POLSKA AKADEMIA NAUK • INSTYTUT NAUK PRAWNYCH

ZAKŁAD KRYMINOLOGII

ARCHIWUM KRYMINOLOGII

PL ISSN 0066-6890

DOI 10.7420/AK2020D

2020 • Vol. XLII • No. 1 • pp. 207–224

Gabriel Oancea, Mihai Ioan Micle ■

The emergence of community control sanctions in the Romanian sanctioning system

Wdrożenie kar probacyjnych do systemu kar w Rumunii

Abstract: This article presents the context that led to the establishment of the probation system in Romania in relation to some reforms of the criminal sanctioning system. These reforms were necessary because of the difficulties faced by the penitentiary system before and after 1989, as well as the need to align the administration of penalties with the requirements imposed by the country's accession to the Council of Europe and the European Union. Eighteen years after the creation of the probation system within the Ministry of Justice, it can be stated that this endeavour constitutes a success, but it is absolutely necessary to continue the efforts towards consolidating it. In addition, these measures have to be accompanied by a change of vision in relation to how other community members can be involved in the process of social reintegration of individuals who have broken the law.

Keywords: Romania, probation system, community control sanctions, Penal Code, prisons

Abstrakt: W artykule został przedstawiony proces wdrożenia systemu probacyjnego w Rumunii w kontekście reform dotyczących zmian systemu sankcji karnych. Z uwagi na trudności, z jakimi borykał się system penitencjarny w Rumunii przed rokiem 1989 i po tym roku, wprowadzenie takich zmian było konieczne. Przemawiała za tym także potrzeba dostosowania systemu karnego do wymogów nałożonych na państwa członkowskie przez Radę Europy i Unię Europejską. Z perspektywy 18 lat od wdrożenia systemu probacyjnego w ramach Ministerstwa Sprawiedliwości przedsięwzięcie to jest uznawane za sukces. Konieczne wydaje się jednak kontynuowanie dotychczasowego

Dr. Gabriel Oancea, Sociology and Social Work Faculty, University of Bucharest, Romania, oancea.gabriel@gmail.com, ORCID: 0000-0002-9292-9081
Dr. Mihai Ioan Micle, "Constantin Rădulescu-Motru" Institute of Philosophy and Psychology of the Romanian Academy, Romania, mihai_micle@yahoo.com, ORCID: 0000-0002-7578-4677

wysiłku, by system ten dodatkowo umocnić. Wykonywaniu środków probacyjnych musi bowiem towarzyszyć zmiana co do postrzegania przez członków społeczeństwa konieczności ich zaangażowania w proces reintegracji społecznej osób, które weszły w konflikt z prawem.

Słowa kluczowe: Rumunia, system probacyjny, kary probacyjne, Kodeks karny, więzienia

Introductory aspects

Although in the historiography of Romania the events of December 1989 are still a controversial topic (Pusca 2018; Stoenescu 2005; Young and Light 2016), what can be said with certainty is that they represented a turning point for the further social, economic, or political development of Romania.

Some of the guidelines of the processes that would outline the recent history of Romania were to be drawn up on 22 December 1989, shortly after Nicolae Ceausescu would leave power. Thus, the new structure that de facto had taken over power, namely, the National Salvation Front, established among its priorities the separation of the legislative, executive, and judicial powers, the development of a foreign policy by integrating a policy of establishing a common Europe, and the promotion of policies subordinated to the principle of respect for human rights and human dignity.

The process by which all these aspirations were to be put into practice has been known throughout Eastern Europe by the generic term 'transition', a process that represented a challenge for the communist states, at least in terms of two aspects. Firstly, it was an economic novelty, i.e. a transition from a centralised economic system to an economic system based on the principles of the free market – of economic relationships following supply and demand. Secondly, it was a process that required a profound reform in almost all aspects of society. It was a process of transformation whose complexity would only be revealed later (Illner 1996), a process with winners and losers, finalised by the accession of most of these countries to the European Union (EU), a moment generally recognised as representing the end of the transition period.

In this context, it is obvious that the criminal justice systems of these countries would undergo radical transformations, given that the system developed in these countries after 1945 was incompatible with the principles and values promoted by the new democratic regimes.

It was (and still is) a complex process, in which the decision-makers were simultaneously subject to pressures from the European institutions and organisations, stressing the need for reforms which emphasise the respect of human rights and human dignity and alignment with the demands imposed by a series of instruments such as the European Convention on Human Rights, but also from public opinion which often perceived these reforms as being far too indulgent towards

people who broke the law, requesting firmer action from the state in the repression of crimes (Meško and Tankebe 2014).

In this article we will examine the particularities of the reform process of the system of penalties in Romania with regard to the context and the way of implementing a system based primarily on the application of some non-custodial measures and sanctions.

1. The premises of the reform process of the sanctioning system

It can be said that the reform of the sanctioning system would begin shortly after the events of December 1989, considering that in January 1990 the death penalty would be abolished by a decree of the National Salvation Front. Also in January 1990, a decree-law[1] was issued giving amnesty for the political crimes committed after 30 December 1947, the date of the official establishment of popular democracy in Romania – in fact the moment when the communist party took over political power in Romania.

