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Summary
THESIS
EXECUTION OF THE PROBATION MEASURES

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The thesis titled *Execution of the probation measures* is structured into four chapters, devoted to introductory aspects, the entities that have competence in the execution of the probation measures, the execution of the probation measures in general and in particular, respectively.

The first chapter aims to bring some much needed terminological clarifications and even to find a suitable definition for the probation measures, that is, for those measures and obligations that accompany the postponement of the sentence, the suspension of the execution of the sentence under supervision and the conditional release, a definition which came as a result of the analysis of Romanian and foreign doctrine, domestic and especially international regulations, and which, in our opinion, captures the general content and functionality elements of the probation measures, as well as their purposes.

Throughout this study the probation measures were approached from a legal perspective, with focus on the enforcement issues.

Perhaps the most significant and daring proposal I made in the first chapter was that of expressly recognizing that probation measures exhibit the same judicial nature as criminal sanctions, supporting my claim by bringing relevant examples of comparative law. In fact, the entire study is focused on the idea of *probation measures seen as criminal sanctions*, with their own conditions of application and with a whole system of institutions created around them, meant to ensure their execution and regularization.

In the first chapter, we identified the reasons that led to the regulation of probation measures in our legal system, going through their historical evolution until they reached the stage of development that we know today.

A particularly useful asset for the rest of our study was the development of a system of classification for the probation measures, based on a series of functional criteria, meant to facilitate the structuring of our analysis, but also to understand the way in which the probation measures must be carried out in order to maximize their efficiency.

The second chapter of the study regards the entities that have competence in the execution of probation measures, and we are firmly convinced that a description of these institutions and an in-depth analysis of their powers will further facilitate the understanding of the place, functions and purposes of the probation measures within the system of criminal sanctions in our country.

We have also made a classification of the entities in question, then we referred to the courts and other institutions that have powers in the execution of probation measures, to the probation services, the most relevant institutions for our study, from the perspective of their competence, to the other public institutions and, finally, to the institutions in the community, a new category of entities that mark the emergence of a

current we have called *the outsourcing* of some of the state attributes regarding the execution of criminal sanctions.

We are convinced of the paramount importance that probation services have in ensuring the successful execution of the probation measures, and, as a consequence, we devoted most of the second chapter to this category of institutions, analysing in great detail those particular aspects of organization and functioning of all the components that make up what the legislator calls a *national probation system*.

We also attempted to analyse the community institutions as closely as possible, given the unprecedented regulation of their duties and their significance as far as the actual execution of the probation measures is concerned.

The third chapter deals with the execution of the probation measures in general, bringing definitions and clarifications of activities such as the *implementation, supervision and organization of the execution of the probation measures and regularization of the enforcement* of this category of criminal sanctions.

These activities were reduced to their main components which were then analysed in relation to both national and international case-law, a process that highlighted certain shortcomings in the relevant legislation, such as those in the field of *supervisory classes*, which, in our opinion, should mean to the supervision measures what the enforcement set of rules means to the system of custodial sanctions.

Finally, *the fourth chapter* aims at a detailed analysis of each probation measure, a structured analysis based on the classification criteria established in the first chapter.

The last chapter also contains most of the case-law references in the study, in addition to many *lege ferenda* proposals, which transform it into a highly useful instrument for probation practitioners, whether they are magistrates, probation counselors, lawyers, clerks or even the persons who are subject to supervision.

However, the *lege ferenda* proposals have been our constant concern throughout the work, seeing how they constitute our contribution to the improvement of the normative framework regarding the execution of the probation measures.

First, we attempted to identify solutions for the difficult problems regarding the execution of the probation measures within the existing normative framework, which we analysed by corroborating the substantive and procedural legal provisions with the international normative acts in the matter. Still, whenever appropriate solutions were not found, we drafted a number of legal proposals included in a synthesized version, for easier consultation, within *the first annex* of our study.

Our in-depth analysis of the object of study resulted in no less than 61 *lege ferenda* proposals which could be divided in three categories according to their significance in improving the normative framework governing the execution of the probation measures.

