

Working with involuntary clients, an analysis from the probation counsellors professional competencies perspective

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Abstract

The persons under supervision of the probation services represent, together with those with custodial sentences, the perfect illustration of the concept of involuntary client, i.e. the one who ends up benefiting from the help/assistance of a specialist not as a result of his own decision, and/or awareness of the necessity of such help, but as a result of a legal mandate. This aspect determines and explains the specific profile of this category of beneficiaries of the intervention activities and programs in the correctional space. In accordance with this reality, the specifics of professional relationship and of the work carried out by the probation counselors with the supervised persons are also configured. This text aims to present on one hand the obvious and less obvious implications of non-volunteering and on the other hand, some of the dimensions of the professional competencies of probation counselors required in such a type of professional interaction. A series of aspects are followed that describe the adequacy of the competencies of probation counselors to the contents of the professional role, for creating awareness opportunities of their own problems by the offenders under supervision, and developing individual resources through which the development of motivation for change and the dynamics of the transition from the state of involuntary client to that of a motivated and involved beneficiary in the helping process, take place in order to make a prosocial change of behavior.

Keywords: *Probation; involuntary clients; professional competencies; correctional interventions; probation counselors; rehabilitation.*

1. Probation

In the field of justice, the punishment is a coercive measure applied by a court, as a formal expression of the social reaction to the violation of the law. Its functions (deterrence, incapacitation, reintegration, restoration) establish, in combinations and with different accents that depend on the criminal philosophy specific to each jurisdiction, the values and intentionality of the act of justice. In return, they are transposed into the mission of the institutions and operationalized through the role of practitioners who manage in the interaction with offenders, the application of the punishment.

Probation is part of the broader category of Community sanctions and measures, which have the role, according to Council Recommendation (92) 16 of the Council of Europe, to keep the offender in the community, involving certain restrictions on his

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freedom by imposing the conditions and/or obligations that are implemented for this purpose by bodies designated by law. Compared to imprisonment, community sanctions and measures are a form of social response to crime that requires more responsibility on the part of the offender, self-determination and decision-making. The sanctioned person in many cases has to complete different programs, look for and maintain a job and face the daily challenges of real life, compared to the artificial environment of the penitentiary where others make (almost) all decisions, reducing significantly the fulfillment of social roles and opportunities to assume their responsibilities. The value of community sanctions lies in the fact that they contribute to the reintegration of offenders in the community (their accountability, improvement of social skills, confrontation with the consequences of their behaviour, carrying out resocializing activities).

The specialized literature often employs the term of probation interchangeable with the one of community supervision of offenders, hence a series of inaccuracies, aspect in connection with which Groza shows that “although it is frequently found in the international recommendations on sanctions and Community measures of the last half century, the term of probation was for the first time assigned a definition only in 2010 in Part I - entitled Purpose, application, definitions and basic principles - of the Council of Europe Recommendation (2011) 1, on the rules of probation”(2011: p.318).According to this definition, probation refers to the implementation in the community of sanctions and measures defined by law and imposed on an offender. It includes a series of activities and interventions that involve supervision, guidance, and assistance in order to ensure the social inclusion of the offender but also to contribute to the safety of the community. This “European” definition given to probation clearly highlights the mission of this institution, namely the values that are specific to it, the main dimensions that structure its content and last but not least, the subjects concerned, people who have violated criminal law. Regarding their profile, a clearer definition is given by Cartledge: ”A method of punishment with a socio-pedagogic basis characterised by a combination of supervision and assistance. It is applied under a free system (no fee) to offenders selected according to their criminal personality, the type of crime, and their receptiveness, in relation to a system whose aim is to give the offender the change to modify his/her approach to life in society and to take a place in the social environment of choice without the risk of violating a social penal norm gain” (Harris 1995, apud Kalmthout and Derks 2000: p. 13).

This definition allows us to emphasize the role of the two key dimensions (supervision and assistance) around which probation activities and interventions are organized, i.e. to facilitate offenders behavioural change that makes possible social reintegration and reduced risk of relapse. This sanctioning modality offers possibilities for prosocial change within the community of some offenders selected through specific evaluations, in the conditions of respecting their right to self-determination.

