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## The institution of probation in criminal justice in the Slovak Republic

**Abstract:** The paper analyses functioning of the institution of probation as an instrument of social work in criminal justice in the Slovak Republic. The author present the selected findings from an empirical research executed on district courts throughout the whole Slovakia. Probation and Mediation Officials (N=39) participated in this research and presented their opinions on probation institution in relation to tertiary prevention. As a result, they identified limitations existing in the probation practice.

**Key words:** restorative justice, probation, probation and mediation officials, social work, tertiary prevention

### The institution of probation in the Slovak Republic — ideological and legislative basis

Finding a new form of criminal justice motivated by attempts at enriching classic understanding of criminal proceeding and replacing traditionally repressive sanctions with new alternative approaches to criminal issues solution found its way also to Slovakia. Attempting at creation of platform for application of restorative or renewing justice concept under the conditions of traditional, retributive justice brought along usage of alternative forms of criminal activity solution beyond standard proceeding, and also usage of alternatives to the punishment of freedom deprivation.

The Slovak government launched changes on May 2000 by approving the legislative intent of re-codification of punitive-legal codes (Penal Code and Code of Criminal Procedure), including preparation of pilot project, which

paramount objective was to implement probation and mediation institution into district courts practice in a manner allowing for supervision of sentenced persons. It also aimed at improving mediation field by authorized workers. The project started to be implemented on 1st of April 2002 at three district courts, which also provided feedback for its use in practice. It finally resulted in approval of the Act no. 550/2003 on Probation and Mediation Officials. This Act when it came into force on 1st of January 2004 implemented probation and mediation institution into practice at all district courts of Slovakia.

Nowadays, the re-codified criminal codices contain also new alternative punishments, significance of which lays in the fact that the sentenced person, under a specific circumstances, is not sent to prison, but may do penal servitude. Among the alternative punishments, which fall into a competence of the institution of probation in the Slovak criminal justice listed in the effective criminal statute, belong the following punishments: house arrest, forced work punishment and suspension of punishment with probation supervision.<sup>1</sup>

The term “probation” is derived from Latin *probare*, i.e. to test, examine, verify.<sup>2</sup> In case of probation it always entails execution of checking, supervision of the accused person, prisoner at the bar or sentenced but also individual assistance provided to offender along with influence exerted on him/her to lead a proper life. It represents alternative, possibility to solve criminal issues in a manner that transcends traditional approaches and a way of solving the problem, because the punishment of the offender does not lead to his/her isolation in the prison environment. An accused person is at large sanctioned within the framework of probation.

The probation in the Slovak Republic can be defined especially as a part of institution of probation and mediation. This term came into use in the field of Slovak criminal justice and also in the field of social work by coming into force of the aforementioned Act. Under this Act the probation shall mean: “[...] organization and execution of supervision of an accused person, prisoner at the bar or sentenced, inspection of execution of punishment not leading to imprisonment including inflicted duty or restriction, supervision of accused person behaviour during the probation period under exemption from imprisonment, assistance to accused person to lead proper life and comply with conditions laid by the prosecuting attorney decision or by court in criminal procedure.”<sup>3</sup>

Probation practice in the Slovak criminal justice is executed on the three basic levels which represent work with persons on conditional discharge and persons on suspended sentence. The punishments for these people are post-

<sup>1</sup> Cf. Zákon č. 300/2005 Z.z. Trestný zákon, v platnom znení.

<sup>2</sup> Cf. M. Hlušíková: *Latinsko-slovenský slovník*. Bratislava 2003, s. 679.

<sup>3</sup> Zákon NR SR č.550/2003 Z.z. o probačných a mediačných úradníkoch a o zmene a doplnení niektorých Zákonov.

poned until trial period and are they under probation supervision, which substitutes for imprisonment.

Probation and mediation officials (hereinafter referred to as PMOs) are authorized to practice the institution of probation and mediation in accordance with the aforementioned Act.

PMO, in accordance with the Code of Criminal Procedure is defined as “judicial officer, who fulfils probation and mediation tasks for issues dealt with in criminal procedure.”<sup>4</sup> PMO assists in discussing the criminal act, in suitable cases in some of the special manner of criminal procedure or to allow punishment to be properly administered and executed in the way not leading to imprisonment or when the imprisonment could be replaced with other suitable measure.

## The institution of probation from the social work perspective

Since the institution of probation was implemented into practice of the Slovak criminal justice, growing attention has been paid to probation as social work in criminal justice. In the theoretical analysis in criminal justice understanding of probation as social work we proceeded from the central concept of social work which, in accordance with several theoreticians and practitioners, we consider concept of social functioning.

