The Probation Service in the Context of European Integration. The Supervision of Convicts in the Community. Critical Observations

Senior Lecturer Ion RUSU, PhD
"Danubius" University of Galati
ionrusu@univ-danubius.ro

Abstract: The purpose of the appliance of non-custodial penalties, completed by the necessity of respecting the measures of surveillance and/or certain obligations imposed by the court, is to ensure the re-socialization and reintegration into the community to which they belong. In this context, at the European Union's level it was adopted 2008/947/JHA Framework Decision of the Council on 27 November 2008 regarding the appliance of mutual recognition principle in the case of judgments and probation decisions for supervising the probation measures and alternative sanctions. The most important criterion under which judicial decision can be transmitted to another Member State is referring to the convicted person residency, considering that adopting such a measure the chances of social reintegration of the sentenced person will increase, allowing them to preserve the family, linguistic, cultural links. The probation service has a critical role for community supervision of the measures and obligations imposed by the Romanian court to the sentenced person. This institution has a number of specific tasks even when the Romanian court sends the legal judgment accompanied by the certificate in another Member State, seeking its recognition and enforcement. These responsibilities relate in particular to the cooperation activity that needs to be carried out with similar authority of the executing Member State, since it can always intervene the possibility of restoring the competence of executing the decision of the Romanian court. The critical observations relate to the legislative act both European and our internal law.

Keywords: probation service; European legislative act; suspension of sanctions

1. Preliminary Considerations

Regarding the term of probation, the specialized literature has sustained that "etymologically, the word comes from the Latin probatio, a term which means a proving period or a test and forgiveness. Thus, those convicted that have proved a desire for change throughout the set period, by accomplishing their imposed probation conditions, they are forgiven and freed from other implications of the criminal justice system" (Tomita, 2010, p. 30).

Considering the development of alternative sanctions to our country, the doctrine has sustained that "*in Romania the non-prison criminal action, that is the suspension of the sentence, with or without conditions, were tested under the form of bills even from 1900, by the Minister of Justice C. Disescu, but legal consecration of such measures have resulted in the Law on Unions of 1921, which in article 59 provides the suspension of sanctions under certain circumstances. In Charles II Criminal Code of 1936, the institution of suspending the penalty appears for the first time, where the institution appeared also in the code of 1968*" (Chis, 2009, p. 23)

The same author (Chis, 2009, pp. 23-24) states that "*in the current criminal law the enforcement of suspended sentences, renouncing the penalty, conditional release, conditional sentence for physical entity, educational measures applicable to minors (scolding, freedom under supervision, admission to a rehabilitation center, hospitalization in a medical-educational institute), safety measures, to waive minor's offenses and sentence, all are scientifically mentioned in the criminal, procedural and execution criminal law, but directed only towards their applicability for realizing the contribution of social sciences, economic sciences and the humanities are reduced, and most of the times, theoretical, sometimes declarative without practical completion.*"

We consider that in Romania, the probation system was implemented with the entry into force of the Criminal Code of Charles II, which provided a number of specific rules.

Thus, article 50 stated that, in addition each company will operate a court patronage, under the supervision of the Minister of Justice, assisted by a central council for social reclassification of released prisoners and for meeting the legal duties relating to minors. These companies will be led by local magistrates' courts.

Although modeled after the Italian Penal Code, the doctrine of the time, referring to the source text, noted that it "has no corresponding text in the foreign codes. It is inspired by the tendency of modern criminal science, helping the convict's rehabilitation, after penalty, in order not to relapse (Rătescu & co., 1937, p. 125).

At the same time note that the article 65-69 of the same Code it is regulated the institution of suspending the execution of sentence, for three years, plus the duration of the sentence, in the case of a sentence of up to two years correctional imprisonment, simple imprisonment or fine, if two conditions are met, namely:

- the prisoner has not suffered any prior conviction of imprisonment for felony or misdemeanor, even though he was restored and
- if according to the circumstances and the history of the convict, the court considers that for the near future he will improve his conduct, even without the performance of the penalty.

Note that, for the social reintegration of the convicted persons, there was established a cooperation between the courts and patronage companies, which were headed by the magistrates of that town. In this context we appreciate that the company of patronage established under the provisions of the Criminal Code of Charles II the first, the Romanian law institution of probation with specific tasks regarding the community supervision of persons sentenced to non-custodial sentence.

