Judges' Perception on the Activity of Probation Services

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1. INTRODUCTORY CONSIDERATIONS

The introduction of probation in Romania was the result of processes that took place in the mid-1990s and involved economic factors, European institutions, ideologies, political figures or figures of the criminal justice system, etc. (Durnescu, 2008). After an experimental phase (1996-2001), according to the Government Ordinance no. 92/2000, social reintegration services for offenders and supervision of non-custodial sanctions were to be set up. These services were initially focused on psychosocial assessment of defendants and of persons under the supervision of such services, as well as on the monitoring of the way the supervised offenders complied with the measures and obligations imposed by the courts. Subsequently, over time, with a background of successive legislative changes, the role and visibility of these services within the criminal justice system increased and a range of responsibilities regarding the protection of victims, juvenile justice and the execution of punishments depriving people of their liberty were added to the probation service.

The involvement of such services in a wide range of activities also implies their interaction with a multitude of people and institutions, especially, though not only, from the field of criminal justice. Thus, probation services work together with, *inter alia*, criminal prosecution bodies, courts, public and private institutions that offer social, medical, educational services, and penal institutions, and the list could go on. The legislation on probation, as well as the speeches of the institutions from the Romanian probation system, amongst other things, refer constantly to the involvement of the community in the activities which probation carries out, because the community also benefits from the activities of surveillance and social reintegration of the probationers. Also, it should not be overlooked that the promotion of probation was always made by reference to the community or, as shown in a leaflet of the Probation Department from the Ministry of Justice, "probation exists for the community, it exists for each of us."

An important element in determining the beneficiaries of probation services is identifying the goals of their activities. Thus, depending on the objectives that they set, probation systems in Europe can be classified into one of the following four categories:

- probation services based on measures and sanctions aimed at promoting community-based sanctions,
- services focused on assistance to the institutions involved in criminal justice,
- services operating on the model of rehabilitation and public protection and
- probation services which base their work on the punishment model (Durnescu, 2008).

The Romanian Probation System is focused more on assistance to the judicial institutions, in particular by preparing assessment reports, taking also into account the fact that the supervision of non-custodial sanctions is playing an increasing role. In these circumstances, we can say that the main beneficiaries of the activities of these services belong more to the area of the institutions from the criminal justice system in general, and to that of judges in particular.

From this perspective we have found that some research focused on the perceptions of judges on the activities undertaken by the probation services, especially the Probation Service of the Bucharest Tribunal, is welcome, not only for the strictly utilitarian purpose of measuring the degree of their satisfaction and the benefits for community penalties, but also from the point of view of the creation of an analytical model, which can then be replicated with other probation services, or even nationally, especially considering that such an approach has not been initiated within the Romanian Probation System. In this sense, what we found were a series of insufficiently systematic initiatives of some local services.

2. RESEARCH DESIGN

The methodology behind this research respects the sociological research stages, as they were developed in the literature (Marginean, 2000). The overall objective of the research work was to highlight the perception that judges have of the activities carried out by The Bucharest Probation Service. Under this overall objective, the research aims to achieve particular objectives such as the evaluation of the impact the activities of the probation service have on the decisions of the judges and the assessment of the current legal framework regarding community sanctions, in relation to the expectations of judges.

The documentation phase confirmed to us that the subject in question had not been given much attention in the Romanian literature, although a number of bibliographical references have been identified. Although these references were not directly linked to the subject of our research, they have nonetheless been very useful for the formulation of a few hypotheses, for establishing adequate research instruments as well as for the assessment of the actual situation of probation services and their collaboration with the courts (Szabo, 2009).

The study was a cross-type, structured in two stages. The first stage was a quantitative research inquiry, based on the application of a questionnaire, which sought to quantify the perception of judges in relation to various activities carried out by the probation service. In the second stage, the results previously obtained were further developed through qualitative research, by means of structured interviews with judges.

Given the theme of the research, but also the nature of the investigated subjects, namely judges, we considered it appropriate to develop and apply an opinion questionnaire, knowing that such a questionnaire evaluates not only opinions but also how firmly these views are held? (Chelcea, 2007).

