currently not clear whether it will be possible to find enough qualified junior staff: Is there a sufficient number of well qualified graduated social workers in the Republic of Armenia in the next years? Will it be possible to win these graduates over and to hire them for the probation service? Will it be attractive for graduated social workers to work in the State Probation Service in terms of salary and working conditions? What should be the hiring procedures? All these are crucial issues for the development of probation in the Republic of Armenia and should be discussed also with university representatives in order to draft a human resources concept.

I propose to add this aspect to Nr. 10 in the now drafted “List of Measures to be encompassed in the Strategic Plan of Legal and Judicial Reforms of the Republic of Armenia for 2018 - 2021): “To draft a human resources and staff hiring concept in cooperation with universities”. The activity implementation deadline should be December 2018.

## 5. Current workload of State Probation Service

In January 2017 the State Probation Service worked with 2.870 clients which actually is a small number compared to the 4.000 inmates of the penitentiary system. Well operating probation services work with about three to four times of the number of inmates. This small number is mainly the consequence of course of the early stage of probation work but also of the poor relevance of alternative sanctions and measures in the penal system of the Republic of Armenia. I will come back to this later in this report.

The majority of cases (about 1.500) are clients who have to pay fines. It has to be mentioned that of course fines are not the classical field of work which is done by probation institutions (apart from engagement to avoid incarceration in case of unpaid fines by substitution of payment for example by community work). The fact, that the State Probation Service is working with this group of clients in such an substantial extend reveals that actually it is designed to execute sentences as a main focus of its capacities. I will come back to this aspect later in my report (6.).

Apart from this the State Probation Service is working with only 49 conditionally released convicts which is extremely poor. Conditional release is, apart from convicts with suspended prison sentence, the main field of assignment of probation agencies. This also shows the low relevance of conditional release in the system of alternative measures and sanctions in the Republic of Armenia.

170 clients have been sentenced to “mandatory community work” which is facilitated by State Probation Service and 200 have been convicted to “occupational ban” (a special alternative sanction in the penal system of the Republic of Armenia). 1.130 clients are under probation because their prison sentence has been suspended for some reasons (pregnant women/mothers with children up to three years/seriously sick persons).

Against the background of these about 3.000 clients the average workload should be about 60 to 70 clients per probation officer. In reality the actual workload seems to be very different, especially if you compare the situation in Yerevan to the conditions in the regions: a probation officer in the Head Office in Yerevan talked about his 117 clients (4 % of the total workload of State Probation Service), among them 11 clients with mandatory work (which is nearly 10 % of all mandatory work clients). This shows that the workload obviously is not balanced very well. Probably the workload in Yerevan is considerably higher than in the

regions where the activity of State Probation Service currently is probably not relevant in terms of alternative sanctions and measures.

## 6. Assignments of State Probation Service / Future Tasks

State Probation Service has to face numerous different future tasks. These challenges as a whole might cause a serious risk to overburden its capacities and also to mislead the development of probation in the Republic of Armenia:

- As already mentioned, the State Probation Service is designed to execute sentences as a main focus of its capacities. It is the currently drafted Penitentiary Code which is regulating the assignment of the State Probation Service in terms of execution of sentences. It is intended to let all existing sentences (fine, mandatory community work, limitation of public rights, occupational ban, deprivation of child custody, eviction) according to the Criminal Code (apart from prison sentence and life sentence) be executed by the State Probation Service. It will also execute sanctions against legal entities which will also be liable in terms of criminal punishment. Considering this, the State Probation Service actually has (as also in Georgia) a main focus on execution of sentences which is very untypical for probation agencies. It will be important to carefully develop and maintain the actual character of probation work under these rather disadvantageous circumstances. The main instrument of probation work is the close and reliable relationship between probation officer and client which is used to conduct supervision and support in order to aim for rehabilitation.
- Implementation of ongoing professional training system (see above “2.”)
- Implementation of risk and needs assessment tool: State Probation Service has managed to generate an advanced and sophisticated computer based risk and needs assessment tool in cooperation with an NGO (Institute of Civil Society). All probation officers have received a brief introduction to this tool. It is intended to run a pilot project in the nearer future. All probation officers (who currently have not received basic vocational training) will have to be trained on this new tool. I propose to make this part of the “ongoing professional training system”.
- Implementation of mediation: mediation as part of the tasks of the State Probation Service is mentioned in the draft of the “Strategic Program of Legal and Judicial

Reforms of the Republic of Armenia for 2018-2021” (4.3. “To fully ensure the functionality of the State Probation Service and to develop relevant legal acts if appropriate.” Mediation procedure is regulated in chapter 8 of the Law on Probation which will be in force in January 2018. Mediation needs training of the assigned probation officers. This must not necessarily be part of the “ongoing professional training system”. It is probably sufficient only to qualify a smaller number of probation officers.

