

Interdisciplinary Collaborative Public Policies at Community Level in the Enforcement Process of Penalties and Non-custodial Measures

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Abstract

As the relationship with the persons under private law empowered to manage the execution of the range of non-custodial measures and punishments in this sphere is currently outlined at the legislative level, the nuances that limit access to the profession are identified. This aspect harms in practice both the person responsible for safety measurement and the judge who is delegated with the execution, the probation department and last but not least the professional mandated with the expertise regarding the state of health of the person in question. Since 2014, the Council of Europe's Report "A juvenile criminal justice adapted to children: from rhetoric to reality" has motivated the considerations regarding justice related to children, which mentions the need for minors in conflict with the law to have access above all to treatment and special staff. The proposed law restores the right to the vision required from the level of practitioners with reference to the recontouring of the provisions of article 20 of Law no. 253/2013 regarding the execution of punishments, educational measures and other non-custodial measures ordered by judicial bodies during the criminal process, in accordance with the goal of the regulation, namely to ensure the legal order by guaranteeing the balance that must exist between the protection of society and the reintegration in the community. At the same time, the terminations of the Ferenda law proposal will demonstrate the need for corroboration with normative acts that regulate the way of exercising the various liberal professions through units without legal personality necessary in terms of providing medical assistance at ambulatory level, both in the preventive and in the of recovery.

Keywords: practice, public service provider, public practice, administrative law.

JEL Classification: H83, K23

1. Introduction - current legal framework

With regard to the content of Articles 18(5) and 20 part of Law No 253/2013 and implicitly to the subject matter of this article, we have drawn attention to a referral made by Tribunal Dolj³, concerning the request for a preliminary ruling by the High Court of Cassation and Justice, on the following question of law: "In interpreting Art. 20 para. (1) of Law No. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by judicial bodies in the course of criminal proceedings, as subsequently amended, **the individual psychology practice registered under the provisions of Art. 13-15 of Law No. 213/2004 on the exercise of the profession of psychologist with the right of free practice**, the establishment, organization and functioning of the College of Psychologists of Romania, as subsequently amended, **constitutes an association, foundation or commercial company among those referred to in Art. 21 of Law No. 253/2013** ?"

Of the two articles indicated, Article 18 regulates the participation of institutions belonging to the local community, through professional actions specific to their activity, in the procedure for the execution of non-custodial measures, **with the inclusion in this category of private legal persons**. These *legal persons* are required by Article 18(5) to produce the documents listed in Article 20, such as the company's registration certificate in the commercial register or the extract from the register of the court registry in the case of an association or foundation.

More precisely, the whole essence of this reference article (Article 20) is limited only to associations, foundations and companies that can provide proof of the concession of a public service. The pertinent question then arises, already highlighted in case law, **how is the purpose of the regulatory act to be achieved, when by law psychology services can only be offered through the organisational forms of the profession, units without legal personality (therefore not registered either with the ORC or with the court registry)** which are: either individual, associated or professional

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³ Dolj Court - Criminal Section, case no. 4.686/63/2019.

civil societies of psychology, or through psychology structures part of various entities⁴ ? The ***text of the article under consideration, in addition to failing to achieve the necessary link with the reference normative acts, also creates a difference in treatment by excluding precisely those structures which can provide authorised*** psychological assessment and counselling in this sensitive area of services, ensuring integration and motivational training in this respect, the development of intrinsic motivation for self-control and constant optimisation of behaviour.

Frankly, we are surprised by such an approach, ***because the angle from which the text should have been essentialized was to establish who can be qualified and authorized as a legal form of organizing the profession*** on the assistance and counseling necessary for individuals established in charge of probation bodies? Furthermore, we reiterate, given that all professional structures, with or without legal personality, are equal under the law, why is it not permissible for those who are qualified to have the same, equal benefits, with the removal of any discrimination?

2. Possibility or right to provide assistance and counselling services?

The issue under investigation deserves to be qualified in ***relation to the right to provide such services through these structures without legal personality*** but also ***in relation to the type of services*** since the organisational forms of the psychology profession are ***public service providers***, even if they are private structures.

