The Social Construction of Probation Counselor: Comparative Qualitative Analysis in Romania and the Republic of Moldova

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Abstract: This paper brings a series of contributions to the understanding of probation practice as a permanent process of social construction, as well as identification of axiological, ideological, normative and institutional frameworks of the process, and how these frameworks are reflected in the speech on practice. The research approach is exploratory, based on the Grounded Theory model, and framed in the social-constructionist paradigm. The research conducted in the N.-E. Area of Romania and the Republic of Moldova confirm our model, according to which the social construction of reality has an axiological and ethical ground, through the existence of constitutive values, and a semiotic-discursive one, guided by operational values. Within this research, there were developed a series of conclusions that could be hypotheses for future research: The Romanian and Moldavian probation model is a multi and transdisciplinary one, with strong assistential and social-therapeutic accents.

Keywords: *social construction; probation; constitutive values; operational values; practice of value-centred probation.*

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Introduction

The introduction of probation as a non-custodial alternative to custodial sanctions reduces the socio-economic costs of imprisonment, being considered – in general – more efficient, from the point of view of diminishing the risk of relapse, but also more cost-effective from the point of view of costs of supervision, far inferior to those of incarceration.

The aim of the research is to develop an interpretative model concerning the institutional and instrumental frameworks of the social construction of probation counsellor profession. The context of the social construction is represented by the continuous changes from the past 25 years, after the exit of Romania and the Republic of Moldova from Communism. The evolution of the normative-institutional framework marks the social construction of the professional identity of the probation counsellor, by reformulating certain operational definitions the professional works with, and around which he constructs his speech on practice.

Abbreviations

IRO1- IRO12 – Romanian interviewed – probation counsellors and directors of probation services from the N.-E. region of Romania – Botosani, Suceava, Iasi, Neamt and Bacau counties.

IMD01- IMD15 – Moldavian interviewed - probation counsellors and directors of probation services from the Republic of Moldova – Balti and Ungheni districts, and from 4 services in the sectors of Chisinau, namely the Central – National Office, based in Chisinau.

IBRO01- IBRO06 – interviews with beneficiaries of probation, supervised persons from Romania.

IBMD01- IBMD07 – interviews with beneficiaries of probation, supervised persons from the Republic of Moldova.

IMLRO – interview with a forensic doctor from Romania.

IMLMD – interview with a forensic doctor from the Republic of Moldova.

IAS – interview with a social worker from Romania.

IAV – interview with a lawyer from Romania.

FG2016RO – focus group conducted with Romanian specialists, others than probation counsellors – social workers, forensic doctor, psychologists.

NCP – New Penal Code

NCPP – New Code of Penal Procedure

Literature review

Probation is a professional practice of supervision within the community, of people who have committed crimes and are in different stages of prosecution / criminal process, where convicted with suspension, or are in some form of „period of trial, test” in order to replace or suspend the imprisonment. Introducing probation as a restorative practice aims to modify the sense of punishment, from the strategy of power (Foucault, 2005) to a strategy of creating consensus to a social level.

The social construction of reality

The theories on the *social construction of reality* – in this case, the social construction of a profession – that of probation counsellor – comes from two different sources, the first one being the sociological one, originated in the work of Berger and Luckmann (2008), and the second one in the social psychology (Payne, 1999). The sociological perspective targets the way (Sandu & Unguru, 2017) in which the social institutions are created, while the psychological dimension (Gergen & Gergen, 2003; Gergen, 2005) targets the emergence of constructs such as the one of identity of role, personality and perception (O'Donoghue, 2010). The meanings the individuals give to the world can differ from one social actor to the other, but the process of deconstruction – reconstruction of senses (Sandu, 2016) makes the individuals identify the common acceptations of the terms used to define the social reality.

The researches on the social construction of probation have considered a series of topics, among which special importance is given to the attitude of the probation counsellors on the *particularities of role* they feel when combining the assistential activity to the coercive one (Glaser, 1969; Klockars, 1972; Ohlin, Piven, & Papenfort 1956; O'Leary & Duffee, 1971; Rowan, 1956; Sandu, 2016b), and the conflicts of role they consider themselves involved in (Clear & Latessa, 1993; Erwin & Bennett, 1987; Hardyman, 1988; McCleary, 1978), due to this double orientation of practice. The analysis of the dynamic of role of probation counselors towards the roles they play in exercising their profession, targets the way in which they relate to the purposes of their own practice, orientation towards the results (Ross & Johnson, 1997), the relationship between own attitudes, values and beliefs of the counsellor and the orientation of practice (Clear & Latessa, 1993; Dembo, 1974). In case of an assistential model, the counselling practices will use elements such as facilitating access to community resources, involving the supervised person in social networks

and consolidating the social integration, etc. On the contrary, the emphasis on the supervision side leads to the idea of control, precise and intransigent monitoring of the obligations imposed by the court, etc. The two sides are described as being disjointed (Clark, 2011).

This distance is attributed to the inability or lack of will of social workers to put his beneficiaries in situations with strong coercive potential, since one the fundamental values of social work is the non-judiciary and non-punishing approach of practice. In the last years, the two professions are increasingly reunited, emphasizing on the importance of preparation in training probation counsellors in social work. Whetzel Paparozzi & Lowenkamp (2011), analysing the relationships between the probation counsellors and the supervised persons, are also in favour of a broad connection between the practice of probation and social work.

