



# Kolegji AAB

FACULTY OF LAW

DEPARTMENT: PENAL LAW

MASTER STUDIES

THEME:

**PROBATION OF CONVICTED PEOPLE IN KOSOVO,  
DURING 2002-2010**

MENTOR :  
Prof. Dr. Sc Rexhep Gashi

Candidate:  
Shaban Çitaku

Prishtinë, 2013

## **Content**

Introduction

Object of the study

Rationalization of the study

Method of the study

Structure of the study

First Chapter

### **HISTORICAL AND COMPARATIVE OVERVIEW OF PROBATION**

The meaning and characteristics of probation

The appearance and development of the probation institute

The historical development of probation institute in criminal legislation of Kosovo

Probation provided under the criminal law of former KSA of Kosovo

Probation provided under the legislation of Kosovo in the postwar period

Comparative Overview of probation

Conditional release of sentenced people under Albanian legislation

Conditional release of sentenced people under Montenegrin legislation

Conditional release of sentenced people under Croatian legislation

Conditional release of sentenced people under German legislation

Conditional release of sentenced people under French legislation

Conditional release of sentenced people under the legislation of England and Wales

Second Chapter

### **NUMBER AND DYNAMICS OF PROBATION CASES DURING 2002-2010 IN KOSOVO**

The number of probation cases

Third Chapter

### **BODIES FOR SETTLING AND THE PROBATION PROCEDURE**

Bodies for placement on probation

Probation Panel in the Republic of Kosovo

Procedure for probation

Before the examination of the demand

Examination of the demand

Acceptance of the demand

Rejection of the demand

Deferring demand

The procedure after reviewing the demand

Oversight

Duration

Conditions

Breach of conditions

Revocation of probation

Penalty

Conclusion

Bibliography & Literature

Introduction

Probation of convicted people is a penological measure which helps the prisoner in his rehabilitation before suffering the whole prison sentence. Institute of probation is relatively old and is known almost by all the legislations of modern states. To be released on bail the convicted person must first have suffered more than half of the sentence or three-quarters of the sentence, after which the convict has the right to apply for probation. The prisoner and his social behavior towards other prisoners, internal order and penitentiary personnel must prove that in the future will not commit any criminal offense, will behave correctly, keep the positive legal norms, namely the re-integration into society.

The commission or a special panel decides for allowing the probation, composed by one professional judge and two lay judges who are knowledgeable in the field of penology,

criminology, psychiatry, pedagogy, sociology etc. The benefit of probation is that the imposed sentence upon a prisoner is difficult to be known exactly until the expiration of the penalty period the person will improve his behavior, and therefore the probation it gives them the opportunity to be rehabilitated before the deadline, and facilitates the penitentiary personnel work because of the over population of prisons and the lower cost of expenses that weighs the respective state budget.

The person on probation has obligations or liabilities to be followed during a certain time period. Failure to meet these obligations result in revocation of probation which may be mandatory and optional. The probation system has been well regulated in the former Yugoslavia, namely KSA of Kosovo, and later in the Interim Administration of the United Nations but also with the legislation of the Republic of Kosovo, we can freely say that our country has a healthy legal basis for the operation of this system. How does this system works I will try to unfold in the making of this theme.

## Conclusion

In this paper of master thesis I have tried to explain the importance of the probation system. I think it's an important matter of time and humanitarian as well, which is provided and applied in almost all the legislations of contemporary societies countries. The penalty of imprisonment of people who contravene the law is justified only in terms of public safety, crime prevention and preparation for reintegration into society (rules of the Tokyo 1990). Even to us the probation system is regulated under the criminal laws of the Republic of Kosovo, as the Criminal Code, the Law on Execution of Criminal Sanctions, Justice code for Juveniles, orders that regulate the work of this institution and is in accordance with international conventions and rules, such as those of Tokyo and the European Commission.

For probation while serving their prison sentence three things are important to be taken into account: 1. The attitude of the convicted person to the committed offense (admits, repents, vows that he will never commit any criminal offense) 2. his behavior in the penitentiary center as against personnel of the institution as well as to other prisoners, the success of fluency of socialization or re-socialization process. 3. Prospects for the post socialization period (after being released from prison and suffering of the rest in freedom).

In addition to these criteria which are mainly based on the Panel's work for probation it is important to note that the acquisition of the right of probation, preliminarily must be met the certain legal conditions foreseen by the KPK provisions (Article 80 ). The convicted people who have held half of their sentence,  $\frac{2}{3}$  can be released on bail; convicted people who have served three-quarters  $\frac{3}{4}$  of the long-term imprisonment can be released on bail, juveniles and convicted people who have served one-third ( $\frac{1}{3}$ ) of the sentence of imprisonment, may exceptionally be released on bail in exceptional circumstances.