However, the actual reform process of the sanctioning system would start under the pressure of two factors: the beginning of the process of joining the European institutions and the inability of the penitentiary system to adequately manage a large number of people. All this was on the backdrop of an increasingly precarious economic situation, a constant in the former communist Eastern European countries during that period.

Although some explanatory proposed models (Durnescu 2015) also highlight the importance of aspects, such as the role of personalities (ministers of justice who have undertaken a series of reforms) or of judicial practice (in the sense of an increasing openness of magistrates for the application of some community control sanctions) in the reform process; we consider that these aspects were rather contextual factors that did not have a decisive influence in reforming the sanctioning system.

Thus, the reforms that some ministers of justice (see the mandate of Minister Valeriu Stoica) initiated were based precisely on the commitments that Romania had assumed internationally through the above-mentioned accession process and on the realities of the penitentiary system which, as we will further indicate, was already marked by a series of significant problems (overcrowding and rioting) which required urgent measures to be taken.

With respect to the openness of the magistrates in applying community control sanctions, a series of legal opportunities have been offered to them in order to pronounce such sanctions, opportunities introduced by the successive modifications

[1] Decree-Law no. 3/04.01.1990 (Official Journal no. 2/05.01.1990)

to criminal law. However, these changes were made as a result of the phenomena mentioned above.

Regarding the impact of the accession process to the European institutions, we can distinguish between two stages: Romania's accession to the Council of Europe and the country's accession to the EU.

Romania's accession to the Council of Europe took place on 7 October 1993, on the occasion of the statutory documents and the European Convention of Human Rights and Fundamental Freedoms being signed. From the perspective of the normative transformations in criminal matters, this moment would be very important, mainly due to the fact that Romania would ratify the European Convention of Human Rights,[2] thus opening the way for the Romanian people to petition the European Court of Human Rights when their rights were being violated. Also, as a result of joining the Council of Europe,[3] Romania would accept the monitoring of detention centres by the Committee for the Prevention of Torture[4] in order to evaluate the respect of human rights in the case of prisoners.

Over time, these two institutions (the European Court of Human Rights and the Committee for the Prevention of Torture) played a fundamental role in improving the conditions of detention and reforming the related normative framework.

The European Court of Human Rights, through the decisions made in the cases of imprisoned people subject to examination, would repeatedly find violations of human rights within Romanian detention facilities. In most cases,[5] the Court would oblige the Romanian state to pay damages to those individuals, which entailed a significant financial effort. For example, the amount paid by Romania as compensation to convicted people as a result of certain ECHR decisions in 2017 was 2 million EUR.[6] Beyond awarding these damages, though, the Court's role was also to place pressure on the political decision-makers in Bucharest to take firm measures in the direction of reforming the system of criminal sanctions, both custodial and community.

In this respect, the decision in the case of Rezvmieş et al. v. Romania is emblematic; in this case the Court was not limited to finding that during the execution of the petitioners' sentence they were held in conditions deemed improper (overcrowded, unhygienic conditions), but it also ruled on the systemic nature of these problems which the penitentiary system has been faced with. Accordingly, the pilot decision[7] procedure was initiated, forcing the Romanian state to submit to the Court, within six months, a timetable for implementing measures aimed at

---

[2] Law no. 30/18.05.1994 (Official Journal 135/31.05.1994)

[3] Law no. 64/4.10.1993 (Official Journal 238/4.10.1993)

[4] Law no. 80/30.09.1994 (Official Journal 285/7.10.1994)

[5] See for example *Micu v. Romania; Olariu v. Romania*; *Stana v. Romania*.

[6] http://anp.gov.ro/wp-content/uploads/2017/04/bilant-ANP-2016.pdf

[7] *Rezvmieş et al. v. Romania*

avoiding overcrowding and improving detention centre conditions. The strategy developed by the Ministry of Justice for the period 2018–2024[8] foresees the introduction of measures that may contribute to increased application of alternative measures and community control sanctions (for example, the possibility of introducing electronic monitoring) as well as to a stronger probation system, which, as we will show, plays an essential role in the implementation of those measures.

An important result of the Committee for the Prevention of Torture's actions was that, through the visits made over time within the detention facilities, the precariousness of the facilities was unveiled, as well as some institutional procedures by which the rights of the detainees were violated. Moreover, the conclusions of these reports were incorporated into the decisions made by the Court, also justifying the sanctions applied to Romania in the light of the findings made by the Committee.

Another important factor that contributed to the implementation and promotion of community control sanctions, from the perspective of Romania's accession to the Council of Europe, was the fact that it imposed the recommendations of the Council of Ministers as reference standards for the legislation to be adopted in the future.[9] From this perspective, a series of recommendations made over time (for example, Recommendation [2008] 11 on the European Rules on the treatment of juvenile delinquents) would emphasise the priority of a criminal sanctioning treatment orientated mainly towards the application of non-custodial sanctions.

Besides the accession to the Council of Europe, another factor of progress in applying measures of community control sanctions was the accession of Romania to the EU. Even if there are no mechanisms at the EU level similar to those developed under the aegis of the Council of Europe, there are still a number of procedures in place which can compel member states, even indirectly, to review their criminal sanctions framework or to improve their method of execution.

