

## FROM THE SERVICES ABOUT ORGANIZATIONS AND FUNCTIONING VICTIMS PROTECTION AND SOCIAL REINTEGRATION OF OFFENDERS TO PROBATION SERVICES IN ROMANIA

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### Abstract

*If we accept that notion and scope of the institution of conditional release was stipulated for the first time in the The 1874 Law, known as The Penitentiary Regime Law<sup>1</sup> as a representative of the Romanian system that works today, then yes, for the Romanian Principates this is the official time of probation beginnings for nowadays. Also, the emergence and development of the concept of probation as well as creating the Romanian institutional framework after the December 1989 has evolved timid and audacious - without abandonment but rather with perseverance and loyalty to a valuable desideratum.*

*At international level "It is difficult to appreciate when exactly appeared this social and legal phenomenon, but most experts are unanimously agreed that the probation first appeared in the system of common law, in the second half of the century XIX."<sup>2</sup> It did not appear suddenly but it was developed as a result of a succession of phenomenon about humanization of justice and as well as an expression of "innovative and avant-garde of some judges into the common law has an absolute authority."<sup>3</sup>*

*From etymologically, probation term comes from the Latin probation, which designed a period of demonstration or testing, after intervened forgiveness. The convicts who demonstrated desire for change throughout the set period - probation - were forgiven and release for other implications of the criminal justice system.*

**Keywords:** *social reintegration, probation, services, assessment report*

### Introduction

If at the end of the XIX<sup>th</sup> century can be said about the existence of common law in capitalism, in the period before, it can display the principles of English Common Law in the Middle Ages (the conquest of England by the Normans, in 1066), did not have the effect of

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<sup>1</sup> Conceived by Ferdinand Dodun des Perrieres, brought in Moldova during the reigns of Grigore Alexandru Ghica in 1852 to organize the prisons in the country.

<sup>2</sup> Abraham, P., Nicolaescu, V., Iasnic, St., B., *Introduction to probation. Supervision, assistance and counseling to offenders sentenced to non-custodial sanctions*; National Publishing House, Bucharest, 2001, p. 83.

<sup>3</sup> Idem, p. 83

## FROM THE SERVICES ABOUT ORGANIZATIONS AND FUNCTIONING VICTIMS PROTECTION AND SOCIAL REINTEGRATION OF OFFENDERS TO PROBATION SERVICES IN ROMANIA

removing Anglo-Saxon law, but influenced by English law through an administratively centralized manner, favoring the establishment of feudalism with strong military accents and consequently the common law.

Common law is that justice applies on the entire territory of England, unlike local juridical customs which applied only in certain regions. Developing a common law for all of England will be, exclusive, the opera to the Royal Courts of Justice, named after the place where the cases were held, "Courts of Westminster".

These Courts were originally more political than judicial organisms, the object of their activities representing the solving problems belonged to the king and central government, only subsidiary, dealing with problems of individuals. The applicable law at Westminster was characterized by an excessive formalism which prevented almost completely, takeover the Roman law, although, on the other hand the development of feudalism had generated novel legal issues that had to be resolved by suitable rules.

**History and evolution of probation.** Thus, Courts had developed a new right - the English common law – consisting of numerous local customs of England and very few elements of Roman law).<sup>4</sup> After XIII<sup>th</sup> century expansion, the English common law was in the position of the Roman civil law, which in the classical era was "doubled" by praetorian righteous, respectively for English common law functioned "Equity" – being fair and impartial, which was gradually transformed into a legal doctrine together with common law, so that in the XVI<sup>th</sup> century to get such a magnitude as to remove the common law – but such event doesn't occurred.

Nineteen<sup>th</sup> and twenty<sup>th</sup> centuries were characterized by important changes in English law matters, juridical solutions given by common law also began to be systematically grouped, no longer separate courts in common law Courts and Courts of equity, rules can apply to both common law and equity.

Nevertheless, the traditional character of English law has not been changed, systematization English was not a codification such as the one known by the French system or by other peoples from the family of Romano-Germanic law.

Development of English law remained since then - during the time – at the discretion of the court – the legislator ordering and systematizing -only courts with new possibilities, English law doctrine generating the collection as: „Law raports" or „Law of England" (1865).

Nevertheless, were too, ample modernization of English common law by elaboration of legal administrative acts; this fact shall generate the approaching of the legal systems of other European countries, based in their turn by Roman law, both considering the legal system applied in most of Western Europe - regarding jurisprudence and legal glossary.

Concerning American law, in its early XVIII century form was developed in the English colonies, without applying English common law because a deep resentment toward England which led a policy of oppression and persecution and chasing their own territories. English colonies were applying certain local rules „and a right system rather primitive based on some precepts of the Bible. This situation has given rise, often to abuse from the magistrates." (Bobos, p. 107)<sup>5</sup>. However, the next century, the society development by poit of

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<sup>4</sup> Bobos, Ghe., *General theory of law*, Dacia Publishing House, Cluj-Napoca, 1994, p. 93.