The term social functioning includes both quality and dynamics of human bonds and interactions in social world. Social functioning reflects on the one hand, human ability to respond to environment demands, and on the other hand demands of environment. Therefore, if we speak about social functioning, we mean the balance between the expectations and activity of man in the social environment and demands or requirements of social environment transformed to social standards.

We do believe that social work also in the field of criminal justice tackles the problems of social functioning of an individual. In the field of criminal justice, the source for disrupting the social balance is activity that violates the law, and subsequent reaction to this violation. The criminal justice and its respective criminal system of standards are characterized by demands and expectations of one’s environment or society. Discrepancy which arises as result of committing a criminal offence, as a social conflict leads to disruption of social balance of individual thus creating space for social work. “While the criminal justice is based precisely on standards and has means to

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<sup>4</sup> Š. Minárik et al.: *Trestný poriadok. Stručný komentár*. Bratislava 2006, s. 129.

execute them in the society, social work is a mediator between these generally acceptable and effective standards and between clients and their standards.”<sup>5</sup> Its task in this context is to mediate dialogue, certain consensus between what the society wants in its standards and a human who is in conflict with these standards. Endeavour to fulfill this goal leads to combining the two key spheres: criminal law and social work.

## Preventive functioning of the institution of prevention and limits in probation practice in Slovak Republic

We carried out empirical research directed at the sphere of the institution of probation as a space of social work in criminal justice and its preventive functioning throughout the whole Slovakia, i.e. on all district courts, from September 2008 to March 2009. The research sample comprised 39 probation and mediation officials (hereinafter referred to as PMOs) from the basic file, which comprised 65 PMOs. The research objective was to find out how the institution of probation contributes to prevention of criminal activity relapse and what limitations do PMOs identify in the concrete probation practice.

We divided our research into three particular spheres: social-demographic characteristics of the research file, preventive functioning of the institution of probation within framework of probation activity and probation practice limitation, and within them we interpreted acquired research material. Our contribution presents the preventive functioning of the institution of probation and probation practice limits.

## Preventive functioning of the institution of probation from the PMOs' perspective

In this part of our research we analyse degree of the institution of probation efficiency in the tertiary prevention, i.e. prevention of criminal activity

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<sup>5</sup> O. Hrušková, L. Ouředníčková, P. Štern: “K některým teoretickým a praktickým otázkám probační služby”. In: *Trestní Právo*. Roč. 2, 1997, č. 7—8, s. 15.

relapse, focus of probation activity and opinions concerning meaning and frequency of the concrete activities in PMOs practice.

Opinions related to findings regarding efficiency of the institution of probation in the tertiary prevention and level of its efficiency. Table 1 reveals that the majority of PMOs considers the institution of probation as a powerful tool that leads to reduction of the criminal activity relapse of their clients.

Table 1

PMOs opinions regarding the institution of probation efficiency in tertiary prevention

Efficiency level	N	Percent
Very efficient	1	2.56
Efficient	35	89.74
Slightly (in) efficient	3	7.69
Inefficient	0	0.00
Completely inefficient	0	0.00
Total	39	100.00

In our research we indicated mutual relation of PMOs, opinions regarding efficiency level of the institution of probation in tertiary prevention and length of their professional experience. PMOs with the longest work experience consider probation as the most effective in the prevention of criminal activity of their clients. On the contrary, PMOs with the shortest professional experience, i.e. below one year, are not sure about the efficiency of the probation (tab. 2).

Table 2

Length of work experience versus the opinions regarding the efficiency level of the probation in the prevention of criminal activity relapse

Lengths of practice	Efficiency degree											
	very efficient		efficient		slightly inefficient		inefficient		completely inefficient		total	
	N	percent	N	percent	N	percent	N	percent	N	percent	N	percent
> 1 year	0	0.00	0	0.00	3	7.69	0	0.00	0	0.00	3	7.69
1—2 years	1	2.56	8	20.51	0	0.00	0	0.00	0	0.00	9	23.08
< 2 years	0	0.00	27	69.23	0	0.00	0	0.00	0	0.00	27	69.23
Total	1	2.56	35	89.74	3	7.69	0	0.00	0	0.00	39	100.00

In relation to the probation activity focus in PMOs practice, we created a hypothesis where we assumed that more than 80% of PMOs in probation activity combine elements of assistance and check in order to secure effective prevention of the criminal activity relaps at work with probation client. Findings reveal that up to 97,44 % of PMOs, while working with client, really combine elements of assistance and check necessary to fulfil the purpose of the institution, i.e. decrease in criminal activity relapse risk at probation clients.