In Romania, the activity of the probation system is carried out in the interest of the community, in order to socially rehabilitate offenders, reduce the risk of new crimes and maintain community safety, and reduce social costs of enforcement of sanctions and criminal measures, by the decrease of the population in the penitentiary units and the capitalization of the social-economic potential of the offenders (Government Decision 1079/2013, art. 1 paragraph 3).

According to the criminal legislation in force in Romania, the subjects of probation are persons for whom the prosecutor ordered the waiver of criminal prosecution (art. 318, Law 153/2010), persons for whom the court ordered the execution of the fine by performing work for the benefit of community (art. 64, paragraph 3, Law no. 286/2009),

persons for whom the court ordered the postponement of the application of the sentence (art. 83-90, Law no. 286/2009), persons for whom the court ordered the suspension under supervision (art. 01 -98, Law no. 286/2009), persons conditional released (art. 99-106, Law no. 286/2009), minors for whom the court ordered one of the non-custodial educational measures - civic training, supervision, obligation to stay at home in weekend, daily assistance (art. 114-123, Law no. 286/2009), minors for whom the court ordered the replacement of hospitalization in an educational centre, with the educational measure of daily assistance, or release from the educational centre (art. 124, Law no. 286/2009), minors for whom the court ordered the replacement of custody in a detention centre with the educational measure of daily assistance or release from the detention centre (art. 125, Law no. 286/2009). These people on probation will have to comply with a series of *measures* (to appear at the probation service on the dates set for him/her, to receive visits from the probation counsellor appointed with his/her supervision, to announce in advance the change of residence, and any travel that exceeds five days, as well as the return, to communicate information and documents that will allow the control of its livelihood) and *obligations* (to attend a course of school training or professional qualification, to perform unpaid work for the benefit of the community, to attend one or more programs of social reintegration carried out by the probation service, or organized in collaboration with community institutions, to submit to control measures, medical treatment or care, not to communicate with the victim, or the victim's family, with persons with whom he/she committed the crime with or with other persons established by the court, or not to approach them, not to be in certain places, or at certain sports, cultural, or public assemblies established by the court, not to drive certain vehicles established by the court, not to possess, not to use and not to carry any category of weapons, not to leave the territory of Romania without the court's consent, not to occupy or not to exercise the function, profession, trade or activity used for the commission of the crime), imposed on them by the court.

As shown in the enumeration above, the persons who come to the attention of the probation services are restricted to a certain extent, the freedom of movement, and to make choices because they are imposed certain restrictions regarding activities, interactions, rights of professional nature, they are subject to checks and are required to accept help/medical assistance or treatment, but also to attend programs aimed at behavioural rehabilitation.

Of the two key probation activities, community supervision of offenders is the most consistent dimension of probation service activity and aims to verify, control and monitor how supervised persons carry out court orders. Assistance is seen according to Law 286/2009 (Criminal Code), simultaneous with supervision, this simultaneity being a guarantee in favour of carrying out the probation mission, reducing the risk of recidivism and offender rehabilitation.

Practitioners in the probation system in Romania, who according to the law and their professional skills, can carry out with the persons under supervision, the activities specific to probation, are called probation counselors. Thus, in the probation services we will have interactions carried out within the professional relationship, between two protagonists, one of whom has the authority conferred by law to fulfil a dual role of control and assistance, and the second, the supervised person, has the obligation imposed by court, to comply with the measures and obligations established for him/her. Therefore, we will consider the latter as an involuntary participant, and the interaction of the two

protagonists, we will call it, taking a formulation of Rooney (2009), an involuntary transaction.

2. Working with involuntary clients in probation

The persons under supervision of the probation services represent, together with those with custodial sentences, the perfect illustration of the concept of involuntary client, i.e. the one who ends up benefiting from the help/assistance of a specialist not as a result of his/her own decision, and/or awareness of the necessity of such help, but as a result of a legal mandate. Rooney proposed definitions of involuntary clients that distinguish categories of motivation including both *legally mandated clients* as well as *nonvoluntary clients*. Examples of legally mandated clients include clients with sexual offenses, clients charged with assault or clients who are involved in a domestic violence situation. Nonvoluntary clients on the other hand, are likely to feel pressure to seek treatment from a significant other, workplace, family member or other source. People in both of these categories are included in the umbrella term “involuntary” (2009: p5).