Subsequently, the institution of probation was taken to the Criminal Code of 1968, as provided in the new Criminal Code[1], with permanent tendencies of development and modernization in line with the developments in modern European criminal sciences.

Regarding the probation, the literature has claimed that it "*is one of the first community sanctions, as a regulated intermediately as an alternative method to custodial sentence. Its appearance was determined on the one hand, by the need to develop legal systems adapted to juvenile delinquency, and on the other hand by the emergence of new tendencies in criminology which advocate the crime control outside the criminal justice. It reflects the key mutations at the level of traditional philosophy of punishment and its functions. As a non-sanction of imprisonment, probation has been practiced in various forms in England, since the Middle Age. In the second half of the nineteenth century, it began to be accepted in the USA*" (Coraş, 2009, p. 52).

At past mid-century, the probation was defined in UN documents as a "*method applied to selected offenders, which consists of conditional suspension of sentence and putting under the personal supervision of the probation counselor for assistance and treatment*" (Coraş, 2009, p. 54).

Referring to probation, the doctrine has revealed the fact that it is "*granted the possibility for the convicted criminals to execute their sentence in the community, under surveillance. The Probation is used instead of imprisonment, primarily for young offenders and offenders that are convicted of primary minor violations of the law. The conditions of probation include general restrictions regarding alcohol consumption, possession of firearms without permission and leaving the territory without the permission of the territory under the jurisdiction of the court that took the action*" (Coraş, 2009, p. 55).

Another view sustained that "the probation is an institution, ordered by state institutions, through the courts, by which it provides control and support to the offender, while he is left to live in the community under supervision (Tomita, 2010, p. 33).

[1] Adopted by the Law no 286/2009, published in the Official Monitor of Romania, Part I, no 510, of July 24th 2009.

Another group of authors believes that "*the probation is the granted possibility to the convicted criminals to execute their sentence in the community, under surveillance*" (Barbu & Serban, 2008, p. 288).

Other author refers to the main values of probation that were imposed internationally; he mentions the following:

- respect for persons, human value, integrity and privacy;
- equity, domiciliary visit and accountability;
- reconciliation between offenders and communities to which they belong;
- non-discrimination of persons who have committed criminal acts with no reason;
- ongoing support and encouragement of the supervised people, assisted and advised for their reintegration into society and the accountability of their actions, by forming a correct attitude towards work, the rule of law and rules of social life. (Rusu, 2007, p. 217)

There is no doubt that in the development of criminal sciences in line with diversifying the opportunities of social rehabilitation of sentenced persons, the requirements of the overall evolution of society, the probation service will become an institution with a major importance in the structure of the Romanian judiciary system.

2. The Supervision of Convicted Persons in Romania, in the case where their Residence or Domicile is in another EU Member State

We appreciate that, given that a significant number of Romanian citizens[1] have their residences or homes in some member states, it is required that the Romanian courts apply with priority the provisions of 2008/947/JHA Framework Decision, from 27 November 2008 on the principle of mutual recognition in case of legal judgments and probation decisions in order to supervise the probation measures and alternative sanctions.[2]

In practical activity, there may be two cases of this kind, namely that a Romanian court sentences a person to a non-custodial penalty with mandatory compliance by the convicted person of certain measures or obligations under the Criminal Code and the person resides in another Member State, or when a Romanian court sentences a person to a non-custodial sentence and the sentenced resides in another Member State. Naturally, each of the two presented cases, we will have to consider the convicted person's nationality (Romanian citizen, of another member state or stateless).

[1] According to some unofficial sources about 3 million.
[2] Published in the Official journal of European Union no. L 337/102 from December 16, 2008.

These two cases involve the Romanian judicial authorities, a series of complex activities, activities which are confined almost entirely to the provisions of the European legislative act.

a) Community supervision of the person convicted in Romania, residing in another Member State

In order to examine this variation, we consider the hypothetical situation in which a Romanian citizen (or a citizen of another Member State) who is resident or domiciled in another EU member state, commits a crime in Romania and the Romanian court suspended sentence supervision order. In this case, the convicted person must submit to the supervision measures provided by article 86^3, alignment (1) Criminal Code, and in some cases, when the court decides, that they must meet one or more obligations under article 86^3 (3).

When the sentenced person is a minor, it must meet one or more of the obligations under article 103 of Criminal Code.

