



УДК 343.281

## THEORETICAL FEATURES OF DISCHARGE JUVENILES FROM PUNISHMENT WITH THE PROBATION IN CRIMINAL LAW OF UKRAINE AND CRIMINAL LAW OF SOME FOREIGN STATES

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### SUMMARY

The article examines the legal nature and criminal-legal content of the discharge of juveniles from punishment with the probation. It was analyzed the preconditions and grounds for using this type of discharge juveniles from punishment and serving it. It was determined the features of the use of discharge types, provided by the criminal law of some foreign countries, which are similar in their criminal-law content to the discharge of juveniles from punishment with the probation, that is provided in the criminal law of Ukraine.

**Key words:** discharge of juveniles from punishment with the probation, preconditions, grounds, criminal law of some foreign countries.

## ТЕОРЕТИЧЕСКИЕ ОСОБЕННОСТИ ОСВОБОЖДЕНИЯ НЕСОВЕРШЕННОЛЕТНИХ ОТ НАКАЗАНИЯ С ИСПЫТАНИЕМ В УГОЛОВНОМ ПРАВЕ УКРАИНЫ И УГОЛОВНОМ ПРАВЕ ОТДЕЛЬНЫХ ЗАРУБЕЖНЫХ ГОСУДАРСТВ

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### АННОТАЦИЯ

В статье исследуется юридическая природа и уголовно-правовое содержание освобождения несовершеннолетних от наказания с испытанием. Проанализированы условия и основания применения данного вида освобождения несовершеннолетних от наказания и его отбывания. Определены особенности применения видов освобождения, предусмотренных уголовным правом некоторых зарубежных государств, которые подобны по своему уголовно-правовому содержанию освобождению несовершеннолетних от наказания с испытанием, предусмотренному в уголовном праве Украины.

**Ключевые слова:** освобождение несовершеннолетних от наказания с испытанием, условия, основания, уголовное право некоторых зарубежных государств.

### REZUMAT

Articolul explorează natura juridică și conținutul penal-juridic al eliberării minorilor de pedeapsă printr-un proces. Au fost analizate condițiile și motivele aplicării acestui tip de eliberare a minorilor de la pedeapsă și de deservire. Sunt definite particularitățile aplicării tipurilor de scutiri prevăzute de legea penală a anumitor state străine, care sunt similare în conținutul lor penal-legal cu eliberarea minorilor de la pedepsirea cu procesul prevăzut de legea penală a Ucrainei.

**Cuvinte cheie:** eliberarea minorilor de pedeapsa cu judecata, condițiile, motivele, dreptul penal al unor state straine.

#### **Formulation of the problem.**

With the adopted Law of Ukraine "On Probation", that came into force on 27.02.2015, in our country appeared the need of the reform of Ukrainian criminal law by introducing new legal relation in the legal fields, which are related to the probation, are specifying the order and terms of service the probation period for persons exempted from punishment, including juveniles. Therefore, the study of the theoretical aspects of such a type of discharge juveniles from punishment as the discharge of juveniles from

punishment with a probation, is not only in the criminal law of Ukraine, but also in the criminal law of certain foreign countries, will contribute to implementation of a systematic approach in developing concrete suggestions to improve the provisions of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine).

**Status of research.** The problems of discharge from punishment with the probation was examined in research of H.H. Kadari, I.I. Karpets, O.O. Knyzhenko, G.A. Kriger,

V.A. Lomako, D.V. Rivman, M.F. Savvin, A.V. Savchenko, E.A. Sarkisova, S.V. Sakhnuk, V.I. Shakun, V.V. Skybitskiy, Y.M. Tkachevskiy and others.

#### **Purpose and tasks of the article.**

The purpose of this article is to examine the legal nature and criminal content of the discharge juveniles from punishment with the probation and analysis of the features of using the discharge types provided by the criminal law of some foreign countries, that is similar in their criminal law content to the discharge juveniles from punishment with a



probation, provided in the criminal law of Ukraine.

**The aim of the research** is based on the following tasks: 1) to analyze the provisions of the Criminal Code of Ukraine and laws on criminal liability of certain foreign states; 2) to develop appropriate suggestions for improving the legislation of Ukraine in this area.