To accomplish the mission of probation is necessary for practitioners to find the most appropriate strategies to develop in the offender under supervision, the motivation to change and thus the transition from the state of involuntary client to that of a motivated and involved beneficiary in the helping process, in order to make a prosocial change of behaviour. A fundamental contribution to achieving this goal belongs to the quality of the professional relationship between probation counsellor and the person under supervision. Its establishment and development are facilitated by the professional competencies of probation counsellor. By professional competencies we mean the integration of three aspects: knowledge, methods and values.

Knowledge about the complex causality of criminal behaviour, about human development, legislation, correctional interventions. Specific correctional interventions methods, rehabilitation models, effective and empathic communication and relationship skills, cultural sensitivity, non-judgmental attitude etc. Values such as respect for dignity, self-determination, confidentiality, are implemented in probation including in the professional working relationship (Poledna 2008: p. 27). Implementing all of them in practice must take into account on the one hand, the characteristics of involuntary clients, and on the other hand, the specific context of the probation in which involuntary transactions, take place. ”An involuntary transaction is a dynamic exchange of resources among clients, practitioners, and agencies occurring in a shifting legal and normative context and power imbalance such that the involuntary client would prefer to be elsewhere” (Rooney 2009: p. 7). The perception of and confrontation with this power imbalance and loss of control, translates into resistance and reluctance on the part of persons under supervision.

Challenges to the process of probation, in terms of supervision and helping intervention, can stem from sources such as clients’ resistance and the pressures that coerce clients into treatment (De Jong and Berg 2001; Yachmenoff 2005; Ritchie 1986, apud Jacobsen and Courtney 2013: p. 8). Resistance and reluctance are two concepts seen as major challenges client engagement in probation. As defined by Ritchie, reluctance is associated with clients preferring to not be around a probation counsellor or talk about their lives with a probation counsellor. Resistance on the other hand is described as hostility towards change. Reluctance and resistance are highly associated with treatment non-compliance and noncompletion. Reluctance and resistance are common concepts when speaking about populations who are coerced into treatment (Clark 1997; Sia et al.,

2000, Smallbone, Crissman and Rayment-McHugh 2009, apud Jacobsen and Courtney 2013: p. 9).

For resistance and reluctance management and decrease, probation counsellor will try to achieve a communication based on respect and empathy, will define the nature of the working relationship, the limits of confidentiality, will assure the person under supervision that he or she, is accepted, by separating the behaviour from the person. It will also seek to develop an interaction framework that provides opportunities for self-determination. So, probation counsellors working with mandated clients seek to blend mandated concerns with client motivations such that they may choose to work on those required concerns for their own reasons (Rooney 2009: p. 149). That's why supervision it has been defined as a good opportunity to build a new life and avoid prison. More specifically, supervision was described as helpful when the process focused on problem-solving or when the clients' welfare was considered important, especially when help was provided around finances, employment and housing (Durnescu, Enengl and Grafl 2013: p. 26).

Referring to social workers, Courtney A. Jacobsen (2013) pointed out that involuntary clients, or clients who are legally mandated or feel pressure to seek treatment, struggle with engagement and are often viewed as being resistant. Engagement is defined by the author as the process through which a client begins to actively participate in their treatment. The engagement process involves developing "agreement on the goals and tasks of treatment" through the collaboration of the therapist and client (Friedlander et al. 2006: p. 72 apud Jacobsen 2013: p. 2). These ideas are also valid in probation, especially if we refer to the dimensions of helping interventions (programs for preventing reoffending and for social reintegration). Probation counsellors apply principles, techniques and skills specific to the cognitive-behavioural approach, as well as the motivational interviewing in order to increase motivation for prosocial change in behaviour. The four dimensions of engagement - receptivity, expectancy, investment and working relationship - are also relevant. Receptivity describes how open clients are to receiving help in their life and also whether or not the clients recognize a problem and a need for change. Expectancy deals with the clients' perceptions of whether they will benefit from treatment. Receptivity and expectancy are closely related in the sense that if clients do not see the need for treatment and deny any problems, they are not likely to have high expectancy or be invested in their treatment. Investment is characterized by clients' active contributions, participation and work in their treatment. The clients who demonstrate the concept of investment will take responsibility for their treatment goals. The working relationship is similar to the therapeutic alliance that exists between therapists and clients. A therapeutic alliance or working relationship is characterized by feelings of fair exchange and open communication between clients and practitioner (Yachmenoff 2005 apud Jacobsen and Courtney 2013: p. 4).

