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PROBATION IN AZERBAIJAN: FIRST RESULTS AND DEVELOPMENT PROSPECTS

ПРОБАЦИЯ В АЗЕРБАЙДЖАНЕ: ПЕРВЫЕ ИТОГИ И ПЕРСПЕКТИВЫ РАЗВИТИЯ

Abstract. The organization of the Probation Service in the Republic of Azerbaijan is discussed, the first results of the work are summarized and the prospects for the development of this new structure are indicated in the article. The article describes the experience of using modern information and communication technologies, including electronic control devices (so-called electronic bracelets) in punishments execution. The author notes that the tasks set by the President of the Republic of Azerbaijan to state bodies, including the probation Service, are a kind of road map, which has a long-term and programmatic nature, and have already been successfully implemented. For example, over the past three years, there has been a steady trend towards decrease in the number of persons sentenced to imprisonment, and increase the proportion of persons sentenced to punishments not connected with isolation from society. For example, in 9 months of 2019, 10.7% more convicts were on probation record than in the same period last year. These changes in sentencing practices and increase in the proportion of alternative types of punishment, including the number of convicted persons on probation record, are not only an indicator of the implementation of the President's initiatives to humanize the state's criminal law policy, but also a result of the confidence of judges in the Probation Service, which ensures the effective execution of sentences that are not related to the isolation of the convicted person from society. The analysis of first results of the Probation Service's activity and study of public opinion show the timeliness of the decision of the head of state to create this structure, which makes it possible to look optimistically into the future, which requires continued measures for its development. According to the author, the further development of the Probation Service should be carried out in three main directions. First, it is necessary to complete the process of improving legislation, first of all to adopt a separate law on probation, and continue to bring the regulatory framework for sentences execution in accordance with time realities. Second, for the purpose of independent activities organization and ensuring effective control, the structure of the service should also be optimized in view of the increased workload. Third, it is necessary to create a modern system of training and advanced training of Probation

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Service employees, ensure their reliable legal and social protection, and provide them with modern technical equipment.

Keywords: Probation Service, penalties not related to the isolation of the convicted person from society, electronic control tools, Republic of Azerbaijan.

Аннотация. В статье рассматриваются вопросы организации деятельности Службы probation в Азербайджанской Республике, подводятся первые итоги работы и указываются перспективы развития этой новой структуры. Описывается опыт использования современных информационно-коммуникационных технологий, в том числе средств электронного контроля (так называемых электронных браслетов), при исполнении наказаний. Автор отмечает, что задачи, поставленные Президентом Азербайджанской Республики перед государственными органами, в том числе Службой probation, являются своеобразной дорожной картой, носящей долгосрочный и программный характер, и уже стали успешно реализовываться. Так, за последние три года наблюдаются устойчивая тенденция уменьшения числа осужденных к лишению свободы, увеличение доли лиц, осужденных к наказаниям, не связанным с изоляцией от общества. Например, за 9 месяцев 2019 г. на probationный учет было принято на 10,7 % осужденных больше чем за аналогичный период прошлого года. Эти изменения в практике назначения наказаний, увеличение доли альтернативных видов наказания, в том числе количества осужденных, состоящих на учете в Службе probation, являются не только показателем реализации инициатив Президента Азербайджанской Республики по гуманизации уголовно-правовой политики государства, но и результатом доверия судей к Службе probation, обеспечивающей эффективное исполнение наказаний, не связанных с изоляцией осужденного от общества. Анализ первых результатов деятельности Службы probation, изучение общественного мнения показывают своевременность решения главы государства о создании указанной структуры, дает возможность оптимистично смотреть в будущее, которое требует продолжения мер по ее развитию. По нашему автора дальнейшее развитие Службы probation должно осуществляться по трем основным направлениям. Во-первых, необходимо завершить процесс совершенствования законодательства, в первую очередь принять отдельный закон о probation, и продолжить приведение нормативной базы исполнения наказаний в соответствии с реалиями времени. Во-вторых, в целях самостоятельной организации деятельности на местах, обеспечения эффективного контроля, а также с учетом возросшей нагрузки следует оптимизировать структуру службы. В-третьих, необходимо создать современную систему подготовки и повышения квалификации сотрудников Службы probation, обеспечить их надежную правовую и социальную защиту, современную техническую оснащенность.