**Presenting the main material.** First of all, it is sensible to find out the legal nature and the basic criminal law content of this type of discharge juveniles from punishment in the criminal law of Ukraine.

In order to determine the legal nature of the discharge juveniles from punishment with the probation, it should be noted, that this measure of a criminal nature is a “special” type in relation to the discharge from punishment with a probation. The provisions of § 1 of Art. 104 of the CC of Ukraine [1], which regulates this type of discharge juveniles from punishment and its serving, is referral. In order to apply this special measure of a criminal nature, it is necessary to refer to the provisions regulating the relevant general criminal-legal measure, – Art. 75-78 of the CC of Ukraine.

The discharge juveniles from punishment with the probation is an optional type of discharge – its implemented through the discretionary powers of the court, taking into account all the grounds for the application of this type of discharge, and conditional, since in the case of a minor person discharge, during the test period, the obligations are assigned by Art. 76 of the CC of Ukraine, in the case of failure to perform, the person will be sent by a court to serve the sentence.

If a minor person convicted during the probationary period fulfilled the duties assigned to him or her and did not commit a new crime, the discharge of a minor person from serving a sentence with the probation is embodied in this form of criminal liability as “conditional non-punishment”. In another case, there is a mixed form of criminal responsibility – the conditional non-use of punishment is combined with the actual execution of punishment.

Precondition for the use of exemption from serving a sentence with the probation to juveniles in accordance with Art. 75 of the CC of Ukraine, § 2 of Art. 104 of the CC of Ukraine is arresting or incarceration for a term not exceeding five years.

Most scholars underline, that the impossibility of discharge of juveniles from punishment and serving it with the probation, while imposing such punishment as corrective labor, significantly reduces the scope of applying the discharge juveniles from punishment and serving it with a probation. In particular, in certain foreign countries the court has the right to apply a similar type of discharge also in cases of imposing punishments, which are not related to imprisonment. Thus, in Art. 77x of the Criminal Code of the Netherlands (hereinafter – CC of the Netherlands) is determined the possibility by the court to exempt from serving a sentence in the form of public works, fine or deprivation of the right to drive a vehicle with the probation of minor persons [21], in Art. 42 of the Criminal Code of the Swiss Confederation (hereinafter – CC of the Swiss Confederation) provides the possibility of conditional sentencing of minors – to stop the execution of punishment in the form of fines, public works and imprisonment [16], according to Art. 25 of the Criminal Code of Japan (hereinafter – CC of Japan), the delay of the sentence execution may be applied in the case of sentencing to imprisonment with or without a compulsory labor for a term up to three years or a fine of up to five hundred thousand yen [12], in Art. 171 of the Criminal Code of the Federative Democratic Republic of Ethiopia (hereinafter – CC of the Federative Democratic Republic of Ethiopia) provides the possibility of applying a deferral for the execution of a guilty verdict to juveniles with probation in the case of sentencing to a fine or imprisonment [20], and in accordance with Art. 150 of the Criminal Code of the Federal Republic of Somalia (hereinafter – CC of the Federal Republic of Somalia), applying the provisional sentence of execution of a court verdict to the minor persons is possible in the case of sentencing to imprisonment or pecuniary punishment [24].

Therefore, we consider the importance of extending the possibility of applying the discharge juveniles from punishment with the probation and also, when a minor person is convicted in the form of corrective labor.

With regard to the grounds for the exemption from serving a sentence with

a probation by minor persons, from the analysis of § 1 of Art. 75 of the CC of Ukraine is shown, that they are: the gravity of the crime, the person characteristic and other circumstances of the case, which give the court the opportunity to make a conclusion on the correction of the convicted person without serving a sentence.