Fulton et. al. (1997) generate an orientation of practice towards the counselling dimension (Whetzel, Paparozzi & Lowenkamp, 2011), and a therapeutic alliance between them and the supervised persons, or the coercive dimension centred on the immediate efficiency highlighted through the lack of relapse. The attitudes and values of probation counsellors are not only transposed into practice, but will significantly influence its results (Whetzel, Paparozzi & Lowenkamp, 2011). The training in social work is an advantage of the professionals in community supervision and probation due to the emphasis of the assistential side and the practice based on community resources (Nellis, 2003).

The scientific literature (Phillips, 2010) on the *social construction of practice of probation* argues the need for the analysis of the historic perspective when implementing new standards concerning the practice of probation, since the systems of probation are dependent on the historic context in which they were and are developing . The comparison between the American and the British systems conducted by Jake Philips shows that the two have evolved differently based on the meaning of the term *offender*¹ (Phillips, 2010). The constructionist perspective leads to the idea according to which the systemic change administratively imposed undermines the social practice of the probation services, which is why the requests of globalization of the assistential practice within the probation services should be refused (Phillips, 2010).

¹ We preferred the term *offender* instead of *criminal*, because we consider it better fits the specific of the restorative paradigm, which we consider to be – at least in part, the origin of the modern probation systems.

Studies conducted by Joan Norrie, Erin Eggleston, Martin Ringer (2003), as well as Ricks & Loudon (2015) have shown that the preference of the probation counsellor for methods based on strict supervision, namely on communicative strategies, influences the quality of practice by choosing techniques of intervention that are included in the case management.

In the construction of probation, the idea of establishing certain relationships of power as a determinant of the functioning of probation is doubled by that of diminishing the risk associated with committing the crime (Hardy, 2014). The anglo-saxon practice in particular consider probation to be a form of exercising power – which we have considered to be soft power (Nye, 1990; 2004; 2011) – doubled by a strategy of limiting the associated community risk, on one side, and the criminality and effects of imprisonment on the other.

Punishment is seen as a form of power coding (Foucault, 2005), and prison is its exterior form. The non-custodial punishments could be interpreted, in Foucauldian terms, as a major change in power coding, from the coercive and restrictive power, to the cooperating power based on influence and co-participation.

Probation understood as an alternative to imprisonment remains tributary to the prison-centred paradigm, even if humanized, imprisonment is present in the speech on punishment, but also in the one on the social recovery of the offender.

Systems of probation

There are four models of probation system in Europe: the ones that promote the community measures and sanctions (Estonia and Turkey); the ones that function with the purpose of helping the legal system make the best decision when formulating a sentence (Italy, Romania); the ones based on the model of rehabilitation / protection of the population (France, Austria, Czech Republic, Denmark, Finland, Northern Ireland, Norway, Germany, Bulgaria); the ones based on the model of punishment or enforcement (Great Britain)” (Durnescu, 2008a; Balica, 2009).

The operational definition of rehabilitation used in this paper, is: *rehabilitation is the result of a complex process that combines the actions of correction of the offender's conduct, his personal development based on promoting the social responsibility and values.* Within the process of rehabilitation, the social responsibility, social justice, active participation, empowerment, the construction of independent and pro-social abilities of life (Munting, 2015). The term

reintegration targets the actions of bringing the offender back in the society, and his process of re-socializing (Spoiala, 2009).

A number of authors, among which Lukas Munting (2015) avoid using the term *rehabilitation*, rather using *reintegration* as a synonym. Michael Wenzel, Tyler G. Okimoto, Norman T. Feather and Michael J. Platow (2008) state that the restorative justice is based on re-affirming the consensus of the values spread in the community through a process of communication that is at least bilaterally – offender-victim –, if not trilateral – offender – victim – community (Toroipan & Oancea, 2002; Dignan, 2005; Groza, 2006). The purpose of restorative justice is to *de-sanctify the sanction* (Johnstone, 2011). The paradigm of restorative justice is – in its theoretical form – situated at the antipode of retributive justice, which it is supposed to replace (Popa, 2005).

Establishment of Romanian and Moldavian probation systems

The Romanian model presented in the New Penal Code introduces probation as a public service involved directly in the supervision, recovery and social reintegration of offenders (Sandu & Unguru, 2016, p. 217; Sandu, 2016a; 2016c). The establishment of probation services, both in Romania and the Republic of Moldova, had the purpose of developing alternative measures of punishing criminals, that would allow to reduce financial and social costs of imprisonment (Dumitrașcu & Schiaucu, 2008). The basis of probation in Romania were made in private, starting with 1997, through pilot programs of restorative justice, especially for minors, conducted by NGOs. Starting with 2001, probation is conducted through means of public services, initially in subordination of the courts. Subsequently, with the criminal reform of 2014, the probation services were subordinated to the National Probation Directorate within the Ministry of Justice.