A first category is made up of proposals that refer to the introduction of a new set of legal provisions in the matter, regarding aspects of great importance for the execution of probation measures, such as the clarification of their judicial nature, the acknowledgment of new functions as far as courts are concerned as well as establishing new principles in the probation activity.

Within this first category, which could be called the *strategic proposals*, we have made 19 *lege ferenda* proposals, among which we mention the following:

- express legislative enshrinement regarding the judicial nature of probation measures as criminal sanctions;
- express legislative enshrinement of the function of courts to ensure the execution of criminal sanctions;
- establishing an *order for the execution of probation measures*, following the example of the warrant for the execution of detention orders;
- the enshrinement of *the continuity rule* as a main principle of the probation activity, following the example of judicial activity
- the establishment of the Advisory Council, an advisory body of the current governing bodies of the National Probation Division, including representatives of courts and prosecutor's offices.

The second category is that of proposals meant to point out significant mismatches between various legal provisions that regulate the execution of probation measures or to place certain regulations within the framework outlined by principles governing the matter at hand, such as the principle of legality or that of non-discrimination, thus contributing to the quality improvement of legal regulations and, as a consequence, to an overall better functioning of institutions.

The second category, that of *technical proposals*, includes some 34 *lege ferenda* proposals, among which we mention:

- the express stipulation that, in case of suspension of the execution under supervision (as in the one of the conditional release), the probation measure consisting in the prohibition to leave the territory of Romania will only be imposed whenever this prohibition isn’t already present as a result of the adjacent penalties applied (specifically, as a result of the complementary penalty, seeing how, according to the provisions of article 68 paragraph (1) letter b) Criminal Code this category of adjacent punishments is executed during the term of supervision);

- the regularization of the functional jurisdiction on behalf of the executing court (as far as probation measures are concerned) in those situations in which the court of first instance that initially passed judgement on the criminal offense that could lead to the revocation of the postponement of the sentence or the suspension of the execution of the sentence under supervision, did not rule on the revocation;
- the addition to the relevant normative framework of useful much needed rules regarding the notification of the common superior hierarchical chief in case of conflict of jurisdiction or interruption of the course of the probation activity;
- granting jurisdiction in the matter of executing the probation measure of the prohibition to leave Romania to the public services for persons' registration with duties in the matter of issuing identity cards based on which free travel throughout the European Union is made possible;
- the enshrinement by law, not by government decision, of the possibility for the offender subjected to probation to voluntarily carry out a series of activities, other than those that fall within the content of the probation measures imposed by the court, for the purpose of an improved chance at social rehabilitation;
- the express legal provision enabling probation counselors to have direct access to the databases administered by various other state institutions, in order to gain possession of the information necessary for the supervision process, following the example of the access that the Criminal Procedure Code gives to the judicial bodies;
- the addition to art. 89 paragraph (2) and art. 97 paragraph (2) Criminal Code of provisions that stipulate the reduction of the community service working days already executed, out of the total working days imposed by the court ruling on multiple offences that also decided in favour of the postponement of the application of the sentence or in that of the suspension of the execution of the sentence under supervision.

Finally, *a third category* of proposals refers to the removal of small but rather significant inconsistencies in the matter of the execution of probation measures, given the rigor that must characterize the matter of criminal enforcement.

From this last category, titled *the rectification proposals category* containing 8 proposals, we mention:

- express nomination of the Bucharest General Directorate of Police among the territorial structures of the Romanian police enabled to control the execution of probation measures in those cases in which the offender resides in the capital;
- terminological alignment of the Regulation for the application of Law no. 252/2013 to the Criminal Code Procedure, by replacing the expression "injured party" with that of "injured person".

For practical reasons, we chose to compile a *second annex*, including a summary of the case law referred to throughout the study, in order to provide to anyone interested in the topic, a useful working tool for the elaboration of future studies on the matter as well as for solving practical problems regarding probation.

Without being an exhaustive or infallible study, we hope, however, that the present thesis will constitute a useful instrument for probation theorists and practitioners alike, containing the substantiated results of an analysis from the perspective of judicial enforcement of a new category of criminal sanctions, that is, the category of *probation measures*.