

EDU WORLD 2022
Edu World International Conference Education Facing Contemporary World Issues

**EDUCATION-AN ESSENTIAL ELEMENT OF PROBATION
MEASURES FOR MINORS**

Raducu Razvan Dobre (a)*
*Corresponding Author

(a) University of Pitești, no 1 Târgu din Vale Street, Pitești, Argeș, raducu.dobre@upit.ro

Abstract

Committing a crime is bad for society. As such, society must react and preserve the general good. However, there is a special type of delinquent, namely the minor. We will not have to apply the same type of reaction to him as to adult criminals because their personality is in formation, and their degree of adaptation is much better. As such, educational measures must be a viable solution in these cases. The present paper tries on the basis of a less generous methodological tool to highlight this new perspective embraced by the Romanian criminal normative system. The education provided to juvenile delinquents is extremely important for the success of its rehabilitation. However, the solution is still at the beginning of the practice and obviously many difficulties can be encountered. This is also the role of the analyzes we make regarding this phenomenon: to regulate "on the fly" any inconsistencies or inefficient working hypotheses.

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Keywords: Education, juvenile delinquency, specific measures

1. Introduction

Probation is an institution designed to provide a second chance for people who have committed a crime and who will be able to "enjoy" a punishment to be executed in the community. Of course, no criminal will be able to benefit from this clemency. Serious criminal acts, the criminal history of the offender are criteria that determine the elimination of such an alternative. Not only and maybe not in all the cases in which such hypotheses appear, only non-custodial sanctions will be generated and applied. (without the involvement of the penitentiary).

The involvement of the offender in the process of re-education and resocialization [...] is a purpose of probation. He must be co-opted in the re-education process, he must show his adherence to the process of fulfilling the obligations and duties that make up the content of community sanctions. (Băncilă, 2020, p. 104).

This goal is also achieved by fulfilling one of the activities specific to probation, namely that of education. There are many criminals whose educational limits become one of the factors favoring the respective judicial situation. In this sense, the following specific attributions of the work of the probation counselor must be kept in mind: "Identifying jobs, schooling and vocational training or retraining for registered persons" (Tomiță, 2012, p. 200).

We cannot hope to achieve that goal of reducing the risk of recidivism, as long as the individual we work with does not have a certain level of understanding. On the other hand, obtaining the effect represented by the trust that the client must have in the probation worker is extremely important. Cooperation, involvement based on conviction and not only on the constraint determined by the risk to which the client is exposed if he does not comply with the restrictions generated by the non-custodial measure are essential premises for the success of this alternative. The proportionality between the type of sanction applied (penitentiary or community) or its duration in relation to the type of crime and the risk generated for the community does not always solve the problem. The risk of recidivism persists, so the offender's reintegration effort may have the opposite effect. This is determined by the fact that sometimes the character of punishment is exaggerated to the detriment of assisting the convict, other times his counseling wrongly replaces, in its entirety, the role of punishment (Zidaru, 2009).

A particular aspect of probation work we find in connection with juvenile offenders. If until 2014, at the time of the adoption of the new Criminal Code of Romania, juvenile offenders could be subject to imprisonment, within the limits reduced by half compared to the amount applicable to criminal treatment specific to adults to be convicted, today we discuss only measures dedicated to this special age segment. The particularities of the activity carried out with the minor clients is given by the need to ensure a safe environment, of necessary support configured for each age category between 0-18 years, respectively the much easier way to get the expected results - success in behavioral adjustment.

2. Problem Statement

This new approach to the criminal policy of the Romanian state, according to which the theory of change in the behaviour of minors is mainly realized through the educational function of the sanction, should ensure a positive impact on reducing recidivism (repetitive nature of the criminal act).

3. Research Questions

- i. Can the positive effects of the new legislative solution adopted for the prosecution of juvenile offenders be identified?
- ii. What types of resources does the new sanctioning system for convicted minors entail? Is this effort justified in relation to the effects generated by the new legislative approach?
- iii. There are barriers that determine the delay or even the removal of the expected effects in the probation work, in the activity of education, training or qualification / requalification?