In the Republic of Moldova, probation is introduced after 2001, along with other measures alternative to detention, among which criminal mediation and unpaid work (Cojocaru, 2005). The establishment of the services of probation has started in Moldova through pilot programs supported by the Center for Resources of the Institute of Criminal Reforms. The practical activities of implementing the service of probation have begun on January 01 2004, through the pilot conducted by the Institute of Criminal Reforms of pre-sentential probation concerning minors in the Center of Chisinau.

The context of research

From a socio-economic point of view, the N.-E. area of Romania includes Iasi, Suceava, Botosani, Neamt and Bacau counties, being one of poorest regions of Romania and the EU. Being a pole of poverty, the criminal perspective is increased, many of the crimes for which people are supervised by the probation services being directly connected to the low level of living.

The Republic of Moldova was a part of USSR until 1991, when it proclaimed its independence. The majority of the population was speaking Romanian. In the Republic of Moldova there is also an increased level of poverty, which makes the criminal rate in the two regions have a certain similarity.

Both in Romania and the Republic of Moldova, probation is a social practice and a recent profession, although there were models of non-custodial sanction ever since before the communist period.

Methodology

Research objectives:

1. Identifying the main discursive axes through which the process of social construction of the profession of counsellor is conducted.
2. Identifying the constitutive and operational values of the practice of probation and the way in which the representation of the values is found in the discourse on practice.

Data collection

The data collection was carried by conducting 27 individual interviews with probation counsellors and directors of probation services, 12 from the N.-E. region of Romania – Botosani, Suceava, Iasi, Neamt and Bacau counties – and 15 from the Republic of Moldova, Balti and Unghieni sectors, as well as 4 services from the sector of Chisinau Municipality, namely the Central-National Office from Chisinau. There were also conducted 6 interviews with people under the supervision of the probation services in Romania, and 7 interviews with people from the Republic of Moldova. A focus group conducted in Romania was also part of it, where the representatives of the Probation System, and 8 other professionals involved in implementing probation (social workers, psychologists, forensic doctors) were also co-opted. Adjacent, 3 interviews were conducted with: a forensic doctor, a lawyer and a social worker, all of them collaborating in one way or another with the service of probation.

The respondents – probation counsellors – were mostly females, 10 of the 12 probation counsellors interviewed in Romania, and 10 out of 15 probation counsellors from the Republic of Moldova, the gender structure of the respondents being similar to that of the employees from the probation services in Romania and the Republic of Moldova.

Regarding the respondents that are supervised persons, 14 were males, and 1 was female. For the participation in the interview, there were selected probation counsellors with professional experience between 2 and 17 years, two of the respondents from Romania and 3 from the Republic of Moldova being in the system ever since the time of experimental projects carried out by NGOs between 1997-2001 in Romania, and 2003-2004 in the Republic of Moldova. At the level of each service, the selection of the respondents was based on the snow-ball method.

The interviews were semi-structured, having a series of thematic axes, among which *the description of professional practice / the specific of practice, institutional cooperation and models of practice of probation*. The subjects were previously informed on the purpose and objectives of the research, as well as ensuring confidentiality, expressing the informed consent to participate in the research.

Qualitative sampling

The theoretical sampling was considered, including a new respondent in the sample, after the analysis of the previous respondents, being chosen new members in the sampling until the saturation of the model.

Discussions

Saturation of the model

For ensuring the saturation of data in order to construct the theoretical model, a saturation grid was used, according to the methodology exposed by Brod, Tesler and Christiansen (2009), Rubin & Rubin (2012), Onwuegbuzie and collaborators (2012), Fusch and Ness (2015). In order to find the saturation of the sample, it was necessary that the input of the last respondents to the table of categories not to exceed the categories already obtained for n-2 respondents.

The specifics of data analysis

For data interpretation we used the Constructionist Grounded Theory (GT) (Goulding, 1999; Creswell, 2007; Corbin & Strauss, 2008; Frunză, 2017; Sandu, 2018), conducting a process of systematic generating of concepts and conceptual categories with an increased level of generality, which explains the topic researched. The approach was inductive, successive work stages being conducted, starting from the information offered by the subjects investigated, thus aiming to generate a theoretical corpus and not the validation of a set of prior hypotheses (Corbin & Strauss, 2008). Thus obtained, the results synthesized as a model may constitute working hypotheses for future research, that would clarify the model resulted, and the extent of its validity. The methodological literature on Grounded Theory finds it necessary for the researcher to abstain from using hypotheses (Ólavur, 2011). GT is based on a progressive identification of the meaning of data and generating semantic categories resulting from the direct analysis of data and their aggregation into a theory, permanently correlated with similar results available in the literature. The objectives guide the research, being based on implicit assumptions, without being formulated as hypotheses.

Open coding involves continuous comparing of own data with the results presented in the literature, and with the respondent's speech. In this process there were established the first categories by identifying certain primary relationships, between the key concepts identified in the discourse of the respondents. The categories obtained were mentioned in the chapter of results.

Axial coding is the second inductive process. In this stage there were generated theoretical conceptual categories, with a higher degree of generalization, which is different from those resulting from the process of open coding. Within this process of coding, the connections between the categories are highlighted, formulating a first model of analysis. The categories resulted in this stage are developed in the subchapter *Discursive perspectives on the social construction of probation* from the chapter of results.

Selective coding involved establishing the central category and the relationships between the categories, through constantly comparing the categories and identifying certain possible discursive pattern (Sandu, 2017b).