In designing and administering the questionnaire, we found it useful to use closed questions (pre-coded). The result was a self-managed questionnaire that was distributed to all courts of Bucharest, except the High Court of Cassation and Justice. It has multiple dimensions:

- the first one refers to "the knowledge and assessment of the general issues related to the activity of the probation service (e.g. "How do you evaluate the effectiveness of the probation service in the following areas of intervention? The social reintegration of offenders, the protection of the public and the increase in community safety, the reduction of recidivism, the protection of victims of crime").
- The next dimensions refer to the assessment report, to supervision in community, to the impact of the new Criminal Code provisions on the activities of the probation service and, finally, to the presentation of the probation service.

A total of 82 questionnaires were distributed to these courts, according to the estimated number of judges who hear criminal cases. Of the 82 questionnaires, a total of 49 completed questionnaires were returned, which means a response rate of 59.7%.

The high rate of the persons that answered the questionnaire can be explained by the preliminary report enclosed that reveals the importance of investigating judges' view over the activities of the probation services, where such an extensive survey is carried out in the Romanian penal justice system for the first time. Emphasis was laid on their part as holders of an expertise significant for the Romanian probation system, on one hand, and as direct beneficiaries of such probation services on the other. The relative ease to fill in the questionnaire was a factor that contributed to the judges' response rate.

Having in mind that judges are commonly people that have to manage, on a regular basis, a large number of case within a limited timeframe, we opted for the Likert scale as a research method, trying to avoid as much as possible the use of open questions where the risk of getting non-answers was high. At the same time the questionnaires were disseminated within every Court by the very author of the study.

The questionnaire responses were coded and their processing was performed with SPSS 17.01 software. Subsequently, the results of the questionnaire have been enhanced in the structured interviews which included five judges (one judge of the court and four district court judges). We also studied a series of documents prepared by the probation service, drawn up at regular meetings with judges, as well as some statistical and evaluation reports and monitoring records, which were corroborated with the results of the survey.

3. RESEARCH RESULTS

The main results of the survey indicated that judges appraise the activity of the probation service positively. They grade the evaluation reports as useful in the process of decision making and

assess the activity of supervising convicted persons as being adequate and efficient. Co-operation with the probation service is far beyond the extent required by the law. At the same time, the survey revealed that judges do not take into consideration the impact of their decisions at an institutional level (prison overcrowding) having rather a non-systemic view about how the institutions of the penal system function. Last but not least, when judges impose a sanction they are keen to see its efficiency and effectiveness in the convict's rehabilitation.

Analyzing the knowledge and assessment of the general issues related to the activity of the probation service, we found that, firstly, 89.8% of judges answered affirmatively the question whether or not they have collaborated with the Bucharest Probation Service during their activity. Behind this significant result there is a series of explanations. For example, starting in 2007, the probation service has been making assessment reports for juvenile offenders, reports which, according to the provisions of the article no. 482 from the Romanian procedural penal code, are mandatory in all cases involving juvenile defendants. Also, another explanation is that the probation service has started to play an increasingly important role in the provision of prison sentences with suspension under probation.

Thus, in the early 2000s, the provisions of the Penal Code governing probation stipulated that the supervision of the convicted person must comply with the measures and obligations specified by the judge responsible for the execution of sentences or by other institutions. Subsequent amendments to this bill included the probation services in an explicit manner, as institutions involved in the supervision of convicted persons.

The analysis of the statistics of the Probation Service on the Bucharest Tribunal showed that courts' decisions to have convicted persons supervised were increasing and that the number of supervised persons was quite significant, which in turn shows an intense collaboration between the probation service and the courts. Thus, on 31.12.2008 there were 1187 supervised convicted persons in the records of the probation service and on 31.12.2009 their number was 1426. This means an increase of 20.13%.

3.1 Perception of judges on the utility and effectiveness of the probation service

The perception of judges on the effectiveness of the probation service in terms of social reintegration of offenders, protection of the public, increase in community safety and the reduction of recidivism was mostly positive. The causes identified by the judges interviewed on these results were found to be the highly professional standards of probation counsellors' activities, the seriousness shown in fulfilling their tasks and their professional integrity.

