

## **The Probation and Mediation Service in the Slovak Republic and the Possibilities to Employ Social Pedagogues**

### **Abstract:**

The contribution presents the probation and mediation service in the Slovak Republic. With regard to the growth of criminality there appeared a need to change the penal policy. Probation and mediation is an effective means of help associated with prevention and implementation of penal justice. One of the possibilities to employ a social pedagogue is just in the frame of probation and mediation services.

**Key words:** *Probation and mediation service, probation and mediation clerk, penal law, social pedagogue, prevention*

The growth of socio-pathological phenomena in society gave rise to an acute societal need for higher attention to be paid to these phenomena from the viewpoint of the prevention system as well as repression, and also from the side of the whole society. Delinquency and criminality belong to serious socio-pathological deviant forms of behaviour representing today not only all-society problem but also a global problem of humanity. The number of delinquents is rising in the Slovak Republic as well. As an epiphenomenon there is a situation of crowded jails, causing a more difficult pedagogic influence on the sentenced. For these reasons in many countries alternatives are sought for that would improve this situation.

According to P. Ondrejko (2000, pp. 147–148) delinquency criminalization, mainly of the youth, by means of the justice, can often be a contra-productive, labelling and stigmatizing effect of the criminal law prosecution by the state institutions, which gave rise to a discussion on their essential reduction. There appeared a conception of diversity that represents an attempt to substitute the penalty of

imprisonment and simultaneously also an attempt to prevent prosecution by official authorities in order to enable supporting wrong-doers in their eventual effort to reach a norm conformable way of life in the future. The application has two forms: 1. Release from prison without sanctions, with warnings. 2. Relinquishing official prosecution and passing the case to the community, city and the like. "From the prevention point of view, diversity means in fact the so called special prevention that occurs on the edge of the secondary (direct) and tertiary prevention." (P. Ondrejko, 2000, p. 149)

The penal policy of the Slovak Republic is on the go; in connection with these changes there opens a broad sphere of action for the so-called assisting professions. The aim of the recodification of the penal law and penal order of the Slovak Republic is to emphasize an individual approach on the basis of the use of alternative sanctions and deflection from the detention (in 2005 a new Penal Law and a Penal Order were accepted with effect from 1st January, 2006). This should be supported by the probation and mediation service, which pursues the mediation of an effective and socially beneficial solution of conflicts linked to criminal activities, and at the same time it provides for and organizes effective implementations of alternative punishments and provisions emphasizing the interests of the sufferers as well as society protection and criminality prevention. "A probation and mediation clerk facilitates the criminal affair to be dealt with, in certain suitable cases, through any special way of prosecution, or that a punishment without imprisonment can be imposed and properly implemented, or that detention can be altered by another appropriate remedy" (Law No. 550 of 28<sup>th</sup> October 2003 on probation and mediation clerks). The Ministry of Justice implemented a pilot project of the probation and mediation service and on its basis a new law proposal concerning probation and mediation clerks was issued with changes and addenda of some laws, and after having been passed in the National Council of the Slovak Republic it was published in the Collection of Laws of the Slovak Republic as Law No. 550/2003. Probation and mediation are specific activities that require a special approach.

For the Law No. 550/2003 purposes, **probation** is understood to be:

- a) Organizing and implementing the supervision over the charged and accused,
- b) Monitoring the implementation of the punishment that is not combined with imprisonment, including the imposed engagement or constraints,
- c) Monitoring the behaviour of the accused in the course of the trial time during probation–release from the punishment of imprisonment,
- d) Supporting the accused to honestly live and meet the conditions imposed on them by the act of a prosecuting attorney or by the court in the trial.

The supervision of the probation clerk should not be a passive form of control over the sentenced only; it primarily means a positive guidance of the sentenced with an aim for them to be actively involved in the improvement of their life in harmony with the law, as well as supporting the conditions for perspective social and job involvement, and for the creation of social background.

The probation clerk works with the sentenced in the frame of a conditional sentence and a conditional release from imprisonment, and he focuses especially on the possibility for the sentenced to integrate into society, to keep adequate family ties and to lead a normal life. As the Penal Law reads, the trespasser who was imposed probationary supervision, is obliged to endure the control over them performed by the probation and mediation clerk.

The operation of probation clerks creates conditions for the individualization of the approach to offenders. The exercise of probation enables offenders to remain in society, to keep family ties as well as to keep broader ties with the social environment, to lead a normal life and to learn to take on responsibility for their own actions. The meaning of the probation clerks' activities is not only to control offenders' behavior but also to care and help in their problems supporting a non-conflict way of life and a positive attitude to the environment where they live.

Probation activity is therefore professional interdisciplinary work directed to an active influence and solution of individual life situations and collisions of a citizen in the area of law and punishment with a goal to help them successfully integrate into society.