4. Purpose of The Study

In this paper, we try to identify the way in which there are practical changes determined by the new sanctioning system for juvenile delinquents. These possible positive effects must reflect the appropriateness of these changes in criminal policy. In case of hypothetical negative consequences, we must sound the alarm to lead the legislator to reorient to other sustainable constructions, which ensures a balance between "investments" determined by resource consumption and successful outputs from the system (educational measure to lead to the behavioural adjustment and to the renunciation of the minor individual to commit criminal acts).

5. Research Methods

We will use statistical analysis of data and observation as research techniques, as the interaction with the probation system and / or its customers is almost impossible to achieve under current health restrictions. The use of means of distance communication to ensure the implementation of other research techniques is inappropriate because the number of respondents would be insignificant, motivated on the one hand by increasing the tasks of probation counsellors and reducing their working time during the pandemic, and lack of means and / or lack of knowledge necessary for their use by the beneficiaries, on the other hand.

6. Findings

The law stipulates that a minor can only be prosecuted if he has discernment. Therefore, under the age of fourteen, the minor cannot be sanctioned. After reaching this age and until reaching the age of 16, the minor must be shown that he acted by understanding his deeds, in order to be able to apply a sanction, respectively after reaching the age of 16 and up to 18 years, his he is given the opportunity to prove that he did not have the necessary understanding and, implicitly, that he acted irresponsibly.

The educational measures specific to juvenile delinquents fall into two categories: some non-custodial, others deprived of liberty. The first find a correspondent in the measures to individualize the execution of the sentence of freedom for the adult, and the second category replaces the criminal sanction of imprisonment, specific to delinquent adults.

6.1. Answers to the first question

Focusing probation activities on the person of the minor leads to effects when we are dealing with a high degree of involvement on the part of the offender in the formalized interaction with the probation officer, respectively when correlatively the convict manages to build his own agenda, with precise, predetermined goals to aim for in the post-punishment period. This will allow a correct highlighting of the beneficial effects achieved by the measures adopted, in particular the elimination of the resumption of the same type of behaviour and the negative impact of the community, not only of the potential victims. (Delaney & Weir, 2011).

However, in measuring these positive effects, we must also take into account the legal realities contemporary to the analysed period. The appearance of the new criminal and procedural-criminal principles in Romanian law together with the year 2014 was also reflected in the abrupt increase of the cases of “successful” exit from the system

Compared to the previous period (2010-2013) in the reference period (2014-2016) we are dealing with a tripling of the cases “won” by the society. This statistical reality is determined not by the behavioural change obtained as a result of the new philosophy of criminal policy in relation to the types of punishment and their ways of individualization, but by another legislative change that shortened waiting times during a trial-Law 202/2010.

Paradoxically, in the reference period, applied to the segment of juvenile delinquents, we notice that compared to adults who have committed a criminal offense, the number of exits from the system with respect to the restrictions and obligations imposed is better. On the other hand, the resumption of the criminal activity by the same persons in a short time horizon, namely 1 year from the execution of the educational measure is 8 times longer than the one registered in the period in which the sanction was actually executed (Direcția Națională de Probațiune [DNP], 2017).

In addition to the data found above, we can say that in general, minors appreciate their change in relation to their own reference system. They were to blame for the crime, not the outside world. The study I referred to above also highlights the fact that the determination of the juvenile delinquent to comply with the requirements of society is sometimes a consequence of the fact that the person in question felt marginalized or excluded. The fact that the level of education was low - only the primary cycle - determined the rejection of the minor (with the legal age that allowed the conclusion of the individual employment contract) by a potential employer. The role of education in the recovery of the minor is borrowed from the education systems. Their efficiency is given by the degree of literacy of those who, according to their age, should have this habit (Lazăr, 2010).

Poverty creates a state of addiction and then the juvenile delinquent continues school not because the probation system has generated this positive effect through conviction. Compliance emerged as a result of rejection by society when the young delinquent tried to change his status. Here we are talking

about personal projections that are independent of what the probation system offers or does not offer. If this change had not occurred through the personal interest of the offender, we would have been in the presence of a higher risk of recidivism, which translates into a semi-failure of the probation system. So the positive effect does not always appear due to the new approach to the criminal treatment of juveniles on probation.

As such, the tools we have at our disposal and in the assessment of which we analyse the effects of the probation system on the minor's adaptation to prosocial life must be anchored in the specificity of the legal system from the moment of recording the respective data.