We are looking here at the mechanism established for the implementation of the European arrest warrant. It was established by Framework Decision 2002/584/JHA, being an instrument by which the Member States of the EU created the premises for mutual recognition of judicial decisions in criminal matters, thus eliminating the extradition procedure (Klimek, 2016). The adoption of this decision represented a real 'make-or-break' for the justice systems of the member countries, replacing the extradition system, under certain conditions, with a transfer system.

From the perspective of our approach, the existence of situations in which European enforcement orders issued by the Romanian authorities cannot be

[8] http://www.just.ro/wp-content/uploads/2018/01/calendar-masuri.pdf

[9] See for example Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules; Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe Probation Rules; and Recommendation CM/Rec (2018) 8 of the Committee of Ministers to member states concerning restorative justice in criminal matters.

enforced due to the conditions in Romanian penitentiaries being considered inhumane or degrading is, in turn, a premise for reforming the sanctioning system.

The Court of Justice of the EU decision[10] in the case of Aranyosi and Căldăraru is relevant here: having been referred by a court in Germany, the Court – recalling that the absolute prohibition of inhumane or degrading treatment and punishment is part of the fundamental rights protected by European law – decided that if, in the light of information provided or any other information available to it, the authority responsible for executing the mandate finds there is a real risk of inhumane or degrading treatment regarding the person subject to the mandate, the execution of the mandate must be delayed until further information is obtained, which allows for the elimination of such a risk.

A further driver of change is represented by the European Parliament, e.g. its reports or motions constituting a factor that can initiate changes to the legislation of EU states towards the adoption of EU sanctions on a wider scale. Such an example is the European Parliament resolution on prison systems and detention conditions.[11] Point 15 of this motion highlights that Member States should consider reducing the number of detainees by using more frequent non-custodial measures, such as community service or electronic monitoring.

Regarding the second factor we have referred to, namely, the inability of the penitentiary system to manage a large number of people deprived of liberty, we consider that the following observations should be made. Some of the problems that the prison system has faced originated during the communist period. If we were to refer to the evolution of this system after 1947, we can distinguish two periods. First, the one between 1947 and 1964 was represented by the involvement of the penitentiary system in repressing those whom the newly installed regime considered undesirable (political detainees, members of the former interwar bourgeoisie, intellectual elites who did not cooperate with the new regime, peasants who did not accept the party's agricultural policy, etc.). It is difficult to estimate the number of detainees whose punishment was carried out in labour camps or penitentiaries, though the figure could have been as high as 500,000 people. There were over 120 units registered in which they executed their punishments, some of those locations being large – as many as 5,000 detainees served their sentences in these units (Boldur-Lățescu 2005). There was in fact a systematic attempt to exterminate these people behind the process the communist regime presented as 're-education', considering, among other things, the inhumane conditions of treatment or forced labour.

After 1964, Romanian communism entered a stage known as 'liberalisation' (Tismaneanu and Stan 2018). Formally, the abuses committed previously by the

[10] Judgment of the Court (Grand Chamber) 5 April 2016 in Joined Cases C-404/15 and C-659/15 PPU

[11] European Parliament resolution of 5 October 2017 on prison systems and conditions (2015/2062(INI)

communist regime were to be 'condemned' by Nicolae Ceausescu during a plenary session of the Romanian Communist Party in 1968 (Popa 2018). A new constitution that ostensibly guaranteed a series of rights and freedoms was also drafted. In order to maintain a series of appearances, the communist regime stopped punishing those crimes which were considered to be directed against the socialist system, though the repression of opponents would continue – only this time they were accused of committing more common crimes (Deletant 2018). Also, in 1968 a new penal code was drafted[12] which, with subsequent changes, would be in force until 1 February 2014. In such circumstances, it is obvious that the penitentiary system would have to undergo a series of transformations, no longer primarily being an institution of political repression.

However, a number of ideologically motivated reforms did have a series of long-term repercussions on this system. With the communist regime asserting its superiority in terms of the humane treatment of people who had broken the law over the capitalist regimes, and following Nicolae Ceausescu's desire to be regarded as a reformer, in 1977 Decree-Law 225[13] was issued by which 70% of the Romanian penitentiaries were closed down, it being estimated that the maximum number of detainees should not exceed 15,000 detainees annually.

This measure was taken simply for propaganda purposes, without any analysis. Obviously, given the above-mentioned underestimated number, the penitentiary system became unable to cope with the much larger number of detainees who would serve out their sentences, taking into account that the criminal law was a mainly repressive one, with an emphasis on the application of custodial sanctions. Later, some penitentiaries were reopened, but the capacity of the penitentiary system remained underdeveloped. Under these conditions, the periodical granting of amnesty or pardons was identified as a method of controlling the number of detainees (Stefan 2006).

Given all these aspects, it was obvious that the penitentiary system was incapable of contributing to the rehabilitation of convicted people. As in the previous period, the social reintegration of the detainees consisted in their obligation to work on different sites, often under conditions taking the form of genuine exploitation.

