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A SOCIO-LEGAL APPROACH OF PROBATION IN LIGHT OF THE NEW PENAL CODE. 
RESTORATIVE JUSTICE VERSUS RETRIBUTIVE JUSTICE

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Abstract:
Present article offers a theoretical analysis regarding probation services provided in Romania. In this respect are reminded the main forms of justice, as they exist around Europe, and then implemented and adapted to Romanian specific. Also there are underlined the major international regulations and laws related to the social-legal approach of probation. The most part of the article is dedicated to a deep analyse of the New Penal Code with regards especially to probation services. Also there mentioned the specifics and philosophy of each form of justice and there are given several examples of how them are implemented in the Romanian practice. New Penal Code along with probation laws and the enforcement of non-custodial sentences are part of a reform of probation in Romania that exceeded experimental phase as a significant institution whose role in the execution of non-custodial measures and the individualization of punishment, being at this stage legally contoured.

Keywords:
Probation, restorative justice, retributive justice, New Penal Code, offender, victim, mediation

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INTRODUCTION

Probation, although a significant institution in the field of executive penal law, which is as a way of gathering execution of non-custodial measures, takes a new approach with the entry into force of the New Penal Code (NPC) along with the law regarding the organization and operation of probation system called Law 252 of 19 July, 2013, together with the law on execution of punishments and educational measures and other non-custodial measures ordered by the court in criminal proceedings known as Law 253 of 19 July 2013.

We were interested to identify the socio-legal context of institutional redefinition of probation in Romania. For this we sought to identify the underlying penal philosophies that represent the base of the construction of probation system, both in Romania and worldwide, along with the history of this institution and the consistency between national and international legislation, especially the European one regarding the non-custodial alternatives.

We considered as significant our concern regarding social alternatives to incarceration considering the following: financial cost and social costs generated by custodial sanctions; increasing risk of committing new crimes by people who were convicted of deprivation of liberty; stigma and social exclusion that these persons are subject to; vulnerability of prisoners' families and also of individuals who have served a custodial sentence.

Previous training in social work and the relative professional contiguity between it and the occupation of probation counsellor prompted us to choose probation, mainly from a legal perspective, but with a significant centring on legal sociology and ethical constitutive elements in the current Romanian context.

The difficulty of the approach is given by the institutional changes that probation underwent with the appearance of NPC and the above mentioned laws, this difficulty being precisely that which constituted the challenge in choosing the theme. The approach does not claim any exhaustive monograph being limited to the construction of ways of understanding of the operational frameworks of probation in accordance with the law at the present time.

SANCTION. THEORETICAL MODELS

Constantin Mitrache considers punishment as "the only criminal sanction intended to ensure restoring order violated by committing a crime". In this sense

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3 We refer to Recommendation Nr.22 (99) of the Ministry Committee towards the State Members, regarding aver filling prisons and the inflation of imprisoned population, adopted by the Ministry Committee on the 30th September 1999, at the 68th assembly of the vice-ministers.

NPC provides in Article 2 para. (2) that "cannot impose a penalty or cannot take an educational measure or a detention order if it was not under the criminal law at the time the act was committed". Article 15 para. (2) of the NPC states that "offense is the sole basis of criminal liability." The offense is strictly correlated with guilt, clearly defined by law [NPC, art. 16, paragraph (1) - (6)].

Although we do not have a clear definition of the institution of punishment, NPC shows the types of main punishment, accessories and complementary ones that can be applied in our country as following: life imprisonment, imprisonment and fine (according to Art.53, NPC), prohibition of certain rights as an accessory penalty, and prohibition of exercising certain rights, military degradation and publication of the judgment of conviction (according to Art.55, NPC). Although the law does not mention in concreto about different penalties than those that can be applied in Romania, article 115 of NPC mentions non-custodial educational measures other than those stated above ie civic training, supervision, record at the end of the week and daily assistance [according to Article 115, paragraph (1) NPC]. These measures are taken against minor aged between 14 and 18 [see Article 114, paragraph (1), NPC] where deprivation of liberty is not necessary [see Article 114, paragraph (2), a and b, NPC].

Non-custodial measures have a sanctionatory nature, as they are the consequences of criminal liability, but the non-custodial educational measure is not classified as punishment. The penalty's functions are: retribution, deterrence, incapacity and rehabilitation. It is not clear whether the legislature's vision on the same functions can be associated with the deprivation of liberty measures.

A general theory of punishment, from the perspective of discursive-postmodern discourse, is performed by Foucault, which seeks distinction between "words and things" in the context of the discourse of power and power generated by discourse and power relations produced by it. The central theme of Foucault's book "Discipline and Punish. The birth of prison" is the power and legitimizing discourse of power use. Both history and social space are seen by Foucault as an excuse to exercise discursivity. Modifying in a radical way the interpretation and context of interpretation, the philosopher amends the representation of reality, underlying substitution between representation and reality itself. Power is internal and constitutive to discourse.
The origin of modernity is seen from the perspective of Foucault, as a resident in a complex of scientific and legal factors. Normality and abnormality become the object of criminal justice, this multiplying its functions from a simply punishment to diagnosis and therapy of social disfunctionality\textsuperscript{10}.

Analysing the work of Foucault we argue that punitive power organizes in three devices, each with its own speech. The first is seen by Foucault as coming from monarchical right. Power has regulatory role and it is outside individuals. To blame the victim is coupled to the sovereign as the representative of the law. Within this type of discourse by identifying individual guilt to a crime regarding public, state and the sovereign order occurs nationalization of judicial power, which gives rise to the function of the prosecutor as a representative of the king. Ordeal and torture were not expressions of violence "but coded techniques of power" that power was maintained and indeed occurring. Whereas the monarchical right supposed truth, it requires a form of knowledge that take the form of investigation. The investigation initially replaced the medieval canon law procedure that was seen as proof of which involved some form of judicial duel of direct confrontation between the accused and the accuser. The investigation is therefore needed as a tool of knowledge and at the same time as the technology of power. Philosophy contractualist introduces a reform by limiting arbitrary punishment and replaced absolute power with absolute property "\textsuperscript{11}.

The objective of the third criminal philosophy, placed by Foucault around the prison institution is "control of the facts, especially the possibility and virtuality crime"\textsuperscript{12}.

Foucault's humanist discourse is the result of encoding the individuals, their classification in terms of individual and population\textsuperscript{13}. The role of the penal philosophy analysis in the whole Foucault's work is to prioritize the discourse and meta-discourse, of the philosophical and ideological composition, or of the dominant social paradigm in the constitution of reality. Foucault sees modern society as one of generalized surveillance broadcast throughout the social body\textsuperscript{14}. In Foucault's view there is a transformation of power styles, coded in the rule of law. Maximizing efficiency and good governance are side effects of the whole process of "reinvention of society" on the model of prison in its entirety\textsuperscript{15}.