According to the Romanian law, the prisoner will be required to remain in the country and to submit to the supervising measures or eventually to perform the duties ordered by the court, otherwise, it will be applied article 86^4, that is the revocation of suspending the penalty under supervision [or there will be applied the provisions of article 103 paragraph (6) of Criminal Code, in case of a minor]. Basically, in this case, the convicted person is required to remain in the country throughout the test period, even if his family is established in the state member where they reside.

The adoption of such measures by the Romanian courts against the convicted person, contraries the purpose of mutual recognition and supervision of suspended sentences, conditional sentence of conviction, alternative sanctions and decisions on parole release, which consists of increasing the chances of social reintegration of the sentenced person, allowing them to preserve their family, linguist, cultural and other ties, but also to improve monitoring the compliance of probation measures and alternative sanctions in order to prevent relapse.

We consider that in such situation, the competent Romanian judicial authority (the court) will have to (according to the European legislative act), to submit the final judicial decision together with the certificate, to the competent judicial authority of the Member State where the Romanian citizen (or foreign) legally resides, ordinary (or home), seeking its recognition and enforcement.

Meanwhile, at the request of the sentenced person, the Romanian court, can transmit the legal judgment to other competent authority of another state (other than the one where the convicted resides), under the condition that the authority agrees to its transmission for recognition and enforcement.

We note that the transmission by the Romanian judicial authorities of a legal judgment to other competent authority of another state for recognition and enforcement is regulated in the Law no. 302/2004 on international judicial cooperation in criminal matters, with subsequent amendments.[1]

The enforcement of the provisions of the European legislative act, the Romanian court will be able to send directly the legal judgment and the certificate of competent court in the executing Member State. If the competent judicial body in the executing State is not known, the Romanian court will have the possibility to identify its points of contact through the European Judicial Network, or by calling the special direction of the Ministry of Justice.

We appreciate that the competent Romanian court, before passing the court decision and the certificate, it must be sure that there is no reason for the competent judicial authority of the executing State to determine the non-recognition decision and therefore failed to take supervision measures in the community ordered by the Romanian court.

In this context, the Romanian court will consider mainly the following:

- filling out correctly the certificate accompanying the legal judgment or its correction within the deadline established by the competent judicial authority of the executing State;
- the sentenced person has his ordinary residence in that state and he returned or intended to return to that state;
- if the convicted person requires the transmission of the legal judgment from another Member State where he does not have his ordinary residence, it is required the consent of the state judicial authority of the executing state, an activity which requires a request before passing the legal decision with the certificate;
- the legal judgment recognition of the judicial authority of the executing State does not contrary the principle of non bis in indem;
- the legal judgment should not relate to the acts which under state law enforcement are not considered crimes, except for tax, customs and foreign exchange;

[1] Published in the Official Monitor of Romania, Part I, no. 594 of July 1, 2004. The law was amended and supplemented successively through the following legal documents: Law no. 224/2006 amending and completing Law 302/2004 published in the Official Monitor of Romania, Part I, no. 534 of July 21, 2006; G.U.O no. 103/2006 regarding some measures for facilitating international police cooperation, published in the Official Monitor of Romania, Part I, no. 1019 of 21 December 2006, approved by Law no. 104/2007 published in the Official Monitor of Romania, Part I, no. 275 of 25 April 2007 and Law no. 222/2008 amending and supplementing Law no. 302/2004 on international judicial cooperation in criminal matters, published in the Official Monitor of Romania, Part I, no. 758 of 10 November 2008.

- the execution of the penalty is not prescribed in accordance with state law enforcement;
- according to the state law enforcement, the convicted person should be held criminally responsible (in terms of his age) for the act in question, for which the legal judgment was passed;
- the legal judgment or surveillance measures or obligations established by the Romanian court, should not provide a medical / therapeutic treatment, which the executing state can not supervise, considering its legal or health system; the court will take into consideration also the re-individualization (adaptation) of the penalty and surveillance measures in the community by the judicial authority of executing state law;
- the duration of surveillance measures or alternative sanctions should not be less than six months;
- the legal judgment should not relate to offenses which according to the executing state law, are considered to be committed wholly or in a significant degree on its territory or in a equivalent place to its territory.

Also, the Romanian court must ensure the compliance with the provisions referred to in Council Framework Decision 2009/299/JAI of February 26, 2009, by which is amended also the Framework Decision 2008/947/JHA.[1]

The execution of these activities are particularly complex, which calls for a permanent cooperation between the Romanian court and competent judicial authority of the executing State. Cooperation in this case can be achieved by two means, respectively, by direct contact with the competent judicial authority of the executing Member State or by special direction of the Ministry of Justice.

