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MODELS OF NON-REPRESSIVE SOCIAL RESPONSE TO CRIME
IN THE CONTEXT OF HUMANIZATION TRENDS IN CRIMINAL POLICY

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Summary

The work encompasses a series of new models and methods that can be more conveniently assimilated into the curative model, which have broadened the scope of non-repressive opportunities in criminal policy, based on the idea of reintegrating the offender into society through their resocialization or rehabilitation. The educational model, the equitable model, the social rehabilitation model, as well as probation, semi-liberty imprisonment, humanization of the execution regime within the prison environment, etc., are appreciated, aiming at leaving the offender in freedom, reducing the period of imprisonment (penitentiary) execution, modes of executing sanctions with semi-liberty imprisonment, and providing appropriate resocialization treatment for the offender in prison or in the open environment (their family and social environment) during this period. Priority is given to achieving the resocialization of the offender within and through the social environment in which they live or the social environment to which the offender is transferred from an antisocial environment.

Keywords: criminal policy, the principle of humanism, criminal punishment, individualization of punishment, the curative model, the educational model, the equitable model, the social rehabilitation model, probation, semi-liberty imprisonment.

Introduction. The humanitarian model of social reaction to crime regards criminal law as a means of rehabilitating offenders. Within this system, the delinquent is considered a person who, due to their psychological characteristics or the situation they are in, has not acted rationally, despite society and the state attributing them free will [1, p.506]. The existing legislation must provide measures for individuals who have committed criminal acts, which minimize the possibility of further criminalization and incarceration (such as: adopting penitentiary practices, learning criminal skills, forming stable criminal motivations) and ensure their return to society as full-fledged members. Therefore, detention in a penitentiary is not seen as punishment or retribution for the committed act, but as an opportunity for the convict to reflect quietly on their behavior and embark on the path of correction.

The principle of humanitarianism in criminal law entails applying the minimum necessary and sufficient penalties to defend society against crimes and achieve the goal of correcting and rehabilitating the offender. Humanitarianism in criminal law advocates for reducing legal repression as a means of combating crime and employing careful, balanced, and moderate deprivation of liberty penalties [2, p.52]. However, despite reforms and humanization efforts in criminal law, the social reaction to crime continues to focus on repressive measures against criminal activity. It is noteworthy that the current Criminal Code of the Republic of Moldova is characterized by a high level of repression. Our penal law prescribes imprisonment for 86.5 percent of the offenses, and of these, every fifth offense is punishable by imprisonment for a term exceeding 12 years.

Nevertheless, criminal law is gradually moving away from the goal of revenge and exces-

sively severe measures of influence on individuals who have violated criminal law. It is becoming increasingly evident that the fundamental element of criminal law is not always consistently, but inevitably, the concept of civilized interaction between society and criminality, based on the principles of compensation and prevention of new offenses [3, p.152].

The humanized penal system is characterized by the following features: a) the offender is perceived as a socially and legally vulnerable person, whose rights and freedoms are violated in the process of holding them criminally responsible; b) the established criminal punishments are relatively mild (the death penalty is eliminated, imprisonment for an extended period of time is not applied in the case of less serious offenses, and the detention conditions are good); c) non-custodial criminal penalties take precedence over penitentiary detention (especially concerning juvenile delinquents); d) conditional suspension of sentence execution and conditional release from punishment before the term expires are frequently applied [2, p.51].

At present, this model of social reaction has fully developed in Belgium, Netherlands, and Norway. For instance, the Dutch Penal Code, in articles 11 and 12, stipulates that custodial sentences must be served in shared or small-capacity cells or in isolation, depending on the personality of the inmate. Every prisoner, to the extent possible, must be placed in a penitentiary institution suitable for their personality, taking into account their detention period and the possibility of rehabilitation [4, p.102-103]. Moreover, the Netherlands is experiencing a shortage of criminals. In 2018, Dutch authorities decided to close four prisons because they were practically empty. Out of a total of 13,500 prison spaces, only two-thirds are occupied. Dutch authorities are concerned about losing millions of euros for prison maintenance. The reduction in prisons comes against the backdrop of declining crime rates in the country. The issue of depopulating prisons is not new. Amsterdam has made agreements with authorities in Belgium and Norway, who have sent their inmates to serve their sentences in Dutch prisons [5].

The popularity of clinical criminology, as well as the therapeutic model of social reaction to crime, has expanded the scope of non-repressive opportunities in penal policy, based on the idea of reintegrating the offender into society through their socialization or rehabilitation.

