

УДК 343.8

O. Pantea,
PhD, Associate Professor.
Moldova State University

THE REFLECTION OF PROBATION WITHIN THE REGIME OF FINDING CONTRAVENTIONS AND ENSURING THE EXECUTION OF CONTRAVENTION SANCTIONS IN THE REPUBLIC OF MOLDOVA (CASE STUDY)

This presented scientific material was devoted to the activity of the probation bodies through the hypostasis of the founding agent in contravention matters: the constitution of the probation service in the Republic of Moldova, the normative provisions regarding the activity of the probation, the reflections analyzed from the Code of Contravention referring to the role of the probation in finding contraventions. A special line is the analysis of contraventions found by probation offices, contravention sanctions that are provided by the probation offices, the structure and the constituent parts of the contraventions. Through the logical ordering of the issues I have addressed, I wanted this work to be useful to students, teachers and law specialists, for this reason the subject was dealt thorough not only from the point of view of the offender or the finding agent.

Keywords: *contravention, probation, contravention sanction, finding agent, court decision, contravention norm, record of finding.*

Представленный научный материал посвящен деятельности органов пробации Республики Молдова: создание Службы пробации, ее нормативно-правовая база, мысли по поводу роли пробации в борьбе с преступностью, исходя из положений Уголовного Кодекса Республики Молдова. Особое внимание в статье уделяется анализу конкретных дел, которые относятся к компетенции Службы пробации, а также санкций, предусмотренных за совершение соответствующих правонарушений. Рассматривается структура и составные части правонарушений, которые относятся к компетенции Службы пробации. Благодаря логическому упорядочению затронутых автором вопросов, которые рассмотрены с точек зрения различных субъектов, эта статья может быть полезной для студентов, преподавателей и юристов-практиков.

Ключевые слова: *правонарушение, условное осуждение, санкции, решение суда, норма права, протокол о правонарушении.*

Introduction. The development tendencies of the Republic of Moldova towards a democratic society, as well as the alignment of the national normative and legal system with the European rules, have led to the creation of more

modern institutions, providing alternatives to the sentences of deprivation of liberty, and providing the authorities with the best solutions for integrating the perpetrators into society. Or by applying sanctions, the state aims to inte-

grate the social integration of the contravient and the restoration of the social relations that have been affected.

The Probation Institution proved to be a successful idea, promising to reform the sanction system by keeping the perpetrators in society under surveillance

The experience in the field of probation accumulated by various European countries has shown how effective this model is.

The results of the discussions.

Generally, probation in Europe has developed very differently, depending on the legal system specific to certain states, but also on how they understood the initiators of the probation institution to promote this idea

The complex analysis by Prof. Ioan Durnescu, quoted by E. Balica, on the way in which probation developed in the Europe highlighted the existence of four models of probation systems:

1. The probation systems based on the idea of promoting Community measures and measures (Estonia and Turkey);

2. The probation systems that work to help the judiciary (prosecutors and judges) to take the best decision when making a sentence (Italy, Romania);

3. The probation systems based on the model of rehabilitation and protection of the population (France, Austria, Czech Republic, Denmark, Finland, Northern Ireland, Norway, Germany, Bulgaria);

4. The probation systems based on the «punishment or enforcement» (Great Britain) [8, p. 301; 9].

Based on Durnescu's analysis, the Republic of Moldova would, through the developed probation system, enroll in the model building to improve the act of

justice by providing the necessary elements for making an appropriate decision, sanctioning delinquent deeds and reducing the risk of relapse. The evolution of the probation in our country has been variously ambitious, so that the short description of the historical dimension and the peculiarities of the probation in the Republic of Moldova will be revealed in order to facilitate the interest in the study.

In Moldova the probation service was created on 12 January 2007, taking full advantage of the results of the pilot projects of the Institute for Penal Reforms carried out in partnership with the international bodies:

«The alternatives to Child Detention in the Criminal Justice System», «The Promoting Alternatives to Detention in the Republic of Moldova». By Government Decision no.44 of 12.01.2007 some changes to the Regulation of the Ministry of Justice were introduced, including the organization of the probation activity by governmental bodies. At that time, the Directorate for the Execution of Criminal Non-custodial Penalties is reorganized into the Probation Directorate, with an additional 125 units of staff being allocated. The Probation Service was created within the Execution Department of the Ministry of Justice of the Republic of Moldova. On 14.02.2008, the Law on probation was enacted, in force as of 13.09.2008, within the Execution Department. After four years of activity, the probation system was undergone to reorganization, and through the Government Decision no.827 of 10.09.2010, the Central Probation Office was created into the organizational structure of the Department of Penitentiary Institutions. Then, on 01.01.2013, by Government Decision no. 735 of 03.10.2012 on

the optimization of the structure, the activity of the Ministry of Justice and the administrative authorities under its subordination, the Central Probation Office was transferred from the subordination of the Department of Penitentiary Institutions to the direct subordination of the Ministry of Justice, reorganized into the National Probation Inspectorate. 42 Probation Offices subordinated to the National Probation Inspectorate [15].