Similar grounds for the use of this type of discharge are determined in the laws on criminal liability of a number of foreign states. Thus, the court may postpone the execution of the sentence: when the purpose of the punishment can be achieved without its execution (Art. 92 of the Criminal Code of the Republic of Lithuania (hereinafter – CC of the Republic of Lithuania) [22], taking into account the personality of the convicted person, his further attitude to the crime, the reasons, that led him to commit a crime, the nature of the event etc. (Art. 26 of the Criminal Code of the Argentine Republic (hereinafter – CC of the Argentine Republic) [8], the existence of criminal offenses, previous good behaviour, personality of the convicted person, the nature and conditions of the crime, the committing reasons (Art. 103 of the Criminal Code of the Republic of Nicaragua (hereinafter – CC of the Republic of Nicaragua). [15] In postponing the execution of a sentence, the court shall take into account: the criminal danger of the convicted person as well as the existence of others criminal cases against him or her and personal circumstances (Art. 80 of the Criminal Code of the Kingdom of Spain (hereinafter – CC of the Kingdom of Spain) [25], the identity of a juvenile convict, his or her way of life in the past, the circumstances of committing a crime, the behaviour after the committing, the lifestyle and results, that may arise in case of applying the deferral of a sentence execution (§ 21 of the German Federal Law on the juvenile) [13], the characteristic of a guilty person, living conditions, previous lifestyle, and behaviour after the crime (§ 2 Art. 69 of the Criminal Code of the Republic of Poland (hereinafter – CC of the Republic of Poland) [23], the nature, past, age, state of health or mental condition of the person, the nature of the offense and the extenuating circumstances in which the crime was committed (§ 1, Art. 306 of the Criminal Procedure Code of Sri Lanka



[10], the circumstances of the crime committing, the nature of the crime and the personality of the offender (§ 1 of Art. 38 of the Criminal Code of the United Republic of Tanzania) [17].

Thus, § 1 of Art. 75 of the CC of Ukraine provides sufficient grounds for the court to exempt minor persons from serving the punishment with a probation.

According to § 3 of Art. 104 of the CC of Ukraine, the probation period is set for a period of one to two years.

The CC of Ukraine does not specify the correlation of the duration of the probation period with the type and time period of the sentence. Therefore, according to some scholars, the probation period is usually set according to the length of the sentence prescribed conditionally, and to deviate from such principle is admissible only in extreme cases and with the obligatory motivation for the need for such a deviation [29, 117].

In criminal laws of some foreign states the duration of the probationary period in a certain way correlates with the term of the sentence. For an example, Art. 92 of the CC of the Republic of Lithuania provides the postponement of the sentence execution in the form of imprisonment for a term of one to three years in the case of conviction of a minor person to imprisonment due to negligence of one or more crimes or to imprisonment for a term not exceeding four years for committing of one or several intentional crimes, Art. 38 of the CC of the United Republic of Tanzania determines, that the probation period should be no more than twelve months, Art. 33 of the New South Wales Criminal Procedure Law on Children states, that the probation period for the release of juveniles from serving a sentence is up to two years [9].

The length of the probationary period in the Kingdom of Spain is longer than the term of the punishment, in § 2 of Art. 80 of the CC determines, that the period of suspending the sentence should be from two to five years in the case of sentencing in the form of imprisonment up to two years, in the Federal Republic of Germany – §§ 21, 22 of the German Federal Law on the juvenile indicates, that the duration of the probation period is from two to three years in the case of the imposition of a punishment in the form of imprisonment for a term not exceeding one year, in Art. 70 of the CC of the Republic of Poland –

in the case of a suspended sentence in the form of imprisonment up to one year, the length of the probation period is from one to three years, and in the case of applying a suspended sentence to a person, who has committed a violent crime, the length of the probation period is from two to five years, in Art. 44 of the CC of the Swiss Confederation – the probation period for pausing the execution of a court sentence is set from two to five years, in § 3 of Art. 51 of the Criminal Code of the Republic of Turkey (hereinafter – CC of the Republic of Turkey) – the probation period may be from one to three years, but in any case not less than the time duration of the imposed punishment, in Art. 74 of the Criminal Code of the People's Republic of China (hereinafter – CC of the People's Republic of China) – the probation period for imprisonment for a period not exceeding two years, short-term imprisonment or a fine may be from two to five years [19], in Art. 25 of the CC of Japan – the postponement of the punishment implementation may be applied for a period of one to five years in the case of sentencing to imprisonment along with engaging in compulsory labor or without it for a term up to three years or a fine of up to five hundred Thousands Yen, the CC of the Federative Democratic Republic of Ethiopia in § 2 of Art. 171 mentions the possibility for the court to establish a probation period of minor persons from one to three years, Art. 14a of the Criminal Code of the Republic of Indonesia (hereinafter – the CC of the Republic of Indonesia) determines, that in the case of convicting a minor to imprisonment up to one year, the probation period shall be no more than two years and in cases of committing certain offenses concerning the general security of persons, property and public health, which are related to public order and morality – no more than three years [11], in Art. 27bis of the CC of the Argentine Republic is provided, that in postponing the execution of a sentence by which a minor person is sentenced to imprisonment of up to three years, the probation period has to be from two to four years, Art. 103 of the CC of the Republic of Nicaragua contains provisions, that in the case of convicting a minor person to imprisonment up to three years, the court may suspend the sentence execution for a probation period of two to five years.