Memos. Introducing them allows the researcher to note ideas on the evolution of the process of theoretical generating at the level of all processes of open, axial and selective coding (Creswell, 2007, p. 67). The memos are theoretical notes on a particular set of data (their association with several

categories, the convergence/divergence with the results in the literature, correlations between the categories). Examples of such notes were introduced in the text through the phrase: *in our opinion*.

The credibility of data interpretation was ensured by permanently reporting to the expressions of the respondent. The acceptance of interpretations by the interpretative community the respondents are a part of, was done by partially exposing the results of the data analysis in the focus group, and the confrontation of the respondents' opinion with that of the probation counsellors interviewed. When finalizing the qualitative analysis of data, the results were made available for the persons in charge of the National System of Probation in the two countries, as well as certain coordinators of the regional probation departments and the persons interviewed. The preliminary report was available for consultations, requiring the persons interested, especially the participants in the research to formulate polemical opinions towards the conclusions of the research, taken into account in drafting the final report. The saturation of the model was verified on each generated category, the selection of new respondents being stopped when the new interviews have no longer brought new significant data in any of the thematic axes of the research. We aimed to triangulate the researchers, carried out with the colleagues in the Center for Research involved in conducting the research, and the data sources, in order to diminish as much as possible the sources of subjectivity in data interpretation, the researchers assuming the subjective nature and the exploratory nature of the research. The interviews were conducted in Romanian, the same language used in the process of data coding. The data were interpreted after transcription, using the Nvivo software. The ethical aspects were analysed by the researchers obtaining the agreement of the Ethics Committee of the institution where the research was conducted.

Results

The results are presented as thematic axes of the categories and subcategories, as they were generated in the process of open coding and transformed following the axial coding. Following the data analysis, the following thematic axes and categories resulted: Thematic axis I: Instrumental and institutional framework; Thematic axis II: Development of human resources; Thematic axis III: The relationship between probation counsellor and supervised person; Thematic axis IV: Values-centred probation. Theoretical-ideological dimension of the social construction of

the profession of probation counsellor; Thematic axis V. Offender-victim mediation.

Within each axis there were highlighted a series of conceptual categories that describe the particular directions of the process of social construction on each of the axes. The categories we have identified were: The normative functioning framework; The institutional functioning framework; The evolution of the practice of probation in Romania and Moldova; The attributions of the probation counsellor in relation to the types of beneficiaries; Professional socialization; Professional identity of probation counsellors; Dilemmas and professional issues in the practice of probation; The specifics of the probation counsellor – supervised person relationship; Case management between supervision and counselling; The relationship probation counsellor – supervised person as a therapeutic relationship; Stories about practice; Strategies of balancing power; Working instruments; Changing the attitude towards the society and normativity; Constitutive values; Operational values of practice; Moral dimension of the practice of probation; Why are criminals punished; Mediation between victim and offender – constitutive element of the paradigm of restorative justice; The functional paradigm of the profession / restorative justice, justice centred on human rights / retributive justice. Some wider categories were split into subcategories, easily to conceptually operationalize.

Discursive perspectives on the social construction of probation in the N.-E. area of Romania and the Republic of Moldova

The co-construction of the practice of probation counsellor

The discourse of both Romanian and Moldavian interviewed on practice is influence by the model of restorative justice, having important responsibilities for the social reintegration of the offender. Executing a non-custodial punishment is seen as a series of stages in which the persons goes to the majority of important actors in the community. In this chain of interactions, the role of the probation counsellor is of mediator between the court and the community. The two poles: court and community, are symbolic representations for the two major functions of punishment: retribution – established by the judge – and recovery – based on the community.

The interviewed persons (IRO03; IRO07; IRO08; IMD08) show that probation is a team work, the counsellors cooperating with each other, discussing the cases in sessions of formal or informal intervision, with the

purpose of identifying the best practices in the benefit of the client, with respecting their rights and the legislation in force.

The probation counsellor between profession and vocation

The career of probation counsellor is relatively new in Romania and the Republic of Moldova. This makes the human resource involved in the process of probation to be insufficient, which leads to a task overload of each counsellor, practically decreasing the professional motivation, but also affecting the efficiency of the practice (Sandu, 2017a). The assistential nature of the profession was imprinted by the beginning of organizing the activities of probation, especially through non-governmental organizations mainly offering social services. Currently, the profession of probation counsellor is considered a different profession from social work, proof being the access of certain specialists with a different initial training.

The transformation of the interpretative paradigm on practice also alters the discourse of the professionals, orienting it to a model based on *ethics of care* and the *social construction of responsibility*, convergent with the restorative paradigm. The same directive of the orientation of practice towards values specific to the operational paradigm are found in a research in New Zealand, which places probation as part of social work, precisely because the respondents, probation counsellors, would emphasize as fundamental values those specific to social work: orientation towards the client, supportive practices, etc. (Dale & Trlin, 2007).

