

# *Probation, Parole and Penitentiary Law*

## *class 3*

*Probation  
& Parole practices  
according to the polish penal system*



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mgr Aleksandra Polak-  
Kruszyk



Uniwersytet  
Wrocławski

Wydział Prawa,  
Administracji i Ekonomii

KATEDRA PRAWA KARNEGO WYKONAWCZEGO

# *Introduction*

- The institution of probation was developed in the Anglo-American legal system in the middle of the 19th century as a measure of response to juvenile delinquency.
- It involved:
  - finding a perpetrator guilty as charged,
  - suspending a sentence,
  - obliging a convicted offender to perform certain duties during a trial period,
  - and determining a trial period under a supervision of a probation office.
- Probation is based on the assumption that punishing an offender is not always necessary to fulfill a purpose of punishment, which is mainly preventing him or her from returning to crime.

*source: <https://rootrebound.wordpress.com/2014/04/21/whats-the-difference-between-parole-probation/>*



# *Introduction*

## The most important Advantages of Probation & Parole:

- **Economical reasons**- probation measures are relatively repressive but, at the same time the State does not have to pay the cost of deprivation of liberty
- **Supervision** - these offenders are monitored more closely- because after release they have more face-to-face contact with the probation officer, and many of them have a curfew or drug testing
- **Protection** - Taking previous function into consideration it is clear that it also protects society by placing offenders under close supervision
- **Better rehabilitation opportunities**- offenders on probation are evaluated and may be required to participate in rehabilitation. Treatment professionals are able to guide such offenders as challenges arise, teaching skills such as how to cope with daily life.
- **It's a "second chance" system** - It provides individuals a chance to redeem themselves and monitors their behaviour and progress to prevent them from committing crimes again.

# *Probation vs. Parole*

Probation	Parole
Probation refers to a period of time before a person is actually sent to prison	Parole refers to the period of time after a defendant is released from prison
Probationers generally avoid prison time	Offenders spend time in prison before release
Probation is a sentencing decision made by a judge	Parole is administrative decision made by a penitentiary court
Probationers must abide by conditions or risk revocation	Parolee must abide by conditions or risk revocation
The functions of probation & parole tend to be very similar Parole has the additional function of trying to reintegrate a defendant into society	

# ***Norms of humanitarianism***

- *Art. 3 of the Polish Criminal Code penalties and other measures provided in the Polish Criminal Code are applied with consideration for the principles of humanitarianism, especially with the respect for human dignity.*
- *Art. 4 Section 1 of the Polish Executive Penal Code states that penalties, penal measures, protective measures and preventive measures are applied in a humanitarian manner with the respect for human dignity*

That provisions prohibits the use of torture or inhuman or degrading treatment or punishment of the sentenced person

# *Probation officers' role*

- The system of alternatives to detention is focused on controlling the conduct of the suspect/ the defendant so as to prevent, in the non-custodial setting, the hindering of the proceedings that are being run.
- In the Polish legal system, the Prison Service and the probation officers are separate forces that are responsible for different tasks, but sometimes they have to cooperate. For example, they cooperate before the sentenced person is released on parole or before the inmate is released on the expiration of their term of sentence.
- [According to the art. 164 of the Executive Penal Code](#)- the period up to 6 months prior to the expected parole or end of sentence is required, if necessary, to prepare the sentenced person for life after the release, especially in order to establish contact with the probation officer.
- [Art. 1 of the Probation Officers Act](#), *the probation officers perform tasks relating to education and social rehabilitation, diagnosis, prevention and control, as part of implementing the court verdicts. The probation officers are an auxiliary force of the courts.*

# *Probation officers' role*

- Probation officers (they are also Parole officers) have several duties like to supervise and manage the offenders and make sure the offenders don't break any laws.
- They conduct home visits, perform curfew checks and also help the offender get into treatment facilities if they need it.
- That's just a few of duties that these officers have to perform.

# ***Probation measures***

## ***according to the Polish Criminal Code***

- Polish Criminal Code , contains three measures connected with putting a perpetrator to a test (trial):
  1. conditional discontinuation of proceedings,
  2. probation (conditionally suspended sentence)
  3. and parole (conditional release from prison after serving a part of the sentence).
- The first two measures may be combined with a sentence imposing on a perpetrator several duties which are determined in the Criminal Code as well.
- It is an original and unique approach to the issue of applying institutions of probation because one legal act regulates the issue of more than one measure connected with putting a perpetrator to a test (trial).

