CROSS-BORDER ENFORCEMENT OF NON-CUSTODIAL SANCTIONS IN NON-TREATY JURISDICTIONS: SUPERVISION GAPS, STATE SOVEREIGNTY, AND PROBATION PRACTICE

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Abstract

This study examined the theoretical and practical dilemmas surrounding the execution of non-custodial criminal penalties and probation supervision concerning individuals residing in foreign territories without bilateral treaties or multilateral conventions (non-treaty jurisdictions). A systemic divergence between criminal procedural and criminal executive regulation was identified, wherein the procedural legalization of remote trial participation under Article 336 of the Criminal Procedure Code of Ukraine directly contradicted the statutory requirement of a convicted person's mandatory territorial presence for sentence execution. In the absence of international conventions, the activities of probation authorities became nominal, as statutory tracing procedures and filings under Article 389 of the Criminal Code of Ukraine proved ineffective and resulted in the expiration of statutes of limitations (Article 80). A persistent judicial dualism at the end of the probation period was analyzed, where domestic courts systematically refused probation requests to revoke probation due to a lack of direct intent while simultaneously denying absolute discharge due to non-fulfillment of statutory obligations, creating prolonged legal limbo. To eliminate this vacuum, a coordinated framework of procedural and legislative measures was developed: mandatory procedural explanations by courts under Article 380 regarding execution modalities, judicial prioritization of property-based sanctions, conditional suspension of probationary terms and limitation periods during non-engagement, and statutory substitution of community-based work with financial equivalents.

Keywords: probation service, non-custodial penalties, suspended sentence, remote proceedings, non-treaty jurisdictions, statutory substitution.

1. Introduction

Under the conditions of the full-scale armed aggression of the Russian Federation against Ukraine and the resulting large-scale migration flows, the cross-border supervision of persons sentenced to non-custodial penalties has become an urgent legal dilemma. In judicial and penitentiary practice, offenders frequently cross the state border during the pre-trial investigation or trial stages while maintaining the procedural status of defendants. Consequently, when a guilty verdict enters into force, these individuals reside outside national territorial jurisdiction.

The fundamental legal challenge in such relationships stems from the fact that a significant number of host states are not parties to multilateral conventions on the supervision of conditionally sentenced offenders or mutual legal assistance in criminal matters, nor do they maintain bilateral treaties with Ukraine. The absence of a conventional mechanism produces a legal vacuum that precludes adequate probationary control, infringes upon the territorial sovereignty of host states, and undermines the principle of inevitable criminal liability (Hloviuk et al., 2022; Vermeulen et al., 2012).

Issues of international judicial cooperation, foreign judgment enforcement, and the transfer of sentenced persons have been extensively examined by scholars such as Alenin (2017), Malaniuk (2018), and Trostianska (2022). The development of national probation institutions was explored by Pidhorodynska (2021) and Bandurka (2019). However, prior scholarship focused almost exclusively on extradition, custodial sentences, and established multilateral instruments, including the European Convention on the International Validity of Criminal Judgments (Council of Europe, 1970) and the Convention on the Transfer of Sentenced Persons (Council of Europe, 1983). The operational realities of probation authorities supervising

offenders serving alternative sanctions (community work, correctional labor, probation supervision, and probation with suspended execution) within non-treaty jurisdictions remain an unaddressed gap in legal doctrine.

The objective of this study was to develop doctrinal foundations for overcoming this jurisdictional vacuum and to formulate actionable legislative and procedural mechanisms for implementing non-custodial sentences executed by probation bodies in relations with non-treaty states.

2. Materials and Legal Framework

The humanization of Ukraine's criminal justice system has structurally reinforced the probation service as the primary body executing non-custodial penalties (Pidhorodynska, 2021). Under the Law of Ukraine "On Probation" (Verkhovna Rada of Ukraine, 2015) and the Criminal Executive Code of Ukraine (Verkhovna Rada of Ukraine, 2003), probation authorities execute a wide range of penal measures, including fines (Article 53 of the Criminal Code of Ukraine; Verkhovna Rada of Ukraine, 2001), deprivation of the right to occupy certain positions or engage in specific activities (Article 55), community service (Article 56), correctional labor (Article 57), probation supervision (Article 59-1), and the supervision of persons released from serving a principal sentence with probation (Articles 75, 76, and 79).

The theoretical underpinning of these measures rests upon personalized behavioral modification and rehabilitative intervention, which a priori requires spatial and territorial accessibility of the offender (Bandurka, 2019; Pidhorodynska, 2021). This model mandates continuous, in-person interaction with a probation supervisor, systematic monitoring of statutory obligations, and the execution of mandatory intervention programs at the offender's physical place of residence.

Conventional international cooperation in criminal judgment enforcement relies upon established multilateral frameworks, including the European Convention on the International Validity of Criminal Judgments (Council of Europe, 1970), the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (Council of Europe, 1964), the Convention on the Transfer of Sentenced Persons (Council of Europe, 1983), and regional instruments such as Council Framework Decision 2008/947/JHA (Council of the European Union, 2008). These instruments establish structured channels whereby the competent central authority of the sentencing state requests foreign authorities to recognize judicial acts and delegate supervisory functions to local correctional bodies (Malaniuk, 2018; Trostianska, 2022).