In December 1989, in Romanian prisons, there were 36,450 detainees, serving their sentences under totally inadequate conditions, the detention facilities being characterised by a lack of basic hygiene and suffering from overcrowding (Cartner 1992). Given that after 1989, the newly established political regime could no longer appeal to the mechanisms of the previous era for controlling the flow of the prison population (granting amnesties or pardons), the number of convictions would increase relatively quickly. Thus, in 1992 the number of people in prisons was 41,300 and the capacity of the penitentiary system was 29,400 (Cartner 1992).

[12] Law no. 15/21.06.1968 (Official Journal no. 65/16.04.1968)

[13] Decree-Law 225/16.07.1977 (Official Journal 722bis/18.07.1977)

This is the context faced by the prison system in the 1990s when, in addition to the pressures exerted by the international bodies mentioned above, a series of riots or hunger strikes initiated by the detainees took place, a situation which would hasten the implementation of reform measures orientated towards the application of non--custodial measures and sanctions. All of this took place under economic conditions which at the time made it almost impossible to allocate the resources necessary for the rapid construction or modernisation of the penitentiary infrastructure.

2. Highlights in the development of community measures and sanctions in Romania

As mentioned before, the main method by which the legal framework regarding the extension of the application of the community measures and sanctions in Romania until 1 February 2014 was by a series of successive changes[14] to the Criminal Code adopted in the year 1968.

For our part, we consider that three stages can be considered in this process. The first stage (1990–2001) was one with a rather strong legislative character, with norms that allowed judges to apply community measures and sanctions on a wider scale being implemented during this period. The second period (2001–2014) was focussed on the emergence of the probation services as part of the criminal justice system. It also represented a period during which a series of penal code drafts were debated, having in common proposals for the extension of non-custodial measures and sanctions. The third stage (2014 to date) is the period after the new penal code came into force,[15] in which the probation system has become the only structure involved in the management of community penalties. In the following paragraphs, we describe the main milestones that would mark each of these stages, placing our approach in the general socioeconomic context of Romania.

Thus, in 1992 a modification introduced to the penal code by Law no. 104/1992 allowed for suspending the execution of prison sentences under supervision.[16] The importance of this achievement lies in the fact that this new practice in criminal law would pave the way for subsequent provisions specific to probation. Essentially, according to the law, under certain conditions, the courts could order a prison sentence to be suspended for a probationary term (not exceeding 9 years).

Similarly, a convicted person had to comply with a series of measures that mainly concerned periodically presenting themselves to the judge appointed as

[14] For example, Law no. 140/5.11.1996 (Official Journal 289/14.11.1996); Law no. 197/13.11.2000 (Official Journal 568/15.11.2000); Law no. 278/04.07.2006 (Official Journal 601/12.07.2006

[15] Law no. 286/2009 (Official Journal 510/17.07.2009)

[16] Law no. 140/5.11. 1996 (Official Journal 289/14.11.1996)

their supervisor or to other bodies established by the court and a control that was instituted regarding their means of support, freedom of movement, or change of workplace. At the same time, if deemed necessary, the court could impose one or more obligations, which were geared rather to the social reintegration of the convicted person (for example, to attend a training course or earn a qualification, or to undergo treatment measures – in particular for detoxification). If the convicted person did not comply with these measures and obligations, the court could revoke their suspension under supervision by ordering their prison sentence to be carried out or by extending their term of probation (Art. 864, Penal Code 1968).

These legal provisions have undergone a series of transformations over time, most of which were dictated by the need to exercise control over the offences where the judges could apply the suspension under supervision. It could not be ordered, for example, in the case of premeditated offences, for which the law provides for imprisonment of more than 15 years, or in cases of serious bodily injury, rape, or torture.

The introduction of suspension under supervision was necessary as a series of criminal sanctions provided for by the penal code had become inapplicable in the new economic conditions after 1989. For example, the penal code provided for the execution of a prison sentence at the workplace. In the context of economic liberalisation, with the increasing volatility of jobs, it was obvious that such a sanction would become inapplicable, falling into desuetude (Durnescu 2015).

The year 1997 is important from the perspective of setting up the first experimental probation centre in Arad, as part of a pilot programme involving local social actors, namely, courts, prosecutors, nongovernmental organisations, authorities, and the penitentiary in Arad. The role of this experimental centre was to pilot a series of elements specific to probation, such as the psycho-social evaluation of the defendants or supervision in the community (Oancea 2012). Subsequently, between 1997 and 2000, eleven such experimental probation centres were to be set up and run following the model of Arad, with financing secured through external financing programmes (for example, the PHARE fund, Know How funded by the Government of Great Britain etc.). Furthermore, a probation department was to be set up within the Ministry of Justice in 1998, a department that had the main role of ensuring the coordination of these experimental centres' activities (Pescaru 2007).

An essential aspect of these centres' activity was that suspension under supervision was promoted as an alternative way of sanctioning and, moreover, one that aimed at eliminating the formality of its execution and orientating it towards the social reintegration of those under supervision.

