

EVOLUTIONS OF THE CONCEPT OF DELINQUENT'S REHABILITATION

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Abstract: The apparition of prison is due the need of finding new and less brutal methods of punishment and due to the desire of rehabilitating delinquents through making a change in their behavior. Among the negative effects of the attempt we can note the apparition of the delinquent's category, classification which stops the achievement of what you desire in what regards the rehabilitation of the individual. Some research reveals the fact that prisons are the places of violence of aggressiveness. It is considered that depriving punishments and probation can really facilitate rehabilitation. Romania has taken a part of the experience from the community countries in what regards delinquent's rehabilitation. In collaboration with partners from the Holland probation systems and England, a process starts of elaborating structural work programs for delinquents and forming the probation advisors. The participation of the sentences persons to this activity is assured by the national legal frame.

Key words: sanctions, attempt, probation, delinquents, rehabilitation.

1. The apparition of rehabilitation in the system of legal justice

The function of rehabilitation the punishment has been included in the results followed by the legal sanctions ever since the XVIII-XIX centuries (Crow&Robinson, 2009, p.2). As Foucault shows in his book *To watch and punish* (Foucault, 2005) the apparition of prison would be tied not only to the necessity of identifying new ways of

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punishing which would substitute the brutal methods of punishment from the antique and medieval age, but also the wish of producing a change in the delinquent's behavior, so that he would not commit any crimes. One, as Foucault described, the place of the executioner would be taken by medics, psychologists or social assistants, and the commander's body wouldn't be kept for repressions, their intervention aiming for the delinquent's soul.

An ideal of delinquent's rehabilitation is shaped, which would guide the activities of those who practice in the correctional system, according to which the achievement in behavior is possible for those who are in conflict with the law, so that in the future they do not commit crimes. In these conditions, prison does not aim only to exclude the delinquent from the social body, but through the activities done there (reading the Bible or religious materials, conferences on spiritual themes, sustained work etc.) a beneficial influence on delinquents has been expected.

Despite all these, short after appearing, prison would be the subject of criticism which would accompany it during its existence.

Some of these critics have been mentioned by Foucault who underlines the fact that it fails just in its attempts to rehabilitate sentenced people, and the failure is manifested through the appearance of the delinquent, socially marginalized person but who is under the control of authorities, in order to supervise criminal environments. Most of the times, at leaving the penitentiary, in lack of support services, the sentenced one does not have any perspective than to get back to the belonging environment, which can determine or facilitate involving in crimes, so that relapse appears unavoidable. (Foucault, 2005)

These are not the only negative effects of the encounter. There is a series of negative effects, much deeper, which have a long term impact more substantial on the sentenced person. A series of studies would highlight the impact at a psychological level characterized through the loss of contact with the support environment, the inability of the sentenced person to take control of his life in the moment of getting free from the penitentiary, especially after serving their time for a long term punishment, or the difficulty of getting reintegrated professionally (James, Irwin & Kubrin, 2003; Cooke, 1996).

They have started to study the mechanism from the penitentiary institutions which contribute to their contra-productivity in report with the proposed goals.

Relevant from this point of view, of developing power relationships which create a solitary environment and of the impact on the sentenced, was the so called Stanford experiment developed by the psychologist Philip Zimbardo in the '70 in Stanford University. This experiment allowed the researcher to conclude that prisons are brutal places which highlight what is worse in a human being. Far from being places

in which rehabilitation activities are developed, through the nature of the relationships created in them, penitentiaries are places of violent and aggressiveness manifestations (Zimbardo, 2009).

2. Rehabilitation from right to obligation of the sentenced person

Taking into consideration what we had said previously, a process starts of identifying those ways of punishing which would transform into reality the ideal of rehabilitation. It appears in the sphere of penal sanctions freedom depriving punishments and probation which, also, propose to rehabilitate the delinquent or, at least, to keep him away from the negative influence of the solitary environment. In the Anglo-Saxon space, starting from a series pre-existing practices (those of recognition and forgiveness) probation appears, while in the continental law system the suspension of punishment execution is introduced under supervision (*mise a l'epreuve*) (Abraham, Nicolaescu & Iasnic, 2001; Siegel L., 2009; Hamai, Ville, Harris, Hough & Zvekcic, 1995).

The rehabilitation concept of delinquents is a dynamic one, reason for which it has suffered(and still suffers) a series of mutations as a result of the dynamic of the research and reflections tied to the results of penal sanctions, progresses from criminology and psychology, and the fact that in the penal policies of states rehabilitation has different approaches.

