

# THE JUDICIAL INDIVIDUALIZATION OF THE PUNISHMENT. ALTERNATIVES TO DETENTION IN THE UNITED KINGDOM CRIMINAL LAW

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## Abstract

*The simple fact that a person commits a crime doesn't mean necessary that that person must be imprisoned. It's for the court to decide which is the proper sanction that must be imposed to that person.*

*The state must create a very organized system of alternatives to detention, and as a result of those alternatives detention should be the ultimate measure for the judge to pronounce.*

*The legislation must regulate a wide variety of means of individualization, alternative to detention, and the courts must choose the one that assures the social reintegration of the delinquent and the restore of the public order.*

*In this study we are going to present how are the alternatives to detention regulated in the UK's criminal law system and what are the results of this system.*

**Keywords:** *the postponing of the execution of the punishment, suspension under supervision of the sentence, discharghe, probation.*

## 1. Introduction

The beginnings of the probation concept and use of in the UK are linked to the name of Frederic Rayner, a printer from the south-east of England, who donated money to the Anglican Church for it to intervene in order to find suitable solutions for the social reintegration of misfits, offenders and criminals. More missionaries were appointed to work next to the Courts, with the aim of saving the sinners's souls from the sin of drink by providing support in finding a job and housing. Appointment of the first missionaries in 1876 represented the beginnings of the Probation Service. The success of these missionaries was so great that, with the adoption by the Government of the Probation Act of 1907 (Probation of Offenders Act), their powers were extended to all offenders not only those addicted to alcohol. The main role of probation in this first phase was to provide social assistance, not being an actual form of punishment. The probation order, as set out in the 1907 law (Probation Act), was not a ruling of a Court, but a chance offered to the offender for him to change his/her behavior without being punished by the Court, which is basically a substitute for a punishment.<sup>1</sup>

It should be noted that currently England's probation services 's main activities consist in the effective supervision of offenders in order to reduce the occurrence of relapse and for protecting the public, and also providing information to the judicial bodies in order to make a judicial individualization proportionate to the seriousness of the offense and to the offender's person. In this regard, the probation

service can prepare pre-sentence reports on demand. Such a report should contain an analysis of the offence/crime committed, relevant information about the offender, the risk of relapse and recommendations for the sanction to be imposed on it. If the conclusions of the report recommend a custodial sentence, the drafting of a contingency plan is necessary, plan containing measures to be applied in prisons in order to reduce the risk of relapse. A copy of the report shall be communicated to the defendant and another copy to the public prosecutor.

## 2. Content

### 2.1. A short presentation of the UK' legal system

Offenses in the UK fall into two categories: minor/light ones called also summary offenses and medium and serious offenses referred to as indictable offenses. The minor offenses in turn are divided into two types: 'motoring offences' (eg speeding regulations) and 'non motoring offences', and generally include offenses that caused a loss of up to £ 5,000, the hitting offense, etc. Such offenses are tried only by the courts of magistrates.

The second category of offenses also includes two kinds of offenses: "triable-either-way offences" which include offenses that caused a loss of £ 5,000 or more, theft, driving under influence, and "indictable only offences" including serious crimes such as murder, deprivation of liberty/ unlawfull confinement, robbery etc. "Triable-either-way offences" can be prosecuted either in the courts of magistrates as well as by the Royal Court. If the magistrates considers that a greater punishment than

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<sup>1</sup> A.M. Van Kalmthout, Reintegrarea socială și supravegherea infractorilor în opt țări europene, Craiova, Ed. Sitech, 2004, p. 35.

they are competent to apply is required, they send the file to the Royal Court. In England and Wales the Court of Magistrates may impose a penalty of up to 12 months in prison.

If the offense is of a reduced seriousness, a warning (caution) can be applied. This applies whenever there is sufficient evidence to justify a potential conviction, but is thought that to refer the case to the Courts would not be of public interest. The offender must admit his/her guilt and agree to receive the warning (caution). The warning (caution) may be simple, the person being cautioned of his unacceptable conduct and on the consequences of committing a new offense or conditioned. In the latter case the offender is obliged to follow certain social rehabilitation programs or repair the damage caused.