Taking into account the provisions of the above-mentioned foreign states, it should be noted, that the length of the probation period from one to two years is a sufficient period of time for effective educational influence in order to correct the convicted person.

The question of determining the starting point of the trial period is complex, since the CC of Ukraine specifies only its duration. In § 1 of Art. 165 of the CEC of Ukraine states, that the probation period is calculated from the moment, when the court verdict is pronounced [2].

In accordance with § 1 of Art. 376 of the Criminal Procedure Code of Ukraine, a judgment is pronounced in public immediately after the court leaves the consultative room. The chairman during the court proceeding clarifies the content of the decision, the procedure and time for its appeal [3].

However, in our opinion, the most appropriate is the position of A.O. Klevtsov, according to which the probation period starts from the moment of entering the sentence into force [30, 121], since the discharge from punishment with a probation is one of the forms of criminal liability, and according to the decision of the Constitutional Court of Ukraine of 27.10.1999, criminal liability starts from the moment of entering into force the court's verdict [6, 274-275].

Thus, according to § 1 of Art. 532 of the CPC of Ukraine, the verdict or decision of the court of first instance, the decision of the investigating judge, unless otherwise is provided by this Code, becomes valid after the end of the submission period for filling an appeal, established by this Code, if no such complaint has been filed [3].

In addition, as A.O. Klevtsov underlines, this position is fully correlates with the provisions of Art. 88; 89; 108 of the CC of Ukraine, concerning the calculation of the expiry date of the criminal records in case of discharge from punishment with the probation. Thus, in Art. 88 of the CC of Ukraine states, that a person is known for having a criminal record from the day of the legal enforcement of a guilty verdict and until the expiry date of the criminal records of conviction. It means, that the probation period should be deducted from the day a guilty verdict enters into force [9, 123].

The experience of foreign countries on this issue is quite significant. For example,



§ 2 of Art. 77 of the CC of the Netherlands mentions the probation period, which begins on the fifteenth day after the notice of the exemption from serving the sentence with a probation was given during the time, that has not yet passed for the appeal, § 22 of the German Federal Law on Juvenile Justice indicates, that the probation period runs from the moment the court's decision comes into force, Art. 70 of the CC of the Republic of Poland states, that the delay in the sentence execution begins with the entry into force the court's decision, Art. 52 of the Israel law on Criminal Law specifies the conditional release from imprisonment, that begins on the day of entering into force the sentence about the imposition of a punishment [26], Art. 14b of the CC of the Republic of Indonesia mentions, that the probation period shall take effect as soon as the sentence has become final.

The Law of Ukraine No. 1492-VIII of 07.09.2016 "On Amendments to Certain Legislative Acts of Ukraine Concerning the Enforcement of Criminal Sentences and the Realization of the Rights of Convicted Persons" [5] modified the Art. 76 of the CC of Ukraine, which set out an exhaustive list of duties, that could have been used by a court. At the same time, the so-called basic duties were set out, the imposition of which in the case of the discharge of juveniles from punishment with the probation is the court's duty, and additional ones.

The court is obliged to impose on the convicted person the following duties, when applying for the discharge of juveniles from serving a sentence with the probation:

1) to show up periodically for registration with the authorized probation body;

2) notify the competent authority on probation about the change of the residence, work or study address.