We must mention that currently, the Romanian Criminal Procedure Code contains several provisions that are in full agreement with those mentioned in the European legislative act, but there are also some shortcomings, which we will not insist upon, given the expected adoption and subsequent entry into force of the new Criminal Procedure Code. However, we mention as critical remark, that out of the desire to ensure the right of the person to be present to a fair trial[2], the legislator did not take into account also the variant where the person in question, intentionally evades from the criminal liability, where the judiciary can no longer ensure his presence at the trial.

Note also that in this respect, the European Court of Human Rights declared that the accused person's right to be present in person at trial is not absolute and that,

[1] Published in Official Monitor of European Union no. L 81/24 of March 27, 2009.
[2] A right provided by article 6 of the Convention for the Protection of Human rights and fundamental Liberties, as been interpreted by The European Court of Human Rights.

under certain conditions, the accused person can waive, voluntary and willingly, explicitly or tacitly, without equivocation, that right.

We appreciate that, in the interpretation of the declaration of the European Court of Human Rights, the circumvent of the prosecution or trial of a physical entity, it may mean that he has given up voluntarily, unequivocally, to the right to be present in person at the trial, assuming the consequences.

Another issue to be considered by the Romanian court, is on the situation in which the alternative sanction or probation measure (within the meaning of the provisions of the European legislative act), has no corresponding state law enforcement (or have other drawbacks that are not consistent with legislation), in which its judicial authority should re-individualize (adapt) the alternative sanction and/or the probation measure in accordance with its laws.

In this case, the Romanian competent court will have to consult with the competent authority of the executing state for efficient and correct implementation of the provisions of the European legislative act.

For the enforcement of the European legislative act provisions, the competent authority of the executing State will inform the competent Romanian court on the amendments of probation measure or alternative sanction.

We believe that from the moment when, the competent Romanian court requires, under the provisions of the European legislative act, the acknowledgment and enforcement of such legal judgments, the previous decisions were taken by the competent authority of the executing State and it will be recognized as such, implicitly transferred to Member State liability enforcement.

b) Duties of the Probation Service

We consider that in our law (which regulate the probation service), such situations are not covered, because the activity of judicial cooperation in criminal matters between Member States was regulated previously, successively, by several normative acts, and some have not been implemented in our legislation.

The interpretation of the legislation on the organization and operation of probation services, lead to the conclusion that these institutions ensure the passed execution ruling by a Romanian court.

In this context, we consider that the probation service in Romania have no direct competence on the execution of alternative sanctions and probation measures (as described in the European legislative act), prepared by a Romanian court, which subsequently were recognized and enforced by a competent judicial authority in another Member State of the European Union (under the provisions of this European legislative act).

It is not an option the possibility for the Romanian probation service to directly transfer its tasks to a similar authority of a Member State under an agreement between these institutions, this task is for the courts or judicial authorities of Member States. So, in accordance with the European legislative act, but also with the Romanian law, the probation service can not substitute for a court or judicial authority, they have the role to enforce the Romanian court decision.

The County probation department will have the following duties:

- Informing the competent Romanian court on the request of the judged person, to reside in another Member State;
- Informing the fact that the judged person is residing in another member state;
- Informing on the request of the trialed person to settle in a third country (but EU member), following the conclusion of a marriage, the spouse being a citizen of that State, or due to other causes;
- Informing the competent court of any other situations which occurred during the trial or later and require appropriate action.

We consider that informing the competent court by the probation service is a necessity, because it (the court in case), should take all measures to pass judgment enforcement authority of the State. We believe that this situation requires preliminary actions, absolutely necessary, before the actual transmission of the decision for recognition and enforcement. Among the measures, we mention: identifying the competent authority in the executing State, carrying out some checks to confirm the existence of the convicted person in that state of residence, to verify the existence of double incrimination, etc.

However, if the convicted person is a Romanian citizen or foreigner residing in Romania, the probation service will also consider the possibility of refusing the recognition and enforcement of court decision by the concerned judicial authority of the Member State, in case the performance of surveillance and obligations imposed by the court will come back to them.