Foucault places the "technology of power" (the exercise of power) as principle of humanization of penalty\textsuperscript{16}.

\textsuperscript{10} Sandu, Filosofia..., p. 206.
\textsuperscript{11} Ibidem, pp: 206-209.
\textsuperscript{12} Ibidem.
\textsuperscript{13} Foucault, op. cit. pp: 27-29.
\textsuperscript{14} Sandu, Filosofia..., p. 208.
\textsuperscript{15} Foucault, A supraveghea……pp.150-170.
\textsuperscript{16} Ibidem.
"Foucault identifies three criminal philosophies of modernity, according to the involvement of the body in the exercise of the sentence:

- monarchical;
- contractualist;
- of generalized surveillance."

Doina Balahur shows that "with the emergence of the penal system as a central element of the modern state, the prison has replaced traditional forms of punishment, as the death sentence, deportation, corporal punishment, and so on, making this favourite sanction through which communities (particularly the Western ones) developed both general and special prevention. The paradigm of punishment in modernity has become one prison centred. The author considers incarceration as a key landmark of conventional criminal prison system and is for both public and professionals the highest sanction of punishment, while being regarded as the most severe and also the best response of community against crime and criminals. Custodial systems are seen as alternatives to prison terms under the aspect of intensity of punishment. The author shows that prison centred paradigm is dominant even in states where non-custodial sanctions - such as warnings, fines and confiscation - represents over 70% of all sentences imposed, as we have the case of Japan, Germany, Slovenia, Finland, Austria and Egypt.

Prison centred paradigm is essentially a retributive one, the sanction being the company's response to crime. Custodial penalties shall remain in retributive logic, showing only that the society understands the disadvantages of the prison social recovery of offenders, as summarized by Michael Tonry and Joan Petersila as the six collateral effects of imprisonment:

- Reduces the chances of the former inmate to find a job;
- Long-term effects of incarceration on the inmate's physical and mental health;
- Isolation and marginalization of the prisoner's family;
- Prison is a criminogenic environment;
- Exports the lifestyle and values of imprisonment in the community.

The New Penal Code defines the importance of probation service in the administration of supervising convicts who were delayed or suspended the execution of sentence under supervision. Supervising measures can be arranged for those released on parole as well. We draw attention to the need for specialized

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17 Sandu, Filosofia..., p. 208.
19 Ibidem, pp: 11-12.
20 Ibidem.
21 Michael Tonry și Joan Petersila apud Balahur, Fundamente. p.16.
personnel in the probation service that can exercise capacity of probation in a competent and qualified manner.

PRISON CENTRED PARADIGM VERSUS RESTORATIVe JUSTICE PARADIGM

The literature identifies four main theoretical models to interpret the meaning and role of sanction, depending on the need and usefulness of it. Retributive justice is considered the classic paradigm of understanding the sentence, having originated in the law of retaliation "which makes reciprocity as the element that governs human relationships. The purpose of punishment is retribution of the offender for the act he committed, or in some cases, for inaction. Retributive justice envisages the distribution of justice." Retributive justice theory lies in the distributive ethics, and especially that of John Rawls. Justice as fairness is implemented in this case as fair punishment for the offense committed. Punishment is supposed to cover both the offender and the offense. The individualization of the sentence follows the social cost of crime, seriousness (socially constructed) of the offense and the circumstances of the offense. Modern penal systems have replaced the retribution retaliations of "eye for eye" and "tooth for tooth" with symbolic punishments, generally deprivation of liberty. Retributive justice theory lies in the distributive ethics, and especially that of John Rawls. Justice as fairness is implemented in this case as fair punishment for the offense committed.

The circumstances of committing the crime, and especially its intentionality, should be weighed in the sentence. Estimating of social threat cannot be the object of punishment in a purely distributive theory, since the analysis would be consequentialist and not intentionalist. We show that the "principles of distributive justice sanction especially the intent of the crime or the neglect that could be provided. Modern penal systems

29 Sandu, Elemente........p.117.
30 Groza, Drepturile, p.22.
take into account the consequences for the sentence in a way that differs from one country to another, and from the practice of a court to another. Manifestation of intention of theft and crime is the same regardless of whether the perpetrator could evade 10 euros or 1 million euros. So, the same sentence should be applied. In practice the sole intention remuneration would encourage offenses where the damage is very high, thus lacking penalty deterrence capability commensurate with the gravity of the offense. A number of other factors, such as the seriousness of the offense, the risk of relapse, recovery of damages, are taken into account in the sentence.

Dalina Groza believes that the principle of retributive justice equity aims to "rebalance" advantages-disadvantages "disrupted by the offense". The author summarizes the theory of justice as fairness as formulated by John Rawls as a "form of social justice which requires fair distribution of advantages and disadvantages, tasks and benefits among all members of society regardless of status, because only in this way can be guaranteed the individual's right not to be disadvantaged in justice". Equity only manifests regarding to the offender, not the victim whom is not compensated for their loss. Actually injury recovery is ordered by the court in the sentencing act, and is an element of individualization of punishment. The risk of injury not to be covered, especially with crimes concerning property, return with the victim.

Retributive function is mainly oriented towards the past, being focus on evil itself produced by criminal behaviour and the proportionality between crime and punishment. The punishment must be deserved. Retributive paradigm stems from a universalist ethical and deontological Kantian inspiration, keeping part of the transcendent nature of the accomplishment of justice and righteousness. Criticism towards retributive model aims to focus solely on punishment instead of a focus on a educational and social-therapeutic function of punishment. The retaliation character is considered unnecessary as long as it is envisaged to prevent or deter the commission of offenses. Prevention of committing new crimes should not be seen as mainly achieved by isolating prisoners from society but rather "the changing propensity to commit crimes".

Disabling or neutralization of criminogenic potential through imprisonment or death punishment is seen in the utilitarian sense as a way to reduce crime.

Utilitarian justice. The purpose of sanctions is to prevent the commission of further offenses. Utilitarian perspective is based on deterrence, rehabilitation

31 Sandu, Elemente, p.117.
32 Groza, Drepturilep.22.
33 Ibidem.
34 Sandu, Elemente, p.117.
35 Groza, Drepturile, p.22.
36 Szabo, op. cit. p. 463.
37 Ibidem
and incapacitating the person to commit new crimes. The utilitarian justice is future oriented. The most important functional component of the utilitarian approach is rehabilitation, which is seen as reducing the potential risk of the offender committing further offenses. Old Penal Code stipulated that "the purpose of punishment is to prevent the commission of further offenses" as a measure of coercion, as a means of rehabilitation of the convict (Art. 52, para. 1). Dalina Groza identifies three principles of utilitarian justice:

- "The principle of deterrence. The penalty must deter future commission of new crimes, both for the perpetrator in question and others. The role of custodial sanction is not so extract the individual from the community and to limit his criminal career, but especially that of discouraging to continue this criminal career in the post prosecution period. Of course this theory does not apply to prisoners sentenced to death and life imprisonment respectively, for which, at least theoretically, there are not post criminal career.

