



PROBATION IN THE EUROPEAN LANDSCAPE OF CRIMINAL JUSTICE

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Abstract: *The context in which the Probation institution is implemented is extremely complex, with facets originating in criminal law, criminology, penology, psychology, social work, sociology etc.*

Thus, to generate policies that lead to probation's efficiency, specialists continuously raise a number of questions about the reasons why people commit crimes, the most effective methods of intervention to prevent the repeat of criminal behavior, the impact of offered services on victims, on the community as a whole and, not least, the costs and benefits arising from these services.

Criminals, recognized as vulnerable persons, require specialized social services to overcome difficult situations, to prevent and combat the repeat of the criminal behavior, the risk of social exclusion, the increase of quality of life and to promote their social inclusion. These services must be a response adapted to the various social needs or vulnerable situations this group of persons is situated in.

Keywords: *probation, criminal justice system, offenders, reintegration*

Introductory considerations

The strategic alliances and partnerships in the criminal justice sector in Europe are important elements in addressing criminal practice and include the penitentiary system, that of probation, the institutions and organizations for the protection of victims and restorative justice, the representatives of the judiciary system and other key actors.

Probation has a significant role in the criminal justice systems in Europe and its contribution leads to the protection of the wider public. The exchange of values, principles and working methods between organizations contributes to the successful implementation of the Council Framework Decision - 2008/947 / JHA of November 27th 2008 on the application of the principle of mutual recognition to judgments and probation decisions in order to oversee probation measures and alternative sanctions.

This Framework Decision provides an effective tool, as it is based on the principle of mutual recognition and implies the participation of all Member States, in which sense the supervision of suspended sentences, of conditional sentences, alternative sanctions

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and conditional release decisions are aimed at increasing the convicted person's chances of social reintegration, allowing him to preserve family, linguistic, cultural and other ties, but also at improving the monitoring of compliance with probation measures and alternative sanctions, in order to prevent relapse, thus paying due regard to the protection of victims and of the general public.

The emergence of the probation institution was determined, on the one hand, by the necessity of developing judicial systems adapted to the dynamics of criminality, and on the other, by the emergence of new trends in criminology, which plead for the control of criminality from outside the criminal justice system and reflects essential mutations at the level of the traditional philosophy of punishment and its functions.

Probation as an alternative measure promotes the social rehabilitation of offenders, for which reason, the correct, complete and professional evaluation done by probation counselors/officers supports the courts' activities in punishment individualization, in accordance with the risk presented by the offender and his realistic social reinsertion perspectives. These professionals must have communication and understanding abilities adapted to each particular case, and the language used by them must facilitate communication, both with other specialists, judges, prosecutors, attorneys, suppliers, as well as with the beneficiaries of probation services, namely offenders.

Under the legal nature, probation, as other community sanctions, is a criminal sanction. Through its scopes and objectives, it however distances itself from the traditional system focused on repression and isolation.

The wording used in the sphere of probation is most often that specific to social work, its concepts such as marginalization, labeling, discrimination, social inclusion and exclusion, rehabilitation, social reintegration etc. being operable.

An important discussion on the concepts used in the sphere of criminal justice is centered on employing the concept of rehabilitation. Pat Carlen shows that social reinsertion and reintegration are often used instead of rehabilitation. The prefix 're', used in the case of offenders, entails that previously they had a socially acceptable statute, to which they can be helped to return. However, the majority of offenders are part of the economically and socially disadvantaged categories and consequently, it is inappropriate to aim at their rehabilitation, in its strict sense. (Sim, J., 2014:17)

The national and European context for offender assistance

The Probation Services implement efficient community sanctions and alternatives to detention, in accordance with the European Council values, also defined in the Probation regulation and in the documents enshrining the European Probation Confederation values.

The EPC aims at promoting the social inclusion of offenders, through community sanctions and measures, such as probation, community work, mediation and counseling. The EPC is engaged in consolidating the image of probation and improving professionalism in this field, at a national and European level.