From the consulting some of the probation counsellors from Cluj probation service, several aspects emerged, aspects that I consider relevant in this analysis for what it means to work with supervised persons, involuntary clients of probation services in our country. The perception of practitioners is quite nuanced in relation to the definition/consideration of those on probation as involuntary clients. There are probation counsellors who invariably perceive them as involuntary clients because no one wants or does not appear on their own initiative at the probation service, but as a result of their sanctioning, following the commission of a crime. Other probation counsellors perceive only sometimes and only certain persons under supervision as involuntary, for example persons

who do not assume responsibility for illegal acts and consider that they have been unjustly convicted. At the beginning of the supervision period, they show hostility towards the supervision process, the probation counsellor, the judicial system, etc. Another argument for considering involuntary clients the ones in the attention of the probation services, is the fact that they must be constantly motivated to collaborate, precisely because the tasks to be respected are imposed and they feel that they are imposed. Certain categories are considered by practitioners, closer to the profile of the involuntary probationary client, than others, minors are included here (they are less aware of the alternative to non-custodial sentences and the long-term effects of the custodial environment), prejudices by the justice system, or adults with a higher social status. A special category is represented by people with mental illness, here the hostility / aggression is doubled by unpredictability and, often, by the lack of awareness of the disease or its non-acceptance.

Analysing the activities that raise difficulties for probation counsellors in their work with involuntary clients, the following situations presented by practitioners emerge: "Bringing to a form of respect for the law and the justice system is generally difficult; in particular, coming at the headquarters of the probation service, and as a preamble to supervision and intervention; the supervisory part (complying with the measures and execution of obligations, information about changes in their lives, requesting / submitting evidence, compliance with sentence restrictions); and last but not least, another activity raising difficulties is "the counselling activity (civic training, development of reintegration programs), the execution of the obligation to work for the benefit of the community (especially for adults with high social status)". The specific difficulties of interacting with involuntary probation clients are also related to the fact that there are often divergences between the probation counsellor's perspective on a certain aspect of probation work and that of the supervised person. Such situations, that the probation counsellors I discussed with meet, can be for example "in supervision where the whole beginning moment is more important and from this point of view the compliance with the professional deontology and the professional formalism (lack of familiarity in the beginning of the relationship) proved by the counsellor in the initial relationship is of great importance, the relationship being created at that time and place. Conflicts can also occur along the way and it happens if the supervised person is discovered by the counsellor that he/she does not comply with the sentence "or" in the initial assessment - in the case of supervision, respectively in assistance activities, when people do not consider the problematic issues so great / many or that they can have an impact on their lives in different areas and are not aware of their consequences". Such divergences are managed by probation counsellors based on their professional skills, experience and work style. Thus, some of them appeal to what they call "bringing the person to the legal framework, recalling the instructions presented at the beginning of supervision or along the way explaining the situation on both sides, offering the possibility to argue, demonstrate things, assume a human role not only professionally by the counsellor, sometimes stopping a discussion or situations that risk degenerating into an aggressive one, putting the person in touch with the head of the service, with a professional mission of mediator of any possible conflicts". Others resort to presenting the issues that led them to certain conclusions, asking the persons under supervision "to evaluate in writing the pros / cons, advantages / disadvantages of their perspective, the impact on them and others"; or solutions are sought to overcome the divergences "by informing the person, about the legal provisions, explaining the consequences of the behaviour / attitude manifested, the risks to which he/she is exposed".