The warning (caution) can be applied by the police except for serious offenses of a medium or serious gravity, when the decision belongs to the Crown's prosecutor.

If it is considered that the case should be referred to the courts for trial, depending on the gravity of the offense, it shall be directed either to the Court of Magistrates or to the Royal Court.

The Court of Magistrates's work is based on the principles of the justice of the peace - magistrates are members of the public. They have no legal training and are not paid for their work as a Magistrate. They are dependent on the advice and expertise of an official with legal training named "justice's clerk".

There are also a number of paid magistrates which have the legal training. These are employed in some Courts of Magistrates and hold an obvious influence on the culture and practice of those courts.<sup>2</sup> The court may order either the conviction to imprisonment for life, imprisonment for a specific period, suspended sentence (suspended sentence order), probation (community sentences), a fine, may drop the charges or may order the defendant to pay a compensation.

The suspended sentence was introduced in 2003 and it applies to the cases where the court rules on imprisonment for a period of 12 months or less. The court may suspend the execution of that sentence for a compound term between six months and two years, period during which the convicted person must perform certain obligations. These are identical to those foreseen for probation. If the convicted person does not comply with these obligations, the suspension will be revoked and the court shall order effective enforcement of the punishment.

## 2.2 Alternatives to detention

Regarding probation (community sentences), the defendant must meet several requirements, including:

- To perform unpaid community work for a period between 40 and 300 hours;
- To attend professional training courses;
- To attend certain social reintegration programs. Such programs exist for example for car thieves, for those who drive drunk / under the influence, for those convicted as a result of domestic violence acts, for those who are guilty of racism, etc.
  - Not to perform/conduct certain activities;
  - To be electronically monitored (curfew). There is the possibility that the convicted person is not allowed to leave his/her residence after a certain hour;
  - Not to change his/her residence without the probation officer's consent;
  - To undergo psychiatric medical treatment (only with the consent of the defendant);
  - To undergo treatment in order to get rid of drug addiction (only with the consent of the defendant);
  - To undergo treatment in order to get rid of alcohol dependence (only with the consent of the defendant);
  - To meet with the probation officer assigned with its supervision according to a program/schedule drawn up by the latter. Basically the convicted person must report to the probation service headquarters at least 12 times in the first 3 months and at least 6 times in the next 3 months.

Regarding the provision of assistance to drug users, it should be noted that in 1998 the Drug Treatment and Testing Order was adopted. This program implies in a first phase that the supervised person shall meet once a week the community psychiatric assistant. The supervised convicted person shall meet twice a week a probation officer (unlike an ordinary person who under probation must perform only two such visits per month). Also, the person following this program must report once a month to the magistrate who convicted him, in order for his/her progress to be evaluated. People included in this program submit periodically urine samples in order to check whether they have been using drugs. Following an assessment carried out by the British authorities on the initial results of this program, it has been found that the weekly amount spent by a drug addict before integration in the program was about 400 pounds. The subjects of this program were committing a total of about 107 offenses per month before being included in the program, afterwards the number of crimes decreased to 10. It has also been found that many of the persons concerned have stopped using drugs.<sup>3</sup>

<sup>2</sup> *Idem*, p. 43.

<sup>3</sup> *Idem*, p. 55.

Waiving charges (discharge) is ordered if the court considers that it is not necessary to impose a sentence. Waiving charges can be unconditional or conditional. In the first case the defendant is not subject to any future restrictions regarding his future conduct, while in the second case it is possible that the defendant can still be held accountable for his actions if a new offense is committed in a specific time frame set by the court (this time frame can't be higher than 3 years).