As a European vocation mechanism, the EPC stimulates the exchange of ideas concerning probation, promotes pan-European cooperation by organizing conferences on current probation themes, by drafting reports on these events, by publishing its digital newsletter and by means of its website. (www.cep-probation.org)

Its members are organizations working in the field of probation and interested natural persons, bringing together practitioners, managers, university bodies, interested parties and other persons activating in the field of probation and criminal justice throughout Europe. Thus, the EPC represents a unique expertise grid concerning the positive ways of working with offenders in the community and its key objective is to protect society without resorting to custodial sentences.

Probation works with offenders in the community, in order to protect the public and to reduce criminality and has its roots in volunteer and religious organizations working with offenders for over 200 years. Today it is an important force in the criminal justice system, which offers the courts a range of community options, with professional and qualified personnel. Probation services distinguish themselves through the accent placed on assistance, guidance and persuasion in the work with offenders. Starting from the fact that society must protect the vulnerable, including those who might be victims of offences, in some states, probation also offers services to victims of offences. Probation counselors/officers work with persons who are mainly part of the most socially disadvantaged and excluded groups, authors or victims of offences.

Probation is based on values nowadays recognized at an international level and targets the rehabilitation of offenders, by helping and encouraging them to lead a dignified life, by respecting the legal and conduct norms governing society. Thus, though the services offered, opportunities are created that will help offenders acquire the needed competencies and motivation.

Probation services play an essential role in contributing to the reduction of penitentiary population, in many cases the community's intervention being more equitable and effective.

Social inclusion is a requirement of social justice and, in principle, the key in the practice of probation. Persons who lack equitable and reasonable access to the services and institutions of civil society (social exclusion) are more susceptible to commit offences, probation thus being centered on social inclusion, it evidently contributes in reducing criminality. In this context, probation services work in close collaboration with the agencies and organizations of civil society and with volunteers, in order to bring the community resources needed for the social inclusion of offenders, inter-service complementary efforts being needed to satisfy the complex needs of offenders.

Starting from the fact that all persons are unique and they must be valued and respected as such, probation services respect the diversity of their beneficiaries, promote non-discrimination and take into account individual needs and circumstances. Probation practices must respect the interests and rights of victims of offences, and in the work and activity with offenders, seek that they become aware of the damage they have caused. This aspect is explicitly found in the practice of some probation services that implement restorative justice programs.

The European landscape of the probation institution is offered and supported through constant presence on the European Council agenda, through the undertaken recommendations and decisions, of which we mention the most relevant: Recommendation CM/Rec (2010)1 on the Council of Europe Probation Rules, Council Framework Decision on the application of the principle of mutual recognition to judgments and probation decisions (2008/947/JHA), Council Framework Decision on the mutual recognition of supervision as an alternative to preventive arrest (2009/829/JHA), Directive on the rights, support and protection of victims of crime (2012/29 / EU).

Their contents show that the goal of probation is to contribute to a fair criminal justice process, as well as to public safety by preventing and reducing the committing of crimes and probation agencies are one of the most important justice agencies and that their activity impacts reducing the prison population. Thus, being based on the European Council's declared scope of reaching higher unity among its members, through harmonizing legislation on matters of common interest, it is recommended that Member States use these documents as guidance in their legislation, policies and practices, to translate and disseminate them as widely as possible, especially to judicial authorities, probation agencies, penitentiary services, as well as to the mass media and the wide public.

What is significant in the context of the thematic of this volume is that all these documents bring together the experts' experiences on key knowledge, theories and competencies necessary, specific to the practice of professional social work.

This highlight refers to the fact that while the findings of behavioral sciences are important for the functioning of the criminal judicial system, this system must also be an appropriate motor for the administration of social services.

The probations services' work with offenders implies increasingly more methods based on scientific research, aiming at implementing those that have proved their efficiency.

The harmonization of policies and strategies aimed at the social rehabilitation of persons under the supervision of probation services, the diminishing of the risk of committing new offences, as well as increasing the degree of public safety, are materialized by transposing European recommendations, rules and decisions in national legislation. These are the major objectives underlying law 252/2013 on the organization and functioning of the probation service, approved through Government Ruling no. 1.079/2013 and are undertaken through and under the coordination of the National Probation Directorate, with the participation of public authorities and institutions, of non-governmental organizations of other legal persons participating in the execution of punishments and non-custodial measures.