Despite the punishment retribution function, which is strictly focused on identifying ways of suspending which accord to the social danger of the crime, the rehabilitation function of the punishment more focused on the personal characteristics of the delinquent who needs treatment and intervention (Miethe & Lu, 2005)?

First of all, we must underline the fact that, in the condition of those mutations that this concept had known, and that we will expose, it is difficult to engulf through a definition the complexity of the nuances that the notion of rehabilitation contains.

Some authors consider rehabilitation as implying a minimum of services given to a delinquent so that he reintegrates in society as a useful person (Rotman, 1986), while others have defined rehabilitation as being the process in which delinquents are given the chance to be members with full rights of the community, with all the rights and obligations that derive from this quality. (Lewis, 2005)

Preoccupations in the rehabilitation domain have met a considerable breakthrough starting with the development in socio-human science domain from the modern and contemporary period.

Initially, interventions to rehabilitate delinquents were based on involving them in moral-religious activities, respecting a strict schedule of work and rest, intense use of delinquents in labor activities or serving time in jail in solitude and under permanent watch(Crow& Robinson, 2009; Foucault,2005). This way was not approached in the contemporary period and as proof we have the missionary activity of different cults in penitentiaries or the existence of therapist communities (for example for treating drug addicts) focused on religious activities.

Although, as a result of some mutations that we will expose, the contemporary approaches are characterized through the intervention in order to rehabilitate on the basis of some cognitive- behavior programs, structured evaluation of relapse risk an criminal needs, elaborating some programs for aggressors etc. (Ward& Maruna, 2007; Bernfeld, Farrington & Leschied, 2001).

This paradigm change takes place as a result of the fact that, starting with the XIX century; human behavior has made the object of study for psychology, sociology and criminology. The studies would demonstrate that, most of the times, at the base of criminal conduit are a series of social, education, physical health problems or lack of inter-relationship abilities.

In these conditions, starting with XX century, they started from the premises that intervention is possible at the level of these problems in order to solve them, the consequence being the drop in relapse risk that the delinquent represented and social reintegration. This type of cause-effect approach would be borrowed from medicine and known as the treatment model.

Actually, it is considered that, if the causes of delinquent behavior are identified, through a specialized intervention of those causes and increase can b felt by the sentenced person. In this context, in which delinquent behavior was seen more as a pathology, it was obvious that a correctional treatment was not the most appropriate way of intervention because the causes needed to be indentified and treated (Crow & Robinson, 2009). Taking concepts and models associated to medicine, delinquents were seen more as ill people who, when identifying an appropriate treatment, could be given back to the society.

This was more of a mechanic, unidirectional point of view, which did not take into consideration the complex of problems delinquents are dealing with, the reason due to which, after the second World War, it would be abandoned.

To this change more factors have contributed,among which the most important are represented by the critic brought to the treatment model (among others) by Robert Martinson (Martinson, 1974), and also a series of penal policies adopted in the last decades which would be centered on implying repressive penal policies, focused on the function of punishment incapacity.

In the '70 Robert Martinson's article What works? Questions and answers about prison reform (Martinson, 1974) would give birth to a series of debates and their echo far from being reached, debates which had a series of consequences at practice and penal policy levels.

Having at base a methodology which would make the object of numerous objections (Palmer, 1983); Martinson proceeded to the evaluation of the efficiency of programs which aimed delinquent's rehabilitation. The failure of most attempts in delinquent's rehabilitation, settled through high rates of relapse, at the end of this analysis, the author would address a rhetorical question (doesn't anything work?)

More, Martinson would support the work schedule programs with results; these are more isolated marks, not identifying a model that would be the base of successful initiatives.

In these conditions, the efficiency of punishments is doubtful due to too much attention paid to treatment theories in disadvantage of an approach based on discourage effect that should be specific to the sentence, especially in the case of primary delinquents, effect that was seen more as a historical curiosity (Martinson, 1974).

Also, the '70 and '80 are marked at the level of the political speech by "populist punitive" ,term consecrated by criminologist Anthony Bottoms (Bottoms, 1995) (also) characterized through a phenomenon of harshness of the punishments, of whose starting point would be represented by USA and then extend international.