**Mediation** means out-of-court settlement of a law-suit between the wronged and the accused. Mediation thus represents mediation of an extrajudicial solution of a law-suit between the wronged and the accused – the culprit of a criminal act, and it represents an alternative to the traditional penal action. According to the Law No. 420/2004 mediation is an extrajudicial activity, during which the persons involved in mediation solve a law-suit, which appeared from their contract or from any other lawful affinity, through a mediator. The exercise of a mediator's activity is an enterprise. This law prescribes an obligation to participate in professional training of 100 hours concluded by an exam, with the exemption of the physical persons that have received a university juristic education of at least the first stage.

Mediation is an alternative form of a non-aggressive modality of an extrajudicial solution of a law-suit between the accused and the wronged aiming at mutual seeking of a shared and satisfying solution, which is to moderate or remove the existing conflict by means of reciprocal communication. Unlike probation, which besides the elements of help involves the elements of social control that do not require any approval of the offender, mediation is introduced only after the acceptance of both parties. Mediation as a form of an extrajudicial solution of law-suits

is common in Great Britain and in other European countries, in the USA, and in Australia.

Successful mediation usually results in an agreement between the accused and the wronged in the presence of the mediation clerk. If mediation fails and the law-suit parties do not find any agreement during the time of mediation, the mediation clerk writes Mediation minutes with the reasons why they could not reach an agreement.

The goals of the mediation and probation service are as follows (<http://portal.justice.cz>):

- Offender's integration – the probation and mediation service struggles for an integration of the accused or an offender into the life of society and for elimination of any further lawbreaking and it also directs toward refreshing the offender's honouring society legal state, and toward their involvement in society as well as toward their personal fulfillment.
- The participation of the wronged – their own compensation, to renew their safety feeling, integrity and confidence in justice.
- Society protection – the probation and mediation service contributes to the safety of society by an effective solution of the conflict and risky situations that are linked to criminal action as well as by effective provisions for the implementation of the imposed alternative punishments and arrangements.

In the time from 1st January 2003 till 31<sup>st</sup> December 2003 177 probation tracts and 61 mediation tracts were assigned to probation and mediation clerks (The evaluation of the probation and mediation project in penal matters. In: [www.justice.gov.sk](http://www.justice.gov.sk) ).

The probation and mediation clerk also exercises protective supervision, which is regulated by the Law No. 448/2002 on protective supervision. The protective supervision is focused on the creation of conditions to prevent repeated crime of the sentenced heavy trespassers thus fulfilling their remedy.

A new kind of punishment is the chastening by a compulsory job, during which the probation and mediation clerk also plays an important role. It is an alternative to the punishment of imprisonment for less dangerous criminal acts. The Penal Law, section 54 reads that “compulsory job punishment can be imposed by the courts with the agreement of the offender in the range from 40 to 300 hours, providing the offender is sentenced for a misdeed that can be punished by imprisonment according to the law up to five years of length”. The implementation of the punishment is also regulated by the Law No. 528 of 28<sup>th</sup> October 2005 on the implementation of compulsory job punishment.

P. Jusko (2003) explains how to use social pedagogues as probation clerks. We will point to the use of social pedagogues as probation and mediation clerks.

In the sense of the law concerning probation and mediation clerks, a probation and mediation clerk can be a Slovak citizen that complies with the requirements according to the Law No. 312/2001 after having accomplished the 2<sup>nd</sup> stage of university Master's Degree in a juristic, teacher, theological or any other study programme in social sciences, or possibly, holds a recognized document on such university training from abroad. A probation and mediation clerk is obliged to take part in advanced training. According to our opinion, the graduates of a Master's programme in social pedagogy are trained to exercise the appointments of probation and mediation clerks.

According to J. Schilling (1999, p. 116) at present "in all the places where people attempt to preserve, improve or renew the quality of life, social pedagogy can provide for advisory service, or for professional social engagement, or it can be required." And it is exactly the improvement of life and its renewal that is the goal of the probation and mediation service.

The profession of a social pedagogue resembles the profession of a teacher, of an educator, of a psychologist, but in no way does it replace them. According to B. Kraus (2001, p. 34) the main functions of a social pedagogue can be characterized by two areas: the first area is represented by integration activities (integration function) and the second by developmental activities (development function).

During the integration function these activities concern people who are in need of help and support. These people are in a crisis situation, in psychical, social or psychosocial imperilment and become a hindrance for the environment.

If the development function is focused, there are no specific situations examined but an exploration of desirable personality development in the direction of the right lifestyle and a valuable and useful leisure is carried out and it actually concerns the whole population.

According to B. Kraus (2000, p. 44) a social pedagogue can be defined as a professional equipped both theoretically and practically as well as conceptually for educational incidence in those places where the formation of a healthy lifestyle is desirable, mainly where the environment of a person or of a group affects destructively or non-creatively for the fulfillment of needs. A social pedagogue is therefore a professional who takes control and organizes the educational-formative process at a professional level, influencing children, the youth and adults in the direction of desirable personality development. They act in the same way in the sense of integration of people in crisis situations who are in need of help.