The perception of judges was not so favourable when the issue of the protection of victims of crime by the probation service was brought into question. Thus, 36.73% of the interviewed judges consider that the service is somewhat effective and only 20.40% feel that the service is effective or very effective. Also 22.44% said they did not know the efficiency of the service, and 20(40%) did not respond.

We must point out that the protection of victims of crime became a task of the probation service as a result of Law no. 211/2004. The Probation Service statistics of the Bucharest Tribunal

shows that victims are an almost non-existent category among the categories of persons from the service record. Thus, if in 2008 there were two applications for providing psychological counselling and other forms of victim assistance, in 2009, the service records no longer included any specific victim. In accordance with the above-mentioned normative act, victim protection is a task that pertains to all institutions involved in criminal justice administration (agencies of police, prosecution or courts) that have certain obligations towards the victims. In these circumstances, we can assume that the apparent absence of victims from the records of the probation service may be the effect of a lack of active involvement of the police, prosecutors or judges in informing the victims about their legal rights.

The study also highlighted the fact that the activities performed by the probation service have proven useful, by responding to the professional needs of district judges. These professional needs are represented mostly by the support offered by the service in the process of individualizing punishment, but also by the assurance the service gives to magistrates about the effectiveness of the enforcement of community penalties.

Regarding the perception that judges have on the work of the probation service in preparing pre-sentence reports, the study showed that for most judges, cooperation with the service is routine in their professional activities. Thus, 69.4% of respondents had worked with the probation service requesting an evaluation report. The importance of the legal basis for collaboration with the probation service is given by the requirement of seeing whether this cooperation is a mandatory one, required by law, or a manifestation of the judge's willingness to cooperate with the probation service, in order to obtain more personal information regarding the offender.

In the case of judges who responded that they worked with the probation service (69.4% of respondents) 24.5% said they had requested reports under one mandatory penal procedural code, 12.2 under the voluntary code and 32.7% have worked with both legal provisions. These responses show us that what motivates the collaboration between judges and the probation service in relation to pre-sentence reports are not the mandatory provisions of the law, but rather the utility the report has offered in responding to the professional needs of the judges. On the other hand, higher levels of collaboration are registered among judges and in the tribunal, which is explainable if we take into consideration the fact that these are the most important courts in terms of functional competence and number of cases.

Starting from a series of observations, found both in the activity of judges and in the literature, which claimed that when applying for a pre-sentence report, the judges are particularly interested in the conclusions of the report about the prospects for reintegration into society, we introduced in the questionnaire a few questions about the importance of each section of the report. The results did not confirm this hypothesis. Thus, the majority of judges considered that each section of the pre-sentence report is important and we did not identify any tendency to give more importance to the section related to reintegration into society. Moreover, there was a predisposition of judges to value more the section regarding the information on the person accused, and the subsequent interviews highlighted this issue.

In this study we found that judges prefer to give their own interpretation of the information related to the accused person and his/her background and, in making their decisions, they rely even more on this interpretation than on the conclusions reached by the probation service, because they

correlate the information derived from the assessment report with the information they have obtained from the criminal file. Judges consider that the view of the probation counsellor on the possibilities for reintegration into society is limited because he/she does not have access to all the information held by the judge. The subsequent interviews highlighted that the judges granted a limited importance to the facts mentioned in the report, being more interested in some subjective matters like the attitude manifested by the offender in relation to the offence. From this perspective, there is a convergence between the expectations of judges and probation practice, which, in the process of offence analysis,takes into account issues such as thoughts, feelings and motivation of the offender to commit the crime, the determining factors of the decision to commit the crime and the exploration of the offender's ability to think differently (Boboş, Drăgotoiu and Puşcaşu, 2002).

Related to the aim of the pre-sentence report (namely to give support to judges in the individualization of punishment), we found it useful to quantify how the judges appreciate the usefulness of the report in the process of individualization. Thus, 64.9% of judges were in total agreement with the statement that the reports have proved useful in the process of individualization of punishment, and 24.5% of them partially agreed. It should be noted that no judge *disagreed* that they were of use in the process of individualization of punishment.