**Probation activity** in Slovakia is delimited by the activities focused on supervision execution over a probation client, including execution of punishment not related to imprisonment check of stipulated duties and restrictions. Other forms of supervision are surveillance of the sentenced person behaviour during probation period, and also providing individual assistance and influence focused on living a life of law-abiding citizens.<sup>6</sup> As a principle and also a particularity of the probation activity we consider check, assistance and consultancy which it involves as a prerequisite of criminality control achieved also via prevention or reduction of criminal activity relapse of probation clients. There is a growing number of opinions emphasizing necessity to combine both elements as crucial elements of prevention, or minimizing criminal activity relapse of probation clients taking part in criminality control.

Due to the aforementioned task to channel work with client towards balanced combination of elements integrated in it as a prerequisite of effective function in tertiary prevention, we found out more interesting facts that in this respect reveal mutual relation between the focus of probation activity and education in the respective field. Findings related to PMOs' education in the respective fields helped us to describe them. The fields in question not only reflect their knowledge base, but also the both components of probation activity – repressive and assisting (or preventive). They also have significant validity for the research. The selected fields listed in Table 3 are in the right of requirements for PMOs' function execution based on the special regulation, which stipulates the “Slovak citizen can be appointed as probation and mediation official under following conditions: a) fulfils requirements according to the special regulation, b) have a university degree – juridical, pedagogical, theological or other social study programme”.<sup>7</sup>

Table 3 describes representation of PMOs' education in the following fields: social work, social pedagogy, which achieved the highest percentage, law and other fields with focus on the elements of PMOs' probation activity

<sup>6</sup> J. Kunová: “Probačná a mediačná služba — nová forma resocializácie a prevencie kriminality”. In: *Práca a sociálna politika*. Roč. 11, 2003, č. 4—5, p. 24.

<sup>7</sup> Zákon č. 550/2003 Z.z. o probačných a mediačných úradníkoch a o zmene a doplnení niektorých zákonov.

practiced. One of our interviewees declared focus of probation activity aimed exclusively on repressive part of the activity. As it is obvious from Table 3, the interviewee belonged to the group with degree in law. We would like to draw the attention to risk of probation activity reduction towards repression without presence of the individual professional assistance and also emphasize that such execution of probation can have exactly the opposite effect. We do believe that the balanced combination of both elements can fulfil the objective for which this institution was created.

Table 3

Focus of probation activity versus PMOs' education in the field

PMOs'education	Focus of probation activities							
	check of the ordered duties and restrictions by court		individual professional assistance and care		combination of help and check		total	
	N	percent	N	percent	N	percent	N	percent
Social work	0	0.00	0	0.00	16	41.03	16	41.03
Social pedagogy	0	0.00	0	0.00	11	28.20	11	28.20
Law	1	2.56	0	0.00	5	12.82	6	15.39
Other	0	0.00	0	0.00	6	15.39	6	15.39
Total	1	2.56	0	0.00	38	97.44	39	100.00

Combination of surveillance and assistance elements, which is applied by majority of interviewees, involves the whole sphere of concrete probation activities. Therefore in other part of our research we deal with the significance ascribed to them by PMOs and also with the frequency of their application. From the perspective of significance ascribed by PMOs to probation activities practiced at work with clients and from the aspect of frequency we may declare that all probation activities influence prevention of relapse or its reduction. Research findings further reveal that what significantly contributes to the relapse prevention of clients is communication with them, as well as their motivation towards personal development and personal responsibility, monitoring their behaviour, guiding their life in accordance with societal standards, social problems solving, stabilization of their situation, active endeavour support, psycho-social support and cooperation with client's family. The most significant from the PMOs' perspective are first three probation activities. As the least significant and the least practiced PMOs consider cooperation with broader social environment of a client.

Therefore, we may declare that on the basis of three aspects under survey within the framework of the institution of probation preventive function and



based on findings of our research, the most important role is played by purposeful combination of elements of surveillance and assistance applied by PMOs' and within its framework concrete probation activities practiced at work with clients.

## Probation practice limitations from the PMOs' perspective

We are fully aware that function of the institution of probation in tertiary prevention and its preventive impact is influenced not only by personal and professional competencies of particular PMOs entrusted with its execution. We also identify probation practice limitations from PMOs' perspective. Based on theoretical analysis, pre-research and conversations with PMOs, we selected for the analysis concrete limitations of probation practice, such as: lack of accredited subject that would provide implementation of specific probation programs, material-technical provision of probation practice, lack of the suitable elements and procedures – description of methodology useful for PMOs' probation activity at work with clients, cumulation of activities, PMOs workload, which contravenes the principle of the individual approach to client, stagnation in the field of social training implementation with sentenced persons, existence of deeply rooted stereotypes and traditions in the criminal law, insufficient cooperation on the part of institutions, bodies and organizations in social sphere, and last but not least, lack of supervision during PMOs' practicum period.