However, given the diversity of situations that may be encountered in future practice, we consider that the role of the probation service will not cease at the moment of the recognition and enforcement by the Romanian court decision requested Member State. We take into consideration the jurisdiction for subsequent decisions belongs to the Romanian court, in which case, the competent judicial authority of the executing State shall immediately inform the competent Romanian court on important issues for the caused situation. All these situations are not excluded, but rather involve an intensification of the cooperation activities between the Romanian Probation Service and similar institution of the executing Member State, a cooperation that needs to materialize in a data exchange, which subsequently must be made available to the Romanian court. In this context, we consider that in all cases where a court decision is passed by a Romanian court, is

recognized and enforced in another Member State, the work of the Romanian Probation services should focus firstly on the cooperation with authorities of the executing Member State, involving the permanent exchange of data on the evolution of the convicted person concerning the re-socialization and the achievement of the objective for ensuring the security of citizens of the concerned member state.

This activity is particularly evident when once the court decision and the certificate for recognition and enforcement, are passed the sentenced person disappears from his residence; in this case the competent authorities of the executing State cannot execute the judicial judgment issued by the Romanian court. In this case, the decision and the certificate will be sent to the Romanian court, which will execute activities circumscribed to the situation. Probation service should resume their specific functions as established by law.

The same action will be taken also in the situation where after the recognition and enforcement, the person in question disappears from his residence from the executing state.

The presented cases highlight the implications of the probation service activity in such cases and the need to ensure continuity in the cooperation activity with similar institutions from other member state.

In conclusion, we consider that the territorial jurisdiction of the probation service, has no powers regarding the transmission of surveillance measures by other similar authority in another Member State, the power belongs only to the court that will request not only the court decision but also the recognition of legal judgments and the execution of the surveillance measures in the community. In this context, the power of this institution is confined only to the cooperation with similar institutions in the involved executing member state for each case and informing the Romanian court.

3. Conclusions and Critical Remarks

Currently the Framework Decision in question, although it has not been transposed into our internal law is in force and produces legal effects, applying its provisions are mandatory both for Romania and for any other member state.

Thus, given the foregoing, the competent Romanian judicial bodies will have to apply the stipulations of the European legislative act, in cases where there are requested the recognition and enforcement of a legal judgment or a probation decision implying the supervision of probation measures and alternative sanctions in the country, or seeking recognition and enforcement of such decisions by

another Member State and implementation of probation measures or alternative sanctions ordered by a Romanian court.

Undoubtedly, this implies the need to amend and supplement the special law with a new chapter (section), by stating specific rules for the application of the mentioned European legislative act.

The European legislative act makes no reference for the sentenced person in Romania (or in any other member state) to have suspended penalty under supervision or being submitted to execution of surveillance measures and/or obligation; after starting the execution, and during the execution there has been a number of changes in its status.

This applies to the situation where after starting the execution, being taken into consideration by the probation service, the person:

- obtained a contract of employment in another member state;
- became a family member of a citizen of another member state residing in that State (through marriage);
- intends to study or other professional qualification in another member state.

We appreciate that each of the three different cases, the court will have to decide the person's position, at the request of the concerned person. In these circumstances, the probation service will be obliged to inform the court, after conducting several investigations, to certify the new mutations that occurred in that situation; these investigations involve cooperating with similar institutions in the Member State or with other institutions of the Romanian State or of the executing member state.

We believe that in such cases, the competent court may be announced by both probation service and the concerned person. In response, the court will consider firstly the achievement of the European legislative act's objective, which is increasing the chances for social reintegration of the sentenced person, allowing him to preserve the family, linguistic, cultural and other ties, but also improving the monitoring of the compliance with the probation and alternative sanctions, in order to prevent recidivism, thus paying attention to the protection of victims and the general public.

Given these issues that may become quite common in the near future, we consider necessary to amend and supplement the European legislative act according to the ones mentioned above.

In the view of Romania's status of European Union member state, under which it will have to adopt specific national measures to implement European legal acts on enhancing specific activities of international judicial cooperation in criminal matters (in particular regarding the recognition and execution of judgments

emanating from a competent authority of another member state, and supervision of probation measures or alternative sanctions), and the used legal terms and syntagms differ from those used in our legislation, we think that it should be adopted a law of their interpretation.

Another critical remark concerns the way in which it is regulatory the probation service activity, in relation to how it is ruled the judge's activity at criminal enforcement section.