Ключевые слова: служба probation, наказания, не связанные с изоляцией осужденного от общества, средства электронного контроля, Азербайджанская Республика.

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In order to ensure control over the execution of sentences not related to isolation the convicted person from society, and to improve the efficiency of management in this area, the Probation Service was established in the structure of the Ministry of Justice as the main Department by the Order of the President of the Azerbaijan Republic (adopted on 10.02.2017) «On improving activities in the penitentiary sphere, humanizing the sentencing policy, expanding the use of alternative punishments and procedural coercion not related to isolation from society».

In accordance with the new Article 15-1 of the Penal Code of the Republic of Azerbaijan, the Probation Service was assigned the task to organize the execution of six types of punishments: fines, deprivation of the right to drive a vehicle, deprivation of the right to hold certain positions and engage in certain activities, public works, correctional labor and restriction of freedom. At the same time, the Probation Service was charged with monitoring probationers (released on parole from serving their sentences), persons whose punishment had been deferred, and those who, along with the punishment (except for deprivation of liberty), were subjected to compulsory medical measures for alcoholism and drug addiction, as well as organizing the execution of public works assigned as an administrative penalty. According to the amendments in the Penal Code of the Republic of Azerbaijan, the Probation Service has also been assigned the task of carrying out probation control over convicts on record and implementing measures aimed at their rehabilitation and social adaptation.

It should be noted that after the entry into force of the Law (adopted on 19.10.2018), which amended the Criminal Procedure Code and the Penal Code of the Republic of Azerbaijan, establishing the specifics of the application and implementation of criminal legal measures against legal entities (execution of fines and deprivation of the right to engage in certain activities), the probation Service was also

entrusted with monitoring the implementation of such court decisions.

To organize the activities of the new service, by order of the Minister of Justice of the Republic of Azerbaijan, the departments of Civil enforcement service in administrative-territorial units of the Republic were transformed into penal and probation services, and in two major cities of the country – Sumgait and Ganja, independent probation departments have been created as a pilot program. (Gumbatov, M. G. 2019). Work on organization of the Probation Service was carried out in three main directions, including the improvement of legislation, search for an optimal structure and training system for probation officers. At the same time, the positive experience of organizing probation in a number of European countries was studied, as well as existing international standards were taken into account. In a short time, the Board of the Ministry of Justice approved five new rules defining the mechanism for sentences execution and monitoring of convicts, related to the competence of the Probation Service. In connection with changes in legislation affecting the order of execution and serving of punishments not related to isolation of the convict from society a number of draft laws on amending the Criminal, Criminal procedure, Immigration Codes and Codes of penal and administrative offences of the Azerbaijan Republic was prepared. Taking into account international standards, new forms of statistical reporting of the service were approved. Along with the tasks of humanizing the criminal law policy of the state, decriminalizing crimes (in particular, crimes in the sphere of economic activity), supplementing the special part of the Criminal code with new types of punishments not related to deprivation of liberty, and improving the basis for applying existing alternative punishments, the President of the Republic of Azerbaijan stressed the need to use modern information and communication technologies, including means of electronic control (so-called electronic bracelets) in the execution of punishments. To perform this task

in the shortest possible time, the world practice of using these devices, their types, software, and the possibilities of their acquisition and implementation was studied. As a result, a decision was made to produce electronic bracelets in Azerbaijan, and their testing began in January 2018.

According to the current legislation, electronic bracelets are applied to convicts sentenced to restriction of freedom. This new criminal law measure was included in the sentencing system at the end of 2017 and as a new real alternative to deprivation of liberty has become frequently applied by the courts. (Gumbatov, M. G. 2018). Electronic bracelets can also be applied to probationers who are released on parole from serving their sentence, if the court determines the use of these electronic devices. In connection with the entry into force on April 15, 2018 two regulations – the List of electronic monitoring applied to persons convicted or against whom the measure of restraint, and the Rules for applying electronic control devices to convicted persons or persons against whom preventive measures were applied, approved by Resolution of the Cabinet of Ministers of the Republic of Azerbaijan No. 144 (adopted on 10.04.2018), the use of electronic bracelets began. Since then, electronic bracelets were applied to more than 1,900 convicts on record in the Probation Service.