Professional identity of the probation counsellors

The interviewees have noticed a social importance of the profession, being one of the few assistential professions whose social value is acknowledged both publicly and by the professionals. One of the possible explanations is the association of probation with the professions in the legal system – probation being part of the criminal executing system. The prestige of the legal professions is transferred onto the probation counsellors. In addition to the positive self-perception of the counsellors in both countries on the prestige of the profession it is added the high salary level, compared to that of other professionals in the assistential field (FG2016RO). This element of wage motivation is lower in the case of Moldavian colleagues. The professional optimism and the attachment towards the assistential values of the profession transpire from the interviews conducted, the professional identity being strong and the belonging to the profession of probation counsellor being considered a personal achievement.

Most of the interviewees, however, show that the existence of a balance between the counselling – re-integrative side and that of supervision, with a practical and temporal focus on supervision, motivated by the task overload of the counsellors who thus have a greater difficulty in conducting their counselling activities which require a greater amount of time.

The fact that the probation model highlighted in the two countries is based on the *social reintegration of the offender*, purpose highlighted both in the interviews with the majority of the respondents, as well as the normative frameworks in force, places probation between the two countries in the area of social professions, with strong assistential specific.

Ethical constitutive values of the profession of probation counsellor

The constitutive values of the practice of probation come from the sphere of humanism, the accent being placed on the (moral) value of the individual itself, beyond that of his actions. The retribution and recovery are two main values, which delimit two types of particular professional discourses, that are specific for the directions of the society: social control and repression of illegitimate practices – considered to be specific for the prosecutor – and the concern for the individual as a depositary of dignity, and in general of the humanist values, even beyond the responsibility towards his actions – discourse specific to the assistential professions, probation included.

One of the discursive strategies specific for probation, derived from humanism as constitutive values is that of the *separation between the negative value of the anti-social deed and the unconditionally positive one of the offender* as a human being. It is highlighted the role of the counsellor in the process of recovery of the offender, as well as the fact that the professionalism of the counsellor underlies his personal and social development, and in the last phase, the reintegration of the offender (IRO11). The punishment must be humanized by finding alternatives to imprisonment (IRO04). The social reintegration of the offenders answer, in our vision, to a central constitutive value of probation, shared with the other assistential professions, namely *the responsibility of the society* towards his members. This responsibility comes from the social consciousness – latent or manifested – of a (co)responsibility of the society in general, towards the actions of his members, which somehow transcends the individual responsibility of each one for his own actions. The responsibility – for the other – as a constitutive value of probation takes two directions: the responsibility for the individual – offender – and for the society itself, as a responsibility for the non-presence (IRO01).

The responsibility cannot be considered exclusively individual. The co-responsibility of the community for the anti-social route of the individual is thus indicated. The lack of legitimate opportunities, sufficient and accessible, of the public trust and the favouring of the social construction of trust in itself, the involvement of the family in the socialization of the individual and the construction of attachment (Garhart, 2009) can be just as many social causes of anti-social behaviour. Just as important is also the responsibility of the individual to his social image, his effort towards his social integration. This effort leads to a change of attitude of the community towards the individual, being one of the keys in the process of resocialization which is necessary for the integration in the community of the supervised person (IRO11).

Operational values of practice. Retributive versus restorative justice

The retributive discourse (Sandu & Ignatescu, 2017) is found in the approach of probation from a social perspective – the retribution compensates the social balance created by the crime, by generating the feeling of the existence of a coercion, the anti-social act generating in itself the need for a retribution. The punishment is personalized by limiting certain rights, this being necessary due to the existence of the deed, coercion being necessary – for both the society and the individual. Society should see that the individual is trying to restore balance, by paying damages, by working for the community, etc. The retributive discourse is somewhat associated with the restorative one, the restoration - the regain of the social equilibrium before committing the offense - not being possible outside the retribution (IRO11). Punishment must be recalled as a positive element, a life experience. Such an approach should lead to the elimination of stigmatization (IRO06). Assuming the consequences of the facts also appears in the responses of supervised persons (IBRO1).

The straightening of the individual for the most part. To realize he was wrong and that's it, he has to bear the consequences (IBRO01).

Restorative and retributive justice are correlated, depending on the specific nature of the damage caused by the offense. The specific of the retributive speech is given by the phrase you have to pay, followed by the argumentation of the necessity of this payment by the created damage and possibly the victim's suffering. Remission itself is part of the restoration of the social equilibrium before committing the deed (IRO11). Supervised persons emphasize the specifics of the crime and, in particular, the social

danger of it, showing that there is a clear difference between the facts according to its consequences. For example, it should not be treated similarly, from the point of view of punishment, that driving the vehicle drunk when no crash occurred and when there were no accidents with significant damage, such as other crimes, for example murder, differentiated by intent (IBRO01).

Trust, a constructive value of the relationship probation officer - supervised person |

An especially important ethical value in probation practice is the sincerity seen by the respondent in correlation with other operational values of probation practice, such as dignity, professional integrity and consistency. Simply adhering to the idea of professional integrity, sincerity, or consistency is not enough. They should be internalized by the probation counsellor at the level of behavioural constants (IRO06). Confidence of the counsellor in the supervised person should be based on frequent reviews of what the beneficiary claims. Responsibility for the subject - considered part of the trustee-bailiff trust report - is accompanied by the verification of its claims and actions (IRO09). Mutual trust between the counsellor and the supervised person is considered to be particularly important, especially if it is based on mutual respect (IRO10).