In my personal comments made during the period I worked at the Bucharest Experimental Probation Centre, I pointed out that when the supervision was carried out by judges, the emphasis was often only on the presentation of the person on probation at court when summoned by the judges; no action was taken to reduce the risk of recidivism. The novelty of these centres' interventions was precisely the attempt to introduce a practice based on a risk-need-responsibility

model and adjusting the intensity of the probation officers' intervention to be in accordance with the risk of relapse of the people under supervision, their criminogenic needs, and their learning style, cognitive abilities, or level of motivation for change (Bonta and Andrews 2007).

In addition, other activities, such as training for the release of people carrying out custodial sentences, working for the benefit of the community, holding victim–offender mediation, or implementing structured work programmes with the offenders (Oancea 2012), were piloted within these centres. Mainly, the decentralised nature of the experimental centres' operation made it possible to carry out the respective additional activities.

During this same period, a series of normative acts were also drafted, regarding the organisation and functioning of the probation institution, starting from the experience accumulated in the experimental centres, but also that resulting from the expertise provided by the partners from England and Wales or the Kingdom of the Netherlands.

The establishment of a probation system within the Ministry of Justice was foreseen, but this initiative was estimated to be implemented in 2004–2005. However, a series of political emergencies related to the processes driven by Romania's accession to the EU and the implementation of profound reforms of the sanctioning system led to the creation of a probation system being placed on the list of immediate priorities; consequently, Government Ordinance no. 92/2000 was drafted in the year 2000. What is unique to this piece of legislation is that, under given conditions, it would limit the scope of the activities carried out by probation more to the community, making the activity of penitentiaries secondary and rather a decision that was to be taken locally by these services. Formally, there was no provision for the probation services to collaborate with the penitentiary units towards social reintegration of people in custody.

From the point of view of the institutional architecture, the method chosen for the organisation and functioning of the probation services ensured their extension for the short-term at the national level with minimum resources allocation. Thus, from an administrative point of view, the newly established services (one in each county, without legal personality) have been placed under the subordination of the courts and the Ministry of Justice through a specialised direction that exercised only the control of the functioning of these services (inspections, methodological guidance, staffing, etc.).

This mode of operation would characterise the organisation and functioning of the probation system up until 2014, when the new set of laws on probation[17] came into force, in the context of drafting the new penal code. This organisational architecture would provide an advantage in the sense that only probation officers

[17] Law no. 252/19.07.2013 (Official Journal 512/14.08.2013); Law no. 253/19.07.2013 (Official Journal 513/14.08.2013)

would be employed within the services, the courts that had their own budget were responsible for the administrative side (assurance of spaces, endowments, payment of salaries, etc.). In the long run, this solution would generate a series of discrepancies between the probation services, generated by the different ways the courts would be involved in their development.

The fact that the establishment of a probation system under the subordination of the Ministry of Justice became a short-term priority (it was practically created between September 2001 and December 2002) meant that the area of activities that the probation services carried out was initially limited to those that were conducted in the former experimental probation centres.

Thus, in the first phase their competence consisted in preparing evaluation reports for the defendants at the request of the courts, supervising the way the people who were convicted respected their obligations and measures during the period of supervision and, upon request, providing them with legal services, assistance, and counselling in order to meet some of their criminogenic needs, as well as supervising the way the minors on whom the courts imposed the educational measure of supervised freedom respected their obligation to perform work for the benefit of the community.

However, the main challenge faced by the newly established services was to achieve a major change in judicial practice, to respectively require the judges to extend the use of suspension under supervision, given that – in the year 2000, for example – 34,448 sentences of imprisonment were pronounced with execution, and only 445 of them with suspended sentences under supervision.[18] The period that followed would see the activity of the services being heavily promoted, both by the magistrates and the institutions in the community, the success of these actions being evidenced by the steady rise in the number of judgments in which the courts entrusted to probation services the supervision of the people sentenced. For example, in 2010, nine years after the establishment of these services, the number of convicted people in their records was 8,977.[19]

Beyond these figures, however, the probation services have gained the confidence of the magistrates, the probation officers being perceived by them as professionals, upstanding and focused on the social reintegration of those convicted. In fact, as a series of investigations would reveal, the judges' expectations from the probation services were aimed at them taking steps to reduce the risk of recidivism among convicted people and not just supervising how the measures were respected or how the obligations related to the period of supervision (Oancea 2012).

In order to increase the capacity of the services to be involved in a meaningful way in the rehabilitation process, a number of approaches specific to the 'what works' paradigm (McGuire 2001) have been introduced at the national level. Firstly,

[18] http://www.just.ro/directia-nationala-de-probatiune

[19] http://www.just.ro/directia-nationala-de-probatiune

we consider the adaptation, piloting, and accreditation of structured programmes for working with the offenders, programmes based on the cognitive-behavioural paradigm or on developing the social skills of those convicted (Micle, Oancea and Saucan 2012a). Judges have begun to be receptive to these new approaches, including in cases of pronouncing prison sentences suspended under supervision and obliging convicted people to participate in programmes run by the probation services.

Unpaid work for the benefit of the community has been introduced to probation practice in criminal matters; judges now have the possibility to impose this obligation when they consider it necessary.