- Principle severity (exemplarity). The severity of punishment deters future criminal behaviour. Being a utilitarian theory, it starts from the premise that the individual develops a behaviour to maximize beneficial effects and minimize the negative ones. The penalty provided for the offense is severe, the risk of punishment will contribute more in balance underlying the decision to delinquent behaviour. Please observe the irrationality of social fact, and the fact that many potential offenders will not be deterred by the punishment, whereas for some of them fear of punishment is no longer a deterrent.

- Principle of proportionality (gradualism). This principle presupposes to start from the rationality of the offender, anticipating the punishment being a reason to discourage criminal behaviour, and also fairness between subjective benefits acquired through crime and the dissatisfactions offered through punishment. Applying the principle eliminates the risk of arbitrariness and discretionary punishment in justice."39

Harris' sanctioning systems develop four models each based on one of the principles: retribution (principle of proportionality), deterrence (principle severity), disability (principle of risk assessment) and rehabilitation (principle of focalization on the behaviour of individuals).40

Justice oriented on human rights and is tributary to the idea that society is represented by the state, is partially responsible along with the offender of the

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38 Groza, Drepturile, p.22.
39 Sandu, Elemente, pp.120-121.
crime, of the disruption of social relations through the criminal act\textsuperscript{41}. Justice oriented on human rights, as Dalina Groza believes, takes the proportionality principle from retributive justice paradigm, adding elements that refer to the offender's personality, and also adding the utilitarian principle of offender rehabilitation. According to this principle, the State is obliged to contribute to the rehabilitation of the offender, the state not only having the right to punish, but also obligations on the nature and limits of punishment execution. These rights would be the power to withdraw a number of rights of the person convicted and sentenced person the power to protect against inhuman and degrading treatment\textsuperscript{42}.

Based on the Hudson, the author shows that in a normal society, freedom is a natural state and not a legal fiction, and that is why the individual is the possessor of positive freedom and fundamental rights including freedom of a action, the choice of expression, the right of inviolability, simply because one is human. Therefore individual rights extend up to the positive rights of others. In the case of criminals, their positive rights come into competition with the victim's right and society right to feel protected. Victim protection, especially of society, constitutes the justification of the sanction and cannot be greater than the risk that society faces if the offender does not incur any penalty\textsuperscript{43}.

We believe that human dignity is intrinsic to every human person, regardless of his personal moral virtues. "Society's right to punish may cover only restricting social freedoms of the individual and cannot under any circumstances attempt to safety and physical integrity"\textsuperscript{44}. International norms on human rights are retrieve into the national legislation thus having the force of law. However, a sufficient number of convictions of Romania to the ECHR (European Court of Human Rights), regarding the inhuman treatment in prisons shows that more human rights-based justice can undergo improvements in terms of its practical application. Theories focused on human rights are relatively recent, bringing nineteenth century abolition of slavery, while civil rights for women and people of colour are a creation of the twentieth century. Same twentieth century brought on the scene a number of heinous crimes against humanity, including the Nazi extermination camps, along with communist prisons who have excelled in inhumanity "showing the need for an international legal system that guarantees human rights and establishment of theoretical vision of deeply humanist

\textsuperscript{42} Groza, \textit{Drepturile}, p.25.
\textsuperscript{44} Sandu, \textit{Elemente}, .pp.119.
philosophy that should change collective mind-sets on deep sense of respect for the human condition"."45

Restorative justice. The role of punishment is to facilitate rehabilitation, the rehabilitation is co-responsible. "Restorative justice underlines the mediation relationship between offender - victim. The purpose of punishment is to restore the rights of the victim by the offender-victim mediation."46 Restorative justice's central position is the one of the victim and the strategies for compensation of damage that has been suffered because of the criminal action. The model is based on active remedial activities and offender awareness about the impact of the crime on the victim.47 Moreover, NPC establishes surveillance measures sentenced for parole (Art.99), where the court is convinced that the convicted person may be headed and reintegrate into society. Romanian system of probation imposed by NPC seems to be based on restorative justice model, whereas Article 101 paragraph, line 2, letter e, prohibits that the supervised convicted to communicate with the victim or members of his family.

Restorative justice as it is theorized as an alternative to custodial penalties favors strategies and victim offender mediation, having as a purpose the decriminalization of sanction.48 This model partially eliminates the recurrence given by prison career and discrimination of ex-prisoners. Thus the educational role of the penalty is maximized at the expense of its punitive role. The model is suitable for those offenses committed by offenders who are first offenders, especially juveniles, people that are having regrets and willing to victim mediation, and recovery of injury.49

Restorative justice is considered as an alternative means of resolving conflicts between victim and offender, modifying the meaning of the term criminal liability. This is not only to society, but also to the victim. Restorative justice’s focus is on understanding the harm the offender, and the acceptance of liability for damages.51 Implementation of restorative justice is achieved by emphasizing the social dimension of criminal liability.52, 53

49 Sandu, Elemente..........., pp.120.
50 James, Dignan, Understanding victims and restorative justice, Open University Press, 2005.
Non-custodial educational measures that may be granted to minors under Article 115, line 1 of NPC are: civic training, supervision, record weekends and daily assistance. The same article refers in paragraph 2 to the custodial educational measures in hospitalization in an educational centre and that placement in a detention centre. We find that educational measures, both custodial and or non-custodial sentences, are not in the opinion of the legislature because they are regulated by art. 53 NPC. Custodial or non-custodial measures that may apply to the minor are consequences of criminal liability. The fact that the legislature did not intend to interpret educational measures in the sense of punishment is given in the interpretation of Article 114 paragraph 2 letter b of NPC, showing that a custodial educational measure may be taken if the offense is imprisonment for seven years or more. For adults the only non-custodial sentence is fine, which consists of the sum of money that the convict is obliged to pay the state (Art. 67, NPC). In certain cases, as shown by Article 64, the fine can be placed through community service work. Coordinating the execution of community service obligation lies with the probation service [Art 64, para. (3) NPC].

In the case of major offenders, the court could decide waiving the punishment (Art. 80 NPC), delay penalty (Art. 83 NPC) or suspension of penalty (Art. 91 NPC). Analysis of each of these situations will be subject to a separate chapter.

Restorative justice is seen by Doina Balahur as a paradigm - a conceptual framework of non-custodial sentences. The author shows that there are two senses of the term probation:

- Strategies that limit the perpetrator's contact with the formal criminal justice system,
- Alternative to custodial penalties.

It is followed not only the decriminalization of sanction, but the reconstruction of networks of organized reciprocity and "civic solidarity".

