



***Probation and Victims.
Florentino Ruiz Yamuza,
Senior Judge, Spain.
Milan, March 2016.***

Probation: what are we talking about?

Probation/Parole/Both

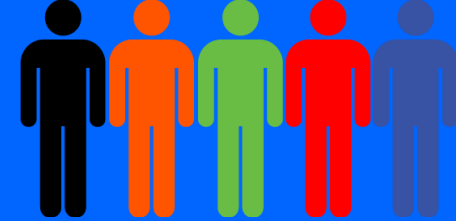
Any alternative measure that may prevent the offender, or allegedly offender, from going to prison either before or after the trial.

Is not strictly a sentence, but rather, a contract between the court and the offender. In return for agreeing to abide by the conditions, the court suspends the sentence.

Probation: relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety. (European Probation Rules)



Probation Stakeholders



Society

Offender

Judiciary

Police

Probation Agencies

Victims' Support Organizations

Victims → Information, involvement, emotional attitude

Alternatives to imprisonment and victims' rights

Directive 2012/29/EU, 25.10.12 Establishing minimum standards on the rights, support and protection of victims of crime

To understand and being understood (Art. 3)

To information (Art.4) → on protection measures

→when the person remanded in custody, prosecuted or sentenced has been released

To be heard in criminal proceedings (Art.10)

To be protected (Art. 18)

Probation work



Recommendation (2010)¹ of the Committee of Ministers to member states on the Council of **Europe Probation Rules** (Adopted by the Committee of Ministers on 20 January 2010)

Probation agencies

Probation work:

Pre-sentence reports

Other reports, eg. offender's release into community

Develop community service schemes

Supervision measures. Conditional release pending trial, bail, conditional non-prosecution, conditional or suspended sentence.

Work with the offender family

Electronic monitoring

Resettlement and after care

Work with victims → assist them in dealing with the consequences of the crime

→ liaise with victim support services to ensure that the needs of victims are met.

Restorative justice practices and crime prevention

What should we expect ?



Statistics show (Probation Service Recidivism Study 2007-2011) that a number of sentenced persons, fluctuating around 37 per cent do re-offend.

Statistical researches seem to prove that those figures are slightly reduced for people who have been under a probation scheme, or have been released on parole, with a slightly higher recidivism rate for those under a probation or supervision order compared with those who have been doing community service.

Age, gender, prior record, current offense (property and other misdemeanor violations), and length of probationary period are significantly related to recidivism.

Reparative probation



Standard probation/Restorative probation

Risk management probation,

Reparative probation, (minor, nonviolent crime.)

Elements:

Reparative board.

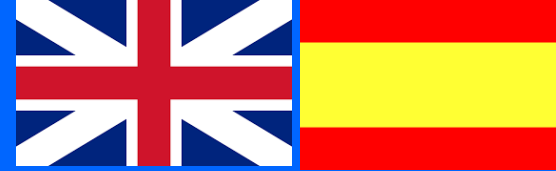
Agreements → help the offender better understand the consequences

→ repair the harm done to the victim and restore the community to its pre-crime state.

→ around a strategy aimed at reducing re-offending.

Reluctance of victims to participate in the Reparative Probation program (e.g., about 1 in 10 victims are directly involved)

Significantly decreases for all kind of offenders the likelihood of a new conviction both while on probation (by 23%) and after the completion of a probationary sentence (by 12%)



UK Victims contact scheme. National Offender Management Service
Victim contact scheme Guidance Manual, 2013

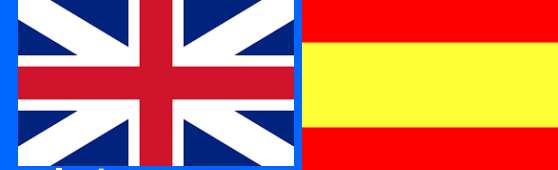
Elegible Victims

The Victim Contact Scheme

Victims of serious violent and sexual crime must, as a minimum, be:

- offered contact by the Probation Trust;*
- assigned a VLO (unless they are the victim of a mentally disordered offender who is subject to a hospital order without restrictions);*
- offered the right to make representations about licence conditions;*
- informed of licence conditions that relate to them;*
- informed about any other key information about the offender's sentence which it is appropriate to share in all the circumstances of the case; and*
- offered the opportunity to make a Victim Personal Statement (VPS) for the Parole Board, if applicable.*

UK/Spain II



The Statute of Victim Act has been enacted in April 2015, It has to developed by By Law and other legal rules. It mainly contain provisions regarding procedural and technical aspects, not tackling the position of the victim in the enforcement stage via probation agencies' performance nor Victims' contact schemes or other mechanisms.

Right to information (Art. 7 SV) in relation to decisions on:

- Prison and release of the offender

- From judicial or prison authorities affecting individuals convicted of crimes that may imply a risk for victims

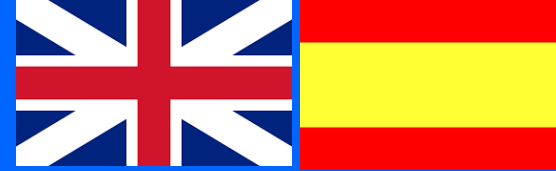
- Related to execution

Victims can challenge the following decisions in relation to some special offences (homicide, murder, grievous bodily harm, rape, sexual assault...) (Art.13 SV)

- 3rd degree before having served half of the sentence

- Prison benefits, furloughs, 3rd degree grade and computation of time for parole

- Parole



Victims are also be entitled to:

Ask to conditional release measures or rules of conduct prescribed by law they deem necessary to ensure their safety

Provide to court information relevant to enforcement decisions, or civil liabilities.

Offices of Victims Assistance

Penitentiary Social Services

Alternative Penalties and Measures Management Service

SGPMA