Law 123 of May 4th 2006 on the statute of probation personnel, in art. 1 align. (2) shows that, in the act of justice, the work of the probation services personnel is a support for judges and prosecutors, the competency and correct fulfillment of tasks pertaining to this category of personnel playing an important part in the process of punishment individualization, non-custodial sanctions execution, assisting and counseling of victims of offences and in art. 6, the purpose of exercising this profession. Thus, the probation

counselor directly contributes in increasing the degree of public safety by informing and counseling the victims of offences, promoting alternatives to detention, preventing criminality, reducing the risk of relapse and the community reintegration of persons who have broken criminal law.

Probation currently holds a key role within the criminal justice system. The tasks and competencies bestowed upon probation services are defined and provided in the Criminal Code, the Criminal Procedure Code or in special laws. Traditionally, probation did not have a significant role in the criminal justice system, it being limited to offering support and assistance to offenders during the custodial sentence, supervision or conditional release. (A. M. van Kalmthout, Roberts.J., Vinding, S., 2003:14)

These attributes remain extremely important to this day, but a series of new ones is added, attributes that give effectiveness to community sanctions. In West European countries, this tendency is consistent, granting the probation institution a consistent role, both with regards to the supervision of offenders in the community, as well as for other sanctions or measures disposed by judicial bodies in the criminal process. It must be mentioned however that there are substantial differences between the criminal justice systems of different countries, both with regards to the phases of the criminal process where probation has a well determined role, as well as in the criminal trial per se.

Not least, according to the degree of community development and the array of services existing at the level of local communities, the inclusion of offences must be underlined, in detriment of their exclusion, in other words, the involvement and commitment of local communities, which is indispensable. Also crucial is the existence of the institution or service that can organize, strengthen, supervise and control these sanctions and community measures in close collaboration with public, private and public-private organizations and institutions, as is also important their task of promoting a public profile adequate to these types of community sanctions.

The role of probation services is on the one hand, to ensure the control of execution of the sanctions or measures imposed by the court of justice and, on the other hand, the assistance activities which are to allow the offender to remain within the community. The coexistence of the two parameters is a delicate issue at first sight, as they are, a priori, antagonistic. Still, the two notions are rather complementary than in real opposition, as they are two components inherent to any form of social assistance. (Tomiță, M., 2009:18)

In addition to the continuous perfecting of legal provisions concerning non-custodial punishments execution in the new Criminal Code, a series of other steps were taken, proving the adapting to new realities and to the requests of transference, where possible, of the sanctioning system, from a closed environment (penitentiary), to an open environment (society), by means of the "probation" institution, as a method of non-custodial punishing with a social-pedagogical foundation and characterized by a combination between supervision and assistance. In view of creating legal mechanisms that will allow the courts to opt for the most appropriate for of criminal liability, the new Criminal Code brings forth a new regulation in this matter, that as an individualization means is aimed at establishing the manner in which the convicted

person will take the coercion applied as a result of the offence committed, this also being a sensible aspect, as it can significantly and directly influence the offender's social rehabilitation process. The proportionality of the offence in report with the severity of the offence and the danger presented by the offender must not be reflected only in the nature, duration or their quantum, but also in the means of execution, if not, there existing the risk that the effort put in the offender's reintegration produce effects other than desired.

Probation appears as a sanction, but it is essentially a process of assisting the offender in view of his social reintegration. Thus arise numerous inconsistencies in the interpretation of the term: sometimes the punitive aspect prevails, in detriment of the assistance activity, at other times counseling almost entirely replaces punishment. In fact, the criminal philosophy of each state is basically reflected in the proportions in which these two aspects, punishment and assistance, are found in the manner of punishment of the offender. Probation is thus a revaluing of punishment.

From the perspective of internal regulations, the probation system promotes the orientation according to which the author of the offence participates in his reintegration in the community, the same community whose values he has jeopardized or harmed by committing the offence and that he is about to assimilate. (Tomîță, M., 2012)

In perfect accordance with the values of social assistance, the Deontological Code applicable to professionals in the probation system targets the principles on non-discrimination on grounds of nationality, citizenship, race, ethnic origin, language, religion, sex, political or any other opinion, political affiliation, wealth, social origin or any other such grounds. To these are added respecting the dignity, physical and moral integrity of beneficiaries/clients, as well as confidentiality regarding the documents they possess, according to law, for professional purposes.

