

# PROBATION AND ITS ROLE IN THE CRIMINAL JUSTICE SYSTEM

PhD Senior lecturer **Mihaela Tomiță**  
West University, Timișoara

**Abstract:** *This paper treats the crucial role that probation has in the criminal justice system, both in terms of crime reduction as a whole, and the appropriate treatment applied to criminal offenders.*

*Probation represents a revalorization of the punishment because it doesn't have in view only the delinquent, but also the victim trying to restore the order existed before the crime.*

*The juridical promotion and regulation of probation was made step by step, under the impact of a complex of processes and changes that interfered in the sphere of law and criminal justice.*

**Key words:** *socialization process, criminal justice system, probation, re-socialization*

Treating and preventing infractionality involves directly responsibilities at all social levels, having in view the fact that poverty, the economical and social crisis do not generate from themselves these kind of phenomena, criminality having a much more complex etiology, and it's prophylaxis presumes the cooperation of all entities that have contact with this phenomena (from state institutions to NGO's).

In this period, there appeared and structured new fundaments with the potential in favour for the infractionality phenomena.

The uncontrolled explosion of the source of information which instead of contributing to the diminution of the phenomena did nothing else but becoming motivational vehicles for the proliferation of delinquent acts.

In this context, there impose a series of socio-juridical modalities of control and diminution of the negative impact of the mentioned factors from the perspective of the sanctionary treatment, with the accent put on the alternative punishment.

An important method of reducing relapse is diversion to other penal sanction instead of the punishment with jail.

The role of the socio-economical factors must be treated with much attention when we talk about the delinquency phenomena knowing the fact that the economical basis determines the social, political, cultural, institutional structure that is why the economical situation of a stat or of a small area determines some human behaviours including criminal one. On the other side the socio-cultural factors have a predominant roll in the positive or negative socialization of people and in the end they lead them to committing crimes. As well, we can show that there is social tolerance towards the deviant behaviour, latent or manifest, with the condition that these behaviours do not affect the wellbeing of the society.<sup>1</sup>

The approach of delinquency on the coordinates of the normal binomial – pathologically we find it in the specialty literature<sup>2</sup> where the criminal behaviour is seen as a result of the psychological abnormality, or as a result of a form of perfectly normal behaviour, but it can not be compatible with the standards of normality of the cultural group or context.<sup>3</sup>

The social and juridical laws indicate what is fair on unfair, moral or immoral, legal or illegal, licit or illicit, etc. establishing the area in which the action or the behaviour of the individuals is permitted. Because the specifically and general features of the offences and crimes are evaluated within the penal law, there are differences from a juridical system to another, differences that are in connection with the cultural and historical traditions, of the customs and habits of each society.

---

<sup>1</sup> Ogien A., *Sociologia devianței*, Editura Polirom, Iași, 2002;

<sup>2</sup> Rădulescu Sorin, Banciu Dan, *Sociologia crimei și criminalității*, Editura Șansa, București 1996, pag. 20

<sup>3</sup> Idem, pag. 21

On the other hand even though, apparently, the crime appears as a juridical phenomena enforce by the rules of the penal law, it is at first a social phenomena, which is produced in the society having negative and destructive consequences for the security of individuals and groups. So, in its general juridical sense, criminality includes those violations of the penal rules through which social and normative order is protected, the laws and freedom of the individuals and social groups, the security of the fundamental institutions of the state are protected.

Defining the offences and crimes just through the criteria of the penal normative is much reduced because the evolution of the criminality phenomena is influenced by a series of socio-cultural variables.

In other words achieving the interiorization of the valuable normative system of the society in the consciousness and behaviour of each individual is the normal task of the socialization process.