<sup>5</sup> Bobos, Ghe., *General theory of law*, Dacia Publishing House, Cluj-Napoca, 1994, p. 107.

economic view imposed the adoption of legal solutions, and the instrument it has been appealed on English common law, although it could opt for the French one *in* *ca* instrument *s-a apelat la dreptul comun englez preferabil celui francez* that was the privilege of those established in Canada and Louisiana. „The independence of the English colonies, officially proclaimed in 1783 and forming U.S. have created new conditions for development. Also, were held territorial changes too, that have influenced American jurists.

In 1763 Canada was annexed by England and in Louisiana in 1803 was acquired by United States of America. Thus the, disappeared the French danger for North America and France became the U.S. a friend and an ally; such, hostile feelings have turned again against England.

1787 United States of America Declaration of Independence and the Constitution were the promoters of American law and were the example of independence and American law - which was developed by adopting codes; between the codes, as importance it has been noted the American Civil Code from 1808, drafted and adopted in the spirit of the French Civil Code.

The hostilities toward English law or sympathy for French law finally led to „English common law triumph [...] meaning in fact the triumph of tradition. English language that Americans have not raised the problem to abandon it - was the means that supported the triumph of English common law”<sup>6</sup>. (Bobos, p. 107).

On the other side probation appeared as a result of the evolution of how society considers to penalize people infringing the values protected by the criminal law.

Another reasoning explains probation - expressed by Mr. Professor Pavel Abraham – it represented the binding element of non-custodial sentences, such as fine and those freedom depriving such as imprisonment, respectively for specific situations in which a fine would mean too little to penalize the offender and the application of imprisonment, too much for the gravity of the offense.

On the other, „probation appeared as a result of the evolution of how society considers to sanction those persons who are affecting the protected values by the criminal law”<sup>7</sup>.

As mentioned, etymologically the term of probation comes from the Latin *probatio* which singled a period of demonstration or the testing then intervened forgiveness. The difficulty of the term definition consisting in way of acceptance for a penal system by opting for defining concept. Thereby, conceptualization appears different depending on the role the country has in the criminal justice system, the significance of the sentence, the social perception of it, but also the individual's role in society.<sup>8</sup> So, the probation could be seen as a punishment or as a control involved regarding assistance in case if the punishment aims causing suffering or pain, while involved regarding assistance is providing help and support to influencing people's behavior without causing suffering.

**In Romania**, after the Revolution of December 1989, the emergence and development of the probation concept and creation of the institutional framework has

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<sup>6</sup> *Idem*.

<sup>7</sup> Abraham, P., Nicolaescu, V., Iasnic, St., B., *Introduction to probation. Supervision, assistance and counseling to offenders sentenced to non-custodial sanctions*; National Publishing House, Bucharest, 2001, p. 81.

<sup>8</sup> Abraham, P., Nicolaescu, V., Iasnic, St., B., *Introduction to probation. Supervision, assistance and counseling to offenders sentenced to non-custodial sanctions*; National Publishing House, Bucharest, 2001.

FROM THE SERVICES ABOUT ORGANIZATIONS AND FUNCTIONING VICTIMS  
PROTECTION AND SOCIAL REINTEGRATION OF OFFENDERS TO PROBATION  
SERVICES IN ROMANIA

expanded at a timid but audacious - without abandonment but rather with perseverance and loyalty towards its a valuable goal.

Throughout and effective personally participation in various meetings that have had occur in the Bihor County (Romania) even with international presence in the field of probation, at the beginning of activity in Romania I met laudatory remarks, admiring but also nostalgic about the existence and application of the principles and specific methods and the before 1989, the evidence being even existing legal provisions at that time. Romania's Penal Code<sup>9</sup> from 1968 provided by the dispositions of art. 90 and 91 that criminal liability could be replaced by a responsibility which attracted application of an administrative sanction or a form of community social control – achieved by direct addressing of certain causes by the community social control organ; the case was sent to public organization as envisaged in art. no 145 from 1968 Romanian Penal Code – for taking measures or to guarantee or custody the offender to a public organization - means all the public authorities, public institutions, institutions or other legal persons of public interest, management, use or exploitation of public property, public services and goods of any kind that by law are public. Also, could be entrusted for up to one year people who have committed crimes whose punishment stipulated by law was imprisonment for 6 months and these conditions were accomplished such as: if the act in its specifically content and in circumstances in which it was committed shows a reduced degree of social danger and produced no serious consequences and if the offender behavior of the past and present resulted sufficient grounds that it may be straightened without a real penal punishment; as entrust warranty may be revoked if it is found within the term test showed no evidence that the offender correcting.

Also, for juvenile offenders, too was a oversight regime that were working or were studying and he had obligation as well: stringently respect work and teaching program, to respect the measures taken in view of correcting his, to comply with the rules of discipline, to obtain a qualification at the work place or to achieve good teaching results etc.