# ***Conditional discontinuation of criminal proceedings***

***It is a measure of probation based on abandonment of sentencing and punishing a perpetrator guilty of the offence***

According to the art. 66 § 1-3 of the Criminal Code this institution may be applied if:

1. guilt and social harm of the act are insignificant
2. there are no doubts as to the commission of the act,
3. a perpetrator has a clean criminal record with regard to intentional offences,
4. there is a positive criminological forecast
5. an offence committed by a perpetrator is punished by a maximum up to 5 years imprisonment.

**All prerequisites/ conditions specified in Art. 66 § 1-3 of the Criminal Code must occur**

# ***Conditional discontinuation of criminal proceedings***

***It is a measure of probation based on abandonment of sentencing and punishing a perpetrator guilty of the offence***

- 1- The prerequisite of insignificant guilt forces courts to assess a factual state of the case pursuant to their knowledge, experience and principles of criminal procedure. The prerequisite of insignificant social harm of the act causes much fewer problems because the court may herein refer to the content of Art. 115 § 2 of the Criminal Code, which lists prerequisites that establish criteria which are taken into account to determine a degree of social harm of an act.
- 2- No doubts as to the fact that the offender committed the act he or she is charged with is not only the prerequisite necessary to apply the institution of conditional discontinuation of proceedings; it also fulfills the function of a guarantee because it protects him or her against the application of the discussed measure if the defendant should be acquitted
- 3- Previous clean criminal record as the prerequisite of applying the institution of conditional discontinuation of proceedings embraces all binding sentences which have been passed before the application of the discussed institution is adjudicated. The subject requirement is applied not only when an offender is convicted of a crime or intentional misdemeanour, but also when punishment is renounced, or when measures envisaged for minors or security measures are applied.
- At the same time, we should remember that a previous conviction for intentional offence does not matter when a decision on the application of conditional discontinuation of proceedings is taken if it has already been erased

# ***Conditional discontinuation of criminal proceedings***

***It is a measure of probation based on abandonment of sentencing and punishing a perpetrator guilty of the offence***

- 4- Positive criminological forecast- the prerequisite of positive criminological forecast is the most subjective among all requirements necessary to apply the discussed measure even though deciding about conditional discontinuation of proceedings, the court must have justified reasons to assume that the convicted offender will follow legal order and will not reoffend in particular.
- Deciding about the application of the discussed institution, the court pays attention to the perpetrator's conduct and attitude (especially whether he or she shows repentance, expresses willingness to improve, or whether the event was incidental), his or her personal features and conditions (understood as personal qualities and temper but also a level of education), and a previous lifestyle (especially those elements of the perpetrator's life which contributed to a crime committed by him or her such as their environmental, family and housing conditions).
- 5- An offence committed by a perpetrator is punished by a maximum up to 5 years imprisonment- a limit of maximum penalty necessary to apply the institution of conditional discontinuation of proceedings cannot exceed five years. This is the only prerequisite of a strict formal nature. This entails that the application of possible extraordinary mitigation or aggravation of penalty envisaged by the law does not affect its occurrence.

# ***Conditional discontinuation of criminal proceedings***

***It is a measure of probation based on abandonment of sentencing and punishing a perpetrator guilty of the offence***

- Conditional discontinuation of proceedings is adjudicated for a trial period [from one to three years](#) counting from the day on which a decision on this measure's application has become final and binding. Its aim is to verify a criminological forecast and exert educational or correctional impact on a perpetrator
- Furthermore, the court may put a perpetrator on probation under a supervision of a probation officer or a trustworthy person, association, institution or social organization whose activities involve educational care, prevention of demoralization or help and assistance provided to convicted offenders

# *Conditional discontinuation of criminal*

## *Duties and conditions*

- Deciding to conditionally discontinue proceedings, the court obliges a perpetrator to redress harm fully or partly and, as far as possible, imposes on him or her a duty to compensate the afflicted harm, or otherwise the court adjudicates exemplary damages instead of these obligations.
- Additionally, depending of the needs, the court obliges a perpetrator to inform the court or probation officer about the course of a trial period, apologize to the victim, exercise the obligation to maintain another person he or she is burdened with, refrain from abusing alcohol or other intoxicating substances, undertake addiction therapy, undertake therapy, in particular psychotherapy or psycho-education, participate in correctional-educational activities, refrain from contacting the victims or other persons in a specified manner or approaching the victim or other persons, and move out a place or residence occupied together with the victim.
- Moreover, the court may apply penal measures in a form of pecuniary consideration or a ban on driving a vehicle for two years

# *Effect of conditional discontinuation of criminal proceedings*

- Effect of conditional discontinuation of criminal proceedings **is the court issuing a verdict but not convicting a perpetrator**
- The court, by issuing the judgement conditionally discontinuing the proceedings, means that perpetrator will be found guilty but there will be no conviction - no punishment will be imposed and the proceeding are discontinued.