- Implementation of electronic monitoring: this future task of the State Probation Service is mentioned in 4.3.2. draft of the “Strategic Program of Legal and Judicial Reforms of the Republic of Armenia for 2018-2021”: “To pilot and fully install the electronic monitoring system. Electronic monitoring as a task for the State Probation Service is regulated in chapter 11 of the Law on Probation which also will be in force in January 2018. Electronic monitoring will be a measure during pre-trial procedures (avoiding pre-trial detention) and in the context of early release. The handling of electronic monitoring devices also needs training of the assigned probation officers. According to 10.2. 10 in the now drafted “List of Measures to be encompassed in the Strategic Plan of Legal and Judicial Reforms of the Republic of Armenia for 2018 - 2021): “To pilot and to fully install the electronic monitoring system.” the action implementation deadline for this measure will be 2019 (4th trimester).

## II. Alternative Measures and Sanctions

### 1. Definition of “alternative sanctions and measures”

By definition (Council Framework Decision 2008/947/JHA) an “alternative sanction shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction”. Alternative sanctions should always be considered in correlation with probation measures because they are also designed to execute a punishment alternatively to custodial sentence. Article 4 of the Council Framework Decision 2008/947/JHA describes the following probation measures and alternative sanctions: obligation to inform a specific authority of any change of residence or working place / obligation not to enter certain localities / limitations on leaving the state / instructions relating to behaviour, residence, education and training, leisure activities, limitations on or modalities of carrying out a professional activity / obligation to report at specific times / obligation to avoid contact with specific persons or objects / obligation to

compensate financially / community service / obligation to cooperate with a probation officer / obligation to undergo therapeutic treatment.

## 2. Alternative sanctions in the Republic of Armenia

Besides prison sentence and life sentence the penal system in the Republic of Armenia basically provides (or will provide) the following “alternative” sanctions: fine, mandatory community work, limitation of public rights, occupational ban, deprivation of child custody, eviction. It also provides the option of early conditional release. New regulations on early conditional release will be part of the currently drafted Penitentiary Law.

Considering this alternative sanctions and measures actually do not play an relevant role in the penal system of the Republic of Armenia. They will of course be strengthened to a certain extend by the new Criminal Code, the new Penitentiary Code and the new State Probation Service. It will be important to consequently follow this way and to intensify the efforts on this field:

- Fines are not an alternative sanction. The assignment of the State Probation Service nevertheless can be a chance in terms of avoiding imprisonment for failiure to pay the fine. This way it might be possible to contribute to the intended reduction of numbers of inmates. This could be done by supporting the convicts in regulating their outstanding debts and to settle their financial and economic situation in order to pay the fine. This also might be a field of possible cooperation with NGO's or volunteers. Another way of avoiding incarceration might be to replace the payment of the fine by community work. This could be facilitated by the State Probation Service.
- Community work is an alternative sanction. Unfortunately it is currently of no significant relevance. There are only 170 convicts who serve community work. It will be an important issue to raise these numbers. The State Probation Service will have to find more suitable places of employment to facilitate community work. Community work must be recognized by the courts as a well operating alternative sanction. Rising numbers of community work are are a good indicator for the relevance and importance of alternative sanctions in a penal system. The development of community work numbers should be watched carefully.

- Probation measures can only be applied in cases of early conditional release or suspended sentence. This actually is the main field of probation work. It is the most important measure to reduce the number of inmates and - in case of suspended sentence - to avoid incarceration and its various negative effects. It also is a most important part of a differentiated penal system. Currently early conditional release has no significant relevance in the Republic of Armenia. Not one of the convicts sentenced to life imprisonment has ever been released conditionally. There are only 49 convicts who have been conditionally released and currently are under the supervision of the State Probation Service. In terms of strengthening alternative sanctions and measures and changing the penal system it will be the most important issue to raise these numbers.

It is 4.4 of the “Programme”: “Reforming the procedure for early conditional release and for substituting the unserved portion of the sentence with a mitigated punishment” and 2.3. of the new “List of Measures Deriving from the Programme 2012-2017” (“Measures”) which are targeted on this aspect: “To reform the procedure for releasing on parole and for replacing the unserved part of the punishment with a milder punishment”. 2.3.1.: “Drafting ... amendments targeted at simplifying the system of the bodies rendering decisions with regard to the release on parole and clarifying the functions of each body”.

Unfortunately the action implementation deadline for these measures (December 2016) is **not observed**.

The new procedures for releasing on parole will be part of the currently drafted Penitentiary Law. The regulations in chapter 25 of the draft are reducing the influence of the penitentiary system and are implementing a court decision on the question of early release. Although it is the court, that has to decide finally it is the so called “Independent Commission” which first has to make up its own decision on the case. Only in case of positive decision the Independent Commission is giving the case to the court according to the current version of the draft. The convict has the right to appeal against the decisions of both, the Independent Commission and the court.