As the sociologist Szczepanski<sup>4</sup> said, in the socialization process “the society forms the ways of behaviour, guides the satisfaction of the needs and what is called human nature, no matter the way it is defined, it is a sum of elements of the culture that have been internalized”<sup>5</sup>. Conceiving socialization as a process within an individual gets a determined cultural identity and at the same time, reacts to this identity, B. Bernstein considers that, in the end, “socialization has as an effect making people lonely and predictable”, because within this long process “the individual becomes aware, through the different codes that he is called to fulfil, of the different principles that actuate in the society”.<sup>6</sup>

The reform of the penal systems and the criminal justice is marked by the end of the XX-th century by the attempt to find, build and experiment new models of prevention of criminality, grounded on modalities and restorative practices. For every person, minor or adult, depriving of liberty is a distinct situation, which has great impact in his life, in the time of the detention and afterwards when he is free. In the time that the individual is in prison, with people that just like him committed crimes, the biggest difficulties are located in the relationship with other people, but also adapting to a way of life that has multiple privations.

The specialty studies<sup>7</sup> highlight the fact that at the minors that get for first time in prison there come multiple somatisations (they become thinner, have insomnias, cry, have pain in the inferior members). In this case, the shock of being in the penitentiary is for the minors directly proportional with the emotional damage that already existed, the sensitive ones, those that are socially and affectively immature, those that are sick are the ones that suffer more in general.

These arguments lead us to the idea that prison is in the most cases a “source of criminality” because the penitentiary must remain the last one of the applied penal sanctions.

In reality, though, there appear serious obstacles even though once with the reform of the penal sanctionatory system, the process of re-socialization reports itself also to the alternative forms of sanctioning the delinquents, mostly the youngsters and minors, which in the present become larger through their educational efficacy.

In the spectrum of alternative sanctions, with a special role in the recovery process of the offenders is the probation.

Etymologically, the term of probation comes from “probatio” that is a Latin word and it means a period of demonstration, or attempt of forgiveness. So, those that are convicted that showed their will to change through the established period of time, by fulfilling the conditions imposed by their probation, are forgiven and sent free from other implications of the criminal justice system.

Referring to the penalization of the offenders, probation is in fact a sanction, but with all these, its philosophy is based on the component of the offender individual in view of re-socialization and

---

<sup>4</sup> Jan Szczepanski în Banciu Dan, Rădulescu Sorin, *Evoluții ale delincvenței juvenile în România*, Editura Lumina Lex, București 2002 pag. 18

<sup>5</sup> idem, pag. 19

<sup>6</sup> Basil Bernstein în Banciu Dan, Rădulescu Sorin, *Evoluții ale delincvenței juvenile în România*, Editura Lumina Lex, București 2002 pag. 18

<sup>7</sup> Gheorghe Florian, *Psihologie Penitenciară*, Editura Oscar Print, București, 1996, pag.121;

social reintegration. With all these, in the specialty literature appears frequently numerous incoherencies in interpreting these terms.

Each state has its own penal philosophy, the most used one can be the punitive sanction and other times counselling /assistance replaces almost integrally the punishment. The proportions in which the punishment and the assistance in the penal legislations are in the sanctionary field of penalization the offenders are being found in the modality through which the system of probation becomes efficient.

Probation represents a valorisation of the punishment, but although the accent remains put on the punishment, this is understood more brightly and is developed more complete in its content but also the victim trying in this way the restoration of the existent order before committing the offence.

At world scale, the role and functions of the incarceration, as an instrument of social control rises a controversial of great importance. So, some specialists consider that re-education in prison does not lead to a good result, but it has a dehumanized aspect on the human personality.

The work document made by the secretary of the VI-th Congress of the United Nations, referring to the prevention of crimes and treatment of the delinquents (Caracas - Venezuela, 1980) establishes that incarceration is not capable to turn better the chances that a delinquent follows the right way and the fact that the imprisonment institutions have not succeeded in reducing criminality.<sup>8</sup>

The existent theories in the specialty literature based on the cases found in the current practice demonstrate and sustain the inefficiency of the custodial punishment, which enforces the fact that when the antisocial facts that are committed have a reduced public danger the best solutions are the alternative sanctions.