A fundamental collision emerges when an offender resides in a state that is neither a party to specialized multilateral conventions nor bound by bilateral legal assistance treaties with Ukraine (non-treaty jurisdictions). Under customary international law, state sovereignty prohibits foreign authorities from exercising supervisory powers on foreign territory without explicit consent (Vermeulen et al., 2012). Concurrently, requests from the Ministry of Justice of Ukraine lack binding legal effect in non-treaty jurisdictions, entirely precluding the delegation of supervisory mandates (Alenin, 2017; Malaniuk, 2018).

3. Practical Dilemmas and Judicial Dualism

An empirical demonstration of this regulatory impasse appears in criminal proceedings where defendants permanently relocate abroad (e.g., to the State of Israel) while participating in domestic trials remotely via videoconferencing, as illustrated in case No. 991/13356/25 (High Anti-Corruption Court of Ukraine, 2026). Exercising judicial discretion, courts impose sentences of imprisonment while simultaneously releasing offenders from serving the sentence

under probationary terms pursuant to Article 75 of the Criminal Code of Ukraine, accompanied by occupational disqualifications (Article 55) and mandatory behavioral obligations under Article 76 (periodic reporting and notification of residency changes) (Verkhovna Rada of Ukraine, 2001; High Anti-Corruption Court of Ukraine, 2026).

Upon entry into force, execution mechanisms stall. Due to the lack of bilateral agreements, the Ministry of Justice of Ukraine cannot initiate the adaptation and enforcement of the verdict abroad. Simultaneously, probation bodies operating under the Criminal Executive Code of Ukraine (Verkhovna Rada of Ukraine, 2003) lack extra-territorial authority. Consequently, non-appearance is procedurally recorded as evasion, even though the offender's residence abroad is officially documented in the court record (High Anti-Corruption Court of Ukraine, 2026).

Probation officers are thus confined to formalistic measures: initiating domestic tracing procedures or referring case files to police bodies under Article 389 of the Criminal Code for evasion of non-custodial penalties (Verkhovna Rada of Ukraine, 2001, 2003). Such practices defeat the statutory goals of criminal punishment set out in Article 50 of the Criminal Code. The offender experiences no real punitive restrictions or social-educational interventions, precluding rehabilitation, while public resources are expended on procedural routines that ultimately conclude with the expiration of statutory limitation periods under Article 80 (Bandurka, 2019; Hloviuk et al., 2022).

An investigation into the procedural origins of this issue demonstrates a significant gap between criminal procedural and criminal executive regulation. The current Criminal Procedure Code of Ukraine (specifically, Article 336 of the CPC of Ukraine) explicitly allows judicial proceedings to be conducted via videoconferencing, including broadcasting from premises other than the court or outside court facilities using participants' own technical devices and a qualified electronic signature via the ESITS subsystems. Legitimate grounds for this format include the imposition of martial law (clause 5, part 1, Article 336 of the CPC of Ukraine), the impossibility of direct participation in the court session due to valid reasons, or the necessity to ensure procedural expediency.

It is essential to take into account the established legal position of the Criminal Cassation Court within the Supreme Court (case No. 320/2582/19), according to which the participation of an accused in a court session via videoconference is equated to direct participation in the case hearing. Consequently, the adoption of such a judicial decision is not considered a special judicial proceeding in the absence of the accused (in absentia). The court directly identifies the accused, hears their testimony and last word, adhering to the fundamental principles of the immediacy of evidence examination (Supreme Court of Ukraine, 2021).

Passing a sentence with the remote participation of the accused, the court acts within its statutory discretion; considering sincere repentance or active cooperation with the investigation, the court imposes a non-custodial penalty or applies the institution of exemption from serving the sentence with probation under Articles 75 and 76 of the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 2001; High Anti-Corruption Court of Ukraine, 2026). However, while creating modern digital tools for court hearings, the legislator entirely neglected the subsequent stage of executing such a verdict.

Thus, a legal contradiction arises: criminal procedure allows an individual located abroad to be sentenced remotely (Supreme Court of Ukraine, 2021), whereas the norms of the Criminal Executive Code of Ukraine (Verkhovna Rada of Ukraine, 2003) and the Law of Ukraine "On Probation" (Verkhovna Rada of Ukraine, 2015) contain no provisions for remote operational supervision and imperatively require exclusively the personal physical appearance of the convict at the probation unit in Ukraine.

A practical analysis of the criminal executive consequences of such sentences reveals significant divergence depending on the specific type of penalty or penal measure imposed.

