

Possible Penalties Alternative to Imprisonment Applicable to Drug Consumers

Assistant Professor Corina NICOLAE, PhD in progress
"Danubius" University of Galați
corina.nicolae@univ-danubius.ro

Abstract: Alternative criminal penalties to imprisonment represent a remedy for eliminating the negative consequences of detention and a consequence of the evolution and humanization of penalties. The economic and social advantages of the alternative criminal penalties explain to a great extent the necessity of their application, together with the diversification of these penalties in order to respond more effectively to individualization according to the offender as well as to the necessity to protect the society.

Keywords: drug, addictive consumer; therapeutic justice; probation

Going back to the dawns of humanity, drugs continue to fascinate, rise interest, reclaim counter measures but also ask questions to which satisfactory answers haven't been given yet. (Drăgan, 1994, p. 39)

In its beginnings, research in drugs was concerned with the connection between the drug and crime, considering the consumer a true offender as the need for drugs requires a significant amount of money.

The contemporary judicial system is focused more and more on the string of applying modern enforcement forms that brings benefits both for the society as well as for the addictive consumers. For them the punishment in detention regime does not exclude a possible second offence or their reinstatement in the labor market, as their anxious states and feelings are amplified but they could be ameliorated through therapeutic support.

The abuse of narcotic drugs and psychotropic substances should be approached as being a chronic progressive and relapsing disorder that can be treated and not as a refuse of adapting to the conventional social values. Therefore, the drug addicts must be considered in the first place as sick people and then criminals, conditions,

in which, prior to applying a custodial sentence, special medical treatment should be applied.

In our opinion, the increased access of drug addicts who committed criminal acts to rehabilitation programs and social reinstatement in view of their reintegration on the labor market can be accomplished through a new method of approaching criminal policies in this matter, given that the drug addicts represent a vulnerable group with great chances of social exclusion because of the disease as well because of the record following the crimes committed. These will ensure their transformation in citizens abiding the law, reducing as a consequence the threat they represent for society.

In the last period of time, efficient systems of treating this category of people have appeared, through the so called therapeutic justice, based on socially-psychological methods.

Professor Christopher Slobogin defined therapeutic justice as being the use of social sciences to study the extent in which a normative act or a criminal legal practice promotes the psychological and physical wellbeing of the people affected by their involvement in criminal procedures. (Abraham & Nicolaescu, 2006, p. 63)

Therapeutic justice represents the study of law as a therapeutic agent, which necessitates that society uses theories, philosophies and conclusions of different disciplines to channel the contribution in shaping the development of law. In essence, therapeutic justice is focused on the socially-psychological methods through which the laws and judicial processes affect the individuals involved in the criminal system. By analyzing the effects of the law in this manner, therapeutic justice can indicate the way laws and legal processes can actually support or undermine the public objectives instituted in order to be reached in the criminal process.

We assert that therapeutic justice completes the specific act of justice in case of drug consumers, gives efficiency to the aspects of mental and psychological sanity, leading to a superior evaluation of the potential to succeed in the recuperative process.

In recovery period, the offender will be applied an intelligent punishment, which means that the coercive power of the judicial instance is distributed to encourage the addictive offender to follow treatment.

Related to therapeutic justice there are instances of problem solving, that work based on the principles of therapeutic jurisprudence on integration of treatment services in the judicial process, continuous judicial intervention, close monitoring the immediate response to behavior, multidisciplinary involvement and collaboration with community and nongovernmental organizations. These instances perform therapeutic activities, reuniting different problematic: instances focused on the issue of drugs, domestic violence, instances dedicated to health problems and community cases. (Abraham & Nicolaescu, 2006, p. 63)

The instances on treatment of drug addiction represent the type of system based on therapeutic treatment able to identify the profound causes of crimes related to drugs, offering the opportunity to intervene and break the drug and crime cycle, different approach from the methods of approved traditional criminal justice, considered to be inefficient and costly.

The instance on drugs have been implemented both at European level (England, Scotland, Ireland) as well as in Australia, South and North America and function based on working principles in multidisciplinary teams, consisted from judges, prosecutors, lawyers, probation counselors, therapists, social workers etc.

In Romania, even though for crimes in drug regime of minor gravity, such as tenure for personal consumption, the legislation allows the judicial instances to individualize custodial arrangements, the social reaction remains repressive.

We assert that a change in the policy of criminal penalties is imposed, with the purpose of eliminating the present problems the Romanian justice is confronting, related to the overcrowding of detention institutions, low reinstatement in the society and on the labor market, low degree of relapsing, diminished feeling of security etc.

Criminal penalties alternative to imprisonment represent a remedy for eliminating the negative consequences of detention and a consequence of the evolution and humanization of penalties.

The economic and social advantages of the alternative criminal penalties explain to a great extent the necessity of their application, together with the diversification of these penalties in order to respond more effectively to individualization according to the offender as well as to the necessity to protect the society.

Alternative criminal penalties are substitutes for the penalty, established by the judicial instance with the consent of the offender, with the purpose of maintaining the offender in the society, by limiting his rights and liberties as by exerting a control from specialized services. (Coraş, 2009, p. 51)

The main criminal sanctions, alternative to imprisonment are: probation, fine, community work, conditional suspension of executing the punishment applied for a private person, suspension of executing the punishment under surveillance applied to a private person, suspension of executing the punishment under surveillance with the obligation that the convicted serves community work, postponement in applying the punishment to a private person, semi detention, weekend detention or placement under electronic surveillance.