# *Starting/launching a proceedings again*

## *Failure of conditionally discontinuation of criminal proceedings*

- The court is obliged to launch/start again conditionally discontinued proceedings if the perpetrator committed an intentional offence he or she has been convicted of during a trial period.
- The proceedings are optionally launched if the perpetrator grossly violates legal order, avoids obligations he or she has been imposed on and, in particular, if he or she has committed another offence.
- In the discussed cases, the court is obliged to launch conditionally discontinued proceedings if the convicted offender received a written admonition from a probation officer unless special considerations suggest otherwise

# *Conditionally suspended sentence*

*It is of a form of punishment where a perpetrator is sentenced to appropriate penalty but its execution is concurrently renounced*

- A conditionally suspended sentence may be applied with regard to deprivation of liberty **not longer than one year**.
- In special cases specified by the Criminal Code, it may also be adjudicated with regard to deprivation of liberty for up to five years - **art. 60 § 5 of the Criminal Code**
- **Deciding about the application of this institution of probation**, the court takes into account a similar scope of the substantive prerequisite which occurred with regard to conditional discontinuation of proceedings, that is the perpetrator's conduct and attitude, his or her personal features and conditions, a previous lifestyle as well as his or her conduct after committing the offence
- It is an **elective (optional)** institution and depends only on the court's discretion as to the satisfaction of all above described prerequisites by the perpetrator

# *Conditionally suspended sentence*

*It is of a form of punishment where a perpetrator is sentenced to appropriate penalty but its execution is concurrently renounced*

- A sentence is conditionally suspended for a trial period **from one up to three years**.
- **From two up to five years** for juvenile offenders and a perpetrators who committed an offence with the use of violence harming a person residing together with him or her, and **up to ten years** according to art. 60 § 5 of the Criminal Code.
- The court may put the offender on probation under the supervision of a probation officer, a trustworthy person or appropriate social organization during a trial period.
- For a juvenile offender who committed an intentional offence, a perpetrator specified in art. 64 § 2 (multi- recidivist), a perpetrator who committed an offence connected with sexual deviation, and a perpetrator who committed an offence with the use of violence harming a person residing together with him or her - **the court is obliged to apply a probation and it is mandatory**

# ***Conditionally suspended sentence***

***It is of a form of punishment where a perpetrator is sentenced to appropriate penalty but its execution is concurrently renounced***

- Opposite to the institution of conditional discontinuation of proceedings, a previous clean criminal record of the perpetrator does not decide about the exclusion of the application of the institution of probation in case. However, the Criminal Code envisages the exclusion of the discussed institution in relation to perpetrators who committed acts of hooliganism and those who were previously convicted of driving a vehicle under the influence alcohol or drugs unless special circumstances occur.

# *Conditionally suspended sentence*

***Moreover, a conditionally suspended sentence may be connected with several optional duties imposed on the perpetrator.***

These are:

1. the obligation to inform the court or probation officer about the course of a trial period,
2. apologize to the victim,
3. exercise the obligation to maintain another person he or she is burdened with,
4. perform paid work,
5. study or undertake vocational training,
6. refrain from abusing alcohol or other intoxicating substances,
7. undertake addiction therapy,
8. undertake therapy, in particular psychotherapy or psycho-education,
9. participate in correctional-educational activities, refrain from visiting specified environments or places,
10. refrain from contacting the victims or other persons in a specified manner or approaching the victim or other persons,
11. and move out a place or residence occupied together with the victim,
12. or behave in another appropriate manner during a trial period which may prevent reoffending

# *Failure of conditionally suspended*

- When a defendant fails without a reasonable excuse to carry out a requirement of a suspended sentence he/she will usually receive a warning stating that any further failure to comply will mean the case will be brought back to court.
- A further failure to comply will result in the defendant being returned to court for breach of the suspended sentence.
- The court is obliged to launch conditionally suspended sentence if the perpetrator committed an intentional offence he or she has been convicted of during a trial period.
- The proceedings are optionally launched if the perpetrator grossly violates legal order, avoids obligations he or she has been imposed on and, in particular, if he or she has committed another offence.