In the 1970s, clinical criminology enjoyed considerable popularity for developing and implementing clinical treatment of offenders for their resocialization, the non-repressive influence on them, and the individualization of influence measures. Great hopes were placed in the research of clinical criminologists. Here is how this research direction of criminology was appreciated in UN documents: "The methods of supervising delinquents and their physical control are increasingly perfected, thanks to the remarkable achievements of electronics, the rapid development of behaviorism, and the discovery of various psychotropic drugs. All these create new possibilities for making police activities more efficient and correcting delinquents, about which previous generations did not even dare to dream" [6, p.3; 7, p.149].

Leaders in this field were France and Italy, where clinical criminologists enjoyed authority and had a strong influence on shaping the state's rehabilitation policy for convicts. Under the influence of clinical criminology doctrine, practically all European states implemented corresponding changes in their repressive penal policies. While most states were somewhat reserved about the practice of indefinite sentences and the increasing role of medical professionals in determining terms of deprivation of liberty, the humanization of repressive policies was practically achieved in all European countries. Fines, warnings about the inadmissibility of law-breaking, suspended sentences, and so-called semi-liberty imprisonment (where the offender remains in their family and social environment, retains their job, but spends nights, weekends, and holidays in prison) were implemented even in Scandinavian countries, which have always been characterized by conservatism in penitentiary system reforms. In France, the prison system reform of August 1985 humanized the conditions of imprisonment. Social-educational services were established in prisons. Convicts were given the opportunity to receive vocational training, attend educational in-

stitutions, and receive medical care outside the prison, without constant supervision from prison administration [7, p.200; 8, p.30-31].

The therapeutic model of social reaction to crime was influenced by the ideas of the “social defense” doctrine advocated by Filippo Grammatica and, especially, those of the “new social defense” promoted by Marc Ancel, which specify that penal policy, based on “social defense,” should primarily focus on individual prevention and not on general crime prevention. According to adherents of this doctrine, treating and rehabilitating delinquents through non-penal means effectively protects society against crime, rather than relying solely on punitive measures.

The therapeutic model of social reaction to crime aimed at: a) focusing penal policy on the idea of rehabilitating the offender, meaning the return of the person who committed the offense to a normal social environment; b) adopting appropriate treatment methods capable of alleviating the reactive tendencies of the offender (reducing or eliminating aggression, egocentrism), contributing to correcting criminal vocations, changing objectives and habits, renewing motivations, and altering attitudes (including ridding delinquents of their indifferent attitude towards criminal punishment); c) adopting procedures and techniques for individualization, contributing to rehabilitation, starting from the judicial stage (individualizing the applied punishment) and continuing during its execution (penitentiary individualization); d) adopting extensive social, economic, cultural, and professional programs aimed at ensuring the most adequate social reintegration of former convicts.

Therefore, according to the curative model, punishment is considered a means of clinical influence on offenders (real and potential), strictly individualized for their resocialization. Resocialization of the offender begins at the judicial stage, continues during the execution of the sentence (in prison), and concludes after the completion of the sentence, with social reintegration [1, p.476].

A series of new models (the educational model, the equitable model, the social rehabilitation model) and new methods (probation, semi-liberty imprisonment, humanization of prison environment, etc.), which can be more comfortably assimilated to the curative model, aimed at leaving the offender at liberty, reducing the duration of imprisonment, implementing methods of semi-liberty imprisonment, and providing adequate resocialization treatment for offenders in prison or in open environments (their family and social environment). Priority is given to achieving the resocialization of the offender within and through the social environment in which they live or to which they are transferred from an antisocial environment.

The educational model involves correcting or eliminating the antisocial behavior of the offender, carried out in the prison environment, using methods such as vocational training, education during leisure time, individual or group counseling, various forms of physical, psychological, and social therapy, medication, surgical methods, individual psychotherapy, and group therapy. According to the educational model, crime is usually generated by the individual pathologies of the offender or by disturbances in their personality structure. Through applied treatment, the educational model ensures the elimination of disturbances in the offender’s personality structure, thus resocializing them. The educational model was extensively practiced in Scandinavian countries and North American states due to the high level of crime in these countries and the large expenses incurred by authorities for sentence enforcement. Scientific research accompanying the implementation of the educational model did not find significant successes. At the same time, human rights organizations revealed violations of human rights during the “forced” treatment applied to convicts.

The equitable model is based on justice, mutual respect for rights and obligations, and the equal satisfaction of everyone’s interests. The key element of the equitable model is ensuring and firmly respecting the constitutional rights and freedoms of convicts as a matter of particular importance in their resocialization. The essence of the equitable model lies in humanizing the

execution of punishment. According to the equitable model, punishment should not cause social, psychological, or physical harm to the offender or turn them into a mere object of manipulation. A humane attitude toward the offender is the main task of society if it desires the positive effects of punishment. Even though freedom of movement is restricted through punishment, the convict retains their constitutional rights. The convict is guaranteed the right to defense. Human rights supervisors (ombudsmen) and magistrates responsible for monitoring human rights must ensure that the attitude towards convicts is humane and legal. Only when a person's rights are firmly guaranteed and protected can they assimilate the norms of legal conduct.