From social responsibility to responsible society

Responsibility as a value of practice can be seen from at least three meanings: the responsibility of the probation counsellor vis-à-vis the supervised person and the society, the responsibility of the society both towards the victim and the offender, and last but not least, the offender's towards his own actions, and their consequences. The counsellor's responsibility is seen as directed to avoiding the offender's relapse and social reintegration. The position of the counsellor's responsibility as an operational value of practice places probation in the field of *social assistance practices*.

The community is made responsible for creating and maintaining legitimate opportunities for the reintegration and social functioning of the offender. This invocation of community responsibility refers to the practice of probation in the context of community-based rehabilitation of the person who committed a criminal offense. Society works repressively, rejecting those who have committed an offense, refusing them the right to education, work, social development. Moreover, society does not prepare those

individuals for a cultural autonomous life. Practically, the construction of the social and cultural autonomy of the supervised person is a component part of the social intervention that the probation counsellor does, compensating for community-based rehabilitation elements where this is impossible or precarious (IRO08).

Role of the probation counsellor in the social construction of the autonomy and responsibility of the supervised person

The term *autonomy* is understood in a moral key as defining a social commitment. This moral commitment should be made in the sense of assuming responsibility for complying with social norms, and in particular with laws, and avoiding new offenses (IRO01). The process of (re) constructing the moral and social autonomy of the supervised persons involves the formation of social communication, relational, organizational skills. Probation has to (re) create the structure that the subject will later build on its own autonomy by acquiring information, knowledge, skills (IRO08). Supervised persons have to find their own inner resources to go to the different institutions where the person has to go, either to carry out court-ordered measures or to get the best social integration.

The probation counsellor may carry out institutional advocacy activities, but only to the extent that the individual assumes a task-oriented behaviour. The discourse is centered on the imperative of necessity, the assumption of one's own moral and social debt is the key of its anticipatory socialization based on socially accepted values (IRO11). The construction of autonomy - both relational, functional and moral (Bandura, 1991) - allows the perpetrator to build a self-care and self-transformation management. The probation practice centered on the supervised person's strengths - the appreciative appraisal (Sandu & Damian, 2012) - will mobilize and motivate the person to use their own internal resources in the process of social reintegration. The practice of probation is included in the sphere of professions related to social assistance, with which it has in common precisely the process of helping the vulnerable person in the (re) construction of his or her autonomy (IRO01, IBM02, IRO04).

The operational definition of the responsibility of the probation counsellors is the *assumption of the consequences* for the deeds committed (IRO09). Probation counsellors are involved in remodelling the behaviour of the supervised subject, restoring his motivation for social integration. (IRO04). Accountability is a gradual process, a social development and socio-therapy (IRO04, IMD03) at the same time. The accountability process

is constructive, being dependent on a number of personality factors, but also on a number of socio-economic factors where it operates (IRO07). The construction of the responsibility is correlated with the attitude of the counsellor to suspend the moral judgment regarding the supervised person, as well as the deed committed by him (IRO08). It is absolutely necessary to congruence the individual actions of the perpetrator with those of the community for the social integration of the perpetrator (IRO01). The probation counsellor uses symbolic coercion in making the perpetrator aware of his or her own future actions by invoking the possibility of revoking unprovoked measures and returning to imprisonment. The process of accountability of the supervised persons can start from identifying situations where they have been previously accountable - for example, parental responsibility - and transferring successful experience into taking responsibility in their own social reintegration process (IRO04, IRO05).

The relationship between probation counsellor - supervised person as a therapeutic-assistant relationship |

It insists on the double dimension of the practice of probation, in addition to the supervision and monitoring of the execution of the non-custodial sanction, there are activities of counselling and effective support in solving the problems that led to the commission of the offense or which could lead in the future to new anti-social facts (IRO01). Counselling and supervision are seen as activities that overlap and reinforce each other for the ultimate outcome, integrating the perpetrator into the society and eliminating the risk of relapse. Supervision leads to the construction of self-responsibility and the moral agency of the supervised person (IRO01). The probation counsellor-supervised person relationship is seen in its therapeutic dimension, trustworthy, both in itself and in the counsellor. Trust is the premise of rehabilitation, as it leads the *beneficiary* to understanding the sanctioning measures and court obligations, effectively working with the counsellor to implement surveillance measures (IRO01).

The purpose of probation as an assistant and coercive practice

The role of justice - and the probation system n.n- is social therapeutics (IRO08). The retributive speech is obvious. The imperative of punishment is indisputable, only its repressive force must be graded according to the degree of guilt. The speech of the interviewee puts it in a modern, objective objectification of the sanction, justice being somewhat immanent, as a: *in itself, what is outside the process of social construction of justice.*

*The punishment must be pronounced in the sense that the person must be **sanctioned**. The court must consider the degree, intent, premeditation to give an appropriate sentence (IRO02).*

The same retributive perspective, according to which criminals are punished because an antisocial deed once committed must be sanctioned, possibly to give an example, is highlighted in the responses of supervised persons (IBM 1, 2, 4, 5, 6, 7, IBRO 1, 3, 5, 6). Some of them tantalize the idea by introducing a distinction based on the intentional or culpable nature of the offense, as well as its severity and social danger (IBM06; IRO05). By placing criminality in the perspective of social handicap, it is basically invoked the responsibility of society towards it, on the same model that persons suffering from other forms of disability require social protection (IRO08, IRO02, IRO01).