Z. Bakošová (1994, p. 13) considers environment to be the subject of social pedagogy; its organization in the sense of the formation of educationally valuable impulses according to the individual needs and the compensation of inappropriate influences in harmony with social integration help. In all those areas there is a place

for a social pedagogue. According to him a social pedagogue is a “specialist whose competences lie in the help and support of children, the youth, adults and parents (social andragogy, geragogy) and in their support in the situations of balancing the deficit of socialization and seeking the possibilities to improve the quality of life through training, education, prevention, counselling” (Bakošová, Z., 2005, p. 190); all that is the purpose of the probation and mediation service.

Social pedagogy has its place in prevention and its attention is focused on the area of sociopathological phenomena prevention, which was also proved by the conference on the “Present situation of social pedagogy in Slovakia“, which took place in Bratislava on 2<sup>nd</sup>–3<sup>rd</sup> February 1999. Social pedagogy reflects the effort to prevent the occurrence of dysfunction processes and sociopathological phenomena of children, the youth and adults. P. Ondrejko (1998, pp. 2–3) likens present social pedagogy and social work to fire-fighters who unobtrusively enter the action in the case of fire. In order to invert this situation, according to him, social pedagogy’s and social work’s offensiveness is sought after, and in the area of prevention professionalism and development of science must take a prominent place.

The probation and mediation service holds an important place in the area of delinquency prevention through its interest in the accused, it is available to them when a solution of various problems is necessary, it supervises their behaviour in the probation time, and it helps them to integrate into the working process. The offender is saved from harmful consequences of the implementation of imprisonment and is not exposed to the negative prison experience. They are not isolated from normal social contacts.

A social pedagogue in the capacity of a probation and mediation clerk can be instrumental also in resocialization, when cooperation with the offender’s family and social environment is very important.

The use of a social pedagogue in practice is broad, and so is the scale of their activities. A social pedagogue is qualified to implement and manage work in the social educational sphere, to work in the state administration; they are able to identify, analyze and solve social pedagogical problems and to provide for the services of social educational counselling. As indicated by J. Hroncová (2005, p. 10), with the entry of the Slovak Republic into the European Union, the inevitability of the development of helping professions is undervalued; the profession of a social pedagogue belongs to them as well. The mosaic of a social pedagogue’s activities is manifold and diversiform. P. Klíma (1993, p. 51) characterizes a social pedagogue as “a specialized professional that is equipped theoretically, practically and conceptually for a purposeful influence on persons and social groups mainly where the lifestyle, life practice of individuals or of social groups is marked by a destructive or non-creative way during the fulfillment of needs and the formation

of one's own identity.“ Our opinion is that social pedagogues could find their place as probation and mediation clerks.

## **Bibliography:**

- Bakošová, Z. (2005): *Sociálna pedagogika ako životná pomoc*. Bratislava: FF UK.
- Bakošová, Z. (1994): *Sociálna pedagogika. Vybrané kapitoly*. Bratislava, p. 13.
- Hroncová, J. (2005): “Sociálna pedagogika – vývin a súčasný stav”, *Pedagogická revue*, No. 1.
- Jusko, P. (2003): “Probačná a mediačná služba ako forma sociálnej práce v trestnej justícii”, *Acta Universitatis Matthaei Belii*, No. 7. Banská Bystrica.
- Klíma, P. (1993): *Koncepcie studijného oboru a vzdelávacieho programu sociálnej pedagogiky*. Praha.
- Kraus B., Poláčková V., a i. (2001): *Človek – prostredie – výchova. K otázkám sociálnej pedagogiky*. Brno.
- Kraus, B. (2000): “Profesní model sociálního pedagoga”, *Súčasný stav sociálnej pedagogiky na Slovensku*. Zborník referátov z vedeckej konferencie s medzinárodnou účasťou. Bratislava.
- Ondrejko, P. a i. (2000): *Sociálna patológia*. Bratislava: Veda.
- Ondrejko, P. (1998): “Sociálna pedagogika, sociálna práca a drogové závislosti”, *Pedagogická revue. Mimoriadne číslo*.
- Poslání a cíle Probační a mediační služby České republiky, <http://portal.justice.cz>
- Schilling, J. (1999): *Sociálna práca. Hlavné smery vývoja sociálnej pedagogiky a sociálnej práce*. Trnava
- (2000) *Súčasný stav sociálnej pedagogiky na Slovensku*. Zborník referátov z vedeckej konferencie s medzinárodnou účasťou. Bratislava.
- The Penal Order*, Law No. 301 of 24<sup>th</sup> May 2005.
- The Penal Law*, Law No 300 of 20<sup>th</sup> May 2005.
- The evaluation of the probation and mediation project in penal matters. At [www.justice.gov.sk](http://www.justice.gov.sk)
- Law No. 420 of 25<sup>th</sup> June 2004 on mediation.
- Law No. 448/2002 on protective supervision.
- Law No. 528 of 28<sup>th</sup> October 2005 on the implementation of compulsory job punishment.
- Law No. 550 of 28<sup>th</sup> October 2003 on probation and mediation clerks.