Special attention was paid to the training of personnel for the new service, and special courses and trainings for employees were held with the participation of international experts. In order to educate and inform the population about the new structure, a public presentation of the Probation Service, meetings with representatives of the media, teachers and students of the law faculty of Baku State University, as well as chairmen and judges of district (city) and appeal courts were held with the participation of representatives of civil society and human rights defenders of the country. A special documentary about the Probation Service and its activities is presented to the

public of the Republic of Azerbaijan; detailed information about electronic monitoring of prisoners is given. Diplomatic representation of a number of foreign countries accredited in the Republic of Azerbaijan showed interest in the new service, they were given the opportunity to get acquainted with the work of the monitoring center, as well as electronic bracelets.

It should be noted that the tasks set by the Decree of the President of the country to state bodies, including the Probation Service, are a kind of road map that has a long-term and programmatic nature, and have already been successfully implemented. Thus, over the past three years, there has been decrease in the number of people sentenced to imprisonment, and increase the proportion of persons sentenced to punishments not connected with isolation from society. It should be noted that in 2018, 24% more convicts were on probation record than in 2017, and in 9 months of 2019 – 8.2% more than in the same period of 2018. In 9 months of 2019, 10.7% more convicts were on probation record than in the same period last year.

These changes in sentencing practices and increase in the proportion of alternative types of punishment, including the number of convicted persons on probation record, are not only an indicator of the implementation of the President's initiatives to humanize the state's criminal law policy, but also a result of the confidence of judges in the Probation Service, which ensures the effective execution of sentences that are not related to the isolation of the convicted person from society.

The changes in legislation and measures taken on behalf of the President of the Republic of Azerbaijan have improved control over the execution of public works (Gumbatov, M. G. 2018), which were imposed as both a punishment and an administrative penalty, and the amount of paid fines and deductions from the earnings of convicts serving correctional labor has significantly increased.

Currently, the work is being completed on the full implementation of the unified

information system «Prisoners and persons in respect of whom a preventive measure has been applied in the form of detention», which meets international requirements, which should provide both the exchange of relevant data between bodies and institutions that execute sentences in real time, as well as allow all documentation and personal files of prisoners to be kept in electronic format, which will significantly facilitate and increase the efficiency of the work of Probation Service employees. This system also involves integration with all relevant government information systems and the introduction of artificial intelligence.

By the end of 2019, testing of a new type of electronic devices designed to monitor convicts sentenced to public works will begin. These devices will be issued to convicts who upon arrival at the place of performing public works will activate it using their fingerprints. After that, the monitoring center of the probation Service will receive a signal and control over the presence of the convicted person in the designated place for performing public works, as well as electronic accounting of work hours. In connection with the above, the legislative body of the country has submitted draft laws on making appropriate changes to the Criminal Code, Codes on the execution of punishments and on administrative offenses.

A proposal to create a special Fund to strengthen the social protection of probation employees, provide financial incentives for their activities and address issues of technical support for the service is being considered. It is planned to create this Fund by 50% deductions from the total amount of fines paid and deductions from the earnings of convicts serving correctional labor.

The analysis of first results of the Probation Service's activity and study of public opinion show the timeliness of the decision of the head of state to create this structure, which makes it possible to look optimistically into the future, which requires continued measures for its development. According to the author, the further development of the Probation Service

should be carried out in three main directions. First, it is necessary to complete the process of improving legislation, first of all to adopt a separate law on probation, and continue to bring the regulatory framework for sentences execution in accordance with time realities. Second, for the purpose of independent activities organization and ensuring effective control, the structure of the service should also be optimized in view of the increased workload. Third, it is necessary to create a modern system of training and advanced training of Probation Service employees, ensure their reliable legal and social protection, and provide them with modern technical equipment.

It should be emphasized that these directions of further development of the Probation Service have already been reflected in the State program «On the development of Azerbaijani Justice in 2019–2023», which was approved by the Decree of the President of the Republic of Azerbaijan on 18.12.2018. It is necessary to consider the provisions set forth in the presidential Decree of the Azerbaijani Republic from April 3, 2019 «On the deepening of reforms in judicial-legal system» which, along with the tasks of speeding up the process of improving the justice system that meets the requirements of the time, increasing transparency in the activities of the courts, is imperative to ensure full and timely execution of court decisions, strengthen measures taken to eliminate red tape and other negative phenomena.

We assume that the first positive achieved results and the implementation of the planned measures will help the successful development of the Probation Service in the Republic of Azerbaijan, ensure the effective operation of the new structure, and create the necessary conditions for its work in accordance with best international practices.

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