Like any system, even probation has its advantages and disadvantages. One of the advantages of probation of convicted people is a kind of correction of a court decision, and the continued retention would have negative effects on the socialization process. But if probation is revoked for violation of conditions or committing any criminal offense, the person on probation returns to serving the punishment prescribed by the court decision and can be judged for the new performed work. Probation of the convicted people helps a lot in the depopulation of prisons and saves the state budget, the cost for a single prisoner for a residence days in jail costs from € 24-27 per day, which burdens the state budget. Regarding disadvantages, probation is also a kind of ticket for the convicted person to be released earlier in freedom and to perform or terminate any criminal offense while serving the rest in freedom.

During this research, in terms of the probation institute, I consider these important proposals:

- It would be necessary for relevant authorities, with the assistance of international organizations, to make efforts that our country is a signatory to the European Convention on the Supervision of offenders for the convicted people on probation, dated 30. IX. 1964, given the fact that a large

number of our citizens live and work in a foreign country, in this case the Probation Service can not perform the supervision of persons on probation abroad.

In cases of more serious and specific offenses would be better that the Panel for Probation to contact with people who have applied for probation so that making the decision to be as meritorious as possible.

In assessing the conditions for probation to have more individual and objective approach to convicted persons who apply for probation by the penitentiary centers staff, Probation Panel and Probation Service, avoiding generalizations and the routine.

The Panel is composed mainly of professional people who have knowledge in the fields of social, educational and legal assistance, preferably with experience of socialization, resettlement and postpenale support of people on probation.

I think that the proper assessment and management during probation would contribute to reducing recidivism opportunities.

The low economic development in Kosovo does not provide more opportunities of employments to people on probation as a measure of resettlement support. We hope that this weakness will be eliminated in the future.

## Bibliography

### Books, studies and articles

1. BLOCH Alain, DURAKU Bedri, 'Lirimi me kusht i personave të dënuar', Bilteni i Avokaturës nr 6,7,8. 2008-2009, Prishtinë
2. GASHI, Dr. Sc Rexhep, 'Ekzekutimi i dënimit me burgim në Shqipëri', Prishtinë, 2011.
3. HALILI, Dr Ragip , 'Penologjia / e drejta e ekzekutimit te sanksioneve penale', Prishtinë, 2009.
4. GASHI, Dr. sc prof. ass Rexhep,' Lirimi me kusht i personave të dënuar në legjislacionin dhe në praktikën Kosovare', Revista "E Drejta" nr 2-2004.
5. PETROVIC Borislav, JOVASEVIC Dragan, 'Krivicno Kazнено Pravo / Opci Dio', Sarajevo ,2005
6. JOVASEVIC Dragan, 'Leksikon Krivicnog Prava', Beograd, 2006
7. SAHITI, Dr.Ejup, 'E drejta e procedurës penale', Prishtinë, 2005
8. SALIHU, Dr. Ismet, 'E Drejta Penale / general part, Prishtinë, 2010.
9. Fjalor Juridik OXFORD, the seventh edition.

10. Manual për aplikimin e alternativave të dënimit me burg. OSCE 2010
11. Shërbimi Sprovues i Kosovës, Buletini 2007
12. Shërbimi i provës, Buletini Nr 2 ,Ministria e Drejtësisë, R. E Shqipërisë, 2011
13. Conditional Liberation (Parole) in France), Christopher L Blakesley, 1978
14. [Leanne Fiftal Alarid, Rolando V. Del Carmen](#) Leanne Fiftal Alarid, Community based Correction,ninth editon <http://books.google.com/books?>
15. Norval Morris &David .J.Rothman “The Oxford history of the prison: The practice of punishment in western society” Oxfords university 1998.  
<http://books.google.com/books>
16. “Senate research Center, May 1999 “Parole: in brief then & now”  
<http://www.senate.state.tx.us>
17. Bob Brown “Parole Suspension, Revocation and Prison Populations: Is There an Impact? Is There a Trend?” 2006. <http://www.icclr.law.ubc.ca/Publications/2008/Book>
18. Systems of Conditional Release (Parole) in the Member States of the Council of Europe Between the principle of equality and individualization, pragmatism. **Pierre V. Tournier**<http://champpenal.revues.org>
19. Principles of European Prison Law and Policy *Penology and human rights* DIRK VAN ZYL SMIT and SONJA SNACKEN
20. The System of early conditional release in the republic of Armenia MAIN ISSUES AND WAYS OF DEVELOPMENT Civil Society Institute Yerevan – 2012
21. JUSTICE POLICY INSTITUTE FINDING DIRECTION: Expanding Criminal Justice Options by Considering Policies of Other NationsAPRIL 2011  
<http://www.justicepolicy.org>.
22. IPRT Position Paper 9,Reform of Remission, Temporary Release and Parole octobar 2012, <http://www.drugsandalcohol.ie>

## **Penal Acts**

1. KSA Criminal Law of Kosovo, KK. Nr. 011-25 / 77, Pristina, June 28, 1977
2. Law on Execution of Criminal Sanctions KSAK. 1977
3. Provisional Criminal Code of Kosovo, UNMIK / REG 2003/25, Pristina, July 6, 2003
4. Provisional Code of Criminal Procedure of Kosovo, UNMIK / REG 2003/26, Pristina, July 6, 2003.