The legislator has set three conditions for the authorisation of private law persons: they must be legal persons, they must only be associations, foundations or companies and they must meet those minimum standards imposed by the probation service.

The holder of the individual psychology practice, petitioner in the case pending before the Dolj Court, *seeking recognition and obtaining the right to be licensed to organise professional activities, namely counselling, social reintegration and assistance for those registered in the database of probation structures, has demonstrated: the functioning of the profession in a legal structure, the authorisation of the structure by the professional body and the possibility of meeting the standards. Part of the courts referred to on the issue discussed, according to recital 33 of the decision no. 6 of 17 February 2020⁵, have established "that ***the authorization of individual psychology offices for reintegration programmes does not require verification of the conditions set out in Article 20*** para. (1) of Law no. 253/2013, these conditions being expressly provided for the organisation of unpaid community work"⁶.*

Therefore, certainly, without any doubt, and in accordance with the provisions of Law no. 213 of 2004 on the way of exercising the profession of psychologist with the right of free practice, the establishment, organization and functioning of the College of Psychologists of Romania⁷, of the Government Emergency Ordinance no. 83/2000 on the organization and functioning of the free practice offices for public services related to the medical act⁸ and of the Decision no. 1/2006 on the establishment, declaration, registration and operation of individual practices, associated practices, professional civil societies of psychology, as well as the exercise of the profession of psychologist

⁴ See Decision no. 180 of 21 October 2021 for the completion of the Regulation of the National Institute of Magistracy, approved by the Decision of the Plenum of the Superior Council of Magistracy no. 127/2007, published in the Official Gazette no. 1030 of 28 October 2021, a normative act which establishes the attributions of the psychology department established according to Law no. 213/2004 on the exercise of the profession of psychologist with the right of free practice, the establishment, organization and functioning of the College of Psychologists of Romania, with subsequent amendments.

⁵ Decision of the High Court of Justice No. 6 of 17 February 2020 on a preliminary ruling on the interpretation of Article 20(2) of Council Regulation (EC) No. 1049/2001 (1) of Act No. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by judicial bodies in the course of criminal proceedings, as subsequently amended and supplemented, published in the Official Gazette No. 518 of 17 June 2020.

⁶ The following courts have expressed their opinion in this regard: the Pitești Court of Appeal (Criminal Division and Division for Juvenile and Family Cases); the courts of Calarasi, Teleorman and Galati (Criminal Division); the courts of Baia Mare, Roșiori de Vede, Turnu Măgurele and Videle and Vaslui. See recitals 33-34 of the Decision of the High Court of Cassation and Justice No. 6 of 17 February 2020.

⁷ Published in the Official Gazette with number 492 of 1 June 2004.

⁸ Published in the Official Journal with number 291 of 27 June 2000.

with the right of free practice in the public or private sector, on a salaried basis⁹, it can be concluded that any professional structure, even without legal personality, has the right to obtain the authorization regulated by Article 20 of Law no. 253/2013.

3. Services of public interest

Health services, whether medical or just related to medical care, are of public interest wherever they are provided, whether in the public or private sector. The public interest is all the more justified as in this case the correspondent is identified in non-custodial educational measures designed to prevent certain relationships or activities and to determine measures of control, care or treatment according to the particularities of each individual juvenile offender. It is precisely for this reason that the **establishment of intervention measures must be the responsibility of authorised professionals, who are the only ones able to assess a favourable or unfavourable change in behaviour and to contribute to the proposal to halt, correct or impose new obligations, thus achieving alignment with the rules of law and consequently the purpose of the measure introduced.**

"The models of treatment of juvenile delinquency and resocialization of delinquent minors, which are the most suitable for the Republic of Moldova and which are offered by experts, focus on educational intervention measures and non-custodial sanctions. The experts interviewed **considered as the best models of treatment of juvenile delinquency and resocialization of delinquent minors for our country the application of educational and therapeutic measures with specialized staff** to minors with delinquent behavior (51.9%)"¹⁰. The examples can go on and are invoked by the European Council in the Strategic Agenda 2019-2024, where the advantages of non-custodial measures are underlined and the European tradition in this field is invoked among practitioners¹¹.