Beyond the above-mentioned tasks, on 20.07.2017 in the Code of Contravention a new amendment was introduced, in chapter III «Competent authorities to solve minor offenses», in art. 421¹ The «National Probation Inspectorate», the finding by the territorial subdivisions of the INP and the conclusion of the contravention provided in Art. 318 of the Code of Contravention. In that article, the INP subdivisions find the deviation foreseen below:

(1) "The intentional non-execution or evasion of the execution of the judgment of the court or of the enforceable document referred to in art. 11 lit. c) or d) of the Execution Code "and others. (2) "The intentional non-execution or evasion of the execution by a responsible person of the documents referred to in paragraph (1) or preventing their execution" [2]. They have the right to find contraventions and conclude the reports with the head of the probation office and the deputy.

Regarding the unexecuted documents for which the offenses of the probation bodies can be found, in art. 318 The contravention code refers to art. 11 lit. (c) and (d) of the Execution Code [3]. Thus, paragraph (c) provides for «contravention decisions (decisions), including those issued by investigating officers within the limits of

their competence attributed to them by law ...». Here, with reference to the second part of the provision «...the enforceable titles issued in criminal cases and sentences in criminal cases, as part of the payment of the fine, as well as in the civil action», they do not refer to the competence of probation. The same situation we encounter in art. 11 (d) of the Code of Execution «the ordinances regarding the release of criminal liability with contravention in the form of a fine».

The execution of fines is within the competence of bailiffs (Article 182 Code of Enforcement). In order to eliminate these misunderstandings in the law, I consider it appropriate for the legislator to specify precisely in art. 421¹ Contravention code, for the non execution of which the documents provided in art. 318 the probation body may find contraventions.

The need to assign probation by law, the statute of a founding agent appeared when the Department of Enforcement was involved and for some time there was no one to be responsible for the enforcement of judgments in certain areas. Respectively, the judgments were not executed without incurring any legal consequences for the perpetrators. At the initiative of the Ministry of Justice amendments were made to the legislation and the norm introduced in the Code of Contravention was introduced. However, Chapter III of the Regulation on the organization and functioning of probation bodies, approved by the Government Decision no. 827 of 10.09.2010, where the competence of the probation bodies is lacking in contravention.

Upon the finding of the offense, the determining agent shall fill in a report on the contravention, which

he/she registers in the «Evidence Register for Contravention» in accordance with the Annex to the Instruction on how to prepare the reports with contravention, approved by INP order no. 116 of 18.04.2018 [6]. The reports on offenses are submitted for examination in due course to the competent court for the application of the contravention sanction (Article 4211 CC). Therefore, the probation body only finds contraventions, does not apply sanctions for contraventions. According to the statistical data presented in The balance sheet report of the INP activity, in the current year, the Probation Offices drew up 12 reports on the finding of contraventions (North – 3 region, South – 9).

Below we will present the legal analysis of the contraventions provided by art. 318 CC, from the perspective of their finding by probation offices:

The generic legal object of the contraventions provided by art. 318 CC are the relations aimed at the normal performance of the activity of the public authorities. By introducing this provision, the state has ensured through a legal mechanism the proper functioning of the public authorities. The specific legal issue results from the social values to which the perpetrator, in our case the social relations aimed at the execution of the court decisions, is.

The objective side for both alignments is only through «action» – the non-execution of the court decision.