In these conditions, rehabilitation, although formally mentioned among the functions of punishment, encounters in practice a rebuff, and it had been affirmed that nothing has effect in the rehabilitation procedure of delinquents (nothing works) when the penitentiary is efficient (prison works) just only as a result of the fact that sentenced people are not able to commit other crimes during the conviction. The immediate consequence of such approaches has been represented by the dynamic raise of the number of convicted persons, harshness of penal legislation and putting the ways of sanctioning depriving on the second place. (Garland, 2001; Pratt, 2000; Gottschalk, 2010).

Although the ones who practiced were still involved in supporting delinquent's activities (Mair, 2006), at the delinquent's level of decision in penal policies domain rehabilitation was something like an impossible ideal or contra-productive (Garland, 2001).

Despite all these, the rehabilitation ideal would not disappear, but, as a result of some mutations in rethinking these institutions, they suffered a series of transformations, according to the tendencies that manifest in the domain of penal policies. The important transition that would take place was going to be from

rehabilitation seen as a right of the sentenced person to rehabilitation seen as an obligation.

Furthermore, in the speeches of those who practice term are included like risk and managing risk, and interventions in rehabilitation domain start to imply a decrease in the risk that delinquents represented for the community (Kemshall, 2008) so that rehabilitation practice would circumscribe to a frame more tied to risk than one referring to wellness.

In these conditions, delinquents would be included in treatment programs and their result correlated to public protection, risk decrease and a higher efficiency in term of cost-efficiency, rehabilitation being seen as a way through which risk management is achieved. (Garland, 2001, p.191)

In addition, the principle of classification judging by risk appears, according to which the delinquents who represents a high level of relapse must be offered a set of services in an intensive rate, in comparison with those classified as low risk (Andrews, Bonta & Hoge, 1990, Kemshall, 2008).

Also in these approaches appears the elaboration of some instrument of evaluation and risk prediction, of whose results are at the base of the decisions of including delinquents in different programs started by correctional services or at settling rehabilitation interventions.

Practices in rehabilitation domain put the accent on the risk that delinquents are, they do not do anything else but to align the speech and practices to the preoccupation of decision factors in penal policies domain, preoccupied by establishing a secure community, that lacks risks.

Even more, the rehabilitation concept started to be in a relationship more and more tied to the notion of punishment. As we affirmed prior, if at the beginning rehabilitation was placed in the context of human rights, being perceived as a way through which the person and community's wellness is assured, the vision that characterizes the late-modern period is rehabilitation as an obligation, or more, as a punishment. This approach appears on the base of the institution's wish to not be perceived as having an inadequate relationship in report with crime phenomenon ("too soft on crime") (Robinson, 2008).

In these conditions, social reintegration is not seen as a process through which delinquents' primordial criminal needs are covered, the rehabilitated person being defined as a person who respects the law (a law abiding citizen).

In practice the manifestation of this approach is obliging the convicted person to participate at structural programs, drug addict's treatment programs or implication in

vocational or educational activities, keeping the delinquent free or other favorable decisions (for example, parole) being correlated with respecting these obligations.

Through the program of working with delinquents we understand that structural approach in order to support them in gaining abilities and knowledge, having as result relapse risk reduction. Most of the programs are group programs (but not always) that want to support delinquents in order to improve capacities of problem solving, resolute abilities combining various opportunities of learning in a structural manner (Raynor, 2007).

For example, in probation and penitentiary systems from England and Welsh a series of programs would be elaborated, applied and accredited, such as Think First, One to go, Aggression replacement training, Drink Impaired Driving, etc.

The evaluation of the effectiveness would prove that the intensity of the programs must be in conformity with the delinquent's risk level; to reduce relapse, programs must focus on those problems that expose the delinquent to regain his crime behavior; the methods that are at the base of the program must be adapted to styles of delinquent's learning; the most efficient programs are the multi-way ones (that address to a variety of problems), are oriented on abilities; use cognitive behavior methods and staff's abilities who deliver (Merrington & Stanley, 2007, p.441).

On the other hand, it has been proved that the most efficient programs are the ones that succeed in making a combination between giving attention to social opportunities correlated with an attention paid to the cognitive factors, like attitude and motivation. This way they succeed to make balance between social and cognitive factors, the result being a higher rate of success in intervention (Raynor, 2003).

3. Delinquent's rehabilitation in Romania

In Romania, the term that meant an important activity of changing the delinquent's behavior was reeducation, used by the penal Code adopted in 1968 when it defined the result of penal right punishments.