Regarding assessment of probation practice limitations, we might declare that PMOs perceive as real all the limitations selected by us. Existence of limitations in probation practice was confirmed by the PMOs almost in all cases. Within the framework of this radius, we utilized also a negative statement: We do not identify any limitations of probation practice in legislative and application sphere. Majority of interviewees disagreed with the this statement, which reflects the fact that PMOs are aware of probation institution shortcomings.

The interviewees were not only supposed to identify, but also arrange probation practice limitations from the most dominant up to least dominant. Among the most dominant probation limitations, the following were identified: lack of supervision during the practicum period, material-technical provision for probation practice, lack of suitable elements and procedures, i.e. description of methodology usable in PMOs probation practice at work with clients.

From the viewpoint of domination of limitations, we created hypothesis saying that more than a half of interviewees completely agree with the opin-

ion that probation practice limitations mean the lack of accredited subject for provision of specific probation program implementation. Therefore, PMOs marked it as the most dominant. However, the hypothesis was not verified, because assumed limitation was not marked as the most dominant. As the most dominant PMOs marked lack of supervision during the practicum period.

In relation to this finding we declared another assumption. In majority cases of probation practicum PMOs lacked the supervision, therefore the possibility of supervision would be welcomed by more than 50% of PMOs. It would make their work more effective and better. As findings reveal, the aforementioned hypothesis was true. Almost all PMOs — 92.31% would welcome the possibility of supervision in order to make their work more effective and better. Research results show that the supervision is not a part of the education and preparation of PMOs within probation institution system. From PMOs' perspective, supervision is a method that should not be absent from probation institute system and should be part of their educational training. PMOs are fully aware of supervision significance as a part of their profession practice.

We also discovered the PMOs' approval for eliminating or reducing the limitations that were identified in probation practice. Two interviewees directly reacted to the most dominant limitation of probation practice that was marked in our research, i.e. lack of supervision during PMOs' practicum period. The following solutions were suggested: supervisors for each region and provision of supervision from PMOs with longer work experience. These suggestions are related to the solution of other limitations related to the lack of suitable elements and procedures — description of methodology usable at probation practice. To this limitation interviewees reacted with the solution to prepare usable methodological instruction but also with provision of professional training of PMOs, which is related to the lack of supervision limitation as well as to the lack of professional training as such. Reactions to those limitation are: to make functional cooperation of the Ministry of Justice and PMOs, and to create the functional separate probation and mediation body at Ministry of Justice of the Slovak Republic. We believe that last two suggestions along with methodological instruction, provision of professional training and issue of cooperation of the Ministry of Justice of the Slovak Republic and PMOs could solve the supervision issue. The remaining suggestions are the reactions to the limitations of material-technical provision of probation practice and cumulation of activities, i.e. PMOs' workload. The suggestions are: assignment of assistant for administrative activities and change in PMOs status in criminal trial and employment of new PMOs. The last suggestion was related to the amendment of Act no. 550/2003 Coll. on Probation and Mediation Officials, in which staff restructuring was suggested.

## Results from research and recommendations for probation practice in Slovakia

Due to empirical findings presented here, we formulate concrete recommendations for probation practice in order to make the institution of probation more effective. These recommendations are addressed to the Ministry of Justice of the Slovak Republic (hereinafter MJ SR), that is in charge of the institution of probation, Department of Probation and Mediation in MJ SR, district courts of the Slovak Republic and PMOs. Since the Department of Probation and Mediation in MJ SR and Council of Probation and Mediation do not function effectively, we suggest the creation of a body that would actively and flexibly support probation development in the following spheres:

1. Personal (relating to PMOs). This would provide for methodological guidance; professional development and professional education; supervision; social-psychological trainings.

2. Legislative. In this sphere in accordance with true amendments in Act no. 550/2003 Coll. On Probation and Mediation Officials, it is advisable to make more concrete requirements for PMOs function execution and criteria related to the education in the field, taking into consideration social work perspective; legislative claims to undergo specific training aimed at development of necessary skills for probation practice.

3. In application sphere it would provide for material-technical provision for probation practice; methodological instructions that would unify PMOs' work.

In order to make the institution of probation more effective in Slovakia, it would be necessary to increase capacities needed for probation by employment of more PMOs and creating the subject that would execute social-psychological trainings and specific probation programs focused on work with target group of probation clients, while lecturers could be educators from social work field.