Another element that has consolidated the role of the probation services in judicial practice was the modification brought to the penal code that provided the obligation to have an evaluation report drawn up by these probation services in all cases where minor offenders were judged. The evaluation report plays the role of providing a variety of information regarding the psycho-social profile of the minor offender, which judges consider to be useful tools in the process of individualizing the sanctions (Art. 506 Law no. 286/2009).

Furthermore, the collaboration between the probation services and the penitentiary units has continued to be developed, firstly by reforming the legal framework for the execution of the penalties, with the probation officers becoming members of the parole commissions, and secondly, that they would begin running as partners a series of programmes aimed at preparing the convicted people to be released (Art. 41 Para. 3 Law no. 254/2013). All of these innovative activities have been subordinated to the imperative of increasing the degree of community security that the probation system in Romania has assumed since its establishment.

In summary, the experience from 2001–2014 can be described as a period of consolidating the probation system, of identifying the effective means of intervention in order to reduce the risk of relapse of those supervised, and of creating and strengthening partnerships with community institutions. At the same time, all these institutional developments required a rethinking of the probation system, as it was obvious the way of organising and running it which was envisaged in 2000 was no longer compatible with the new realities.

However, it was not so much the probation system which had to be reformed as the whole vision of the administration of the criminal justice system, since the approach considered after 1990 to successively modify the criminal code in order to adapt it to the new socioeconomic realities had already reached its limits. In the explanatory memorandum released when the new criminal law was being drafted, the legislature acknowledged that previous repressive practices had not proved to be effective (for example, the maximum punishment for the crime of robbery was 15 years). The important thing was to achieve a sanctioning system which, through flexibility and diversity, would allow the choice and application of the most appropriate measures so as to ensure both proportional constraint in relation to the

seriousness of the crime committed and the dangerousness of the offender and an efficient way to rehabilitate the offender.

Under these conditions, given the introduction of the new penal code, the probation system would have to be reformed, by reorganising the National Probation Directorate within the Ministry of Justice. On 1 February 2014, both the new penal code and the new laws governing the organisation of the probation system came into force simultaneously. The innovation that the new regulations would bring is represented first of all by the fact that the National Probation Directorate would exercise full control over the activity of the probation services, the latter having a separate budget. As far as the jurisdiction of the probation system is concerned, it would be significantly expanded, giving it the power to administer the enforcement of all community control sanctions (except for fines).

Thus, with regard to juvenile justice, the legislature explicitly stipulated that the rule, in the case of minors in conflict with criminal law, is to sanction them with a non-custodial educational measure (Art. 114 Para. 1 Law no. 286/2009), while the application of a deprivation of freedom measure is exceptional in nature and must be justified firstly by the degree of gravity of the crime for society. Also, at the time of release from the centres where they execute their custodial measures, the supervision of minors in the community is usually the responsibility of the probation services. Judges are offered the opportunity to adapt the educational measure to the criminogenic needs of minors by imposing obligations (for example, attending school or qualification courses, or the obligation to not associate with certain people).

Significant changes were also made in the way of sanctioning adults. In addition to suspending prison sentences under supervision (which would have survived in a relatively similar form compared to the old regulation), the concept of postponing the sentence was introduced. The introduction of this measure (which exists under German and, partially, French law) was mainly justified by the need to create a stronger sanctioning framework for people who commit crimes with a low degree of gravity for society. In many cases the individuals who were sanctioned did not perceive these solutions as being punitive in nature, and returned to their criminal conduct. Here we consider, in particular, the offences of the traffic regime on public roads (for example, driving under the influence of alcohol).

The new penal code limited the discretionary character of the prosecutors' decisions, so that in most of these cases the judges choose to postpone the sentence. Essentially, the enforcement of the sentence consists in establishing a punishment for a person found guilty of committing a crime and temporarily delaying its execution, when the exact punishment established is a fine or imprisonment of a maximum of 2 years, and the court considers – taking into account the offender's character and the conduct he/she had before and after committing the crime – that due to the personal situation of the defendant, the immediate application of a sentence is not necessary, but supervision of his/her conduct is required for a fixed period of 2 years.

In the practice of the probation services, the institution of postponing sentence execution has generated a real 'inflationary' effect of the cases under supervision. Thus, on 31 December 2014 a total of 26,749 supervised individuals were registered in the services' records, and on 31 December 2018 this number had risen to 69,702 cases.[20]

Another novel element was the compulsory nature of the work for the benefit of the community in cases where the court decides to suspend the execution of the punishment under supervision and optionally in the case of delaying the execution of the punishment, except for cases where the sanctioned person cannot perform it for medical reasons.

In its explanation of the new normative framework, the legislature expressed a greater concern for providing the probation services with the tools necessary to adapt interventions to the criminogenic needs of the person under supervision. Given that people who have broken the law sometimes have a low level of intrinsic motivation to change, a fact which generates genuine frustration for practitioners (Viets, Walker and Miller 2002), one possible solution is to transform extrinsic motivation into intrinsic motivation by imposing obligations (Day et al. 2010).