Without entering in more details, we must underline the fact that the term reeducation enters juridical terminology in Romania, starting with the end of the '40 and beginning of '50, in a process of instauration of the communist society, being taken from the "ideological arsenal " of the soviet communism. In the Soviet Union, after 1917, the process of reeducation had a political ending, following the population's attachment to communist ideology. Anyone who had shown an opinion contrary to the ideology of the communist party would be known as being immature or bourgeois, and to straighten his believes, he was included in a doctrine process known as reeducation.

Since power separation in state had been abolished and its institutions were under communist regime, penitentiaries become an essential vector in the reeducation process. In these conditions and in Romania, especially during 1948-1964, the penitentiary system, and State Security are going to become the key-institutions of repression against opponents of the communist regime. Among the horrors that the reeducation process implied, meaningful is the late called reeducation phenomenon from Pitesti during 1949-1951. Without any more details, because it has been studied in the last years (Popescu, 2005; Ierunca, 1990, Muresan, 2007), we mention the fact that reeducation in Pitesti prison meant torture in order to change their beliefs, in a favorable way for communism. Prior, after 1964, using the penitentiary in political goals is not a rule anymore, but the term of reeducation is still used to describe steps followed by penitentiaries in order to change the behavior of sentenced people, being then engulfed in 1968 in the penal Code.

Regarding the ways of intervention practice in order to reeducate, these were the limits, labor being seen as the main factor that can contribute to re-socialization, an aspect strengthened by art.5 from Law 23/1969 of accepting punishments that said that convict's reeducation is made through work, the sentenced being obliged to do useful work for the capable ones. In these conditions, in juridical literature of that period is mentioned the fact that in socialist society's labor is the main factor of progress and civilization, forming and developing human personality (Turianu, 1984). Also, there is a vision through which prison punishment itself can contribute to reeducation, or as it has been mentioned, reeducation is first possible due to the fact that prison punishment is the punishment made in a longer time, months or years, time in which such a function (of reeducation) can be done, the sentenced one being at the execution's orders (Oancea, 1998). Another vector of reeducation was the force of the collective to reeducate him, so that a person who has problems with the law can develop his ability to value work, form a spirit of discipline and responsibility. (Turianu, 1984)

It was more a vision specific to the XIX century and the beginning of XX, which would be abandoned in 1989.

After 1990 abandoning the use of correctional practices of this term and correlative practices, a series of approaches appeared that are according with the mutations from the international plan. The reeducation term is replaced with delinquent's social reintegration, and the work place as a target factor in behavior changing and it begins is replaced by their implication in some programs.

Therefore, to the work current based on structural programs would be added the probation system from Romania starting at the middle of 2000, when, at the level of the Ministry of Justice, the problem of accreditation given to some specialized programs which work with people under the supervision of probation services.

In collaboration with partners from Holland and British system probation an elaboration process starts of structural delinquent's labor, adapted to socio-cultural realities from Romania and of forming probation counselors that would apply these programs in services.

In Great Britain, the following programs would be taken, adapted and implemented: "Stop!-Think and Change" and "One on one" and from Holland the programs: "Developing social abilities to majors" and "Developing social abilities to minors", identifying the way through which courts impose this obligation of taking part in programs, under the sanction of revoking suspension under supervision in case of not doing your obligation.

The way through which it can be imposed as obligation the participation of sentenced people to these programs has been identified, the starting point being the obligation found in art.86 letter through which the court said that during the probation term the supervised person must have and do the activity. Starting from this legal disposition, courts have proceeded to a determination of this obligation, specifying the fact that the convicted person is obliged to do an activity, meaning to participate in the probation service's programs.

Furthermore, the new Penal Code foresees the court's possibilities of imposing them to oblige people to get involved, convicts who are in the evidence of the probation services, consistence being given to social reintegration as an obligation for delinquents.

Also, in the penitentiary system we can notice a change from strict value of getting involved in work during the sentence, as a manifestation of the convict's straightening, to giving special attention to involvement in educational activities and re-socialization programs. A proof is the foresees from art.190 align. 2 from HG 1897/2006 which specifies the fact that deprived persons who had worked, have participated to courses of alphabetization or schooling -primary, secondary, high school or university, or professional forming or re-socialization programs, and deprived people who had not worked due to certain reasons, but have proved a real progress in their own behavior and have constantly participated in education and psychological intervention programs, taking into account the penal background, they can benefit from parole after doing a part of the sentence foreseen in the penal Code.

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