With reference to the subject of the contravention, it is apparent from the content of the provision, namely, in the cases provided by the law. (1) the subject of the contravention is general, so it refers to all persons who do not deliberately execute the judgments, and in the case of contraventions stipulated

in paragraph (2) we have the special subject, the person with responsible positions. For example, a court decision made a person deprived of the right to hold certain positions / conduct a certain activity, but the administration of the institution deliberately refuses to dismiss the employee. Thus, the founding agent within the territorial probation office may draw up the report on the finding of the contravention provided by art. 318 al. (2) CC. The subject of the contravention may be not only the natural person, but also the legal person who did not deliberately execute the court decision. It is important to note *that in both cases the probation officer's office can draw up minutes only on non-execution judgments, the enforcement of which is exclusively in the jurisdiction of probation.*

The subjective part, is the attitude of conscience towards the deed conceived and its consequences, in the case of the contraventions provided by art. 318 CC, is expressed only by intent. This is also deduced from the content of the rule, in both cases «intentional non-execution ...».

An important hint that should not be overlooked refers to the categories of contravention sanctions, the execution of which is ensured through the probation body. The functional competence of the probation is to ensure the execution of the contravention sanction:

-deprivation of the right to occupy certain positions or to exercise a certain activity;

- the performance of unpaid work for the benefit of the community.

Until 2017, the probation also included the enforcement of the sanction of deprivation of the right to drive and the deprivation of the right of posses-

sion or port and the use of the weapon, and from 8 January 2018 this became the exclusive competence of the police within the offender's domicile.

The sanction of the deprivation of the right to carry out certain activities, the deprivation of the right to hold certain positions shall be determined only by the court, which sends the decision of the probation body from the district in which they carry out their activity or domicile. In turn, the probation body sends the decision of the court within 3 days to the institution where the counterpart is working, the administration to dismiss or prohibit carrying out a particular activity. In the 5 days term, the probation body informs the court about the enforcement of the judgment. Subsequently, the probation body supervises the contravention of the established ban. In turn, the employing organization is obliged to execute the prescriptions established by the court and the probation body. According to the statistical data on the official INP website, since the beginning of 2018, 700 individuals have the right to carry out a certain activity or hold certain positions in the evidence of probation [18].

The enforcement of sanctions for unpaid community benefit is also ensured by the probation body in the range of home displacement. Punishment is run on socially-oriented objects, from 2 to 4 hours a day, outside the time of basic or study activity. If the coordinator is not trained in basic or study activities, at the request or with his consent, the punishment can be executed up to 8 hours a day. Work may be performed even on Saturdays and Sundays, except during night work or in adverse conditions, in dangerous places or at risk for the health or integrity of the person sanctioned. The probation

body keeps track of the persons involved in such work, controls the way, the conditions of the execution of the sanction, determines with the local authorities the place, the volume of labor. In case the offender has evaded from the execution of the sanction, 317 The Code of Execution, the probation body submits to the court a request for the replacement of community service work with another sanction, in accordance with the provisions of the law of contravention [3]. According to data provided by INP, in 2018, 32 persons were punished with community-based unpaid work [19].

Conclusions. Despite the fact that the contravention was by no means a factor determining the probation service in our country, with the passage of time it proved to be quite useful in this field: with the attribution of the statute of founding agent in some contraventional cases, the insurance the execution of punishments according to the functional competence, the organization of probation programs for contravisors, other missions established by law. However, society's reaction to contravention has also over time seen different forms of manifestation, which have been shaped by distinct models. We are talking here about the models: repressive, preventive, curative. These three models, taken together, have contributed today to the formation of a new tendency of social reaction – the idea of a moderate trend, which addresses the problem of contravention prevention in a structural manner, appreciating that social, economic and cultural equity between individuals is likely to contribute to a greater involvement of citizens in solving the problems of their community. Probation has just spread this idea. The probation institution is of ma-

major importance in the Republic of Moldova from at least the following points: it has been statistically demonstrated throughout the world that the relapse of the persons under the supervision of the probation service is lower than that of the persons sanctioned in another

way, a few times smaller in the case of persons supervised by the probation service than those supposed to isolate the perpetrators in specially arranged places, not least – the probation tries to provide a social solution to a social problem.