Thus, serving community service and correctional labor requires the performance of actual, socially beneficial unpaid or paid labor at designated sites within the territorial boundaries of the convict's residential locality in Ukraine (Verkhovna Rada of Ukraine, 2003). The convict's residence abroad entirely precludes the possibility of performing such labor. The probation authority is forced to compile and forward materials regarding evasion under Article 389 of the Criminal Code of Ukraine, or initiate exemption from serving the sentence due to the expiration of limitation periods for the execution of a guilty verdict (Article 80 of the Criminal Code of Ukraine; Verkhovna Rada of Ukraine, 2001), which ultimately allows the individual to evade punishment.

No less problematic, albeit distinct in execution, are the deprivation of the right to occupy certain positions or engage in specific activities and probation supervision (Verkhovna Rada of Ukraine, 2001, 2015). In the absence of personal contact with the convict and the impossibility of conducting social-educational interventions or verifying employment abroad, execution essentially reduces to sending periodic informational inquiries and nominally deregistering the person upon the expiration of the term.

The most complex law-enforcement collision arises during the implementation of exemption from serving a sentence with probation (Verkhovna Rada of Ukraine, 2001). Unlike fixed-term penalties, where an individual is deregistered by the probation authority automatically upon expiration without additional judicial procedures, the application of probation requires a judicial ruling for final discharge.

An analysis of judicial practice reveals a profound contradiction at this stage:

First, attempts by the probation authority to initiate the revocation of probation and the referral of the convict to serve the imposed sentence encounter systematic court refusals. Exercising judicial discretion, courts generally establish the absence of the subjective element of evasion — direct intent. In motivating such rulings, judges hold that the mere fact of permanent residence outside Ukraine does not constitute evasion;

Second, courts adopt a diametrically opposite and strictly formalistic approach when considering probation filings for discharge upon the expiration of the probationary period. At this stage, courts disregard the previously established fact of foreign residence and motivate decisions solely by the fact that the convict did not appear in person before the probation authority and was not acquainted under signature with the court-imposed duties or requirements regarding changes of residence, employment, or education. Consequently, courts dismiss the probation authority's discharge filings.

As a result, a state of prolonged legal uncertainty emerges: the individual is not discharged due to failure to fulfill the duties prescribed by Article 76 of the Criminal Code of Ukraine; yet, actual enforcement of the custodial sentence is impossible due to the lack of evidence of willful non-compliance and the absence of effective international legal enforcement mechanisms for this category of cases (High Anti-Corruption Court of Ukraine, 2026; Hloviuk et al., 2022).

Such judicial practice nullifies the substantive penal content of probation, reducing the operational role of the probation authority to procedural recording of the impossibility of executing the court judgment (Bandurka, 2019; Pidhorodynska, 2021).

4. Proposed Practical and Legislative Solutions

To resolve the outlined problems, it is scientifically substantiated to introduce a comprehensive set of measures at both the law-enforcement and rule-making levels.

Specifically, at the level of law-enforcement practice:

formation of a unified judicial practice regarding the application of Article 380 of the Criminal Procedure Code of Ukraine, which obliges the court, when passing a sentence via videoconferencing regarding a person residing in a foreign jurisdiction without conventional

regulation, to detail in the motivational and operative parts of the judicial decision the specific procedural algorithm and method of executing the imposed punishment or criminal law measure;
orientation of judicial discretion towards the priority selection of property sanctions (in particular, a fine under Article 53 of the Criminal Code of Ukraine within the sanction of the Special Part article) or supplementary property penalties, the compulsory execution of which can be secured through the convict's assets within the territory of Ukraine without mandatory spatial-territorial presence.
At the rule-making level:
introducing amendments to criminal and criminal executive legislation regarding the establishment of a mechanism for tolling the probationary period (Article 78 of the Criminal Code of Ukraine) and the limitation periods for sentence execution (Article 80 of the Criminal Code of Ukraine). At the same time, to uphold the principle of legal certainty and prevent excessive restrictions on human rights, such tolling should not be unconditional. It is advisable to apply it as a differentiated legal consequence: if the convict, having been duly notified of the sentence, evades remote engagement with the probation authority and fails to appear upon summons to become acquainted with court-imposed duties, the limitation periods and probationary term are suspended until control is restored or the person enters Ukraine;
unification of the mechanism for substituting criminal penalties, in particular providing within article sanctions for the replacement of penalties requiring personal presence and social-educational work with a fine upon official verification of prolonged residence abroad without the possibility of actual execution.

5. Conclusions

This investigation demonstrated a systemic disconnect between procedural, substantive, and penitentiary norms in Ukraine. While procedural rules fully legitimate the remote adjudication of defendants located abroad (Supreme Court, 2021), execution statutes retain rigid physical presence requirements (Verkhovna Rada of Ukraine, 2003, 2015), creating unenforceable verdicts.
The practical outcome is the devaluation of penal goals across non-custodial sanctions and a contradictory judicial practice concerning suspended sentences. Reconciling this dilemma necessitates the proactive use of judicial explanations under Article 380 of the Criminal Procedure Code, a sentencing shift toward property-based sanctions, the statutory tolling of limitation periods for uncooperative offenders, and the legislative substitution of activity-based sanctions with financial penalties for individuals permanently residing outside national jurisdiction.

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