5. Criminal Procedure Code of Kosovo, Law no. 03 / L-003, November 6, 2008
6. Law on Execution of Criminal Sanctions, UNMIK / REG 2004/46, Pristina, November 19, 2004.
7. Penal Law for Juvelines in Kosovo, Pristina, April 6, 2004
8. Criminal Code of Kosovo, Law no. 03 / L-002, November 6, 2008
9. The Criminal Code of the Republic of Kosovo, Law no. 04 / L-082 (comes into force on January 1, 2013)
10. Law on execution of criminal sanctions, Law Nr. 03 / L-191, July 22, 2010
11. Code of Juvenile Justice of Kosovo, Law no. 03 / L-19, July 8, 2010
12. Directions to governing the work of the Panel on Probation, UNMIK / CRP / 2008/01, June 3, 2008.
13. Reference MD -02-3881/2 Panel for Probation, Ministry of Justice, Republic of Kosovo, date 31.12.2012

1. UNMIK/Reg 1999/01
2. UNMIK/Reg 1999/24
3. UNMIK/Reg 2001/9
4. Resolution 1244 (1999) Adopted by the Security Council at its 4011th meeting, on 10 June 1999 <http://www.nato.int/Kosovo/docu/u990610a.htm>.
5. R E S O L U T I O N (70) 1 (Adopted by the Ministers' Deputies on 26 January 1970)  
PRACTICAL ORGANISATION OF MEASURES FOR THE SUPERVISION AND  
AFTER CARE OF CONDITIONALLY SENTENCED OR CONDITIONALLY  
RELEASED OFFENDERS
- 6.( The Tokyo Rules) United Nations Standard Minimum Rules for Non-custodial  
Measures A/RES/45/110 68th plenary meeting 14 December 1990.
- 7.Recommendation Rec(2003)22of the Committee of Ministers to member states on  
conditional release (parole), (Adopted by the Committee of Ministers on 24  
September 2003at the 853rd meeting of the Ministers' Deputies) COUNCIL OF  
EUROPE COMMITTEE OF MINISTERS
8. European Convention « THE SUPERVISION OF CONDITIONALLY SENTENCED  
OR CONDITIONALLY RELEASED OFFENDERS.»..Strasbourg,30.XI.1964



9. Mandat Komisije za uslovni otpust i štrajk u Zavodu za izvršenje krivičnih sankcija. Datum objave 27.09.2012 17:41 Autor Ministarstvo pravde I ljudskih prava. <http://www.gov.me>.
10. K R I V I C N I Z A K O N I K («Službeni list Republike Crne Gore», br.70/04, 13/04)
11. KAZNENI ZAKON "Narodne novine" br. 110/97 <http://www.opbw.org>
12. THE GERMAN CODE OF CRIMINAL PROCEDURE published on 7 April 1987 (Federal Law Gazette [Bundesgesetzblatt] amended on 22 of December 2011 (Federal Law Gazette [Bundesgesetzblatt] <http://www.gesetze-im-internet.de>
13. GERMAN CRIMINAL CODE 13 November 1998, Federal Law Gazette [Bundesgesetzblatt] amended on 2 of October 2009, Federal Law Gazette I p. 3214 <http://www.gesetze-im-internet.de>
14. The French criminal Code, Article 132-23 Amended on 12 of December 2005 - art. 3 Official Journal of 13 December 2005. <http://www.legifrance.gouv.fr>
15. The French Criminal Procedure Code, Article 712-1.