6.2. Answers to the second question

Among the obligations imposed on the juvenile convict are the obligation to complete school courses (if we talk about the ten compulsory classes, according to the current Romanian education system), the obligation to participate in a vocational training course (when we have dealing with minors who can later perform work - at least fifteen years of age, cumulatively with the express consent of the parents in this regard).

This way of intervention makes the transition from the prison-centric paradigm to the paradigm of restorative justice, the last of which presupposes the attempt to focus on the behavioural change of the convict, on rehabilitation (Sandu & Unguru, 2016).

Even when we discuss the educational measures of deprivation of liberty, namely hospitalization in an educational centre, respectively hospitalization in a detention centre, the stated objective of establishing these solutions is to recover the minor, return him to his family and community and not apply retaliation. Obstruction of the minor's freedom of movement is in these cases short-lived and, as I said earlier, is not an end in itself. Otherwise, the registration of substantial changes in the minor's mode of action may lead to a change in the custodial regime, which is considered exceptional. In such a situation we gradually turn to those educational measures that do not restrict the minor's movement: civic training internship, supervision, weekend recording or daily assistance.

The activity of probation services in work dedicated to the minor is a special one from the perspective of a public service that is closer here to the social character than to the judicial one. We do not emphasize the supervision activity which also has an important role in probation, but rather the counselling and assistance of the minor. However, the probation officer can be qualified as an agent of control and social change. He promotes the "strengths" of the offender and develops formal and informal networks in the community, leading to a proper systemic functioning (Buzducea, 2009).

Parental authority presupposes an established responsibility for parents in relation to their children. Under certain conditions, this responsibility does not come to be effectively respected and then the community, or finally the state must intervene in managing the situation of vulnerability of the minor. (see in this sense the order of precedence regarding the intervention in order to provide support through social services, established by law 292/2011 on the national social assistance system).

Committing a crime that is defined as the most serious fact that a person can commit is in the case of a juvenile delinquent, a proof of the failure registered by the parents in terms of fulfilling his obligation to raise and educate him. The lack of education can be corrected by these very obligations imposed on the

juvenile delinquent. We can even say that a precarious education at the level of parents leads to the spread of this level in the families of minors.

Lately, a phenomenon has been observed in continuous expansion in connection with the families in which the parents were gone to work abroad, and the minors remained in Romania without having designated a person to act as a parental substitute. The lack of parents near the minor during the period in which he is going to accumulate knowledge, to define his personality generates an emotional imbalance and implicitly a set of internal factors (interfamilial) that favour the antisocial behaviour.

There are also external (extra familial) factors that are nothing more than a consequence of the fact that parents are not present with the minor - the bad entourage and the construction of an antisocial reference network at community level, as an alternative to their own family (Godinet, 2011).

Among these external factors that can favour the commission of the deed is the negative influence of the media. Starting with models such as Batman, Rambo, or more recently Beavis and Butt-Head, we can create a reaction of admiration, learning and "emancipation" among minors or young people. This leads to the "structuring of the thinking and behaviour" of juvenile delinquency (Kellner, 2001).

Solving such a hypothesis can be done through creative groups that lay the foundations for a program that the beneficiary of the probation system to follow. A research applied on this issue concluded that the benefits can be seen if the structure of such a group is of maximum 6 clients, the sequencing of the work submitted with them does not exceed an hour interval, a frequency of two weekly sessions is ensured, various incentives are offered for assimilating the program (Dragomir, 2021).

As such, committing more or less serious crimes appears as a reality when we identify "the absence of a reference family environment and (we are) under the influence of transnational care methods" (Cătăraiu, 2019, p. 301). The fact that the minor does not have an insured support plan will make it easier for him or her not to be involved enough or not at all in the educational process, which is equivalent in a very short time to an intermittent school attendance or even school dropout. The success in the attempt to social reintegration of the minor who committed a criminal act is based on "an open, communicative attitude, combined with the authoritarian one only when it is the case, much more efficient than a formal authoritarian attitude" (Sandu, 2017, p. 101).

According to a judicial statistic, approximately 15,000 minors were convicted between 2011 and 2015. The criminal code, which entered into force in 2014, reduced the number of juveniles sent to court by about 1,000 people, without the criminal phenomenon falling sharply. In the first two years after the adoption of educational measures as a solution for juvenile delinquents, about 800 such sanctions were applied (Dănilăuț, 2016, p. 1).