Towards a probation model centered on human values in Romania and the Republic of Moldova

The construction of probation in Romania was done mainly by taking over successful elements from the models of other states, especially the United Kingdom and Norway, but only partially adaptable to the Romanian situation from the perspective of the legal system and the dominant criminal philosophy, the mentality of the population, criminogen and communication features. The Moldovan probation system is mostly a creation of local professionals, more adapted to the local socio-cultural specificity, proof being the increased assistant accent, which is normal for a country with a low standard of living compared to the European average. An essential feature of the Romanian system is the *strong personalized dimension of communication*, both at institutional and inter-institutional level, which contrasts with the orientation towards formalism of the Moldovan one. This emphasis on communication of practice in Romania makes the system orientated towards the advisory side, with therapeutic accents, to the detriment of the punitive one, while the preference for the formalization of institutional communication led to the emergence of an assistance side based on identifying and facilitating access to resources in favor of the beneficiary.

The practice of ethics centered probation

The paradigm of restorative justice, despite the dual normative discourse, is ultimately tributary to a postmodern society model. The postmodern elements covered by the Romanian and Moldovan restorative probation model are also represented by the debt dissolution (Lipovetsky,

1996) and its interpretive derivation to social responsibility. The model of debt is convergent with the idea of retributive justice, while social responsibility involves a model of restorative justice. The model of value-based probation in Romania and the Republic of Moldova is based on a theoretical process of interrelation between the paradigm of retributive justice - the non-consensual justice - the paradigm of restorative justice and that of human rights-based justice. The constitutive values of the Romanian model of probation are righteousness - as retribution - responsibility and dignity as human general value. Each of these values comes from a different ethical construction.

The central expression of the model is the certainty of remuneration that guarantees equity between individuals and their equality before the law. The prison-centered paradigm is considered an excessive and costly reward, the probation introducing social pay models: community work, limitation of rights, supervised freedom. The responsibility of the society is highlighted by trying to recover and reintegrate them, to reduce the risk of relapse. Within this model, responsibility is substituted for equality, and recovery takes the place of retribution. A particular definition of responsibility comes from the Ethics of Care (Frunza, 2004), where it is understood as an assistant practice. Marilyn J. Gregory (2011) also places the restorative justice in the sphere of ethics of care. This opinion is consistent with our own results, the elements of restorative justice in the speeches of probation counsellors are often contextualized by the idea of responsibility - the community's co-responsibility for the social reintegration of the perpetrator - and the responsibility of the perpetrator himself. The humanistic paradigm of probation emphasizes social reintegration, correlated with retribution, but in the context of constant care for respecting the rights of perpetrators. The human rights model includes an important component of the *humanization of punishments*, their individualization and their correlation with the personality of the perpetrator, and the context of committing the offense. The punishment must be humanized, and strictly enforced within the limits of the law, which protects a number of fundamental rights of the convicted person.

Principles of Probation Practice and Social Assistance: Unity and Diversity

The assistential dimension is convergent with the European perspective on probation practice. Supervised persons appreciate the probation counsellor's assumption of specific duties to the social worker in

order to obtain concrete results to reduce the risk of relapse (Kavanagh, 2007). Restorative mentality is obvious, but it is ambivalent. On the one hand, the emphasis is on the strict observance of the law (especially Moldovan councillors), the educational function of the punishment, when expressly discussing the role of punishment, and on the other hand they are highlighted as the main elements of success, the issues that place probation as a social reintegration socio-therapy.

The Moldavian probation is closer to the model of *probation officer*, a person with authority, who strictly follows the execution of non-custodial measures. It is the assistant side that ensures the success of the practice, and the social reintegration of supervised persons is particularly important in avoiding relapse. The complementarity between the assistantship and the supervision side shows that the model is closer to the council than they want to transcend, the excess of formalization being a result of institutional pressure. The focus on interpersonal communication is identified in the relationship between probation services and other institutions, such as the courts of law and enforcement, the penitentiary, the mayoralities, the police. Direct communication, from professional to professional, is preferred by probation officers in Romania to official, institutionalized communication. The latter is seen as difficult, bureaucratic, with fewer results.

Personalizing relationships between professionals is beneficial to institutions, until the departure of a professional from a system is limiting institutional communication with representatives of other public institutions. Excessive personalization can lead to a fluidization of the institutional communication limits, in some cases situations of inter-institutional collaboration, even in the absence of formal agreement from the management of the partner institution. In contrast, the Moldavian professional emphasizes the limitation of the personal element in favour of the formal one as much as possible, in accordance with precise normative frameworks, which give a minimal possibility of error. This formalism is a form of perfectionism that defines the idea of professionalism. It is defined by Moldavian councillors in accordance with the norm, in a legitimate approach. By contrast, those in Romania define the profession in terms of efficiency, of course without neglecting the normative orientation.

