

Probation Services and Their Role in the Execution of Criminal Sanctions

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Abstract:

The study aims to present the trajectory of Probation Services in Romania from the first implementation initiatives to their current configuration in accordance with the new regulations in criminal matters (the New Criminal Code, the New Criminal Procedure Code) correlated to the provisions of Law no. 252/2013 on the organization and functioning of probation system, Law no. 253/2013 on the enforcement of sanctions, educational measures and other non-custodial measures imposed by court during trial, Law no. 254/2013 on the enforcement of sanctions and measures involving deprivation of liberty ordered by the court during the trial.

Keywords: Probation services; custodial sanctions; non-custodial sanctions; social reintegration of offenders.

In Romania, the interest for establishment and proper functioning of Probation services is related to the requirement formulated in doctrine: penal policy should “aim at a systematic action of re-socialization of offenders, which can be developed only through a growing humanization of the repressive system and must be based on scientific approach to the crime and the offender's personality”.¹

In 1996-1998 have outlined the first initiatives both in theory and practice² within the implementation of program *Partnership for Justice* by Romanian General Directorate of Prisons, Organization Europe to Europe, University of Exeter, Devon Probation Service from UK, in collaboration with professors from West University of Timisoara (the main objective of the program was the professional training of the prison staff and volunteers from the community for the probation activities); also, in 1997 was created the first experimental center probation in Romania as distinct department of Arad Penitentiary (the activity of this center was focused initially on juvenile offenders).

The development of Probation services in Romania highlights the harmonization of Romanian legislation in criminal matters with the European legislation in the probation area, particularly the Council of Europe recommendations (e.g., Recommendation (2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules: this document recommends that governments of the member states be guided in their legislation, policies and practice by the rules concerning the probation activities, ensuring that this recommendation and the accompanying commentary are translated and disseminated as widely as possible and more specifically among judicial authorities, probation services, penitentiary administration, as well as the media and the general public).

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¹ Christine Lazerges, *La politique criminelle*, P.U.F., Paris, 1987, p. 14.

² Viorel Pașca, *Curs de drept penal Partea generală*, vol. II, Editura Universul Juridic, București, 2011, p. 194.

In accordance with the definitions formulated in Recommendation (2010)¹ on Probation Rules regarding the basic terms used in this field (*e.g. Probation* – 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; *Probation agency* – means anybody designated by law to implement the above tasks and responsibilities; depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime), the national law (Law no. 252/2013 on the organization and functioning of probation system) contains main provisions related to the organization and functioning of bodies carrying out probation activities (at central level the National Probation Directorate within Ministry of Justice – with legal personality and the subordinated Probation Services at territorial level – without legal personality).

The National Probation Directorate establishes strategic directions for action in the field of probation in order to implement justice as a public service, coordinates the enforcement of non-custodial sanctions and measures, develops minimum standards for institutions working in probation and community norms for the approval and accreditation of work with supervised persons, organizes and coordinates the work of territorial structures. The Law no. 252/2013 provides that personnel working in the probation system has specialised training in accordance with the responsibilities assigned by law and aims to achieve high standards of professionalism. The National Probation Directorate provides training to staff on probation and carries out study and research on the directions of development of the probation practice directly or through subordinated organized structures. The probation activity is accomplished by probation officers within territorial structures (Probation services).

The Probation services are specialized bodies with main tasks and duties on supervising the execution of the measures and obligations ordered by the court concerning the social reintegration of offenders, the assistance of persons convicted and the advice to the offender's request. From 2000 to present, these services have seen different names: services of offenders social reintegration and supervising the execution of non-custodial sanctions (according to Government Ordinance no. 92/2000 on the organization and functioning of these services); services of victim protection and offenders social reintegration (according to Law no. 211/2004 on certain measures to protect victims of crime); Probation services (according to Law no. 123/2006 on the status of probation staff). The new legislation in criminal matters (Law no. 286/2009, Law no. 135/2010, Law no. 252/2013, Law no. 253/2013 and Law no. 254/2013) maintains the name of Probation services.

Through its activity, the probation system as a public service, contributes to the administration of justice. The probation system activity is conducted in the interest of the community, for social reintegration of offenders, reducing the risk of committing new crimes and increasing community safety, evaluating and monitoring the impact of custody and the feasibility of non-custodial sanctions and measures, in general and in particular cases, planning and developing assistance and control interventions. Promoting community sanctions and measures aimed at reducing the social costs of

enforcement of criminal sanctions and measures by reducing the prison population, taking into account the potential socio-economic of offenders and maintaining community safety, the probation system has the inherent responsibility to meet the needs of offenders as members of community.