As we have shown, it was also possible to impose obligations on a supervised person under the old regulations, but they could not be modified during the supervision period. Moreover, a consistent judicial practice aimed at imposing obligations had not been outlined, although a series of studies proved its to be effective in the practice of probation (Micle, Oancea and Şaucan 2012).

The new penal code provides the probation officers with the possibility of requesting the executing court to remove or add new obligations during this term, depending on the risk of recidivism or the criminogenic needs of the person under supervision.

Another way in which the new penal code established new tasks for the probation system was by introducing attributions regarding the supervision of convicts after being released from the penitentiary. As we have mentioned, at the time of setting up the probation services, they were focused mainly on activities in the community, while collaboration with the penitentiary units was rather secondary.

After 1989, the reforms were directed in particular towards improving the conditions of detention, totally neglecting the aspects aimed at the social reintegration of former detainees. Moreover, as a result of the collapse of the centralised economy, the approaches used during the communist period would fall into desuetude, meaning the existence of bodies on the local level that mediated the employment of a detainee after their release from prison in one of the economic units controlled by the state. Under those circumstances, lacking the most elementary support after release, the recidivism of the former detainees was for the most part only a matter of time.

[20] http://www.just.ro/directia-nationala-de-probatiune

The steps taken were to be sequential, rather based on a series of local initiatives or projects of some non-governmental organisations that, in most cases, after the financing ran out could no longer ensure their sustainability. Even though there were a number of initiatives of the political factor to identify a variety of ways to improve the situation of post-release detainees, they have not been completed.

The reasons for this state of affairs are manifold, but the most important one seems to be the reluctance of the decision-makers to take the initiative of concrete steps to avoid a series of negative reactions from the media or public opinion. In this regard, a relevant factor was the reaction of the media to a draft bill aimed at granting benefits (paying transport expenses, providing clothing, and providing free medical care) to detainees released from prison in order to facilitate their social reintegration. Most often, the newspapers presented this initiative with headlines like 'Detainees the priority of Members of Parliament', 'Incredible benefits after release from prison', and 'Social Democratic Party wants to force mayors to give prisoners homes, meals, clothing, and free transportation upon leaving prison'. In most cases, the media presented the rights that former detainees would have enjoyed as being excessive, which would ultimately lead to the abandonment of these initiatives. Under these conditions, the natural consequence of this state of affairs has materialised in the high recidivism rates faced by the Romanian prison system (approximately 70%).

The novel element introduced by the current penal code is the probation services' supervision of individuals released conditionally from penitentiaries who have at least two years of their sentences remaining, within the framework of procedures similar to suspending a sentence under supervision.

However, this involvement of the probation services deals only with part of the problem, namely, that of the supervision of the conditionally released detainees, while the most important aspect – their social reintegration – remains unresolved. The causes are multiple, some being related to the capacity of the probation services to involve themselves in a substantial way, given that the volume of cases per probation officer is high (196 cases/probation officer in 2018). In addition to the volume of activity, it should also be taken into account that the people released on parole most often face a complex of criminogenic needs, with a high risk of recurrence (Durnescu 2018).

Also, opportunities in the community are extremely limited, as there are still no services tailored to the specific needs of former detainees (e.g. half-way houses), and the existing initiatives are rather exceptional. In addition, there is still an attitude of stigmatisation of former detainees in public opinion and among potential employers, which makes their social reintegration extremely problematic; they most often identified the solution to the problems faced after liberation to be emigration (Durnescu 2019; Durnescu et al. 2016).

The Criminal Code which came into force on 1 February 2014 introduced a series of procedures likely to help and recover the civil damages set by the court

involving the probation services. In cases where the person under supervision does not pay his civil obligations, they are obliged at the latest three months before the end of the supervision period, to notify the court by report that the suspension or postponement of the application of the sentence can be revoked.

Conclusions

Thirty years after the fall of communism, Romania has undertaken a series of fundamental reforms of the system of criminal sanctions, but it still faces a series of systemic problems that demand immediate intervention. If we look at the statistical data, it is obvious that the application of custodial sanctions is not the rule for the judges, who have at hand a series of community control sanctions, whose enforcement is ensured in almost all cases by the probation services.

The period after the adoption of the new penal code was characterised by a steady decrease in the number of prisoners and an exponential increase in the number of people under the supervision of the probation services. So far, there has not been a complete assessment of the impact of the new criminal legal provisions on the probation system; the data available to us are only a few summaries (the number of people evaluated and supervised, the type of sanction applied, or the possible obligations related to the period of supervision). We do not yet have an accurate picture of the risk of recidivism presented by the people under supervision, or an analysis of the causes underlying their relapse. This information is fundamental in the process of allocating resources to the probation services.

The most important gain of the eighteen years that have passed since the establishment of the probation services is the fact that they are perceived as institutions with a key role in the reintegration process of people who have been in conflict with the law. In this regard, there is a constant concern in the direction of providing these services with effective means of intervention (see structured programmes for working with offenders). The efforts of the probation system must also be doubled by a series of transformations at the level of the community partners. It is obvious that changing public opinion on the situation of convicted people is difficult to achieve, but at the institutional level it is important to take concrete steps, for example, by providing tax benefits to companies that employ these individuals. The prerequisites for making these changes exist, given that the Romanian state has made a series of commitments to the Council of Europe to implement several reform measures aimed at probation services as well.