It is to appreciate that the future Penitentiary Law will provide regulations which will simplify the early release procedure, which are reducing the relevance of the penitentiary system and the already existing “Independent Commission” within the procedure, which will stipulate an independent court decision with the right to appeal

and which will certainly have a positive effect on the numbers of conditionally released convicts under supervision of State Probation Service.

On the other hand the future regulations on early release still do not simplify the procedures in the desirable and necessary way. They are still too complicated and perpetuate the existence of the “Independent Commission”, which should actually be given up. It would be sufficient and more effective just to stipulate fixed points of time when the convict is entitled to apply for early conditional release. His application should directly go to court with a statement of the prison and the public prosecution department. The procedures in the “Independent Commission” are not transparent and the complexity of procedures in a way opens the floor for possible corruption - at least this was the concern of a NGO representative.

I propose to review the intended regulations in the draft of the Penitentiary Law in order to create an effective and simple procedure of early conditional release which is urgently needed to reduce the number of inmates and to raise the number of early released convicts under the supervision of the State Probation Service.

I found no information on the issue of suspended prison sentence (apart from the above mentioned cases (pregnant women/mothers with children up to three years/seriously sick persons). The reason for suspended sentences in terms of alternative sanctions is, that it is expected, that the effect of the sentence itself, accompanied by probation measures are sufficient to prevent the convict from reoffending without the impact of the penitentiary. The suspended prison sentence in this meaning is a most important part of a differentiated penal system and should be considered in cases of sentences up to two or maximum three years of imprisonment.

I propose to ask the Government of the Republic of Armenia if a suspended prison sentence in this meaning will be part of the reforms of the penal system. If not the intended regulations should be reviewed and the option of a suspended sentence should be considered.

### III. Remarks on the Penitentiary System

The situation in the penitentiary system will be reported by Mr. Isaksson. I will just refer to some issues which are mentioned in the CPT report and are related to regulations in the currently drafted Penitentiary Law.

#### 1. Situation of the “lifera”

The draft version of the Penitentiary Law still contains regulations which

- make it possible to separate the lifera from the other inmates (Art. 74 Nr. 6),
- are stipulating conditions for the lifera which are worse compared to the other inmates in terms of regime (Art. 120), visits, retry of application for conditional release,
- therefore perpetuate the de facto discrimination and separation of lifera and frustrate attempts to individualize the planning of the sentence (for example: minimum of 8 years in closed regime).

#### 2. Situation of HIV infected inmates

The draft version of the Penitentiary Law still contains regulations which make it possible to separate the HIV infected from the other inmates (Art. 74 Nr. 5).

#### 3. Situation of homosexual inmates

The draft version still contains regulations which are discriminating homosexual inmates. “Homosexual activity” is considered as a serious breach of disciplinary rules (Art. 113).

I propose to review the intended regulations in the draft of the Penitentiary Law in order to avoid any discrimination of lifera, HIV-infected and homosexual inmates and to stipulate the need of individualized planning of the prison sentence.

#### IV. Proposals

##### **I propose**

- that the intended vocational training system should initially be started as soon as possible but not later than July 2017 (one year after launching the probation service). All 44 probation officers should receive at least basic training till the end of 2017.
- to make the training on the risk and needs assessment tool part of the “ongoing professional training system”,
- to start a continuous work on probation work standards and add this to Nr. 10 in the now drafted “List of Measures to be encompassed in the Strategic Plan of Legal and Judicial Reforms of the Republic of Armenia for 2018 - 2021): “Start a continuous work on probation work standards” The activity implementation deadline should be December 2017 with the need of finish a first version by December 2018. The probation work standards could be in this way a continuously developing natural curriculum of the vocational training system.
- to draft a human resources and staff hiring concept and add this aspect to Nr. 10 in the now drafted “List of Measures to be encompassed in the Strategic Plan of Legal and Judicial Reforms of the Republic of Armenia for 2018 - 2021): “To draft a human resources and staff hiring concept in cooperation with universities”. The activity implementation deadline should be December 2018.
- to ask the Government of the Republic of Armenia to consider, that it is important to carefully develop and maintain the character of probation work within the State Probation Service which is to a significant extend an execution authority,
- to review the intended regulations in the draft of the Penitentiary Law in order to create an effective and simple procedure of early conditional release which is urgently needed to reduce the number of inmates and to raise the number of early released convicts under the supervision of the State Probation Service,
- to ask the Government of the Republic of Armenia if a suspended prison sentence will be part of the reforms of the penal system. If not the intended regulations should be reviewed and the option of a suspended sentence should be considered,

- to review the intended regulations in the draft of the Penitentiary Law in order to avoid any discrimination of lifers, HIV-infected and homosexual inmates and to stipulate the need of individualized planning of the prison sentence.

Dr. Stefan von der Beck

Oldenburg, 21th of March 2017