



EUROPEAN UNION



Event notes:

Project:	Technical Assistance to RA Ministry of Justice and Special Working Group Monitoring Implementation of “Support to Justice Reform in Armenia – Phase II” and the Justice Reform Progress
Title	Round-table discussion on Draft Law on Probation and State Probation Service and the CoE Legal Opinion on the Draft Legislation
Date:	October 21, 2015
Location:	Marriott Armenia Hotel
Attended:	NGO representatives; MOJ representatives; representatives of Ministries and other Agencies; Judge from the Court of Cassation of Armenia; representative from the Committee of the State and Legal Affairs of the National Assembly; COE representatives; the representative of the EU Delegation to the Republic of Armenia; representatives of the international organizations in Armenia; representatives of the Chamber of Advocates of Armenia; representative of the Human Rights Defender’s Office in Armenia; EU experts.

## AGENDA

21 October, 2015

Marriott hotel, 'Masis' hall

- 09:45 - 10:00 Registration of participants / coffee
- 10:00 – 10:15 *Welcome*  
Mr. Suren Krmoyan, Deputy Minister of Justice of RA  
Ms. Naira Avetisyan, Deputy Head of Office, Council of Europe
- Presentation*
- 10:15 – 10:45 Draft Law on State Probation Service of the Republic of Armenia  
Representative of the Ministry of Justice
- 10:45 – 11:15 Questions and answers, discussion
- Presentation*
- 11:15 – 11:45 Recommendations from the legal opinion on the Draft Law on State Probation Service  
Mr. Peter van der Laan, co-author of the legal opinion
- 11:45 – 12:15 *Questions and answers, discussion*
- 12:15 – 12:30 *Future steps / plans*  
Representative of the Ministry of Justice of the Republic of Armenia

## *Topics Discussed*

### **I. Welcoming Remarks to Participants of the Round-Table Discussion**

- Mr. Hayk Khemchyan, Senior Project Officer of the “Council of Europe (CoE) “Support to the Establishment of Probation Service in Armenia” Project welcomed the participants. He mentioned that the “Support to the Establishment of Probation Service in Armenia” Project was implemented by the CoE Office in Yerevan and was funded by the Norwegian Government. Mr. Khemchyan welcomed also Mr. Peter van der Laan, the Dutch expert who provided opinion and comments on the Draft Law on the State Probation Service (Draft Law).
- Mr. Suren Krmoyan, Deputy Minister of Justice of Armenia welcomed the participants. The Deputy Minister emphasized the importance of the public discussion, as the opinions on the Draft Law expressed by the participants would be taken into consideration aimed at improving the Draft Law. The Draft Law needed to be improved before its official circulation, following which it would be submitted to the Government. Mr. Krmoyan informed also that the new Draft Criminal Procedure Code was submitted to the National Assembly. At the same time working groups were working on the new penitentiary code and the adoption of the mentioned Codes, as well as the amendments to the Criminal Code were essential for the full functioning of the Probation Service.
- Ms. Naira Avetisyan, the Deputy Head of the CoE Office in Yerevan welcomed the participants. She informed that CoE Office in Yerevan implemented the second Project aimed at introducing probation service in Armenia. The objective was to introduce alternative punishment measures and thus to work against having prisons overcrowded with inmates. Ms. Avetisyan expressed hope that a new and bigger project would be implemented by the CoE Office in Yerevan following the currently implemented Probation Service Project and she also stressed the importance of having new enforcing legislation in place.
- Mr. Arthur Sakunts, HBA Vanadzor office, made a remark to say that the NGOs were interested to engage in the probation service and to have observation/monitoring functions in the process.
- In response to the remark made by Mr. Sakunts, Mr. Krmoyan stated that the NGOs were welcome to engage in the probation service enforcement process and that the RA Ministry of Justice (MOJ) were looking to engage the NGOs in the pilot probation service project.

- Mr. Hayk Khemchyan requested the participants to have interactive discussion and passed the floor to Mr. Emil Margaryan from the MOJ to present the Draft Law.
- Mr. Emil Margaryan, introduced the underlying aspects of the Draft Law. He mentioned that introducing of the state probation service in Armenia was envisaged by the Strategy on Judicial and Legal Reforms for 2012-2016 adopted by the Decree of the President dated on 30 June 2012. Further to this, introducing of the Probation Service was envisaged by the Government Program of 2014. Mr. Margaryan introduced the relationships and the issues regulated by the Draft Law. He further outlined the objectives of the Draft Law, such as enforcement of alternative punishment, re-integration of the offenders in the society, achieving the objective of avoiding recidivism among the offenders, depopulation of the prisons overcrowded with inmates among other issues.
- Mr. Margaryan presented the main concepts used in the Draft Law. In addition, Mr. Margaryan talked about the probation service database to be administered by the MOJ, the manner of data keeping would be defined by the Government.
- Further on, Mr. Margaryan mentioned that the state probation service would be considered as a special type of service to function under the MOJ and would have its structural departments in Yerevan, as well as in the Marzes of Armenia.
- Mr. Margaryan briefly mentioned about the control functions to be enforced against the offenders undergoing their probation service. These should be done primarily through the GPS system or other relevant radio-measurement equipment. The alternative punishment should be defined by the court and the probation service staff should conduct the follow-up over the probation service enforcement process by the offender. The consultancy report would be provided to the court by the probation service.
- According to Mr. Margaryan, the Draft Law addressed the special categories of offenders, including the pregnant women and juvenile. It further established the type of programs, including educational, sports, psychological, re-integration activities to be implemented with offenders by establishing also the relevant bodies, including the church.
- Mr. Krmoyan outlined the main structure of the Draft Law. He mentioned that in the first stage it was being envisaged to have the alternative punishment service in place. According to the Deputy Minister the probation service would function properly only upon adoption of the new Criminal Procedure Code and the new Penitentiary Code.