4. Conclusions. De lege ferenda proposals

By way of support for equality and also for the elimination of discrimination, we propose a comprehensive current regulation in line with all the relevant legislation: **"Art. 18. Participation of community institutions in the execution of sentences and non-custodial measures: (5) Undertakings with or without legal personality, authorised, providing public, state or private services, may carry out the activities referred to in paragraph 1(1) subject to authorisation in accordance with Article 20.**

Art. 20. Procedure for the approval of authorized enterprises with or without legal personality, associations and foundations, providers of public, state or private services: (1) The authorisation of authorised undertakings with or without legal personality, associations and foundations providing public, state or private services and companies referred to in Article 21 shall be granted on application by the judge delegated with the execution of the court in whose district they have their seat. (2) The application for authorisation shall be accompanied by the following documents:

a) a certified copy of the conclusion of the registration of the company/enterprise in the commercial register, respectively the registration of the association or foundation in the Register of Associations and Foundations;

b) certified copy of the memorandum of association/statutes of the legal entity;

c) a copy of the constitutive act registered with the professional body and an extract from the National Register of Health Care Professionals.

d) a description, corresponding to the authorised competences, of all the activities which may

⁹ Published in the Official Journal with number 112 of 14 February 2007.

¹⁰ Igor Dolea, Victor Zaharia, Valentina Pritcan, Mariana Buciuceanu-Vrabie, *The Phenomenon of Juvenile Crime in the Republic of Moldova*, the paper is published in the framework of the project "Promoting New Elements of Justice for Children in the Justice System of the Republic of Moldova", implemented by the Institute for Penal Reforms with the financial support of UNICEF-Moldova and the Swedish Embassy in Chisinau.

¹¹ To be accessed: [https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52019XG1216\(02\)](https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52019XG1216(02)), consulted on 1.05.2023.

be organised within the structure, with their compatibility in relation to the standards indicated in Article 18(1) - (6) and the conditions under which these activities may be carried out;

e) any other accreditations, authorisations or licences that may be relevant to the activities for which the licence is sought."

With regard to the term "enterprise", the proposal aims to be in line with the date of entry into force of the new Civil Code (which has already been in force for a long time), which has given us the status of "enterprise" and "professional" as the main actors, defined in close correlation with the idea that professionals are considered to be all those who prove the operation of an enterprise, i.e. those who "systematically carry out, alone or together with one or more persons, an organised activity consisting of activities such as: the production, management or disposal of goods **or the provision of services**, whether or not for profit". Moreover, Article 8 of Law no. 71/2011 gives substance to the concept of "professional" as provided for in Article 3 of the Civil Code, including the categories of entrepreneur and economic operator, **but also in a broad sense any other type of person who is authorised to carry out economic or professional activities**.

With reference to the National Register of Professionals in the Health System, we specify that it was regulated on September 3, 2021 in Title XXI of Law no. 95/2006 (r) with subsequent amendments and additions¹², thus aiming to develop and implement a human resources policy that contributes to the balance and good management of the population's health regardless of the issues raised. As this register includes all health professionals, the proposed wording of Article 20(2)(c) is intended to absorb any other health professionals who may be involved in the management of non-custodial measures, as the electronic platform is owned by the State and managed by the Ministry of Health.

There are definitely disruptions in public policies at national level that lead to an uneven application of all the basic principles of the TFEU and do not sufficiently remove the discrepancies in the perception of the application of these guidelines. We cannot boast of equal access to cross-disciplinary collaboration at the community level, nor, in conclusion, of equity that truly leads to the achievement of public policy goals that prove sustainable over time.

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¹² See Government Ordinance No. 18 of 30 August 2021, published in the Official Gazette No. 834 of 31 August 2021.

9. Report of 19 May 2014 in which the Council of Europe calls on member states to open up to age-appropriate solutions for juvenile offenders and to replace traditional measures with non-custodial measures, <https://pace.coe.int/en/files/20914>.
10. Decision of the High Court of Justice No. 6 of 17 February 2020 on a preliminary ruling on the interpretation of Article 20(2) of Council Regulation (EEC) No. 1408/71 (1) of Act No. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by judicial bodies in the course of criminal proceedings, as subsequently amended and supplemented, published in the Official Gazette No. 518 of 17 June 2020.
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