Restorative justice theory shows that the answer to crime must involve the victim, offender and community. The model involves mediation between the parties with the assistance of a neutral third party. As we mentioned earlier, even though NPC does not speak explicitly of criminal mediation in the relationship offender-victim, reconciliation between victim and offender removes criminal
liability and stops the civil action, in the case where the criminal action was done automatically, or if a law expressly provides it (Art.159 NPC). This provision opens the mediation procedure in criminal cases.

The legislator also provides victim the possibility not to complain prior, and thus not trigger criminal proceedings (Article 157, para. 1), namely the possibility of withdrawing the complaint that may arise prior to a final judgment, in the case of offenses where the initiation of criminal proceedings depends on introduction of a prior complaint.

Virgil Dumitru Diaconu conducts in his volume "Mediation in criminal cases, a series of interpretations on the application of mediation underlying some non-correlations, inaccuracies, both on average over the criminal and civil side of the case"\(^{56}\). The author makes a few proposals with regard to the amendment of Law no. 192/2006 on mediation and the mediator profession, from the perspective of the New Criminal Procedure Code and normative acts which would be criminal procedure. The author analyses the mediation not only in terms of domestic law, but also in relation to European regulations.

Doina Balahur believes that restorative justice has become the criminal philosophy of community penalties\(^{57}\) and also a path towards a multidimensional approach to the issue of the sanction. This involves prosecuting, as defining the boundaries of socially acceptable behaviour, individual rehabilitation of offenders, victim support, crime prevention by strengthening community capacity to take on this role, and keeping administration costs to a minimum prison system.

Transactional justice. Compared to the previously identified models, we propose the existence of yet another model, namely the transactional justice. "The transactional system is out-judicial and occurs when the understanding of parties suspend or cancel the criminal proceedings. Romanian legislation provides the institution of criminal mediation only in few cases, generally works without violence or mild violence, and reduced injury. The U.S. transactional justice model allows understanding between offenders and prosecutors, which exclude criminal proceedings. In the Romanian context in which mediation is a relatively new institution, we welcome initiatives to introduce mediation in criminal acts"\(^ {58}\).

Romanian legislation introduced elements of transactional justice through plea bargaining agreement. Plea agreement is a legal institution new to the Romanian law governed by Articles 478-488 of the NPC. Plea agreement may be initiated both by the defendant and the prosecutor [Art 478 para. (3) NPC] and has the recognition and acceptance of the legal classification of the offense. Also this sets the type and form of the sentence and its execution (Art.479 NPC).

\(^{57}\) Ibidem, p.25.
\(^{58}\) Sandu, Elemente, pp.124.
Agreement is concluded only in written form (Art. 481 NPC), and in this situation of plea agreement is no longer drawn an indictment on the accused that had on this agreement [Art 481 para. (2) NPC]. Plea agreement is not currently a result of the mediation process and does not involve elements of restorative justice unless deferred or suspended execution of sentence, in which case the intervention of the probation service is under NPC. Plea agreement cannot be integrated as such in the criminal philosophies mentioned but has a transactional nature which excludes victim to the negotiation of the agreement.

**NATIONAL AND INTERNATIONAL LEGAL FRAMEWORK FOR THE ESTABLISHMENT AND OPERATION OF PROBATION SERVICES**

Development of probation, and generally non-custodial alternatives measurements, was done in order to transpose into national law the principles and rules of laws that are included in international conventions to which Romania joined and is part. Upgrading criminal law institutions translate a convergent pan-European trend with criminal philosophies centred on human rights, even if the declared criminal philosophy of NPC is tributary to retributive paradigm (punishment of the crime is solely the result).

The main sources of law in the regulation of the proof come from the sphere of international protection of human rights. Regulations from the internal law bring the result of experience in the field of probation in other member countries of the Convention on the Protection of Human Rights, because they are based on customary law and international jurisprudence (with the status of a source of law for other national legislation)\(^{59}\).

Regarding the implementation of probation in juvenile cases, a number of international conventions have a reference status.

A) Resolution 40/33 of 29 November 1985 of the United Nations regarding operational administration of juvenile justice (known as the Beijing Rules), is the first international regulation on the administration of juvenile justice. In their preamble, the Beijing Rules refer to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other regulations on human rights in the UN system. In this document are set the foundations for reform of juvenile justice, and penal policies in general, of UN member states, in order to include several based on humanitarian principles and rules of operation of juvenile justice. Beijing Rules recommends that each

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Member State to set up specialized institutions in the field of juvenile justice and the creation of specific institutions and procedural rules for the operation of juvenile justice. Beijing Rules recommends a minimum package of juvenile justice principles, below which Member States undertake not to derogate. These rules concern investigation and prosecution, judgment and settlement of cases, institutional and non-institutional treatment of minors. Beijing Rules are based on the principle of best interest of the child and non-custodial measures recommended as the main way of punishing a minor who has committed criminal acts. Beijing Rules recommends that Member States that according to specific national laws to implement an extra-juvenile-court proceedings, or where such measures are not possible courts, to have as much as possible a different name and a different structure than those for adults. Rules Beijing insist on differentiation depending on the age of criminal responsibility and discernment of the child, helping the child by the parents, guardian or legal representative throughout the procedure and the prosecution before the court, the presence of psychosocial professionals judges whose expertise is useful for a judgment in cases involving minors. The same rules provide for the expeditious conduct of the trial in minors and privacy.

Doina Balahur shows that criminal philosophy underlying the Beijing Rules is the restorative one and is based on the value of social reintegration and promoting the welfare of children and young people who have committed criminal acts.

United Nations Convention on the Rights of the Child requires signatory states to establish a minimum age below which children shall be presumed as with lack of capacity to infringe the penal law [Art 40, para. (3) point. a]. Same Covent makes a number of principles of obligation for state parties, namely: child protection against discrimination; protect the superior interests of the child in all actions concerning children, including those before the courts; assuring the care and protection necessary to ensure the welfare of the child; observance of precise standards institutions and services responsible for the protection and care of children etc.

Also in the UN system there were adopted the Tokyo Rules on the development of deprivation of liberty measures adopted on 14 November 1990.

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60 Ibidem, p.154.
61 Ibidem, p.158.
62 For extra information regarding the principles of probation applied in the cases with minors, to be seen: Principles of United Nations regarding juvenile prevention (Principles from Riyadh), Resolution 45/112 14 December 1998, (the 68th Plenary Session);
63 Balahur, Fundamente......., p.149.
These recommended the adoption of penal policies of waiving the prison centred paradigm and to replace penalties of deprivation of freedom with others which are more effective regarding social reintegration of offenders and criminogenic risk reduction. Tokyo Rules refer the recommendations on the adoption of non-custodial sanctions, and use them as often as possible, with priority to the deprivation of liberty; where in conjunction with national legislation is possible. These aim to establishing minimum safeguards for people who have broken the law, involving local communities in the criminal justice and social recovery in the offenders. The basis of introducing non-custodial measures should be a decriminalization policy of facts with potentially reduced social risk.