The objectivist epistemic orientation, with accents of ideological monism that can be justified by the modern ideal of objectivity, was conveyed through the Marxist ideology in the form of a rigid realism that essentially has a connotation of epistemic nondualism. Epistemic objectivism can generate a normative rigidity in the minds' plan. The contrary attitude is based on a mentality that emphasizes interpersonal,

normative minimalism. The communist experience generated in Romania a normative contraction, a mentality of the double standard. This may, for example, explain why institutional communication is effective despite the opposition of decision-makers in the organization. Normality is seen as the minimum acceptability threshold of a conduit. Reporting is a key to understanding the probation system as a criminal enforcement system. Probation, being part of the criminal enforcement system, carries a symbolic power transferred from the criminal system in general and invests probation counsellors with professional prestige even despite the low visibility of the profession in the public space.

However, professional prestige is ambivalent as it is partly shadowed by the transfer of negative reputation from beneficiaries to professionals. If maximalist normative reporting encodes a system of individual responsibility, then the minimalist approach unloads responsibility. The focus on communication of the system could encode an attitude of fluidization of normality, existing at the level of the Romanian society. Fluidity of normality can generate social creativity, and normative maximalism can generate identity construction by common adherence to a set of normative coded values. From the point of view of probation, both approaches - both normative fluidity and normative maximalism - are key dimensions, being, we consider, present simultaneously in the practice of probation in both countries, but differently discursively coded, depending on the different appreciation of constitutive values in the community.

A limitation of the probation system is the lack of visibility and public recognition of its role in the criminal enforcement system. The remarkable effects of non-life practices, where the risk of relapse is national at around 5%, compared with 45% for convicted persons, should be known to the public and to policy-makers. The data is almost identical for the probation systems in both countries. The low human and material costs for both the perpetrator and the society should be further promoted, for example from the argument that an extremely small number of probation counsellors (350 counsellors in Romania) manages the execution of non-custodial sentences of 40 thousand people, compared to 15 thousand prison system officers managing 12 thousand inmates. Better knowledge of the social importance of probation would be given by education of the public in understanding the real risks to which the community is subjected due to the execution of non-custodial measures, and which is extremely low.

The narrative approach is generally enthusiastic, with professionals' belonging being a strong source of professional identity. Practical advice specific to Romanian probation requires time, while the load of over 250

cases from 30 cases in other countries, makes it impossible to correctly and completely apply time-based work tools based on experience and collaboration with specialists from other countries. There is an increased risk of bureaucratisation of the probation, transforming the counsellor into a simple evaluator of the proper enforcement of court measures that no longer has the capacity to help the convicted person turn into even the process of implementing non-hostile freedom which diminishes the practical side of the practice.

Progression centered on strong points and appreciative probation model

A pragmatic perspective resulting from the in-depth analysis of interviews targets the respondents' focus on *what works - the direction of practice based on the strengths of the supervised person* (Ward & Maruna, 2007). This approach can be considered part of the appreciative paradigm of probation. The strength-based approach completes the problem-centred approach, often considered less effective in the process of rehabilitation and social reintegration of the offenders (Fox, 2014). This approach makes the probation methodologically integrated with social assistance, but also with other counselling practices meant to ensure social (re) integration of the various vulnerable social groups - persons who have committed a criminal offense in the case of probation.

Conclusions and policy proposals in the field of probation

In the present research, a series of conclusions have been constructed that can be of value for future research:

- The Romanian and Moldovan probation model is a multidisciplinary and transdisciplinary one, with strong assistential and social therapy accents. The assistant perspective is fundamental to the professional practice of the probation counsellor.

- Probation counsellors in Romania rather focus on interpersonal, informal communication strategies. While their colleagues from the Republic of Moldova are more interested in formal, institutionalized communication, in both cases with full and strict observance of the law.

The Romanian model is a combination of four paradigms - retributive justice, restorative justice, utilitarian justice and justice based on human values and human rights - in part due to the model of the development of probation in Romania and Moldova on the basis of private initiatives (NGO environment) of restorative justice, and of the

predominance of the practical specificity of practice. The dominant speech is a predominant retributive one, most of the respondents pointing out that punishment is necessary because the anti-social act must draw the sanctioning response from the society. Restorative and human rights-based elements are substituted for retribution when it comes to the mode of application and the type of sanctions that apply.

Starting from the outlined results, we welcome a series of measures aimed at the implementation of restorative justice and non-custodial alternatives:

- developing a national strategy specific to each of the two countries for public information on the benefits of probation in terms of reducing the costs of incarceration and reducing the risk of relapse. Raising public awareness of tolerance and, in particular, the rights of detainees as human beings, must be based on the distinction between the individual as a human being and the deed committed.

- clarifying the function of punishment in national legislation. Among the traditional functions of punishment, the most important are: retributive function - actual punishment of the facts for reasons of necessity of retribution, as a logical and legal consequence of the deed; restorative function - punishment to restore the perpetrator-victim-society balance and ecological function - discouraging recidivism and committing the criminal offense by the same or another offender.

- the implementation of appreciative probation through the implementation of programs of social reintegration of perpetrators, based on their strengths, on the strategies they have followed over time, for legitimate access to resources and the implementation of these social functioning strategies of perpetrators in the place for illegitimate access to resources.

- The very low material and social costs of community rehabilitation against imprisonment should encourage a criminal policy to emphasize the importance of probation and non-custodial sanctions.

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