The granting of a compensation occurs for offenses/crimes such as murder, hitting, stealing, etc., and can be applied as a unique punishment or alongside other types of punishment such as the ones mentioned above. In the Courts of Magistrates the defendant may be compelled to pay a compensation amounting to a maximum of £ 5,000 per offense. If the defendant is judged by a Royal Court, there is no such limit. In determining the amount of the compensation to be paid, the Court must take into consideration also the financial resources of the defendant.<sup>4</sup>

### 2.3. Results of the UK's criminal system

Between July 2013 and July 2014 in England and Wales were registered about 3.5 billion offenses, of which only 2,059 billion have come before the Courts of Magistrates. Around 1,394 billion defendants were tried by the Courts of Magistrates, 1,083 billion being found guilty, out of which 788.287 were fined and 42.987 were sentenced to imprisonment, compared to the 102.911 on which probation was ordered, the 25.331 on which the suspended sentence was applied and to the 104.844 to which other sanctions were applied.

Within the Royal Courts 85.943 persons were convicted, out of which 77.156 based on an admission of guilt agreement and 8787 without such an agreement. Of those who entered into such an agreement, 1603 persons were fined, 41.639 were sentenced to imprisonment, 20.765 received suspended sentences and 9915 persons were placed under probation. As it concerns those who have not concluded such an agreement, 182 were fined, 6297 were sentenced to imprisonment, 1344 received suspended sentences and 642 were placed under probation.

In total, within the above mentioned period 90.923 persons were sentenced to imprisonment (the average length of the sentence was 15.6 months), 160.908 persons were placed under probation and for 47.000 persons the suspended sentence was ordered.<sup>5</sup>

The statistics also show that the number of recorded offenses in the UK is steadily declining, now being the lowest since 1970 (when these type of statistics started being recorded).

The most common form of punishment applied by the British courts is the fine (over two thirds of those convicted were sanctioned with a fine). This is because most of the offenses were minor ones (summary offences), which are falling within the Courts of Magistrates's jurisdiction. In 85% of summary offences cases, fines were imposed.

The number of persons sentenced to imprisonment also decreased by 12% in the past two years, in the reference period mentioned above only 8% of defendants being incarcerated. Notwithstanding the prison population increased by about 1-2%, together with the average length of the sentences ordered, from 15 months to 15.6 months.

Amid legislative reforms, an increase in the number of persons who have received a suspended sentence was registered, correlated with a reduction in the number of sentences through which probation (community sentence) was ordered.

In terms of more serious offenses like the offenses of a average and high gravity, the most common form of punishment ordered is imprisonment. The percentage of sentences ordering imprisonment is of 27%, the highest in the last decade. 21% of the convicted persons (for the same type of offense) were placed under probation (community sentence), compared to the 19% which were fined and the 12% which received a suspended sentence. Over a quarter of those who committed this type of offenses were tried by the Royal Courts, 57% of whom were sentenced to imprisonment. This proves a specialization regarding such serious offenses and a firm reaction of the judges in this kind of cases.<sup>6</sup>

It also noted that the number of first offenders is steadily decreasing since 2007, correlated with an increase in the number of recidivist offenders. Between June 2013 and June 2014, 104.100 convicted persons had been previously convicted or warned at least 15 times. About 38.9% of those convicted in the same period had a "rich" criminal record, as opposed to a percentage of 26.9% from ten years ago.

Of those who had 15 or more previous convictions or warnings, 38% were incarcerated for average or high gravity offenses, while only 11% of first offenders were sentenced to prison for the same type of offenses. In the case of first offenders the most common sanction was the warning (57%).<sup>7</sup>

<sup>4</sup> *A Guide to criminal Justice Statistics*, last updated 19<sup>th</sup> November 2015, disponibil la adresa [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217725/criminal-justice-statistics-guide-0811.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217725/criminal-justice-statistics-guide-0811.pdf).

<sup>5</sup> *Criminal Justice Statistics Quarterly Update to June 2014. England and Wales*, p.20, disponibil pe <https://www.gov.uk>.

<sup>6</sup> *Idem*, p.11-15.

<sup>7</sup> *Idem*, p.17-19.