The appearance of the alternative sanctions with the incarceration is owed to the fact that traditional penal law could not respond anymore to some principles that are much more accepted by the specialists and the ones that practitioners in the field of justice: the priority given to the reasocialization in the open area (community), involving community in the reaction towards criminality, the place and rights of the victim, as well as the delinquent, etc. As Denis van Doosselaere shows, the alternative is a measure that allows the delinquent to live in his natural life environment; it is a particular condition for maintaining him in the family.<sup>9</sup> It "the neutralization of the most violent ways, in the absence of the avoidance of the appeal of penal law, which represents the failure of the will of preventing some situations and some behaviours". The juridical promotion and regulation of the alternative sanctions was made gradually, under the impact of a complex of processes and mutations that came in the area of law and criminal justice.

The specialty literature gives the alternative measures some other advantages, comparatively to the incarceration and part of them are<sup>10</sup>: their flexibility practice, according to the seriousness of the crime and the intensity of the necessary effort, the active collaboration of the delinquent, having to do this because he wants to escape from the judgment control, or because he wants to set himself free from the feeling of culpability, because he wants to repair the damage by himself to the victim, the possibility of offering compensation on the victim and last but not least, the participation of the community in solving the criminality problem, including to modify the perception of the community towards delinquency.

In Romania, the first step in the direction of the development of this system of alternative sanctions was made by introducing probation in the justice system. This was just the beginning, it's consecration in the practice of instances was late gaining field in the direction of building a specific legislation and an adequate institutional frame that, regarding our country is still in the full process of fundament. So, in the year 2000, the institution of probation in Romania was legislatively consecrated by adopting the Government Ordinance nr.92/2000 about the organization and function

---

<sup>8</sup> Revista de Știință Penitenciară, nr. 1-2/1990, Direcția Generală a Penitenciarelor din Ministerul Justiției, pag. 31

<sup>9</sup> Denis van Doosselaere, *Alternative la privarea de libertate: Ce măsuri trebuie luate pentru minorii din comunitatea franceză din Belgia*, Revista Română de Sociologie, anul IX, nr. 5-6, 2003, pag. 357

<sup>10</sup> Dan Banciu, *Crima și criminalitate, Repere și abordări juris-sociologice*, Editura Lumina Lex, București, 2005

of the reintegration services of offenders and the supervision of the no custody sanctions execution, approved with some modifications in 2002, through the law nr.129.

By the end of the year 2002 the infrastructure was developed at a national level by organizing 41 social reintegration and supervision services, near the law courts.

The process of organization and development of the probation system has gone through some phases. The first, was an experimental one and it focused on activities of promotion for probation institution, its role, the people that benefit from using the alternative sanctions at detention, in front of the magistrates, the local authorities, public opinion and also in unfurling some specifically activities at the court, in prison and community.

In the year 2006, by promoting the law nr.275, we can talk about a new phase that included the development of the probation services. Once promoting the law nr.275/2006 referring to the punishment execution and other measures disposed by the judiciary organs through the penal process, it is mentioned that a probation counsellor must be a member of the committee for individualization the regime of custodial punishment execution.

The year 2007 marks the extinction of the personal schemes in the local services and reorganization of the system at a central level: Direction of Probation-Ministry of Justice and at the local level; 41 probation services under the authority of the Ministry of Justice through the local courts.

Elaborating the normative frame had in view the national and international experience, as well as a series of recommendations of the Council of Europe, such as The Recommendation R (92)16 regarding the European Regulations for sanctions and communitarian measures, Recommendation R (2000)22 regarding the improvement of applying the European Regulations for sanctions and communitarian measures.

Based on the study <sup>11</sup> made in 2007, regarding the perception of specialists, from the point of view of those that are in the academics field, the role of alternative sanctions applied on minors and youngster that committed crimes, is of educational order but also social following the reintegration in the society after the punishment execution and avoiding the repetition of criminal behaviour.

The role of application the alternative sanctions is centered by the opinion of specialists from justice, in the same study, through the social reintegration and correction the criminal behaviour of minors. Through these kinds of punishment, the educational and re-education process are easier and more efficient, and there is much more entities that can offer sustainment for minor's rehabilitation: family, school, pedagogues, psychologists, social workers, group of friends, etc. Regarding the replacement custodial punishment with the alternative sanction the opinions are split. On one side it is underlined the utility of the alternative measures and why they are need, because they are less serious facts for which it would be recommended. On the other hand, it is underline the role of exemplarity and of discouragement of punishment with imprisonment.