The new regulations in criminal matters (the New Criminal Code adopted by Law no. 286/2009 and the New Criminal Procedure Code adopted by Law no. 135/2010 – correlated to Law no. 252/2013, Law no. 253/2013, Law no. 254/2013) have the main contribution to clarify the role that Probation services play in four directions:

a) Elaborating the pre-sentence reports on individual offenders in order to assist the judicial authorities in deciding what would be the appropriate sanctions or measures (especially, in case of application of non-custodial sanctions or measures) and also other advisory reports required for decisions to be taken by the competent authorities taking into account: the feasibility of the offender's release in the community, any special conditions that might be included in the decision regarding the offender's release, any intervention required to prepare the offender for release.

b) Evaluation, at the request of the court, of the supervised persons, *i.e.* persons convicted, regarding the compliance of the supervision measures and obligations established by law and also of the juvenile offenders whose the court applies a non-custodial educational measures.

c) Development of the special programs regarding the protection, the assistance and the counseling of offenders upon request; these programs are oriented to the social and group behavior of offenders (particularly, the behavior of the juvenile offenders).

The support and advice of offenders can be considered essential dimensions of supervision. In accordance with the settlements of Rec (2010) 1, supervision refers both to assistance activities conducted by or on behalf of an implementing authority which are intended to maintain the offender in the community and to actions taken to ensure that the offender fulfills any conditions or obligations imposed, including control where necessary. The Romanian doctrine³ emphasizes that the offender assistance and counseling activities have a decisive role in monitoring and evaluation by the probation services of offenders social reinsertion.

In the prisons, the Probation services provide support to offenders. Assistance and counseling activity are achieved through the development and implementation of programs of civic education, ethics and moral education, hygiene and health education, psychosocial therapy programs. Participation of inmates in these programs is possible voluntary (in most cases), by recommending of prison administration or *ex officio*. We note that is necessary a transparent evaluation of the participants to the programs of assistance and counseling conducted by Probation services in prisons, taking into account the following criteria: the degree of correction of behavior, the real possibilities of offender reintegration into community, the risk of inmates for community.

Assistance and counseling of offender can be achieved through cooperation and partnership between Probation services and community (especially representatives of non-governmental organizations specialized in social assistance).

d) Initiation of collaborative programs with public institutions and non-governmental organizations for the joint actions aimed to the effective social reintegration of persons

³ Pavel Abraham, Victor Nicolăescu, Ștefăniță Bogdan Iașnic, *Introducere în probațiune, supraveghere, asistență și consiliere a infractorilor condamnați la sancțiuni neprivative de libertate*, Editura Național, București, 2001, p. 140.

supervised: finding jobs, development of training courses and qualifications; we can observe that the fourth direction of action highlights the *postdelictum* and *postdecision* involvement of the representatives of civil society into probation activities focused on supervising and re-socialization of offenders as provided by law (Law no. 253/2013 and Law no. 254/2013).

In this situation is accomplished the requirement formulated in Rec (2010)1: the Probation services shall work in cooperation with other agencies of the justice system, with support agencies and with the representatives of civil society in order to implement their tasks and duties effectively.

Regarding the sanctioning regime applicable to minors, the new Penal Code is more nuanced, referring to custodial educational measures (non-custodial sanctions of juveniles offenders as provided the previous Criminal Code and Law no. 275/ 2006 as amended by Law no. 83/2010) and the non-custodial educational measures.

The Law no. 253/2014 emphasizes the role of Probation services in coordination of the process of monitoring compliance the non-custodial educational measures and enforcement of obligations imposed by the court in charge of minors to ordering: civic training stage; supervision; recording the weekend; daily assistance. Coordinating the supervision of the minor in one of the educational measures is carried out by the probation officer-case manager. During the execution of one of the non-custodial educational measure, the probation officer-case manager shall exercise supervisory control over the process, both with respect to execution of the measure by the minor and of the fulfillment of duties by the person exercising supervision.