It is necessary to reduce the application of custodial sentences. Prisons should be located in urban centers, where no more than 300 convicts serve their sentences, and living conditions should meet the standards of industrial society. Forced treatment, as well as a series of therapeutic methods, are to be prohibited as they are not effective and contravene the constitution. The benevolent agreement of convicts to undergo treatment, on the contrary, should be encouraged in prisons to humanize them. Treatment includes general education and vocational training, psychological counseling, and group therapy. Treatment is not the sole or primary purpose of deprivation of liberty.

The social rehabilitation model is centered on identifying a correct response to the offense, through which the offender, victim, and society can be helped. According to this model, not only the offender within and through the conformist social community in which they live but also the victim of the offense and even some social groups (for example, through family therapy) are subject to influence (resocialization). "The convict will not serve the sentence in prison but will be left free (in their family and social environment). The execution of the convict's sentence is entrusted to the community and consists of correcting and improving relationships between people in well-monitored, small communities. The aim of the social rehabilitation model is to improve the quality of human relationships within the community. Thus, by improving the quality of relationships within the community where the delinquent lives, their, the victim's, and certain social groups' resocialization is achieved. In the given community, the delinquent is to put their relations with their family, school (if they are a minor), neighbors, work colleagues, and leisure companions in order. In this way, society is also involved as a participant in the non-repressive influence process. Through compensation for damages caused, the convict must seek and obtain reconciliation with the victim of their offense. As a result, social understanding and order are restored" [9, p.424].

Probation represents a form of conditional sentence, widely used in the criminal justice systems of England, the USA, and a number of other states. By adopting a decision on probation, the court conditionally suspends the execution of the prison sentence imposed on the convict and sets a probation period under the supervision of a probation officer. The court may require the released offender not to change their residence and/or domicile without the consent of the competent authority, not to visit certain places, not to meet certain persons, to undergo treatment for drug addiction, alcoholism, drug addiction, or venereal disease, to participate in a special treatment or counseling program, to attend training courses, etc. The probation service is responsible for community supervision of how convicted persons comply with the measures and obligations imposed by the court. The convict is obliged to report periodically to the probation service, and the probation officer may visit the offender at home at any time (usually, one probation officer is responsible for 60-70 convicts). Therefore, *probation has defined itself and continues to define itself in certain jurisdictions as an alternative to imprisonment.*

Sometimes, *the adoption of the judicial decision of conviction is suspended*, allowing offenders whose guilt has been established but who exhibit good behavior to remain at liberty. Both in the case of suspending the pronouncement of the conviction decision and in the case of conditional suspension of the sentence execution, during the probation period, the offender is supervised,

guided, and provided assistance by the probation officer [10, p.170].

A series of non-repressive *methods have targeted ways of executing sanctions in semi-liberty regimes*, particularly applicable to minors. Thus, in Belgium and Germany, as well as in other countries, the “Weekend Imprisonment” model was introduced, according to which, except for weekends when the convict remains in prison, for the rest of the time they are left in their family and social environment and maintain their job [11, 215].

In this vein, there is also the so-called “*partial probation*”, which is preceded by a short period of serving the sentence in prison. If the court concludes that it is not rational for the offender to serve the entire prison sentence in prison, it may order the partial suspension of the convicted person’s sentence, indicating in the decision the period of imprisonment and the probation period. During the probation period, the offender is supervised by the probation officer. This method of individualizing the prison sentence by reducing the term of imprisonment in prison and establishing a probation period for the unexecuted part of the prison sentence is relatively new to the criminal legislation of the Republic of Moldova, having appeared only at the end of 2017. Thus, by Law No. 163 of 20.07.2017, in force on 20.12.2017, Article 901 “Partial Suspension of the Execution of the Prison Sentence” was introduced into the Criminal Code of the Republic of Moldova.

Simultaneously, a strong movement to *reform the prison system* occurred, with the general tendency being the humanization of the execution regime [11, p.215]. In European countries, the execution regime underwent substantial changes. In some cases, there were even unwanted exaggerations, creating conditions for convicts that were superior to those they had in freedom. Thus, prison cells resemble hotel rooms, and some prisons that stood out for their exceptional comfort were nicknamed “rest houses.” Inmates actively participate and engage in social life, pursue studies in higher education institutions, and engage in creative activities. Many convicts are interested in painting, and their works were exhibited in art galleries. Works by inmates were eagerly purchased by enthusiasts of exotic prison art. The social community establishes permanent connections with inmates. Sometimes, even convicts took under their protection unfortunate individuals from society, whom they learned about from the media, providing material support to single mothers and orphaned children.