- The second stage was being alternative punishments, these would entail to supplement the list of punishments to qualify as alternative punishments to be enforced against the offenders undergoing the probation service. The given stage would address also matters pertaining to re-integration (socialization) programs to be enforced for the offenders.
- As Mr. Krmoyan mentioned that the pre-trial stage was taken out from the Draft Law, but would be discussed in 2017-2018 to be addressed in the concept paper. He mentioned the role of the church as part of the psychological program to be implemented with the offenders.
- The Deputy Minister further mentioned that electronic management system for the probation service would be administered to process the relevant data for probation. The data would be administered through its specific tools and methods in order to maintain and submit relevant report on offenders undergoing their probation service.
- Mr. Krmoyan informed the participants that during the coming week the MOJ planned to have working discussions with the Alternative Punishment Division to more clearly define in the Draft Law the functions of the State Probation Service staff.
- Mr. Khemchyan was interested to learn from the Deputy Minister whether there was coordination of efforts between the working groups engaged in the process of drafting the criminal procedure code, the penitentiary code and the Draft Law.
- Mr. Krmoyan confirmed that coordination of work was ongoing between the experts of the working groups engaged in drafting the codes and the Draft Law and further coordination would be carried out.
- Mr. Sakunts expressed an opinion that it would be reasonable for the probation service to function as an independent service rather than for it to operate under the MOJ. In the second place Mr. Sakunts wanted to know what kind of special service should the probation service be considered.
- According to Mr. Krmoyan the main idea was to have the probation service separate from the punishment system and be a part of civil service. Deliberations were going whether it should be an independent authority or it should function under the MOJ. The main objective here would be to establish safeguards for the probation service to function independently.
- In regard to the second question as to the type of service, Mr. Krmoyan explained that the state probation service would be considered as a civilian service, however with some

elements of a special service. The employees would have some special near to civilian type of wears rather than strong uniforms. The employees would hold their position rank titles.

- Mr. Armolayan from GIZ was interested to learn whether the Draft Law was developed on the basis of the criminal code amendments, the new criminal procedure code and whether or not the material law should be adopted in the first place.
- Mr. Krmoyan stated again that the Draft Law would be further elaborated and would be officially circulated before its adoption. The Draft Law would envisage some transitional provisions which would become effective upon adoption of the respective Codes. As mentioned by Mr. Krmoyan, the Codes were much ahead from the Draft Law. The work would be coordinated with the working group experts engaged in drafting the Penitentiary Code. The given Code would establish the types of punishments to be reflected in the Draft Law.
- Mr. Krmoyan expressed hope that the State Probation Service would be fully functional in the second quarter of 2016.
- Ms. Hasmik Harutyunyan, from the “Protection of Rights” NGO asked whether the objective and the purpose of subject matter were clearly defined in the Draft Law.
- According to Mr. Krmoyan, the purpose was defined in the main concepts of the Draft Law in consideration of the international instruments in the given field. He explained that the Concept Paper on Introduction of Probation Service established four phases of probation, including the pre-trial stage, the trial stage, the penitentiary stage and the post-penitentiary stage. Nevertheless, no probation related activities were envisaged in the Draft Law in respect of the pre-trial and trial stages, whereas the probation would be fully functional with respect to the penitentiary and the post-penitentiary stages. However, according to the Deputy Minister, the MOJ did not exclude the possibility of envisaging probation service with respect to both the trial and the pre-trial stages in the future.
- Mr. Danielyan from CSI expressed an opinion as to whether or not it would be more reasonable to postpone adoption of the Draft Law until adoption of the criminal legislation. Mr. Danielyan remarked that the practical enforcement of the Law would be an issue if adopted before adoption of the Codes.
- Mr. Sakunts recommended to view the probation service not only within the government structures, but rather to delegate some functions of the probation service to the civil society NGOs. It was mentioned that the Armenian Apostolic Church should have some

role there and it might be considered as a discrimination against other confessions existing in Armenia. Furthermore he stated that the human rights protection NGOs could engage in the process of integrating the offenders in the society. Mr. Sakunts advised that the given recommendation be considered.