3.2. Judges' opinion on the recommendations contained in the assessment report on the types of sanctions

Pre-sentence reports often make recommendations about the type of sanctions appropriate for the offenders and the degree of risk that the offender presents; for example, in the UK, (Dad, Burns, Halliday, Hutton and McNeill, 2008). We therefore explored during the interviews held with the judges the extent to which they agree with the adoption of such practices into the activities of probation services, as under the current Romanian legislation on probation such recommendations are not allowed. This is allowed only for the reports requested for persons under supervision.

Post-survey interviews revealed a number of interesting aspects related to the introduction of recommendations on the most appropriate type of penal treatment of the accused into the pre-sentence report. Thus, there were judges who were totally against such a possibility, justifying their position with the statement that "when a probation counsellor makes a number of recommendations to the court, he has a limited perspective on the case because the counsellors don't have enough information". Moreover, the judge considers that he has absolute jurisdiction on the assessment of guilt and the sentence, aspects which should not be interfered with by external sources, not even with recommendations from the probation service.

There were, however, a number of opinions in favour of including recommendations, based on the premise that their formulation does not in any way diminish the authority of a judge, because he/she may or may not take into account these recommendations when the decision is taken. The formulation of recommendations by the probation counsellor could make decision-making more efficient. However, it was considered that the possibility of increasing the role of the probation service by means of such recommendations could be an additional pressure factor for the counsellor who prepares the assessment report. In such circumstances the counsellor could be vulnerable to attempts of corruption. In these circumstances, if the judge found discrepancies

between the information about the investigated person and the prospects for reintegration into society, the judges might suspect the probation counselor of corruption; even if the inconsistency was based on the latter's error of evaluation. This diversity of opinions demonstrates the importance and sensitivity of this subject, but also the difficulty of any attempt to harmonize the different views and to adopt a policy which allows for recommendations.

3.3 Judges' Opinions on probation supervision

As far as supervision is concerned, the activities of the probation service consist of supervising a person sentenced to imprisonment with suspension under supervision or a juvenile to whom the court applied the educational measure of supervised liberty. Probation has a duty to ensure that the measures and the obligations imposed by the court are appropriately respected.

Our research centered strictly on the issue of the persons sentenced to imprisonment with suspension under supervision. The reason why juveniles to whom the court applied the aforementioned educational measure were left out is the fact that, in the statistics of the Probation Service, this category hardly exists.

As in the investigation on the problem of pre-sentence reports, the judges were initially asked if, in the last six months prior to completing the questionnaire, they had worked with the probation service by entrusting it with the supervision of persons to whom the court imposed a non-custodial sanction. Positive responses were given by 63.3% of judges, and negative by 20.4%, which indicates that judges were accustomed to collaboration with the probation service.

Also, given that judges completed a section of the questionnaire which was closely connected with the enforcement of a sentence, we inserted a series of questions about the influences that factors such as the pre-sentence report, the judge's personal experiences, and information from mass media or their concern about the overcrowding of prisons might have on the sentencing process. In connection with this last aspect, the research has revealed that a large proportion of judges do not take into account the issue of prison overcrowding in the process of applying a penalty.

Thus, 57.1% of the judges said that they never take account of problem of prison overcrowding in the decision process. For 14.3% this happens rarely and for ten (2%) this happens sometimes. The negative responses revealed a strong fragmentation within the criminal justice system, which is further demonstrated by the interviews, which showed that the issue of prison overcrowding is one that is caused by a series of administrative problems for which only the National Administration of Prisons is responsible and in relation to which judges do not assume any responsibility.