Tokyo Rules recommend the application of any measurements, both custodial and non-custodial, with respecting dignity and conduct to denote humanity. Tokyo Rules propose a series of sanctions, both minors and adults who have committed major crimes: Economic sanctions and monetary penalties, such as fines and 24 hours imprisonment; Confiscation and expropriation; Restitution to the victim or a compensation order; Verbal sanctions, such as admonition, reprimand and warning; Keeping liberty before judgment; Deprivation of rights; Condemning with postponement or suspension of sentence; Sentence of community service; Record in an open institution; Arrest; Probation supervision; Any other form of treatment in the open; A combination of some of these measures.

And as alternatives to deprivation of liberty is recommended: Permission to go out and be placed in a home for reintegration; Freedom for work or education; Conditional release by different rules; Reduction of sentence; Pardon.

The new penal codes provide specific legal establishment for juvenile justice institutions, namely:

- During the application of preventive measures is established a special detention of minors, taking into account the peculiarities of age and not detrimental to their physical, mental and moral development [Art 244, NPC].
- The court is required to take into account the effects that imprisonment would have on the personality and development of minor, and not to dispose on preventive detention if the effects are estimated to be disproportionate to the aim by taking measure [Art 243, paragraph (2), NPC].
- Regarding prosecution and trial of minor cases NPC contains a number of special regulations aimed at summoning necessarily the guardian or person in whose care the minor is, as well as the general department for

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65 Firțală, Instrumente...p.175.
66 Regulile de la Tokio apud. Firțală, Instrumente...p.177.
child protection when not the age of 16 years, and namely their summoning only if the prosecuting authority considers appropriate for minors under the age of 16 years [Art 505, para. (1); (2); (3), NCP]. Although Article 504 provides that the prosecution and trial of offenses committed by juveniles, and enforcement of decisions regarding them, are the usual procedures (ie without specifically establish a juvenile court), Article 509 (on deployment trial) and Article 507 (regarding the composition of the court stating that the minor defendant is judged according to the rules of ordinary jurisdiction, but by judges specially appointed by law) generates in practice the existence of juvenile courts.

Juvenile assessment report is required to be performed by the Probation Service near the Court within whose jurisdiction the child resides, or at the time of prosecution at the request of the criminal investigation, or during criminal proves following court request. If the report is requested by the prosecution, a new request of it by court is optional [Art 506, para. (1); (2); (4) NPC].

Trial of minor cases have a number of features provided by the NPC, namely:

- emergency trial and preferably unpublicized session, the possibility of eliminating minor younger than 16 years of courtroom if management believes that certain evidence bring a negative influence on the minor; minor hearing once during his trial with the possibility re-examination only with solid cases [Art 509, para. (1); (2); (3); (4); (5), NPC].

NPC establishes a system of non-custodial educational measures defined as: civic training, supervision, record weekends and daily assistance [Art 117-123, NPC] and educational measures for deprivation of liberty cases: internment in an educational center and that placement in a detention centre [Art 124-125, NPC]. Execution of non-custodial measures are administered by probation services.

Enforcement of custodial educational measures is made after a final decision by setting a deadline to bring the minor, call legal representative and the representative of the Probation Service. At that time proceed to enforce the measure.

Regarding limiting criminal liability of minors Article 113 indicates that minor under the age of 14 years is not criminally responsible, while the minor aged 14-16 is criminally liable if it proves its judgment the time of the offense.

The referred measures transpose the international recommendations into national law, including those formulated in the Beijing Rules and the Rules of Tokyo.
COUNCIL OF EUROPE RECOMMENDATIONS ON PROBATION

European Convention underpins the humanization of the European criminal law and enshrines human rights paradigm, as a central paradigm in the construction of legal systems in Europe. Holocaust and war experience centred on the primacy of racial and the ethic of superman, brought to the attention of the world, especially Europe, the need for radical change of values, going from a focus on conflict and supremacy at a perspective based on cooperation and mutual control in terms of international politics. The political model centred on cooperation and European and Euro-Atlantic integration (though really only done in the first decade of the XXI century, when the former socialist countries joined the European Union) was actually a constant of political and international legal approach, especially in Europe after the Second World War. European Convention follows the same paradigm of the need for a legal system to protect human rights in a time when Western Europe was separated from Eastern Europe by an iron curtain.

Recommendations of the Council of Europe on human rights in regard to the rights of persons in detention, measures and community sanctions as an alternative to incarceration, and mediation in criminal cases, have created a strong current of opinion regarding the need to correlate national laws including the Romanian justice with the justice model based on Human Rights, which arises from the application of the Convention and other treaties on the Legal Protection of Human Rights. Ion Durnescu, analysing the establishment of the frameworks of probation systems in Romania, refers to Recommendation (92) 16 of the European Commission, regarding the European rules on community sanctions and communitary measures. It comprises a set of rules relating to: legal framework, legal and procedural safeguards regarding complaints, need to respect fundamental rights, cooperation and informed consent of the offender in the imposition and enforcement of community sanctions as an alternative to custodial sentences, the involvement and participation of the community, working methods, conditions of implementation, etc.

A second recommendation (2000) 22, on improving the implementation of the European rules on community sanctions and measures, based on the results of a study showing increased prison population in Europe, recommends promoting community sanctions as an alternative to custodial sentences. This recommendation aimed mainly at improving the judicial practice by creating


To be seen: Recommendation Nr. R 19 (99) a of the Ministry Committee towards State Members regarding mediation in penal cases, adopted by the Ministry Committee on the 15th of September 1999.

practice standards to encourage community-based sanctions and compensation for victims (restorative justice) at the expense of custodial sentences.\textsuperscript{70}

European rules on probation are subject to Regulation (2010) 1 and aimed at organizations implementing Community measures and penalties. Recommendation adjust the ethical standards governing the operation of the probation system in Europe starting from the vision of ethical correctness at the expense of pragmatism.\textsuperscript{71}

In the European Union exists a mutual recognition in criminal matters enshrined in the Lisbon Treaty and also in the framework decisions:

- "Council's Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States;
- Council's Framework Decision 2008/909/JHA on the application of the principle of mutual recognition of custodial sentences or measures involving deprivation of liberty;
- Council's Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions." \textsuperscript{72}

Transposing into Romanian legislation of this Recommendation is achieved by NPC that includes suspending measures, postponement of sentencing and parole for major persons and the establishment of educational measures for juveniles who have committed crimes. The imposition of the penalty fine days (Art. 61NPC) with its possible transformation into community service work establishes the idea of alternative sanctions contained in the Recommendation.