- Mr. Krmoyan mentioned that the role of the church was emphasized in the Draft Law, however he would propose to discuss with the Working Group the opportunity to add also other churches apart from the Armenian Apostolic Church and would also add the requirement in the Draft law to cooperate with the NGOs.
- In regard to the issue of delegating certain functions of the probation service, Mr. Krmoyan stated that it was too early in the initial stage when the Service was not functional yet. The Deputy Minister considered it would not be possible to discuss the matter of delegating the functions of the Service at that early stage. According to the Deputy Minister it was worth to envisage cooperation mechanisms in the Draft Law and later on the matters of delegation would be added to the existing Service.
- Mr. David Avetisyan, Judge from the Court of Cassation, raised two issues. The first issue related to the victims, mainly whether the probation service would be effective equally with respect to the victims, as the given practice existed in other countries. The second issue related to the statement to say that the probation service would be enforced in couple of phases. Mr. Avetisyan expressed his disagreement over the statement that probation would not work in the trial stage. He stressed that it would be possible for the judge to receive the conclusion of the case and look through it.
- Mr. Krmoyan responded that they would consider the recommendation raised by Mr. Avetisyan to link the probation to the trial stage as well.
- Mr. Peter van der Laan, the expert from Netherlands, provided expert opinion on the Draft Law. As Mr. van der Laan mentioned the opinion were preliminary and were not legal but addressed social matters and related to the content. Mr. van der Laan mentioned that he would continue to provide comments on the Draft Law, which were considered his personal opinion.
- Mr. Peter van der Laan mainly constructed his presentation to address the matters pertaining to the objective of the probation service, the main tasks, some questions and the step-by-step needs to be conducted to safeguard its enforcement. According to the expert, the probation as envisaged in the Draft Law was in line with European probation rules. He mentioned about the non-custodial methods in the Draft Law and stressed the

importance of having community measures in place. The expert focused also on facilitating the re-integration (re-socialization) of the offenders.

- Mr. Peter van der Laan spoke about the main tasks of the probation service, including early intervening and practical support for arrestees, advice, supervision, community sanctions, alternative measures and the aftercare. The expert also recommended State Probation Service to provide advisory reports to the Courts (the Judiciary) in all stages.
- According to Mr. Peter van der Laan the proper probation service would secure reducing the number of re-offending, as the re-offending was said to be very high in Armenia.
- Mr. Peter van der Laan mentioned that when mentioning about the probation service the adult offenders were meant to be referred. He recommended having a similar service for the juveniles as well. Certain elements of probation service were similar with respect to both the adults and the juveniles. According to the expert there could be specifics of probation service in Armenia, however some general characteristics were similar all over the places.
- Mr. Danielyan's question related to imposing of fines. He was interested to learn the purpose why it was the purpose of envisaging the fines to be enforced by the probation service, as the fines had nothing to do with the probation service.
- Mr. Peter van der Laan replied that fines were alternative functions and it would be recommended to have another authority to enforce the fines. He recalled the practice in Netherlands, where a separate agency existing to enforce collection of the fines.
- As to the issue whether the probation service should be under the Ministry or whether it should function independently, the expert mentioned that in Netherlands it was not a Government authority, however it was funded by the Government and was under the responsibility of the Ministry. The employees were civil servants.
- Mr. Peter van der Laan emphasized that nowadays the interests of a victim took a more priority role in probation service. The probation officers worked for the client meaning the offender.
- Mr. Arthur Hovhannisyan from the Chamber of Advocates requested to explain a possible situation when the enforcement officer was able to locate no property to be enforced. Did that mean that the punishment was not enforced and the proceeding was stopped there?

- The MOJ representative responded that the pilot probation project was implemented. He mentioned that collection of fines would be enforced by the Enforcement Service.
- Mr. Sakunts was interested to learn whether the offenders of non-serious crimes, for instance a car accident, also needed to undergo the process of re-integration/re-socialization as part of their probation program.
- In reply to the question, Mr. Peter van der Laan answered that the cases of offenders charged for even negligence should be scrutinized. It would be possible that such offenders could have addiction to alcohol or drugs, or probably the person needed help of a psychologist and relevant recommendations should be advised to the court for imposing of the proper alternative measures with respect to the offender.
- Mr. Hayk Khemchyan thanked the participants for the interactive discussion and for coming up with comments and the recommendations in regard to the Draft Law.
- Mr. Krmoyan expressed his gratitude to participants for their questions and comments. He stated again that the Draft Law would be finalized and would be officially circulated. He mentioned that the MOJ had partner NGOs. The Deputy Minister stated that the Ministry would start to work with such NGOs before official circulation of Draft Law to make it closer to be final. Deputy Minister called on the participants to engage and provide their comments on the Draft Law and work with track changes. He thanked the expert as his recommendations were based on practice. Finally, Mr. Krmoyan expressed hope that meaningful results on the probation service would be evident in the near future.