In coordination of minors supervision, the probation officer-case manager shall proceed as follows: informs the juvenile offender and parent, tutor or person responsible for monitoring within the supervisory process; evaluates initially the minor; planning the supervisory process (elaborates the work plan); coordinates the activities of the community institutions and the persons responsible for supervising of minor offender; cooperates with the judge, the court enforcement and other authorities or public institutions; monitors the surveillance; evaluates finally the supervisory process. For each case, the probation officer-case manager shall establish a record of probation.

During the enforcement of the non-custodial educational measures, the Probation service shall notify the court in the next cases:

a) intervening the reasons for modifying the obligations imposed by the court or the end of enforcement of some of these (the court orders the change of obligations if considers that this ensures better chances for the supervised minor or the extinction of obligations if considers that is not necessary to maintain them - as provides art. 122 of the new Penal Code);

b) minor supervised, with bad faith, does not comply the enforcement conditions of the educational measure or the obligations imposed (court orders: extending educational measure, without exceeding the maximum provided by law for this; replacement the measure with another non-custodial educational measure, more severe; replacement the non-custodial educational measure with one custodial educational measure: internment into educational center, if initially was taken the non-custodial educational most severe during its maximum – as provides art. 123 of the new Penal Code).

In the case of major offenders, as provides the Law no. 253/2013, the Probation Service coordinates the monitoring of compliance of supervision measures and enforcement of obligations set by the court on the persons to whom it was ordered:

delay penalty; suspension of sentence under supervision; conditional release if the remaining unexecuted punishment is 2 years or more at the release date.

The coordination of supervision is carried out for each person supervised by the probation officer assigned case manager as follows: informs the person on the surveillance process; initially evaluates the person supervised; elaborates the supervisory plan; develops the survey and conducts or assists in the supervision process; directly controls the compliance of surveillance measures by the person supervised - in exercising control compliance measures, the probation officer periodically checks the data provided by the person supervised and establishes any other control measures adapted case; collaborates with the execution judge, community institutions, and other public authorities or institutions; monitors the surveillance; finally assesses the supervisory process.

For each case, the probation officer-case manager prepares a record of probation.

At the first meeting, the probation officer-case manager shall inform the person convicted on supervision measures and obligations that have to execute and the consequences of compliance or non-compliance of them. If the supervised person has executed obligations whose fulfillment is verified by other bodies than the probation service, the probation officer informs the person about it.

The organization and conduct of supervision is carried out based on a survey plan prepared by the probation officer-case manager, taking into account the initial assessment and the involvement of the supervised person. Monitoring plan shall be made within 30 days of the first meeting and reviewed whenever necessary, depending on changes in the person's situation and progress of the case.

In order to enforce the obligation of attending a social reintegration program, probation officer-case manager, depending on the situation and individual needs, identifies suitable reintegration program within the Probation service or within the community institution of those recorded in the database established at the national level.

If the reintegration program set is available in the Probation service, probation officer-case manager develops the program if has a specific training or ensures the transmission of case to the probation officer specialized in this respect, within the Probation service.

If the established social reintegration program is not available or cannot be implemented in the Probation service, probation officer-case manager identifies a community institution where the supervised person can follow the program.

Following the establishment of community institutions, probation officer issued a decision referring the case to the community institution established for enforcement of obligation.

The decision and a copy of the sentence concerning the enforcement of attending a social reintegration program shall notify to the community institution set for developing this program. Also, the decision shall be communicated to the person supervised.

During the enforcement of obligation, the probation officer-case manager monitors the implementation of the program of social reintegration.

Upon completion of the program, the document issued by the community institution which confirm the attendance of this program by the offender is attached (copy) to the record of probation.

Offender reintegration into community is an important goal of community sanctions and measures, which can be achieved through one close cooperation between

Probation services and local community members in carrying out surveillance of offenders, and in the development of local programs on crime prevention. Community sanctions and measures are a practical solution⁴ based on the premise that, unlike detention regime, in the community are better conditions for the social reintegration of offenders and assumption of their responsibilities; the enforcement of community sanctions must take into account the resources of the community and the need for supervision of offenders, ensuring a balance between the need for social safety and needs of the social reintegration of offenders.

In accordance with the requirements underlined in Rec (2010)1, we consider necessary that the competent authorities and the Probation services shall inform the media and the general public about the work of probation services in order to encourage a better understanding of their role and value in society.

⁴ Pavel Abraham, Daniela Nicolăescu, *Justiția terapeutică. O nouă abordare în tratamentul consumatorului de droguri*, Editura Concordia, Arad, 2006, pp. 20-27, 41-48.