The field of probation is an important topic on the European Union agenda, in view of relieving the courts of justice's roles and increasing the quality of the act of justice. Member States are under the obligation to implement special regulations that give rise to the possibility of alternative conflict resolution. Also, in the context of the European Space of Liberty, Justice and Security, the Member States are also under the obligation to develop and implement special normative regulations concerning the assistance and protection of victims of offences.

From an academic perspective, that of university training of specialists for the probation system, educational programs target the complementary valuing of all perspectives that work together in constructing the specializing in this complex problematic area as criminality and the social reaction towards the victim, offender and offence.

Probation, a dynamic presence in local communities

We must underline the fact that probation as a discipline, institution and profession, is situated in the field of social-humanistic inter-disciplinarity in which social assistance has the role of correcting the individuals' socialization deficit with social needs in the perspective of ensuring the needed conditions for their integration in the social space.

Thus, probation, as a social science applied in the field of justice, entails the conjoined effort of psychology, sociology, social assistance, legal sciences and not least, of the local administration. This inter-disciplinarity convincingly pleads for probation's community nature. Justice, being through its genesis a social issue, thus communitarian, ensures a democratic management on all components of a pluralistic social space.

In the context of its continuous modernizing, almost 15 years after its coming to life, the Romanian probation system benefits from a tradition that confers it the markings of its own identity, as well as from special perspectives that stimulate professional preoccupations for the efficiency of needed renewals in the current national and international frame of regulation.

As shown before, recognizing probation as a part of modern social spaces has become a constant and articulating its own category system, both in theory and in practice at a national level has become a reality.

In the current socio-cultural context, where we wish to be governed by the principle "in democracy law is king", probation acquires a role of balance, in ensuring the equilibrium and rationalizing of social control to benefit the society it serves.

Thus, alongside the traditional actors of the criminal justice system, the probation institution brings forth the true reform, that which beyond the humanistic benefits also brings an important effectiveness of the system from a cost-benefit perspective. As a community based vehicle for the sanctioning of offenders, probation services offer a threefold wider array of benefits: to the offender, community in general and the justice system. Concerning the offender, the person remains in the community to repair the prejudice caused and can continue to have civic responsibilities, such as a work place, being a family member and part of the community. The person under supervision also has access to community resources for substance abuse, mental health, labor force and so forth – resources that should aid the individual in reacquiring his role as a citizen of his community.

Probation services are based on these community resources and can contribute in developing community based organizations that respond to the general needs of the community.

Governmental and non-profit organizations are important resources, both for the probation service and for the persons under supervision, as they aid in repairing the prejudice caused to society, for example through community work. Organizations can also offer support services to help persons under supervision avoid re-entering the justice system.

The dynamics of criminality in the social contemporary space brings with it promoting a qualitative civism, while correcting socializing deficits, a need that Probation can successfully respond to.

Approaching the end, we find that probation is and will continue to be a generous invitation to qualified dialogue, for social workers, to all professionals from the criminal justice system, authorities, civil society and the wider public. In light of the new criminal regulations, which expand the sphere of applicability of probation services in Romania,

needed are a series of evaluations that comprise the new conditionings for evaluating the needs of assistance of offenders and not least, the probation counselors' professional training needs and requirements. Concerning this last aspect, the academic environment's educational offer must be adapted to the new requirements, starting from diagnosing the needs and profile of the offender, tuned with the results of action-change type social researches results.

As a study discipline, probation belongs to those matters and fields that require a permanent change of ideas and experiences. The development of modern institutions must take place in accordance and in tight connection with the legislative construction in the matter (Tomiță, M., 2009:11).

Transmitting to the professionals from the probation system an authentic teaching based on new concepts, expertise and research, will eliminate the risk of applying generally applicable models in a very diversified cultural and individual context. The ability to respond to challenges regarding the development of new sanctioning systems with psycho-social basis belongs to the specialists in the field and represents a challenge for the entire professional community forced to permanently adapt their social interventions to the criminal dynamics.

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