# Parole

## ***Conditional release from prison after serving a part of the sentence***

- Parole may be granted to a person who is serving a sentence of imprisonment.
- According to the [art. 77 of the Polish Criminal Code](#) person serving a sentence may be released from serving the balance of the penalty, only when their attitude, personal characteristics, circumstances of the crime and their behaviour after commitment of the crime and during the imprisonment justify the belief that after release this person will respect the adjudicated punitive measure and obey the legal order, in particular, would not commit a crime again.
- [The prerequisite of positive criminological forecast](#)- assumption that convicted person, after release, will comply with the sentence/ probation measure, and will comply with the legal order, in particular it will not commit a crime again.
- In exceptional situations, the court imposing a penalty of deprivation of liberty [may impose more strict restrictions for the conditional release of the sentenced person](#)

# *Parole*

- According to the art. 78 of the Criminal Code convict (the sentenced person of deprivation of liberty) may be conditionally released after serving  
at least half of the penalty
- Person sentenced for offence under an art. 64 § 1 of the Criminal Code (recidivist) may be conditionally released  
after serving 2/3 of the penalty,
- and person sentenced under an art. 64 § 2 of the Criminal Code (multi-recidivist) may be conditionally released  
after 3/4 of the penalty.
- A person who was sentenced to 25 years of imprisonment may be paroled  
after 15 years
- And a person convicted to life imprisonment may be paroled  
after 25 years
- And as it was said the court, sentencing the accused for the sentence of imprisonment, sentence of 25 years of imprisonment or sentence of life imprisonment may determine more rigorous restrictions to prevent the possibility of the convicted person benefiting from the parole.

# *Parole*

## *Limitation of liberty*

- According to the art. 83 of the Criminal Code, the court may discharge a sentenced person from the remainder of the penalty [of limitation of liberty](#), deeming it completed, if the sentenced person has served at least half of the imposed penalty, has respected the legal order, has conscientiously performed the imposed work, and has also carried out the imposed obligations and the imposed penal measures.

# *Parole*

***Moreover, a parole may be also connected with several optional duties imposed on the perpetrator.***

These are:

1. the obligation to inform the court or probation officer about the course of a trial period,
2. apologize to the victim,
3. exercise the obligation to maintain another person he or she is burdened with,
4. perform paid work,
5. study or undertake vocational training,
6. refrain from abusing alcohol or other intoxicating substances,
7. undertake addiction therapy,
8. undertake therapy, in particular psychotherapy or psycho-education,
9. participate in correctional-educational activities, refrain from visiting specified environments or places,
10. refrain from contacting the victims or other persons in a specified manner or approaching the victim or other persons,
11. and move out a place or residence occupied together with the victim,
12. or behave in another appropriate manner during a trial period which may prevent reoffending

# *Revocation of Parole*

**Parole revocation** means the administrative act of committing a parolee back to prison for his/her failure to comply with the conditions of parole.

- Parole may also be revoked if the released, during the probation period, flagrantly violated the law in particular, committed another offence or has been sentenced to punishment other than imprisonment without conditional suspension of its execution or when evades supervision, performance of the obligations imposed or adjudicated punitive measures, forfeiture or compensatory measures. If these circumstances arise after giving a written warning to the convicted by a parole officer, the court is obliged to revoke the parole unless special reasons occur against it.
- In case of revocation of the parole, the sentenced person may not again be conditionally released before the lapse of one year from the date of committing him to the penal institution, and in case of the penalty of life imprisonment, before the lapse of 5 years.
- The convicted can appeal against the decision on revocation of the parole.

# *Advantages of Parole*

- It is a provision of fresh opportunity and the chance for convicts to start a new life.
- It is also advantageous to the public to reduce the number of people in prisons, which can cost a lot of money per prisoner per year.
- Parole can also help prisoners through the difficult transition back to the community by providing targeted support such as drug and alcohol or psychological counselling, advice and practical assistance.
- Parole enables parole officers to supervise prisoners following their release into the community.

# *Summary*

- Most inmates will be released back into society.
- Barriers to successful reentry need to be addressed, including:
- Substance abuse
- Lack of education
- Poverty
- Diminished opportunities for employment
- Physical or mental disabilities

# ***Task to complete***

Answer questions below briefly (in a few words):

- When we don't follow the rules, sometimes we have to suffer the consequences in life. For every action there can be reaction.

Q1: What happens when probationer/ parolee fail to follow the rules?

- If any of us ever damaged someone's property unintentionally or intentionally, did we have to pay them back? Was it the right thing to do? It is obviously called restitution.

Q2: Do you think that convicted criminal should make restitution to the victim? Why or why not?

- **Send it back to me:** e-mail [aleksandra.polak2@uwr.edu.pl](mailto:aleksandra.polak2@uwr.edu.pl) by the end of next week
- For those who hasn't done that yet- remember to complete previous tasks!