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**A VICTIM IN A CRIMINAL CODE OF UKRAINE:
PERSPECTIVES OF CHANGES AND THE REALITIES
OF THEIR IMPLEMENTATION**

The Verkhovna Rada of Ukraine registered the Draft of Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Execution of Criminal Penalties and the Organizational and Legal Provision of the Probation Authority" No. 7494 dated January 17, 2018. This Draft of Law of Ukraine was created to improve the existing mechanism of legal regulation in the field of execution of criminal penalties and probation, since the existing system of execution of criminal penalties and the established organizational and legal basis of the activity of the probation body are not perfect, due to what there are gaps, shortcomings and legislative conflicts which can be eliminated by adopting the relevant law. In order to enhance the security of the representatives of the authorized body on probation and their close relatives, the draft of law proposes to criminalize the resistance of the representative of the authorized body on probation while exercising their powers and for threats or violence against the representative of the authorized body on probation.

Such a proposal is not appropriate in view of the following. Part one of Article 342 of the Criminal Code provides for liability for resistance to the representative of the government, including acts and actions committed against the representative of the authorized probation body, who is the representative of the government. The recognition of the representative of the authorized probation body as

the representative of the authority is based on the provisions of the following normative and legal acts:

a) as indicated in Part 1 of Art. 11 of the Criminal Executive Code, the penal organs are: the central executive authority which implement the state policy in the field of execution of criminal penalties and probation, its territorial bodies of administration, the authorized bodies on probation

b) in accordance with the thesis p. 4-5 of Part 1 of Art. 2 of the Law of Ukraine "On Probation" dated February 5, 2015, the probation body is a central executive body that implements state policy in the field of probation; the personnel of the probation body are employees who, in accordance with the powers determined by this Law and other laws of Ukraine, perform probation tasks;

Б) According to the Decree of the Ministry of Justice of Ukraine No. 2649/5 dated 18.08.2017 "On Approval of the Model Provision on the Authorized Body on Probation", the authorized probation body (hereinafter referred to as the probation body) is a punishment body that ensures the implementation of state policy in the area of the implementation of certain types of criminal penalties, not related to deprivation of liberty and probation. The probation body is directly subordinated to the inter-regional department for the execution of criminal penalties and probation of the Ministry of Justice of Ukraine and is a separate subdivision without the right of a legal entity. The probation body is formed by the Minister of Justice of Ukraine in the administrative-territorial units of Ukraine to ensure the execution of the tasks of the State Criminal Execution Service of Ukraine. Consequently, on the basis of the foregoing, it is obvious that the representative of the authorized body on probation, in accordance with the provisions of the current legislation, is currently a representative of the government and there is no sense to allocate it separately as a victim of an offense as established by art. 342 of the Criminal Code.

Regarding the logic of recognition of the representative of the authorized body on probation as victim in Art. 345 of the Criminal Code are also in doubt. First, it is not clear why the changes are

proposed only to Art. 345 of the Criminal Code, and to crimes stipulated by Art. 343, 347, 348, 349 of the CC - no. Secondly, Art. 345 of the Criminal Code provides for responsibility for the threat or violence against employees of a law enforcement body in view of the specifics and the danger of their professional activity, which is their direct participation in: 1) review of court cases in all instances, 2) investigation of criminal proceedings and cases of administrative offenses, 3) operational search and intelligence activities, 4) protection of public order and public security, 5) execution of sentences, decisions, court decisions; 6) control over the movement of people, vehicles or objects through the state and customs borders; 7) Supervision and control over the implementation of laws.

Therefore, there is no sense in view of the lack of specificity and the danger of professional activity, the representative of the authorized body on probation has no grounds to determine the said persons or their relatives to the victims in the act stipulated by art. 345 CC.