According to article 6 (6) of Law no. 275/2006 on executing punishments and the measures ordered by the judiciary bodies during the criminal proceedings[1], the delegated judge of the criminal enforcement section within each execution court, delegated annually by the President of that court, supervises and monitors the insurance of the legality of the non-custodial sentences execution and he performs other duties stipulated by the Criminal Procedure Code, rules of inside order of the courts and by this law.

Meanwhile article 8 of the same normative act provides – control over the execution of the supervision measures and its obligations under the Criminal Code, which can be prepared in case of suspension of penalty under supervision, it ensures that the judge directly or through the service advisors to protect victims and offenders in the social reintegration of the criminals under the circumscription where is the domicile, residence or dwelling of the convicted person.

According to article 86^3 (1), a) of the Criminal Code, the prisoner must be present at the set date, to the judge assigned for his supervision or probation service. Moreover, one of the tasks set by G.O. 92/2000 approved by Law no. 129/2002, with subsequent amendments, is to monitor the compliance by the convicted person of the measures provided by article 86^3 paragraph (1), letter a)-d) of the Criminal Code, monitoring the execution of the obligations imposed by the court under article 86^3, (30 letter a)-f) of the Criminal Code and monitoring execution of the obligations imposed to the minor by the court under article 103 paragraph (3). a)-c) of the Criminal Code.

Proceeding to the interpretation of legal rules mentioned above, it results that under the Criminal Code, the enforcement authority of the measures ordered by the court is the judge assigned to its supervision or probation service, both bodies could inform the Courts. While article 8 (1) of Law no. 275/2006 provides that the authority for implementing the measures ordered by the court is the judge delegated at the section of criminal enforcement, which may exercise this authority directly or through advisers of probation service.

[1] Published in Official Monitor of Romania, Part I, no. 627 of July 20, 2006.

So the text in the Law no 275/2006 provides a single authority for enforcement of measures ordered by the court, that is the judge at the criminal enforcement section, which may exercise this authority directly or through advisers of probation service, while the Penal Code mentions two such authorities, which is the judge designated for the supervision and the Probation Service.

These conflicting provisions relating to the authority for implementing the measures ordered by the court are likely to cause confusion and disruption on this line, which is why we consider it is necessary to amend Law no. 275/2006. Conflicting aspects that result from the examination legal norms provided by the European legislative act appear also in the institution that has the obligation to notify the executing court. Thus, the Criminal Code states that the court can be informed by the delegated judge or by the probation service and the Law no 275/2006 provides that in the event of a failure of surveillance measure or obligations under the Criminal Code, ordered by the court, it may be informed by the judge delegated by the criminal enforcement section, ex officio or at the proposal of the probation service advisors.

Another aspect that it isdebated is the one related to the judge's tasks delegated by the criminal enforcement section (appointed annually by the President of the court). According to Law no. 275/2006 he monitors and controls the insurance of the legality of the execution of non-custodial sentences and he performs other duties stipulated by the Code of Criminal Procedure, rules of inside order of the courts and the law in question, and according to the Criminal Code, the prisoner must be present, at the set date, at the judge appointed for the supervision (or the probation service). Note that these complex functions are given by the judge in the criminal enforcement section, they are not only of execution (implementation) of the measures ordered by the court, but also of surveillance and control of the legality of the enforcement measures ordered by the court. We appreciate that the delegated judge must only have the function of supervision and control of the legality of execution by the probation service measures ordered by the court.

A final observation concerns the status of the probation service in the current context. Thus, the development of this institution has been driven by the criminal policy considerations of the state, influenced by the developments in legal science, criminological research, carried out by proposing another way of social rehabilitation of the sentenced persons, than imprisonment, which in many cases proved to be wrong.

According to these current regulations, this institution has a double subordination, on the one hand, it is submitted to supervision and control of the judiciary authority in ensuring the legality of the enforcement measures ordered by the court, and on the other hand, it is subordinated to the Probation Department in the Ministry Justice, which provides staff training and other activities circumscribed to

functional tasks of this institution. But according to Law no. 275/2006, the probation counselors are under the authority of the delegated judge, while both the Criminal Code and Criminal Procedure Code or special law expressly mention the probation service institution, which implies (in fact correctly), that there is an institution with specific functions and powers, and it has its own system of organization and operation, plus its own standards of professional performance. In this context we consider that, from a hierarchical point of view, the probation counselors are under authority and that the probation service reports to the head of the probation service and that the institution as a whole is under judicial control.

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