The court may additionally impose the following obligations:

1) to ask the victim publicly or in a different form for forgiveness;

2) not to leave Ukraine without the consent of the authorized probation body;

3) to work for an employer or by the referral of the authorized probation body apply to the State Employment Service for registration as an unemployed person and to work, if he or she was offered an appropriate position (job);

4) to take actions, that are provided by the probation program;

5) to take a course of treatment from mental disorders and behaviour as a result of the use of psychoactive substances or a disease, that is a danger to others;

6) to follow to the requirements established by the court regarding certain actions, restrictions on communication, travel and leisure activities.

The criminal law of certain foreign states provides similar (in content) obligations, which are imposed by a juvenile court. Art. 92 of the CC of the Republic of Lithuania, § 57 of the Criminal Code of the Kingdom of Denmark (hereinafter – CC Criminal Code of the Kingdom of Denmark) [28, 48], Art. 72 of the CC of the Republic of Poland, § 2 of Art. 51 of the CC of the Republic of Turkey, Art. 74 CC of the People's Republic of China, Art. 197, 198 CC of the Federative Democratic Republic of Ethiopia, Art. 150 CC of the Federal Republic of Somalia, Art. 38 of the CC of the United Republic of Tanzania, Art. 104 of the CC of the Republic of Nicaragua also provide on a minor person the possibility of the obligation to compensate for or eliminate pecuniary damage.

Thus, the CC of Ukraine should contain a provision of extending the list of duties, that can be applied by the court to minor persons in the event of discharge from serving a sentence with the probation, in particular: to compensate the harm to the victim.

The feature of the discharge of juveniles from punishment and serving it with the probation, compared to the general type of such discharge, is the right of the court to assign to an individual, with his or her consent or request, the obligation to supervise the convicted person and to conduct educational work (§ 4 of Art. 104 CC of Ukraine). This mechanism is also known to the criminal law of foreign states: § 57 of the CC of the Kingdom of Denmark provides the supervision of an authorized person over the convicted, § 24 of the German Federal Law on the juvenile provides the appointment of an assistant, Art. 73 of the CC of the Republic of Poland mentions the duty of the court to appoint a curator or a person, who has confidence in order to educate the convict, § 2 of Art. 44 CC of the Swiss Confederation offers the right of the court to appoint an employee of the

probation service, § 5 of Art. 51 of the CC of the Republic of Turkey describes the right of the court to appoint an expert to support the released person, Art. 76 CC of the People's Republic of China, Art. 25th CC of Japan indicates the duty of transfer under the supervision of a public organization by location of the convict, Art. 62-2 of the Criminal Code of the Republic of Korea (hereinafter – CC of the Republic of Korea) determines, that the execution of a conditional release under bail is delayed for the minor person [29, 37], Art. 199 CC of the Federative Democratic Republic of Ethiopia, Art. 14d CC of the Republic of Indonesia, § 2 of Art. 24 Tasmania Laws on sentences [18] provide an appointment of a probation officer (an official).

In certain cases, when a minor person is discharge from punishment with the probation from serving the main sentence, the court may not release him or her from serving additional punishment in the form of a fine, deprivation of the right to occupy certain positions or engage in certain activities.

If a convicted person does not perform the assigned duties or systematically commit offenses, that have led to administrative penalties and which indicate a reluctance to go to the correction path, the court shall send that person to serve the sentence. Understanding "systematic offenses committing" is described in § 10 of the Plenum Resolution of the Supreme Court No. 7 "On the practice of criminal punishment appointment by courts" of 24.10.2003 – according to § 2 of Art. 78 of the CC of Ukraine, a court on application of a body, which supervises the behaviour of a convicted person discharged from punishment with the probation, may decide to cancel the release and send a sentenced person to serve his or her sentence in case of non-fulfilment of assigned duties specified in Art. 76 of the CC, or systematic (three or more times) committing offenses leading to administrative penalties and indicating his or her reluctance to enter the correction path [7, 64].

If a minor aged 14 to 16 years old is convicted of committing a crime before arrest (we do not agree with this position of scholars, taking into account the provisions of Art. 101 of the CC of Ukraine) or imprisonment and discharge from punishment with the probation,



during the probation period systematically commits an offense, which indicates his or her reluctance to go to the correction path, no such reaction will be taken to such person, since a person aged between 14 and 16 cannot be brought to administrative liability, therefore they cannot be subject to administrative penalties, which is a requirement for sending a sentenced person to serve the sentence. In this regard, after the expiry of the probation period while deciding about the release of such person from the punishment, except taking into account the execution of obligations in accordance with Art. 76 of the CC of Ukraine, it seems relevant to simultaneously evaluate the behaviour of a minor person during the probation period [27, 1011].