Bibliography

1. Закон Республики Молдова nr. 8 от 14.02.2008 о probationии.
2. Кодекс Республики Молдова о правонарушениях nr. 218 от 24.10.2008.
3. Исполнительный кодекс Республики Молдова nr. 443 от 24.12.2004.
4. Постановление Правительство Республики Молдова nr. 827 от 10.09.2010 об организации и функционировании органов probationии (положение об организации и функционировании органов probationии).
5. Постановление Правительство Республики Молдова nr. 1015 от 01.09.2016 об утверждении Стратегии развития системы probationии на 2016–2020 годы и плана действий по ее реализации.
6. Приказ Национальной Инспекцией по Probationии nr. 116 от 18.04.2018 об утверждении образца протокола о констатировании правонарушениях. URL: www.probatune.gov.md (просмотрено 10.10.2018).
7. Recomandarea CM/rec(2010)1 comitetului de Miniștri către statele membre cu privire la regulile de probațiune ale Consiliului Europei. URL: <https://rm.coe.int/rec-2010-1-on-probation-rules-moldovan/16808b60bc>.
8. Balica E. Instituționalizarea probațiunii în România: Practici și strategii instituționale în contextul (post) aderării la Uniunea Europeană. În: Revista română de sociologie, 2009/7/1. P. 299–317.
9. Durnescu I. An Exploration of the Purposes and Outcomes of Probation in European Jurisdictions. *Probation Journal*. 2008. Sage, vol. 55 (3). p. 273.
10. Ghidul consilierului de probațiune în activitatea cu programe probaționale. Ministerul Justiției. Chișinău, 2017.
11. Manualul formatorului Program de reabilitare «Drink & Drive». Institutul de Reforme Penale. Chișinău: Cartea juridică, 2017.
12. Spoială A. Probațiunea și reintegrarea socială a infractorilor. Chișinău: Centrul editorial UASM. 2009.
13. Mackenzie D. L. et others. The impact of probation on the criminal activities of offenders. *Journal of Research in Crime and Delinquency*. Vol. 36, no. 4. 1999. P. 422–461.
14. Морару В., Сосна А. Probation как мера наказания. *Закон и Жизнь*. №. 4. 2004. С. 45–48.
15. Ministerul Justiției Al Republicii Moldova Nspectoratul Național De. Probațiune URL: <http://www.probation.gov.md>. (просмотрено 10.10.2018).
16. Ministerul Justiției al Republicii Moldova. URL: <http://www.justice.gov.md/index.php?cid=192>.
17. The Confederation of European Probation. URL: <http://www.cepprobation.org/>.
18. Статистика наказаний (2018 г.) «лишение права осуществлять определенную деятельность и лишение права занимать определенные должности». URL: [http://probatune.gov.md/tc_userfiles/file/Statistica/2018/Privare\(1\).pdf](http://probatune.gov.md/tc_userfiles/file/Statistica/2018/Privare(1).pdf) (просмотрено 12.10.2018).

19. Статистика наказаний (2018 г.) «неоплачиваемый труд в пользу общества». URL: http://probatiune.gov.md/tc_userfiles/file/Statistica/2018/Num%C4%83rul%20condamna%C8%9Bilor%20cu%20obliga%C8%9Bii%20stabilite%20%C3%AEn%20perioda%20I%20trimestru%202018.pdf (просмотрено 14.10.2018).

Пантеа О.,
кандидат юридичних наук, доцент,
Молдавський державний університет

РОЛЬ ПРОБАЦІЇ В БОРОТЬБІ ЗІ ЗЛОЧИННІСТЮ ТА ЗАБЕЗПЕЧЕННІ ВИКОНАННЯ САНКЦІЙ, ПЕРЕДБАЧЕНИХ ЗАКОНОДАВСТВОМ РЕСПУБЛІКИ МОЛДОВА (РОЗГЛЯД ВІДПОВІДНИХ СПРАВ)

Представлений матеріал присвячений діяльності органів пробації Республіки Молдова: створенню Служби пробації, нормативно-правовій базі, думкам з приводу ролі пробації в боротьбі зі злочинністю, виходячи з положень Кримінального Кодексу Республіки Молдова. Особлива увага приділяється аналізу конкретних справ, які відносяться до компетенції Служби пробації, а також санкцій, передбачених за вчинення відповідних правопорушень. Розглядається структура та елементи складку правопорушень, які відносяться до компетенції Служби пробації.

Досвід роботи у сфері пробації, накопичений різними європейськими країнами, показав, наскільки ефективною є та чи інша модель пробації, хоча вона розвивалася дуже по-різному в Європі, в залежності від правової системи, специфічної для кожної країни. Окреслено та проаналізовано 4 моделі систем пробації в європейських країнах.

Республіка Молдова розробила й ухвалила 12 січня 2007 року таку систему пробації, що відноситься до моделі, яка сприяє здійсненню правосуддя, забезпечивши необхідну інформацію для прийняття справедливого рішення, що зменш повторного вчинення злочинів.

Ключові слова: правопорушення, умовне засудження, санкції, рішення суду, норма права, протокол про правопорушення.

Надійшла до редакції 15.10.2018