References

Boldur-Lățescu G. (2005). *The Communist Genocide in Romania*. New York: Nova Science Publishers.

Bonta J. and Andrews D.A. (2007). 'Risk-need-responsibility model for offender assessment and rehabilitation'. *Rehabilitation* 6(1), pp. 1–22.

Cartner H. (1992). *Prison Conditions in Romania*. New York: Human Rights Watch.

Day A., Casey S., Ward T., Howells K. and Vess J. (2010). *Transitions to Better Lives: Offender Readiness and Rehabilitation*. Uffculme: Willan Publishing.

Deletant D. (2018). *Romania under Communism: Paradox and Degeneration*. London: Routledge.

Durnescu I. (2015). 'Empty shells, emulation, and Europeanization'. In G. Robinson and F. McNeil (eds.) *Community Punishment: European Perspectives*. London: Routledge, pp. 156–172.

Durnescu I. (2018). 'Brutal release: Resettlement in Romania – A case study'. In F. Dünkel, I. Pruin, A. Storgaard and J. Weber (eds.) *Prisoner Resettlement in Europe*. Milton: Routledge, pp. 266–277.

Durnescu I. (2019). 'Work as a drama: The experience of former prisoners on the labour market'. *European Journal of Criminology*, DOI: 1477370819838718.

Durnescu I., Istrate A., Teoroc C., Pitiu E. and Rotariu L. (2016). 'Routes to freedom: Romanian and Roma prisoners finding their way back into Romanian society'. In R. Armstrong and I. Durnescu (eds.) *Parole and Beyond: International Experience of Life after Prison*. London: Palgrave Macmillan, pp. 271–301.

Illner M. (1996). 'Post-communist transformation revisited'. *Sociologický časopis / Czech Sociological Review* 4(2), pp. 157–169.

Klimek L. (2016). *Mutual Recognition of Judicial Decisions in European Criminal Law*. Cham: Springer.

McGuire J. (2001). 'What works in correctional intervention? Evidence and practical implications'. In G.A. Bernfeld, D.P. Farrington and A.W. Leschied (eds.) *Offender Rehabilitation in Practice: Implementing and Evaluating Effective Programs*. Hoboken: Wiley, pp. 25–43.

Meško G. and Tankebe J. (2014). *Trust and Legitimacy in Criminal Justice: European Perspectives*. Cham: Springer.

Micle M.I., Oancea G. and Săucan D.Ş. (2012a). 'Tehnici cognitiv-comportamentale în reabilitarea infractorilor' [Cognitive-behavioural techniques in the rehabilitation of offenders]. *Revista de Asistență Socială* 1, pp. 49–57.

Micle M.I., Oancea G. and Săucan D.Ş. (2012b). 'Tipuri de motivaţii în reabilitarea condamnaţilor aflaţi în evidenţa serviciilor de probaţiune' [Types of motivation in the rehabilitation of convicted people under the probation services' supervision]. *Revista de Asistență Socială* 3, pp. 147–158.

Oancea G. (2012). *Probațiunea în România: Evaluări normative și sociologice* [Probation in Romania: Normative and Sociological Evaluation]. București: C.H. Beck.

Pescaru M. (2007). 'Probation services in Romania'. *Revista Universitara de Sociologie* 3(2), pp. 210–216.

Popa C. (2018). 'Nicolae Ceaușescu – mecanismele unei dictaturi (1965–1967)' [Nicolae Ceausescu – The mechanisms of a dictatorship (1965–1967)]. *Studii și materiale de istorie contemporană (SMIC)* 1, pp. 115–136.

Pusca A.M. (2018). *Revolution, Democratic Transition, and Disillusionment: The Case of Romania*. Manchester: Manchester University Press.

Stefan B. (2006). 'Istoria si reforma inchisorilor romanesti' [History and Romanian prison reform]. *Revista Română de Sociologie* 17(5–6), pp. 485–512.

Stoenescu A.M. (2005). *Istoria loviturilor de stat din România: 1821–1999*. Vol. 4. Part 2: *Revoluția din Decembrie 1989 – o tragedie românească* [History of the coup d'etats in Romania: 1821–1999. Vol. 4. Part 2: The Revolution of December 1989 – A Romanian tragedy]. București: Editura RAO.

Tismaneanu V. and Stan M. (2018). *Romania Confronts Its Communist Past: Democracy, Memory, and Moral Justice*. Cambridge–New York: Cambridge University Press.

Viets V.L., Walker D.D. and Miller W.R. (2002). 'What is motivation to change? A scientific analysis'. In M. McMurran (ed.) *Motivating Offenders to Change: A Guide to Enhancing Engagement in Therapy*. Chichester: Wiley, pp. 15–30.

Young C. and Light D. (2016). 'Multiple and contested geographies of memory: Remembering the 1989 Romanian "revolution"'. In D. Drozdzewski, S. De Nardi and E. Waterton (eds.) *Memory, Place, and Identity: Commemoration and Remembrance of War and Conflict*. London: Routledge, pp. 70–87.