If the convict will commit a new crime, the court will apply the rules provided in Art. 71, 72 of the CC of Ukraine, that means the punishment (that was imposed on a previously committed crime) has to be joined in whole or in part to the punishment for a new offense.

Almost in all analyzed laws on the criminal liability of certain foreign states (§ 3 of Art. 92 of the CC of the Republic of Lithuania, § 60 of the CC of the Kingdom of Denmark, Art. 84 of the CC of the Kingdom of Spain, paragraph § of § 26 of the German Federal Law on the juvenile, Art. 75 of the CC of the Republic of Poland, Art. 46 of the CC of the Swiss Confederation, Art. 52 of the Israeli Law on Criminal Law, Art. 75, 75-1 of the CC of the People's Republic of China, Art. 63-65 of the CC of the Republic of Korea, Art. 200 of the CC of the Federal Democratic Republic of Ethiopia, § 3, § 12, Act of the Republic of Mauritius on juvenile offenders [14], § 3, Art. 150 of the CC of the Federal Republic of Somalia, Art. 38A of the CC of the United Republic of Tanzania, Art. 14f of the CC of the Republic of Indonesia, Art. 26, 27 of the Tasmanian Law on sentences, Art. 27 of the CC of the Argentine Republic, Art. 105 of the CC of the Republic of Nicaragua) the same order is established for the final release of minor persons or sending them for serving a sentence in case of non-fulfilment the duties during the probation period or the commission of a new crime.

In addition, § 3 of Art. 92 of the CC of the Republic of Lithuania, § 60 of the CC of the Kingdom of Denmark and Art. 200

of the CC of the Federative Democratic Republic of Ethiopia, provide for the possibility of a court to initially apply a warning, concerning the possibility of serving a punishment, in case of a violation of the minor person the obligations during the probation period. And in § 3 of Art. 92 of the CC of the Republic of Lithuania, § 60 of the CC of the Kingdom of Denmark, Art. 84 CC of the Kingdom of Spain, § 2 of Art. 46 CC of the Swiss Confederation, Art. 52 of the Israeli law on Criminal Law indicated the possibility of extending the probation period in case of violation the responsibilities by a minor person.

It is worth supporting the position of A.O. Klevtsov, concerning the controversy of the name of this type of discharge. The term "discharge from serving a sentence with the probation" denies the humanistic nature of this institution, moreover, it creates a sense of repression of this institute. The term "probation" is more about the technique, the mechanisms and is not acceptable to the person. Exemption from serving a sentence with a trial creates an impression not about the humanity of this institute, but about its cruel nature, which consists of a certain number of tests for a person who committed a crime [30, 54]. The "conditional conviction" term is also ineffective, since conditional is not a conviction, but serving a sentence by a minor person.

If we take into account the experience of some foreign countries, the Kingdom of Denmark, the Federal Democratic Republic of Ethiopia, the Federal Republic of Somalia, the Republic of Indonesia, Tasmania, the Argentine Republic, the Republic of Nicaragua have a delayed execution of the sentence. However, the use of such experience is controversial in the criminal law of Ukraine. First of all, this is due to the fact, that Art. 536 of the CPC of Ukraine provides for the possibility of using by the court at the phase of execution the sentence a criminal-procedural measure as delaying its execution in case of severe illness of the convicted person, which hinders the punishment, pregnancy of the convicted person or if she has a young child, or if the immediate serving of a sentence can involve exceptionally severe consequences for the convicted person or his/her family due to special circumstances (fire, natural disaster, serious illness or death of the only working family member, etc.) [3].

Thus, the discharge juveniles from serving a sentence with a probation is possible subject to the improvement of the convicted without serving a sentence, and the delay in the sentence execution relates to the postponement of the sentence execution to a specified time in connection with certain circumstances that necessarily indicate the objective impossibility of execution of sentenced sentences.