Following we will analyse the inclusion of these provisions in the national legislation and the form in which they are contained in NPC:

\textsuperscript{70} Ibidem, p.189.
\textsuperscript{71} Ibidem, p.190.
\textsuperscript{72} Durnescu Ioan, Filimon Adriana, Uniunea Europeană şi dezvoltarea unui sistem de probătiune european, in Durnescu, Ioan (coord.) Probațiunea. Teorii, legislație și practică, Editura Polirom, 2011, p.194.
Table 1. Transposition of Council's Framework Decision 2008/947/JHA on internal legislation

<table>
<thead>
<tr>
<th>Measures and sanctions under Council's Framework Decision 2008/947/JHA</th>
<th>Measure's implementation in Romanian legislation</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the obligation for the sentenced person to inform a specific authority of any change in residence or employment;</td>
<td>When sentence is postponed, the convicted person is required to give advance notice if change home, job or any travel over 5 days [Art Article 85 (b), (c), (d), NPC]. If suspended sentence, the same obligations incumbent upon the person convicted under Article 93 paragraph (b), (c), (d), the NPC. If parole, the same obligations imposed to the released person by Article 101 paragraph (b), (c), (d) NPC.</td>
<td>When penalty is cancelled this obligation does not apply as waiving application of punishment does not involve supervision. If within 2 years after a sentence is final, ordering the waiver of penalty, the person does not suffer from any effect of his conviction. In the case of educational measures applied to juveniles who have committed crimes, although the obligation of the sentenced person to inform a specific authority of any change of residence or employment it is not expressly required, it derives from the obligations that may be imposed to the minor, namely not to exceed a territorial limit exceeded by instance [Art Paragraph 121 (b), NPC]. The measure is not binding on the court. The same obligation derives from the content of Article 118 which defines the educational measure of supervision and control and guiding of minor in daily activity.</td>
</tr>
<tr>
<td>(b) the obligation not to enter certain localities, places or defined areas in the issuing or executing State;</td>
<td>In case of postponement of sentence, the court may require the person does not leave the Romanian territory (Art. 85 para j) or not to be in certain places or at certain sporting, cultural events or other public assemblies (Article 85 paragraph</td>
<td>In the case of person whose execution of sentence has been suspended under supervision is not impose restriction on attendance at certain places or areas, but it can be imposed a range of control measures, including his freedom of</td>
</tr>
</tbody>
</table>
f). Obligation to leave the territory of Romania lies also for the person whose sentence was suspended under surveillance. If the person is released on probation [Art 101 paragraph (2), lit. d NPC], the court may order that it not be in certain places or certain cultural, sporting events or other public events. If the non-custodial educational measures such regulation takes the form required by Article 121 paragraph (1) letter c NCP not to be in certain places or certain sports events, cultural and other public events.

| (c) an obligation on specific limitations on leaving the territory of the executing State; | In case of postponement of penalty ban to leave Romania without agreement of court is governed by Article 85 paragraph (2) letter i. The same prohibition is imposed on the person who is sentence execution is suspended under supervision by Article 93 paragraph (2) letter d. If released on parole, same prohibition to leave the Romanian territory is governed by Article 101 paragraph (2) letter c. |
| (d) the dispositions relating to behaviour, | For people who are postponing penalty may be required to follow a training course or qualifying school attendance of |

movement. Because of the symmetry identified between measures of postponement penalty, suspended sentence and release on parole, we believe that failure of restriction on certain localities, places or areas of the convict whose sentence execution is suspended may be a clerical error by the legislature. We support this is because if a person convicted of an offense committed, by eg a football match whose sentence is suspended, he can return to the stadium where the prohibition on certain sporting events are not applicable during the suspended sentence. In the case of non-custodial educational measures imposed by Article 121 para regulation (1). c, of NPC, this interdiction is corroborated by the prohibition not to exceed a territorial limit set by the court without the probation service Article 121 paragraph (1) letter b.

Specific measures taken against minors covered non-custodial educational measures are described in greater detail in the
<table>
<thead>
<tr>
<th>(c) an obligation to report at specified times to a specific authority;</th>
<th>The obligation to report to the probation service on fixed dates it returns all three categories previously discussed: Article 85, paragraph (1), letter a, where penalty postponement; Article 93, paragraph (1), letter a where suspension of sentence and that Article 101, paragraph (1), letter a where parole. The minor subject to non-custodial educational measures apply this obligation under Art. 121, paragraph (1), letter e.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(f) an obligation to avoid contact with specific persons;</td>
<td>This obligation is established by Article 85, paragraph (2) letter e that allows the court to apply the prohibition to communicate with the victim or her family</td>
</tr>
<tr>
<td><strong>residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;</strong></td>
<td>one or more social reintegration programs, carried out by the probation service or other institutions and organizations in the community. The person may be limited the right to drive, to own weapons. The person may be banned execution of function, the trade, profession or business resulting from the exercise of offense Article 85, paragraph (2) a letter to j. The same rules are imposed on suspended sentence in Article 93, paragraph (2) letter a to d. And that if parole Article 101, paragraph (2) letter a to g. If the non-custodial educational measures applied to minors, they may be required to perform a civic training course (Art 117, Art 119), weekends consignment, daily assistance (Article 120), following a course of education or training (Art 121, paragraph (1) letter a).</td>
</tr>
<tr>
<td><strong>NPC than probation specific measures imposed to adults convicted and whose punishment is delayed, suspended or who are released on probation. This proves that in the vision of the legislature, probation remains a component of juvenile justice, even if now there are expanded duties on community supervision of execution of non-custodial sanctions for adults.</strong></td>
<td></td>
</tr>
</tbody>
</table>

members or others with whom the offender committed the crime, or other person determined by the court, if the person whose sentence application has been deferred. Similarly measure applies to the person released on probation Art. 101, paragraph (2) letter e.

This prohibition is not specifically regulated in the NPC, apart when related to weapons. Similar measures would be welcomed, such as prohibiting the use of computing devices for people who commit computer crimes.

This obligation is regulated in the context of suspended penalty under Article 80, paragraph (1), letter b, which allows taking such measures in respect with the conduct of the offender previously taken offense, and also his efforts to remove the effects of crime. The same conditions are applied for postponement of the penalty, under Article 83, paragraph (1), letter d, the suspended sentence under supervision under Article 91, paragraph (1), letter d, respectively parole when expressly required complete fulfilment of civil obligations established by the judgment of conviction under Article 100, paragraph (1), letter e.