In some models of social response, there was an increased concern for post-penal treatment, which aims to support the offender upon release from prison, so that they can avoid criminogenic situations and mitigate the process of stigmatization. In support of this post-curative model, there is a preference for minimizing the period of imprisonment in prison and more boldly applying the conditional release measure “on word”, already practiced in the Anglo-Saxon system. “According to the provisions of this system, the sentence is set between a minimum and a maximum, and subsequently, after the minimum has been served and depending on the evidence of correction provided by the convict during the sentence, the decision is made about when to apply the conditional release “on word” [12, p.230].

The penitentiary-executional system aims at the resocialization of inmates and the prevention of new offenses. It is particularly important for this objective to be successfully achieved. The effectiveness of inmate resocialization and the prevention of new offenses are determined by the recidivism rate after serving the sentence. For example, the number of recidivists in Russia is 70 percent of the total number of former convicts, in the USA – 80 percent, in European countries – on average 50 percent, and in Norway – less than 20 percent. The Norwegian prison operates on the principle: “To correct the person, it is necessary, first of all, to respect them”. Conditions are created for inmates that favor their resocialization. All inmates are required to learn or work, passions, hobbies, or self-education are encouraged. Inmates communicate with prison staff on equal terms and with mutual respect. Six months before release, inmates are transferred to a rehabilitation center where they are prepared for release. The rehabilitation center operates on the principle: “Before taking a person out of prison, the prison must be removed from the person’s soul”. In

this center, conditions are as close as possible to those in freedom. A curator is appointed for each inmate to address their housing, employment, health, etc. Thus, a decent person is released from prison, with respect for others, respect for work, certain interests, good health, future plans, ready to reintegrate into society as a full-fledged member [13].

Conclusions. We believe that in order to balance the current system of criminal penalties, it is necessary to develop a new social ideology. It is necessary to conduct extensive social work with delinquents, based on a detailed study of the interaction between criminal behavior, social status, and the professional activities of individuals. Many things need to be done in favor of the victim as well. For example, for certain types of offenses, monetary compensation may be provided. Because a significant portion of offenders are poor and unable to compensate victims for damages in monetary terms, the state must assume the responsibility of compensating the victim.

Bibliographical references

1. Gladchi Gh. Criminologie. Chișinău: CEP USM, 2019. 619p.
2. Gladchi Gh. Tendința umanizării dreptului penal. În: Integrare prin cercetare și inovare. Conferință științifică națională cu participare internațională, 10-11 noiembrie 2020. Universitatea de Stat din Moldova. Rezultatele comunicărilor. Științe juridice și economice. Vol. I. Chișinău, 2020, p.48-53.
3. Шестаков Д.А. Российская уголовно-правовая политика под углом зрения исторической тенденции к смягчению репрессии. In: Правоведение, 1998, № 4, pp.152-161.
4. Малиновский А.А. Сравнительное уголовное право. Москва: Московский Гос. Ин-т Межд. Отношений МИД России, 2014. 592p.
5. O țară din Europa își încheie patru penitenciare. Motivul e incredibil: din lipsă de deținuți. Data publicării: 26.06.2018. [Accesat: 23.03.2024]. Disponibil: [//www.digi24.ro/stiri/externe/ue/tara-care-nu-are-suficienti-detinuti-va-inchide-patru-penitenciare-953205](http://www.digi24.ro/stiri/externe/ue/tara-care-nu-are-suficienti-detinuti-va-inchide-patru-penitenciare-953205)
6. Новые границы в области международного предупреждения преступности. In: Международное обозрение уголовной политики (Материалы департамента ООН по экономическим и социальным вопросам). Нью-Йорк, 1973, 202p.
7. Иншаков С.М. Зарубежная криминология. Москва: ИНФРА*М-НОРМА, 1997, 383p.
8. Изменения в режиме тюремного заключения во Франции. In: Проблемы преступности в капиталистических странах. 1986. № 6, p.21-37.
9. Шнайдер Г.Й. Криминология. Москва: Изд. группа «Прогресс»-«Универс», 1994. 504p.
10. Stănoiu R.M. Introducere în criminology. București: Ed. Academiei, 1989. 210p.
11. Giurgiu N. Elemente de criminologie. Iași: Editura Fundației "Chemarea", 1992. 311p.
12. Nistoreanu Gh., Păun C. Criminologie. București: Editura Didactică și Pedagogică R.A., 1995. 352p.
13. Почему в Норвегии такие хорошие тюрьмы? Не является ли это мотивом к совершению преступлений норвежскими люмпенами? Galliamov A. (ответ). [Accesat: 23.03.2024]. Disponibil: <https://thequestion.ru/questions/127791/pochemu-v-norvegii-takie-khoroshie-tyurmy-ne-yavlyaetsya-li-eto-motivom-k-soversheniyu-prestuplenii-norvezhskimi-lyumpenami>