Another interesting aspect revealed by this research was that, when applying a penalty, judges take into account the problems faced by the accused. 28.6% of judges said that this always happens, and 30.6% considered that this happens sometimes. The result is somewhat surprising given the fact that judges tend to consider that the main criterion of the judge when determining a sentence seems to be the social danger or seriousness of the offence, a result which was reiterated during the interview. Although the question was formulated at a general level, subsequent interviews revealed a number of important nuances to our approach. Thus, solving the problems facing the accused person is particularly taken into consideration when the person is sentenced to imprisonment

with suspension under supervision and the supervision assigned to the probation service, because when the judge gives an imprisonment sentence, his reason is to exclude the offender from society for a certain period in order to prevent another crime. On the other hand, the judges are forced in some other cases to give an imprisonment sentence, because the law requires it, even if they do not find it appropriate.

Regarding the way in which the judge contributes through the sentence that he/she gives to the solving of the problems faced by the defendant, in the interviews, reference was made to the possibility provided by the criminal law of imposing to the persons assigned to probation supervision a series of obligations that must be complied with or fulfilled during the probation period.

Given that in the questionnaire on which we based our study we focused on the assessment of the perception of judges on the performance of the probation service in the enforcement of the sentence to imprisonment with suspension under supervision we included a series of questions concerning the perception that judges have on the possible aims of this sentence. In this sense judges were asked to give their opinions on a series of statements about the sentence to imprisonment with suspension under supervision. Such a statement was that the sentence to imprisonment with suspension under supervision is a *punishment* for offenders. At this point a few preliminary clarifications are required. According to the doctrine of the criminal law, the sentence to imprisonment with suspension under supervision is not a punishment, it is a means of individualizing the main sentence: imprisonment (Boroi, 2006). When we raised this question obviously judges did not refer to this strict sense of the concept of legal punishment, but to a broader sense. We tried to see to what extent judges associated the concept of suspension of sentence to punishment functions described in legal studies (for example, repression, rehabilitation and an exemplary function) (Boroi, 2006).

The answers given by judges to this question were in most cases "total agreement" (26.5%) and "partial agreement" (30.6%). Subsequent interviews demonstrated that the basis for this perception is that primarily, although not so much as in the case of imprisonment, the suspension of imprisonment under supervision implies a restraining function which consists in limitations imposed on the convicted person(regular visits to the probation office, according with a schedule established by the probation counsellor, restrictions that may be imposed on meeting certain people or going to certain places, restrictions on freedom of movement, the trespassing of which may trigger the revocation of the suspension by the court and the enforcement of the sentence of imprisonment).

The judges held strong opinions about the effect of the sentence to imprisonment with suspension under supervision on the rehabilitation of the sentenced person. Thus, 38.8% of judges expressed "complete agreement" with the statement that "suspension of sentence under supervision, is an aid for those who break the law, because it helps them to solve the problems they are facing and which brought them in conflict with the criminal law." Partial agreement was expressed by 32.7% of the judges.

We also formulated some questions regarding the individualization of punishment through the sentence to imprisonment with suspension under supervision, taking as a starting point the purposes identified in the literature and in the regulatory framework governing the activities

of the probation service. This refers to the fact that the application of non-custodial sanctions contributes to the protection of the public, deters crime, helps to reduce recidivism and has a positive long term impact on the community.

When we raised these questions, our goal was to explain a paradox, or rather to check if judges have an accurate perception on the approach of the probation service in terms of the promotion of non-custodial sanctions. The paradox in question can be summarized as follows: how is it possible to ensure the protection of the public and to deter crime while also allowing the freedom of persons who commit offences, given the fact that, traditionally, community protection was provided precisely by eliminating from the social body those in conflict with the criminal law? Without going into details, the answer of the probation service to this apparent paradox is that, by avoiding incarceration, a number of negative consequences associated with it (such as the adoption of the negative behaviour present in a prison environment) are avoided, and the involvement of community institutions during the probation period can reduce the risk of relapse and thus increase community safety.

The questionnaire results showed that most judges show a total or partial agreement with the effect the sentence to imprisonment with suspension under supervision has in terms of increasing community safety by reducing the risk of relapse.