The ratio between the number of clients of the probation system and that of the counsellors assigned to the specific activities is disproportionate. There are on average about 70,000 beneficiaries and about 500 people specialized in the work of assistance, counselling and supervision of those sentenced to non-custodial solutions. Compared to 2019, in 2020 there is a decline in the number of serving staff (from 515 to 498) while the number of beneficiaries has increased (if we refer only to convicts who left the system from 29,485 to 33,724). The average age of probation counsellors has increased slightly (from 38.31 years to 38.47 years) although their absolute number is diminished as we have already shown. For the category of juvenile offenders, the figures on "stock" decrease from 1462 in 2019 to only 551 in 2020.

The stock "refers" to the number of convicts remaining in the system from the previous year. In other words, the pandemic "disrupted" the procedures and the completion of criminal cases that did not pose significant procedural or substantive issues, including those specific to minors where educational measures are applied. This did not mean that there were fewer crimes committed, investigated and sanctioned involving minors. These figures came "behind" anyway because if not for the criminal investigation, at least the trial and execution of the sentences will not take place in the same calendar year. (Council Of Europe [CE], 2019, pp. 64-66,106-110; Council Of Europe [CE], 2020, pp. 81-86, 103-105).

6.3. Answers to the third question

The sanction for the minor in these situations must generate change, and communication is the key when we encounter difficulties, when we are in the presence of the minor's resilience. The educator to whom the minor should be directed by the probation counsellor should be a benchmark for him, a model for understanding the role of the individual in society and especially the one who should explain to him how far he has to fall, reported at the rights of others (Gheorghe, 1996). All this is related to the adaptation of the probation counsellor to the challenges that appeared during the work submitted with the young delinquent. Thus, continuous training in such a field is essential because it is a combination of at least three specializations: legal, psychological, social.

Individual and inter-institutional communication techniques are eloquent, respectively, but we must accept the reality that not every probation counsellor can engage in counselling and assistance, as not always has the necessary skills in this regard. As such, ensuring a unitary approach to the activity can be achieved only by recognizing the independent status of the probation worker, which requires a sum of knowledge acquired through higher education (master in probation). The marketing of this public service will have to increase so that the general population and in particular delinquents can understand the differences between the classic judicial systems of sanctioning criminals, compared to those of restitutive justice.

Changing one system of sanctions to another can also have a negative effect. Minors are much better adapted to the environment in which they have become accustomed. Changing the rules, even if it seems to favour their position, can upset them. For some of them, the feeling of security appears in a potentially hostile environment (cell with adult men) to the detriment of re-education centres, because here they do not know what the requirements are, the type of supervisor they will interact with (Giles, 2002).

In the new logic of probation for minors we combine the paradigm of withdrawal where the human capital of the convict, social interaction and opportunities indicated by the counsellor can ensure success (McNeill, 2006) with the paradigm of the good life where the probation counsellor ensures the client's orientation to goods primary and towards a realistic post-sanction life plan (Maruna & Ward, 2007). We can discuss an assessment of the risk of institutionalized recidivism after 2004, which, however, did not exist within the reach of probation workers until that moment (Durnescu, 2010).

Most educational measures extend over a short period of time from a few weeks to a few months. As I said, the education of the juvenile delinquent is a more targeted result in these cases. In practice,

there may be situations in which school enrolment can no longer be monitored because this operation takes place in the autumn, and supervision has ceased for some time. Another problem pointed out in a fairly recent study is that the accreditation of community institutions with which probation services should interact is limited.

There is no express limitation of the type of organization that can fulfil these responsibilities, but indirectly from the way the criteria are established we go only to public institutions - see Government Decision no. 818/2018 (Preda, 2015).

The low number of accredited community institutions also has repercussions on the number and thematic diversity of school or vocational training courses dedicated to minors (Călin et al., 2017).

There is also a vicious circle in considering these limits, namely the fact that although resocialization is the purpose of probation services, they can practically not offer it to delinquents, including minors.

7. Conclusions

As we have shown from the answers given to the questions posed at the beginning of the research approach, the positive effects of the new alternatives offered for the juvenile delinquent are beginning to occur. However, we cannot generalize this because they are inadvertent at the system level that will need to be corrected. One thing is certain - education must remain a goal both for the state in relation to the beneficiary of the probation system and for each minor offender, who must set such a goal, distinct from the formalism of criminal law.

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