The perception of the prison officers, the specialists who work in the re-education centre, police officers and probation counsellors regarding the role of alternative sanctions, this is grouped round the concept of delinquent education, of social reintegration but also of being aware of the gravity of the committed facts. A great attention from the family but also from the teachers, counselling and sustaining for rehabilitation can become a key factor in avoiding a relapse from offenders in a way, and in forming a pro-social behaviour, on the other hand Regarding the type of sanction that must be applied to the delinquent minor, in all groups were the same tendency: the punishment must be established taking in consideration the gravity of the committed fact, but only the penal violent facts should be sanctioned by deprivation of liberty. In these kinds of situations, the alternative sanctions are recommended and sustained by the interviewed ones.

In the opinion of all the interviewed ones, the problems that appear in applying the alternative sanctions are of legislative order. The absence of a coherent legislation, adapted to the

---

<sup>11</sup> Mihaela Tomiță, *Delincvența juvenilă. Sisteme alternative de executare a pedepselor*, Editura Eurobit, Timișoara, 2008, p. 221

social Romanian system, generates failures in administrating the criminal phenomena, in preventing or combating it.

The introduction of alternative sanctions, of the probation at least, represents an important step in the direction of harmonizing the penal Romanian law with the European one, even if this challenges many controversies regarding to its conceptualization in direct feature with the specific philosophy of each criminal justice system.

Known also as “social work for justice”, probation is a sanction situated within the binomial of to punish – to help/assist and it is focused on involving the civil society in the social reintegration process of offenders.

In Romania, at modernizing his probation should remember so as to render traditional signs of their identity, and so as to stimulate future work concerns the efficiency of renewals urgently needed.

Probation, in communities where they operate, there was both practical contributions to the re-socialization of offenders and increasing the overall quality of civic values in the western-style communities where the motto "in democratic law is king ", generated a decrease in crime rate and a greater respect for authority in the general sense of the term. Probation acted thus in directly, the purpose of rationalizing and articulating all social controls beneficial effects on social entropy decrease.

Justice, as the genesis to a social problem, so Community administration thereof, into the logic impending democratic management of all components of a pluralistic social space.

In these coordinates, the contribution of probation as an institution and profession, is felt through the management equation of community problems by involving the community itself, which provides as taxpayer, and spread the necessary financial functioning of the system justice and prison system.

In addition, non-custodial sanction offenders, reveal an important resource to reduce costs arising from the traditional type of custody conditions.

#### **BIBLIOGRAPHY:**

1. Bernstein Basil în Banciu Dan, Rădulescu Sorin, *Evoluții ale delincvenței juvenile în România*, Editura Lumina Lex, București 2002;
2. Banciu Dan, *Crima și criminalitate, Repere și abordări juris-sociologice*, Editura Lumina Lex, București, 2005;
3. Denis van Doosselaere, *Alternative la privarea de libertate: Ce măsuri trebuie luate pentru minorii din comunitatea franceză din Belgia*, Revista Română de Sociologie, anul IX, nr. 5-6, 2003;
4. Florian Gheorghe, *Psihologie Penitenciară*, Editura Oscar Print, București, 1996, pag.121
5. Ogien A., *Sociologia devianței*, Editura Polirom, Iași, 2002;
6. Rădulescu Sorin, Banciu Dan, *Sociologia crimei și criminalității*, Editura Șansa, București 1996;
7. Szczepanski Jan în Banciu Dan, Rădulescu Sorin, *Evoluții ale delincvenței juvenile în România*, Editura Lumina Lex, București 2002;
8. Tomiță Mihaela, *Delincvența juvenilă. Sisteme alternative de executare a pedepselor*, Editura Eurobit, Timișoara, 2008;
9. Revista de Știință Penitenciară, nr. 1-2/1990, Direcția Generală a Penitenciarelor din Ministerul Justiției.