With regards the relapse rate, based on different types of sanctions, the results of a study conducted between 2000-2010 must be noted. The study reveals that of those who benefited from a warning (the sample was of 135.722 persons) 15.7% have committed criminal offenses within the next year, in the next two years 23.3% of them committed criminal offenses, the percentage increased to 28.5% after three years, to 32.1% after four years, to 34, 7% after five years, to 35.9% after six years, to 36, 8% after seven years, to 37.4% after eight years, just to find that after nine years 38% of these persons had committed criminal offenses. The average number of offenses committed for each of these individuals was of 2.43 after one year, 3.02 after two years, 3.52 after three years and 5.50 offenses after 9 years.

With regards those against which noncustodial sanctions were ordered, under the supervision of the probation services (the sample was of 73.075 persons) after one year 32.3% of these persons relapsed, 44.7% committed new offenses after two years, 51.9% after three years, 56.6% after four years, 59.8% after five years, 62.5% after six years, 64.7% after seven years, 64.7% after eight years and 67.8% after nine years relapsed. The same statistics show that the average number of offenses committed by persons who relapsed was of 3.53 after the first year, 4.97 after two years, 6,20 after three years, 9,85 after eight years and 10.36 after the ninth year.

By comparison, of those who had been sentenced to imprisonment (54.108 persons), after the first year 45.8% of them committed at least a new offence, that percentage increased to 59.4% after two years, to 66.1% after three years, to 70% after four years, to 72.5% after five years, to 74.5% after six years, to 76.1% after seven years, to 77.4% after eight years and to 78.4% after nine years. The

average number of criminal offenses committed by persons who relapsed was of 4.45 after one year, of 6.63 after two years, of 8.60 after three years, of 10.28 after four years and of 15.54 after nine years.<sup>8</sup>

### 3. Conclusions

Every criminal system is efficient, regarding the alternatives to detention, only if the persons placed under supervision don't commit new offences end if they are not imprisoned.

The economy that the state makes with not imprisoning a person, but place him under supervision, will have a opposite effect if that person commits new crimes.

This reality must be taken in consideration and must lead to a real reform regarding the alternatives to detention in the Romanian criminal law.

We presented the UK's criminal model so we can understand what we have to do in our criminal system.

Like in the UK, one of the most important problem is the underfunding of the probation system.

The lack of financial and human resources have negative effects i our country.

Without a perfect organised probation system there can't be a surveillance of the convicted persons.

However the probation system crisis is only a side of the economic and social crisis that our country is confronted in the last twenty years. Without a strong economy and without a well organized social system it's impossible to create workplace and assure the social reintegration of the convicted persons.

### References:

- Ancel M., L institution de la mise à l'épreuve, *Revue International de droit comparé*, 1950;
- Bohm R.M., Haley K.N., *Justiția Penală, o viziune asupra modelului american*, București, Ed. Expert, 1999;
- Eichar P.L., Review of selected 2005 California legislation: penal: Chapter 484: From home detention to gps monitoring, *McGeorge Law Review*, 2006;
- Pradel J., Corstens G, *Droit penal europeen*, Ed. Dalloz, Paris, 1999;
- Pradel J., *Droit penal compare*, Ed. Dalloz, Paris, 2002;
- Pradel J., *Droit penal general*, Ed. Cujas, Paris, 2006;
- Rapone J.C., Thinking outside the box: Why prisons are only part of the solution în *Suffolk Journal of Trial & Appellate Advocacy*, 2013;
- Van Kalmthout A.M., *Reintegrarea socială și supravegherea infractorilor în opt țări europene*, Craiova, Ed. Sitech, 2004;
- 2012 Compendium of re-offending statistics and analysis, disponibil pe <https://www.gov.uk>;
- Criminal Justice Statistics Quarterly Update to June 2014. England and Wales, disponibil pe <https://www.gov.uk>;
- A Guide to criminal Justice Statistics, last updated 19th November 2015, disponibil la adresa [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217725/criminal-justice-statistics-guide-0811.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217725/criminal-justice-statistics-guide-0811.pdf)

<sup>8</sup> 2012 Compendium of re-offending statistics and analysis, p. 41 disponibil pe <https://www.gov.uk>.