Conclusions. Discharge juveniles from serving a sentence with a probation is a special type of exemption from serving a trial sentence and has its own features. A precondition for the application of this type of dismissal in accordance with § 2 of Art. 104 of the CC of Ukraine is a conviction of a minor person to arrest or imprisonment for a specified term (not more than five years).

Taking into account the experience of certain foreign countries in applying this type of discharge, we consider the most successful name as "conditional release of minor persons from serving a sentence", and we suggest to extend the scope of application of the exemption of minors from serving a sentence with a probation; and in condemning a minor person to punishment in the form of corrective labor.

At the legislative level, there is no time from which the calculation of the probation period begins. In our opinion, the most substantiated is the position, according to which the trial period begins from the moment, when the verdict has entered into force.

The Law of Ukraine No. 1492-VIII of 07.09.2016 "On Amendments to Certain Legislative Acts of Ukraine Concerning the Enforcement of Criminal Sentences and the Realization of the Rights of Convicted Persons", Art. 76 of the CC of Ukraine, which set out an exhaustive list of duties, that could be imposed by a court on the convicted person, was introduced in the new edition. At the same time, the so-called basic obligations were set out, the imposition of which in the case of the discharge a minor person from punishment with the probation is the court's duty, and additional.

As a result of the analysis of laws on the criminal liability of certain foreign countries, we consider the necessity to add Art. 76 of the CC of Ukraine with a provision, which extends the list of



duties, that can be applied by a court to minor persons in the event of discharge from punishment with the probation, in particular: to compensate for the harm done to the victim in the case of an independent income of a minor person.

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УДК 343.1

## ОСНОВАНИЯ И ПОРЯДОК ПРИМЕНЕНИЯ ЗАЛОГА

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#### АННОТАЦИЯ

В данной научной статье определены основания применения залога как меры пресечения в уголовном производстве. Определены основные причины отказа в удовлетворении ходатайств о применении залога. На основании анализа судебной практики определены случаи неправильного определения размера и применения залога. Раскрыт перечень субъектов, которые могут вносить залог, и уполномоченные его определять. Раскрыт порядок внесения и порядок возврата залога.

**Ключевые слова:** мероприятие, мера пресечения, уголовный процесс, уголовное производство, залог, домашний арест, содержание под стражей, личное поручительство, личное обязательство.

#### GROUND AND PROCEDURE FOR THE USE OF COLLATERAL

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#### SUMMARY

In this scientific article, the grounds for using collateral have been identified as a precautionary measure in a criminal proceeding. The main reasons for the refusal to satisfy the applications for the use of collateral are determined. Based on the analysis of judicial practice, cases of incorrect determination of the size and use of collateral have been identified. The list of subjects that may be pledged and authorized to identify them is disclosed. The order of making and the procedure for the return of collateral are disclosed.

**Key words:** measure, preventive measure, criminal procedure, criminal proceedings, pledge, house arrest, detention, personal guarantee, personal commitment.

#### REZUMAT

În acest articol științific motivele pentru utilizarea garanției ca măsură preventivă în cadrul procedurilor penale. Se determină principalele motive pentru refuzul de a satisface cererile de utilizare a garanției. Pe baza analizei jurisprudenței definite utilizarea abuzivă a determina mărimea și aplicarea garanției. Dezvăluit lista entităților care pot face un angajament, și autorizat să stabilească. Ordinea de depunere și ordinea de returnare a gajului sunt prezentate.

**Cuvinte cheie:** acțiune, o măsură preventivă, procedura penală, procedurile penale, cauțiune, arest la domiciliu, detenție, securitate personală, angajament personal.

**Постановка проблемы.** Под мерами обеспечения уголовного производства принято понимать предусмотренные Уголовно-процессуальным кодексом Украины (далее – УПК) меры принудительного характера, применяемые при наличии оснований и в порядке, установленном законом, в целях предотвращения и преодоления негатив-

ных обстоятельств, которые препятствуют или могут препятствовать решению задач уголовного судопроизводства, обеспечению его действительности [1]. Основаниями для применения мер обеспечения уголовного производства УПК определяет: существование обоснованного подозрения о совершении уголовного преступления такой степе-