In our approach we also considered it useful to explore some general issues related to the perception of judges on the efficiency of the service in monitoring the convicted persons' compliance with the measures and obligations imposed by the court and the efficiency of the social reintegration of such persons by means of assistance and counselling services. In this situation, the total or partial agreement of the majority of judges shows an adequate collaboration between the courts and the Probation Service, whereas a disagreement with these aspects might indicate certain misgivings or doubts on the part of the judges, which might lead to a new analysis of the message conveyed by the probation service.

The starting point of this investigation was a series of findings in the literature (Farrow, 2004), according to which the relation between the counsellors and the supervised persons consists of both control and assistance and counselling activities. A phenomenon that might occur due to the increase in the number of cases a probation counsellor is in charge of is that of centering the relationship between counsellor and beneficiary on just one of these dimensions: control or assistance. The results are as follows: in terms of monitoring the way the convicted person complies with the measures and obligations imposed by the court (control function), 26.5% of judges have expressed their total agreement with the fact that the monitoring is conducted by the probation service in a rigorous manner, and 34.7% of them partially agreed. A significant proportion - 57.1% - of judges, however, expressed their complete agreement with the fact that the probation service is involved in assistance and counselling, while 20.4% of the judges expressed a partial agreement. Although the judges' perceptions of the involvement of the probation service in surveillance, assistance and counselling activities are different, at the level of judicial discourse these two dimensions are considered to be in a close interdependence, as social reintegration is seen as a natural result of rigorous surveillance.

Another aspect that we wanted to highlight in our study was the judges' perception of the current legal framework on community sanctions – whether or not it is sufficient. The reason why we included this question was the international recommendations related to non-custodial sanctions

which constantly refer to the fact that states should use a system of community sanctions which should include a varied range of sanctions. Our question was also motivated by the situation of the Romanian criminal law system, in which the judges' possibilities of applying community sanctions is considered to be limited.

Thus, with the claim that the current legislative framework is sufficient in terms of community penalties, 42.9% of judges partially disagreed, while 16.3% of them expressed their total disagreement. On the one hand, this shows the dissatisfaction of the judges with the current framework of legal dispositions related to such sanctions. On the other hand, these figures also express the judges' concern with the possibility of giving community sanctions and with the need for an extension of such sanctions. Subsequent interviews demonstrated that the current legal framework restricts the magistrate's possibilities to impose community penalties, but on the other hand, we noted that judges are interested not only in a greater diversity of community penalties, but also in the effectiveness of such sanctions. Thus, the judges are also interested in having an institutional framework which can ensure that their dispositions are respected.

4. DIFFICULTIES IN CARRYING OUT THE RESEARCH

Circumscribing the contents of the questionnaire handed over with the multitude activities performed by the probation services was the first among the difficulties in carrying out this research. The questionnaire had to be sufficiently broad to cover the judges' perception on these activities and also prepared to facilitate filling in, due to the time constraint.

Secondly, increased attention had to be paid when we prepared the questionnaire in order to have clear questions and avoid inaccuracies that could prove ignorance of the legal framework we referred to and make us less credible before the judges.

However, the most difficult part of our endeavor was interviewing the judges in order to clarify answers given to the questionnaire.

As a conclusion we may say that the answers we got were relevant for the study and the experience gained through repeated interaction with the judges was of great help. This interaction showed several aspects that need not be neglected when relating with judges even in a sociological research. Respect and solid knowledge of the research area, of the legal terminology and of the conditions of their work are key elements for a positive professional relation with the judges.

Having in mind that judges are subject to high ethical and professional standards that come along with several restrictions regarding expressing their personal views, we avoided to refer to any particular case from our activity.

5. CONCLUSIONS

As a general conclusion, we can say that the research revealed that the method chosen to assess the judges' perceptions on the effectiveness of probation services has proven useful and may be extended to a national level or for other probation services. Also, the results were relevant in terms of the general and particular objectives that we have aimed at. Taking into account that

under the provisions of the New Penal Code, probation services are to occupy a central role in the criminal justice system, we consider that such a research should become a priority, as the relation between the courts and the probation services includes many unknown aspects on both sides.

A larger study would highlight the possible discrepancies between the vision and the practice of the probation system and the expectations of judges, who, in the Romanian legal context, are the main beneficiaries of the activity of the probation services.

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