In 1996, in Arad Penitentiary Institution implemented a pilot program for probation; it was created under the integrated action plan – Partnership for Justice – conceived by *Europe for Europe Organization*, to support fundamental reforms of the criminal justice system in Romania. Basis for initiating this project has been accepted the collaboration in penal executional field that the head of General Penitentiary in Romania issued in 1994, to the British Embassy. British project aimed principles to Romanian conditions by adopting concrete solutions to decongest prisons on Romanian, avoiding the negative effects of jails particularly on minors. Also, to Arad Penitentiary in 1997 was first experimental application of specific elements of probation by the European legal system authorized with specific activities according to Recommendation - R no. 92 (16) to the Council of Europe.

1997 was a year with an important large scale development because was founded besides rehabilitation center for minors in Gaesti – Probation Center - with activities by the courts but after release, too and in Focsani was created a probation center with Vrancea Social Service with assistance and counseling; in 1997 too, in Cluj-Napoca was founded a probation center in partnership with Gherla Penitentiary.

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<sup>9</sup> Published in Romanian Official Bulletin, I Part, no. 79-79 bis/21.06.1968.

In 1998 was created Probation Directorate inside of General Direction and Coordination of Legal Strategies Against Crime in Romanian Ministry of Justice.

Mentioning the Probation Center in Iasi with a substantial activity with Social Alternatives Association one of the most visible association on NGO sector (without lucrative purpose).

In 1999 was created three more probation centers to: Pitesti, Targoviste and Timisoara.

Also, Romania became a permanent member to Probation Permanent European Conference.

A significant role among the normative acts has Law no. 129/2002<sup>10</sup> approving R.G.O. no. 92/2000 about the organization and functioning of the social reintegration services for offenders and supervision of the execution of non-custodial sanctions<sup>11</sup> which provided in art. no. 1 that they - known under the law: services of social reintegration and supervision - was founded under the Ministry of Justice, as specialized institutions, without legal personality. Under art. 11 of Law no. 129/2002 is providing that the probation services and social reintegration were chasing straightening of the people sentenced to prison whose total penalty was pardoned by law as well as minors who committed offenses under the criminal law, to which it was removed by law educational measures of admission in a rehabilitation center.

Subsequent, the adoption of Law 123/2006 concerning the Staff Regulations of Probation Services<sup>12</sup> was passed to officially name *probation* without argue that the term will be confused with provision of evidence from a trial.

Starting 2006, probation officers responsibilities increased following the entry into force of *Law no. 275/2006 on the execution punishments and measures ordered by the court during the trial*<sup>13</sup> – abrogated, because for now is in force *Law no. 254/2013 about sentences and custodial execution measures ordered by courts during the penal trial*<sup>14</sup>. Under the Law no. 275/2006, probation counselors were required to attend some activities within the competence of prison territorial - it's about individualizing punishment commissions and probation committees. Regarding the categories of beneficiaries of probation revealed the presence of several different categories of persons convicted for offences, offences generally with a low degree of dangerousness and people supervised by probation services as a result of court order to minors, ill HIV/TB, drug users, people with mental disorders and people convicted of various offenses under the prison and preparing for conditional release. (Balica, 2009).

A new change in the entire system of probation has occurred once with *Law no. 252/2013 about organization and functioning of the probation system*<sup>15</sup> in accordance with the entire penal legislation which will enter to force - mentioning principally Romanian Penal Code and Romanian Penal Procedure Code – both in force from 1<sup>st</sup> of February 2014.

Conclusions: throughout this "journey" in which I showed mainly how was born the concept of probation, generally in law and also in Romanian society before 1989 and after

<sup>10</sup> Published in Official Gazette of Romania, no. 129/18.03.2002.

<sup>11</sup> Published in Official Gazette of Romania, no. 423/01.09.2000.

<sup>12</sup> Published in Official Gazette of Romania, no. 407/10.05.2006.

<sup>13</sup> Published in Official Gazette of Romania, no. 627/20.07.2006.

<sup>14</sup> Published in Official Gazette of Romania, no. 514/14.08.2013, actualized.

<sup>15</sup> Published in Official Gazette of Romania, no. 514/14.08.2013, actualized.

FROM THE SERVICES ABOUT ORGANIZATIONS AND FUNCTIONING VICTIMS  
PROTECTION AND SOCIAL REINTEGRATION OF OFFENDERS TO PROBATION  
SERVICES IN ROMANIA

1989 can be said that in the present moment in our country is in force a modern legislation accordind with part of European norms - enough to ensure fundamental requirements; also I appreciate as against of the stage which began its work, the assessment report of the probation councilor had advisory only for instances, for now his duties have multiplied and gained meaning and signification, the assessment report having even recommendation value by formulating proposals reasoned, as provided for example the Law no. no. 252/2013 about organization and functioning of the probation system on par. 3 - art. no. 39: *the probation counselor formulates assessment report, reasoned proposals on measures considered appropriate in terms of reducing the risk of committing crimes.*

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