This obligation is governed by Article 85, paragraph (2), point b, which provides for the postponement of sentence the provision of community service work for a period between 30-

This obligation is not expressly mentioned for parole, just because it can be done only after completion of at least two thirds of the penalty Article 101, paragraph (1), letter a, and when

| (g) an obligation to avoid contact with certain objects, which have been used or could be used by the person convicted for committing a criminal offense; | This obligation is not specifically regulated in the NPC, apart when related to weapons. Similar measures would be welcomed, such as prohibiting the use of computing devices for people who commit computer crimes. |
| (h) the obligation to compensate financially for the prejudice caused by the offense and/or the obligation to provide proof of compliance with this obligation; | This obligation is regulated in the context of suspended penalty under Article 80, paragraph (1), letter b, which allows taking such measures in respect with the conduct of the offender previously taken offense, and also his efforts to remove the effects of crime. The same conditions are applied for postponement of the penalty, under Article 83, paragraph (1), letter d, the suspended sentence under supervision under Article 91, paragraph (1), letter d, respectively parole when expressly required complete fulfilment of civil obligations established by the judgment of conviction under Article 100, paragraph (1), letter e. |
| (i) the obligation to perform community service; | This obligation is governed by Article 85, paragraph (2), point b, which provides for the postponement of sentence the provision of community service work for a period between 30- |
| (j) an obligation to cooperate with a supervision (probation) agent or a representative of a social service that has responsibilities in respect of sentenced persons; | The obligation to cooperate with the Probation Service is regulated in all three cases postponing sentence Art 85, paragraph (1) letter a and b, para. 2 letter b; suspended sentence Article 93, paragraph (1), letter a and b and par. 2 letter b, respectively for parole Article 101, paragraph (1), letter a and b and par. 2 letter b. | full implementation of civil obligations. Making a work in detention computing element can be fractions of punishment according to law enforcement penalties Article 100, paragraph (4). |
| k) the obligation to undergo therapeutic treatment or rehab. | Obligation to seek treatment for deferral penalty situation is governed by Article 85, paragraph (1) letter d, and where suspended sentence is under Article 93, paragraph (2), letter c. | This obligation is not expressly provided for released on parole situations. |
Traditional probation inspired by American and Continental model remains focused on criminal law enforcement paradigm that is dependent on punishment\textsuperscript{73,74}. Probation goals are the same with prison centred paradigm: crime control, punishment, prevention of committing further offenses and community reintegration of offenders. Practically, persons under surveillance are supported by family and social services, and also remain integrated into the community. It avoids stigmatization and social exclusion of prisoners and liaising with the community, which leads to an easier reintegrate their community\textsuperscript{75}.

Restorative probation aims to restore the balance between the victim and the offender\textsuperscript{76}, primarily using mediation. For the victim it is pursuing his repositioning in the state before the crime, the recovery of the moral and material damage, and for the offender is aimed for accountability and active integration in the community. Probation integrates contemporary restorative victim-offender relationship in a triadic relationship victim-offender-community. This model is based on probation victim-offender mediation, as a current practice of restorative justice, not only for acts committed without violence but also for other categories of offenses for which victims agree to meet and communicate with offenders\textsuperscript{77}.

Doina Balahur shows that, although established within the social worker practices, probation is delimited by it by integrating besides welfare goals the following: advice, help, support in crisis situations and objectives specific to offender control within the community: ensuring community safety, prevention and punishment\textsuperscript{78}.

In regards to the used methods, probation counselling borrows a number of techniques from the social care area, including cognitive-behavioural methods, relational and emotional nondirective therapy, transactional analysis, individual and group counselling, interventions in group situations, material and financial resource management. A series of individualized counselling probation practices by controlling the risk of committing new offenses, supervision of persons released on probation, prison labour, risk management etc. Specific for probation counsellors is the balance between health-care-control-reintegration. The focus of the last two components individualize probation counselling from assistential practice\textsuperscript{79}.

\textsuperscript{74} Bălan, Ana, Restorative Justice in Romania – from theory to practice, PROBATION junior, 2/Vol. IV/2013
\textsuperscript{75} Balahur Doina, Fundamente...pp:36-37.
\textsuperscript{76} M. PESCARU, Asistenţa socială a persoanelor delinvente. Introducere în probaţiune, Editura Universităţii din Pitesti, 2012.
\textsuperscript{77} Balahur Doina, Fundamente...pp: 37-38.
\textsuperscript{78} Ibidem, pp. 95-96.
\textsuperscript{79} Ibidem, p. 97.
From the perspective of NPC, the role of the probation service is the application of surveillance, management of unpaid community work programs [Art 85, para. (1) and (2); Article 86], providing court information about offenders situation [Art 85, paragraph (3)], assuring the necessary measures against offenders that are legally followed [Art 85, paragraph (2) letter], community service work [Art 85, paragraph (2) letter b], etc. can execute as soon as possible those obligations [Art 86, paragraph (3)]. Also, the probation services shall notify the court if they spoke grounds for modification or termination of the obligations imposed by the court of their execution [Art 86, paragraph (4), letter a], failure by the person supervised of the imposed conditions and its obligations [Art 86, paragraph (4), letter b] or failure of the person supervised in their civil obligations established by the decision no later than three months before the expiry of supervision [Art 86, paragraph (4), letter c]. Probation Service assigned similar obligations regarding supervision of persons who have been ordered with conditional sentence, suspended sentence or probation.

Probation service is in charge of organizing and supervising minor participation during the training civic [Article 117, paragraph (2), NPC]. This is an educational measure through which the minor is required to participate in a program lasting 4 months designed to help him understand the legal and social consequences to which he is subject to if committing new crimes in the future, empowering on its own behaviour (Art. 117, NPC).

Also in the responsibility of the probation service lies the minor supervision as an educational measures that aims controlling and guiding him in his daily program lasting between 2 and 6 months, ensuring the participation of the minor in education or training, preventing the deployment of criminal activities and entry about people that might affect the correction of minor (Art. 118, NPC).

Recording on weekends is another educational measure that is done under the supervision or coordination of the probation service [Article 119, paragraph (2), NPC]. Educational measure of recording the weekends concerns the minor regarding the obligation of not leaving the house on Saturdays and Sundays for a period of 4 to 12 weeks except for participation in reintegration programs or to pursue activities imposed by the court.

Daily assistance is another educational measure consisting of minor obligation to comply with a schedule set by the probation service and must necessarily include the timetable and conditions for educational activities and prohibitions imposed upon him [Art. 120, paragraph (1), NPC]. Daily assistance is also under the supervision of the probation service for a period of between 3 and 6 months [Article 120, paragraph (2), NPC].

Article 121 which sets the obligations that may be imposed on the minor during the execution of non-custodial educational measures establishes as responsibilities of the probation service the following: supervising their execution
by the minor [Article 121, paragraph (3), NPC], the requirement for court referral when there are reasons for changing the obligations imposed by the court, as the termination of execution of some of these [Article 121, paragraph (4), letter a, NPC]; when supervised person does not respect the conditions or educational measures as obligations [Article 121, paragraph (4), letter b NPC].