The probation counsellors consulted, consider that a role in the achievement of the probation objectives, is played by the professional discretion (decisional / actional) of the practitioner. The arguments in this regard refer to the fact that “the intervention is individualized / adapted to the specifics of each one, there is no single “correct” working method and it is desirable that this independence be complemented by supervising the activity and encouraging the professional and personal development of practitioners (career development plan)”. On the same note, it is considered that autonomy allows the individualization of the intervention process to the person's needs (legal provisions allow the probation counsellor to ask the court to increase or decrease the conditions of execution of the sentence, by eliminating or disposing of new obligations to ensure increased chances directing the person)”.

Along with professional discretion, some key professional qualities and competencies of the probation counsellor in working with involuntary clients were identified, such as: “emotional balance, providing support and guidance”, “empathy and desire to support / accompany the person in the process of supervision (unconditional acceptance of the person provides the support they may need, or the confidence that they can change their course so that they can continue a life 'without crime': at the same time it is important to delimit criminal behaviour, which is not desirable, accepted, tolerated for violating the rights / freedoms of others); clarity in expressing requirements, accurate observations etc. (it ensures the achievement of the person's objectives and progress, respectively the compliance of the sentence provisions and the successful completion of the supervision), the consistency of the practitioner from the point of view of the steps, the counsellor's attitude towards the person in evidence, the legal provision reinforcement, and so on, because it ensures the achievement of the objectives and the progress of the person, the framework for the compliance with the sentence; the counsellor can provide a 'behaviour model' - if we identify a problem, we look for solutions until it is improved/solved”. To which are added “honesty, respect and acceptance, non-punitive attitude, in the sense of offering the right to self-determination to the supervised person (to give him/her the right to certain informed choices, which do not contradict the sentence, regarding the supervision / evaluation procedures etc.). ”

The most important ways identified by the consulted probation counsellors, through which the voluntary involvement of the supervised person can be increased, include in order of their importance, the quality of the professional relationship with the probation counsellor, motivational congruence, help to explore possible consequences of supervised choices or decisions, highlighting alternatives, socializing in the role of a supervised person (clarifying his/her rights and obligations), identifying negotiable options, in the context of applying the court decision, the flexibility of the probation counsellor as a result of professional autonomy (discretion), honest and empathic communication, creating opportunities to voluntary choices /for self-determination, ensuring confidentiality (including clarifying its limits), the authenticity of the probation counsellor, negotiating issues and co-opting the person supervised in decisions, complying with the legal limits. ”Complete and accurate information of the person (regarding the law, alternatives to non-custodial punishments, attributions and role of the probation counsellor, the purpose and mission of probation), combined with a non-punitive attitude on the part of the counsellor are the main strategies / methods to turn an involuntary client into a voluntary client. My goal, as a counsellor, is to make the person aware of the fact that supervision is a benefit (comparing it with an imprisonment sanction, etc.), and compliance or non-compliance with supervision conditions is a personal choice”.

The signs indicating the gradual transition from the status of involuntary client to that of voluntary client, of the supervised person were described by the probation counsellors, as follows: The first sign is the acceptance to collaborate, without motivating efforts, materialized in actions, attendance at the dates set for the meeting, the manifestation of the request, the pleasure of the interaction and the involvement in complying with the law. Other identified markers are "increasing compliance with the requirements of the court decision, providing information, on their own initiative about personal aspects of his/her life with / without relevance to the supervision process, seeking advice or the need for 'advice' with the probation counsellor, decreased hostility, a more benevolent attitude, more careful observance of the obligations / duties of the supervised person."

The community safety depends on the efficiency of the institutions that have attributions in the implementation of custodial punishments or of community sanctions and measures, their mission having as finality the reduction of the risk of recidivism and the behavioural rehabilitation of the sanctioned persons. Each of these desiderata pursued by the activity of probation services can be really achieved, only if the subjects of probation are involved in everything that means the experience of probation. Council of Europe's recommendations places an important emphasis on offender involvement, in other words on fulfillment of two requirements: consent a cooperation; consent can be regarded as related to 'voluntarism' which is seen as a common underlying principle in European probation (Morgenstern and Larrauri 2013: p.125). Seen from this perspective, the dynamics of the transition from the status of involuntary client to that of voluntary client, describes the complex process that the persons under supervision goes through on the way to prosocial behavioural change, which will be reflected in increasing community safety.

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