At the moment, Law no. 143/2000 on preventing and combating traffic and illicit drug consumption, amended and completed by Law no. 522/2004 (article 19¹ and 19²) regulate as alternative to imprisonment the institution of renouncing and postponing the punishment, according to which if at the moment of issuing the decision, the offender respects the protocol of the integrated assistance program of drug consumers, the judicial instance can apply no punishment or postpone the punishment.

The assistance for the drug consumer represents a combination of therapeutic interventions, in integrated manner, covering the services spectrum (centers, programs, types of assistance) that are available for the drug consumers in accordance to their needs and for a certain period of time, as well as the entire range of services offered subsequently during the evolution, as part of the treatment process of the disturbances caused by the consumption.

The regulation including the consumers, when manifesting their agreement, in the integrated assistance circuit for consumers and in the case of respecting the assistance program for the consumer involved in a criminal lawsuit whose object is represented by legal acts of consumption, the possibility to not apply a punishment by the judicial instance or postpone its application practically represents “the alternative” offered to the consumer for reaching the final objective of the society as well as the consumers’, namely their social reintegration.

The Romanian legislator approached, through Law no. 522/2004 a new concept regarding the repression of the drug addicts that commit crimes, other than the one mentioned in article 4 of Law no. 143/2000 but also of the persons carrying drugs

for personal consumption, act which is incriminated by article 4 in Law no. 143/2000 as amended by Law no. 522/2004.

Through these regulations, in the matter of sanctioning the consumers or drug addicts who committed crimes, the judicial organs have been provided with a criminal and procedural mechanism through which the consumers and offender addicted consumers can be applied, together with a imprisonment punishment, medical measures in the conditions provisioned by law, but also the possibility of applying only medical measures that are not accompanied by imprisonment.

We assert that together with these measures, other criminal sanctions alternative to imprisonment would impose to be regulated and applied to the consumers or addicted consumers, such as probation or placement under electronic surveillance which in the states of the world make a significant difference. Probation is one of the first community sanctions regulated as measure alternative to imprisonment.

In what concerns the definition of probation, the literature asserts that there is no concept that describes and explains in unitary manner this alternative criminal sanction. The probation systems reflect the particularities of time and space, cultural, economic, of the criminal policies and practices in a certain state maintaining at the same time, a few fundamental common features, as well as the identity and professional orientation of the probation counselors. (Coraş, 2009, p. 54)

In the documents of the United Nations, probation, as sanction disposed by a judicial decision, is defined as method applied to selected offenders, consisting in the conditioned suspension of the punishment and placing the offenders under personal surveillance of the probation counselor, in order to be granted assistance and treatment.

In the common law system, probation defines an assembly of measures of surveillance and assistance of a person who committed a crime and agrees that through the decision of the court, s placed under surveillance of probation agents for a period of time between 6 months and 3 years, in order to verify if in this interval of time the person in question will have a good behavior (Coraş, 2009, p. 55). Probation is the possibility granted to convicted offenders to execute the punishment within the community, under surveillance.

Although is presents certain resemblances with the institution of supervising the execution of the punishment, characteristic to the French and Belgian law system,

the probation system has the advantage of offering material and psychological support to the offender, unlike the suspension of execution, which only leads to the individualization of the punishment and avoids the issue of a shorter punishment.

An alternative sanction to imprisonment applicable in some states (Dobozi, 2008, pp. 179-182) especially in what concerns the offenders consumers of drugs and alcohol, condition of probation is the placement under electronic surveillance or electronic monitoring.

The sanction allows the offender, convicted to imprisonment for a short period of time, to prevent a possible detention, by installing on the wrist or ankle, an electronic bracelet with the purpose of monitoring and supervising his presence at the working place or at home, at certain hours established in the personal chart by the judicial authorities.

Being modern and successful, we hope that the placement under electronic surveillance will represent a future institution in Romania as well, in view of reducing the number of those incarcerated and improving the conditions of detention of those people, as well as offering educative efficiency to the system of punishments by imprisonment, even if they are accompanied by additional measures, such as therapies, social or community programs.

In conclusion, the alternatives to imprisonment that can be offered to addicted drug consumers that have been convicted covers a wide range of sanctions, that can delay, avoid, replace or substitute the imprisonment sentence for those addicted drug consumers that have committed a crime punished, according to the national law, with imprisonment. We are mentioning measures alternative to imprisonment but also alternative measures applicable at the moment of observing the illicit drug abuse. The principle is reflected in one of the two general objectives of the European Union Strategy on drugs for 2005-2012, aiming at reducing the use of drugs, dependency and not affecting the public health and society in general.

References

- Drăgan, Jenica (1994). *Aproape totul despre droguri*. Bucharest: Militară.
- Dobozi (2008). Plasamentul sub supraveghere electronică in *Revista de drept penal*, no. 1/2008.
- Abraham, Pavel & Nicolaescu, Daniela (2006). *Justiția terapeutică. O nouă abordare în tratamentul consumatorului de droguri*. Arad: Concordia.