Although the law does not speak specifically about the tasks of the probation service when running educational measures involving deprivation of liberty in the educational center or detention center, it is expected and desirable that the experience and qualified staff of the probation service be exploited in the development and implementation of probation programs within these institutions, for the execution of custodial educational measures.

CONCLUSIONS

Restorative paradigm is based on a new vision of penal policy, which the role of punishment is rather to restore social balance disturbed by a criminal act than to mere punishment of the man who committed a criminal act.

The most common elements of restorative justice are the criminal mediation and operation of probation services in the administration of non-custodial sanctions.

With the entry into force of the NPC, probation becomes a significant institution involved in case management and administration of non-custodial educational measures and other non-custodial sanctions which apply to major persons who are represented by delaying of sentence execution, suspended sentence or parole supervision. In all these measures the focus is on community supervision of persons who have committed crimes, as an alternative to incarceration. Although the NPC does not regulate the functions of punishment or criminal philosophy behind the model building on penalties, it remains primarily retributive as the offense is the only basis for criminal liability. This definition does not exclude the orientation towards a paradigm of justice based on human rights, particularly evident in law and law enforcement probation custodial sentences whose provisions supplement the provisions on probation contained in the NCP.

The considered restorative elements are those related to community participation and probation goal oriented towards community for social balance also evident in probation law and law enforcement of non-custodial sentences.

The fact that the NPC contains express provisions regarding non-custodial sanctions and the way they can be ordered by the courts instead of deliberate custodial sanction show a criminal legislature trend of communitarian philosophy.
Regulation of community service work, as a private institution in the application of non-custodial sanctions, according to European documents, and making offender's consent mandatory knowingly to perform community service, as obligation of the offender required for the court can decide the postponement of the sentence, or suspended sentence under supervision, question the priority of principles such as the right to dignity of the convicted person, the right to privacy and the complex thereof the lack of restriction of additional rights that were not ordered by the court according to law.

It is also important to note that the minor cannot be imposed punishment but only "educational non-deprivation or deprivation of liberty measures ". It is clear that the legislature intended a distinction between them (custodial educational measures) and the penalty that may be just the type of life imprisonment, imprisonment or fine.

Regarding minor non-custodial sanctions that take the form of educational measures and are not alternatives to punishment, they are the very object of the sanction.

For people who have committed major crimes, non-custodial sanctions may be ordered as an alternative to imprisonment only after it is rendered and its application is delayed or suspended.

Community supervision on parole intervenes in the situation after the convicted person has served a fraction of imprisonment.

NPC legislator transposed the European Directives content on probation and international conventions in the field.

New Penal Code and probation laws and the enforcement of non-custodial sentences are part of a reform of probation in Romania that exceeded experimental phase as a significant institution whose role in the execution of non-custodial measures and the individualization of punishment is legally contoured.

Follow that practice to speak up with the doctrine concerning the effective operation of probation, and passage becoming more pronounced from a retributive paradigm to a restorative paradigm centred on community-based rehabilitation of persons that realized offenses.

REFERENCES

TREATIES, MONOGRAPHS, COURSES


Crețu, Gabriela, Discursul lui Foucault, Editura Cronica, Iași, 2005.


A SOCIO-LEGAL APPROACH OF PROBATION IN LIGHT …


Tudorel Toader, *Drept penal. Partea speciala, Editia a IV-a*, Editura Hamangiu, Bucureşti, 2009

2. STUDIES AND ARTICLES


Toroian, Raluca, Oancea, Gabriel, Justiția restaurativă. Metode de reinserție pentru tinerii delincvenți în România în Jurnalul practicilor pozitive comunitare, nr. 3-4, 2002.


Mitrache Cristian, Suspendarea executării pedepsei ca forma a probării în dreptul penal roman, Editura Universității din Pitesti, 2012

Baciu, Dan, Sociological and Normative Assessment of Juvenile Criminal Justice in Romania, Sociologie românescă, Nr. 4, 2011


3. LEGISLATION

LEGEA Nr. 252 din 19 iulie 2013 privind organizarea și funcționarea sistemului de probăriune.

LEGEA Nr. 253 din 19 iulie 2013 privind executarea pedepselor, a măsurilor educative și a altor măsuri neprivative de libertate dispuse de organele judiciare în cursul procesului penal.

Noul cod penal
Noul Cod de Procedură Penală
Probation of Offenders Act 1907 (7 Edw. 7 c. 17)
Codul Penal din 1936 publicat în Monitorul Oficial, Partea I nr. 65 din 18.03.1936.
A SOCIO-LEGAL APPROACH OF PROBATION IN LIGHT …


DECLARATIA UNIVERSALA A DREPTURILOR OMULUI adoptata de Adunarea Generală a Organizatiei Națiunilor Unite la 10 de septembrie 1948.


Regulile minimale ale Națiunilor Unite pentru elaborarea unor măsuri neprivative de libertate (Regulile de la Tokyo) 45-110 din anul 1990, Cea de-a 68-a ședință plenară, 14 decembrie 1990;
Principiile Națiunilor Unite pentru prevenirea delincvenței juvenile (Principiile de la Riyadh), Rezoluția 45/112 14 decembrie 1998, (a 68-a Sesiune Plenară);
Recomandarea Nr. R (92) 16 a Comitetului de Miniștri către statele membre referitoare la regulile europene asupra sancțiunilor aplicate în comunitate, adoptată de Comitetul de Miniștri în 19 octombrie 1992, cu ocazia celei de a 482-a reuniune a vice-miniștrilor;
Recomandarea Nr. R 19 (99) a Comitetului de Miniştri către statele membre cu privire la mediere în cazuri penale, adoptată de Comitetul de Miniştri în 15 septembrie 1999;
Recomandarea Nr. R 22 (99) a Comitetului de Miniştri către statele membre cu privire la supraaglomerarea închisorilor şi inflaţia populaţiei închisorilor, adoptată de Comitetul de Miniştri în 30 septembrie 1999, la cea de-a 681-a întrunire a vice-miniştrilor;
Recomandarea Rec (2003) 22 a Comitetului de Miniştri al Consiliului Europei către statele membre privind liberarea condiţionată (parole), adoptată la 24 septembrie 2003 la cea de-a 853-a întrunire a vice-miniştrilor;
Recomandarea CM/Rec (2010) 1 a Comitetului de Miniştri a Consiliului Europei către statele membre cu privire la Regulile de Probaţiune ale Consiliului Europei, adoptată de către Comitetul de Miniştri la 20 ianuarie 2010, la cea de-a 1075-a adunare a vice-miniştrilor;
Decizia-cadru 2008/947/JAI a Consiliului din 27 noiembrie 2008 privind aplicarea principiului recunoaşterii reciproce în cazul hotărârilor judecătoreşti şi al deciziilor de probaţiune în vederea supravegherii măsurilor de probaţiune şi a sancţiunilor alternative

4. INTERNET REFERENCES.