### **Faqet elektronike**

1. <http://www.ziks.me/page.php?id=19>
2. <http://www.gov.me/naslovna/vijesti-iz-ministarstava/116630/Mandat-Komisije-za-uslovni-otrust-i-strajk-u-Zavodu-za-izvršenje-krivičnih-sankcija.html>
3. <http://www.scribd.com/doc/91758585/38/Uslovni-otrust>
4. [http://www.gesetze-im-internet.de/englisch\\_stgb/index.html#gl\\_p0347](http://www.gesetze-im-internet.de/englisch_stgb/index.html#gl_p0347)
5. [http://www.coe.int/t/dghl/standardsetting/pcoc/Country\\_information1\\_en\\_files/Lithuania%20transfer%20of%20sentenced%20persons.pdf](http://www.coe.int/t/dghl/standardsetting/pcoc/Country_information1_en_files/Lithuania%20transfer%20of%20sentenced%20persons.pdf)
6. <http://legal-dictionary.thefreedictionary.com/parole>
7. [http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/sentencing\\_commonwealth\\_offenders.html](http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/sentencing_commonwealth_offenders.html)
8. <http://www.thecanadianencyclopedia.com/articles/probation-and-parole>
9. <http://pbc-clcc.gc.ca/infocntr/bklt-eng.pdf>
10. [http://www3.law.columbia.edu/hrlr/JLM/Chapter\\_35.pdf](http://www3.law.columbia.edu/hrlr/JLM/Chapter_35.pdf)
11. <http://scholars.law.unlv.edu/facpub/315/>
12. <http://champpenal.revues.org/378#tocto1n2>

13. [http://books.google.com/books?id=bwvH5ce94eIC&pg=PA189&lpg=PA189&dq=the+history+of+conditional+release+in+France&source=bl&ots=UckQ4gqOER&sig=eMRRZP0ZRV6j9B8S9mOQ2ZpjW\\_g&hl=en&sa=X&ei=6-qSUNrqCJHNSwaWz4DYAw&ved=0CC4Q6AEwAg#v=onepage&q=the%20history%20of%20conditional%20release%20in%20France&f=false](http://books.google.com/books?id=bwvH5ce94eIC&pg=PA189&lpg=PA189&dq=the+history+of+conditional+release+in+France&source=bl&ots=UckQ4gqOER&sig=eMRRZP0ZRV6j9B8S9mOQ2ZpjW_g&hl=en&sa=X&ei=6-qSUNrqCJHNSwaWz4DYAw&ved=0CC4Q6AEwAg#v=onepage&q=the%20history%20of%20conditional%20release%20in%20France&f=false)
  14. <http://books.google.com/books?id=vZzEITnFPo8C&pg=PA43&lpg=PA43&dq=the+history+of+conditional+release+in+France&source=bl&ots=ofUw4psID5&sig=PW7GBAmjOwhIoErTUNcQ3Ucf4M&hl=en&sa=X&ei=u2SUPeIN8fvsgaGvYHgDA&ved=0CFEQ6AEwBzgK#v=onepage&q=the%20history%20of%20conditional%20release%20in%20France&f=false>
  15. <file:///C:/Documents%20and%20Settings/Administrator/Desktop/E%20drejta%20nd%20C3%20ABrkomb%20C3%20ABtare%20p%20C3%20ABr%20t%20C3%20AB%20drejta%20e%20njeriut%20-%20OHCHR%20-%20Stand-alone%20office%20in%20Kosovo.htm>
  16. <http://web.ebscohost.com/ehost/results?sid=4406433a-cf35-48c5-8b0c-4d75ac54685c%40sessionmgr14&vid=1&hid=28&bquery=conditional+release&bdata=JmRiPWFwaCZjbGkwPUZUJmNsdjA9WSZjbGkxPUZmNsdjE9WSZ0eXB1PTEmc2l0ZT1laG9zdC1saXZl>
  17. [http://pbc-clcc.gc.ca/infocntr/myths\\_reality-eng.shtml#mythone](http://pbc-clcc.gc.ca/infocntr/myths_reality-eng.shtml#mythone)
  18. <http://www.icclr.law.ubc.ca/Publications/2008/Book%20on%20Community%20Corrections/28%20R.E.%20Bob%20Brown%20Parole%20Suspension.pdf>
  19. [http://www.justicepolicy.org/uploads/justicepolicy/documents/parole\\_and\\_reentry.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/parole_and_reentry.pdf)
  20. <http://www.csc-scc.gc.ca/education/media/pdf/etu-stu-mod5-eng.pdf>
  21. [http://www.icclr.law.ubc.ca/files/books/Conditional%20Release%20Violations%20Final\\_English.pdf](http://www.icclr.law.ubc.ca/files/books/Conditional%20Release%20Violations%20Final_English.pdf)
  22. [http://www.drugsandalcohol.ie/18656/1/IPRT\\_Position\\_Paper\\_Reform\\_of\\_Remision\\_TR\\_Parole\\_Oct\\_2012.pdf](http://www.drugsandalcohol.ie/18656/1/IPRT_Position_Paper_Reform_of_Remision_TR_Parole_Oct_2012.pdf)
  23. [http://www.urban.org/pdfs/from\\_prison\\_to\\_home.pdf](http://www.urban.org/pdfs/from_prison_to_home.pdf)
  24. <http://www.justice.gov.uk/downloads/offenders/parole-board/parole-for-children-young-people.pdf>
  25. <http://www.encyclopedia.com/topic/Corrections.aspx>
- <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=051&CM=1&CL=ENG>

