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Regimes for the execution of sentences and rights and obligations of sentenced persons

Anane Iuliana

Independent Researcher

Abstract. Correcting deviant behavior has been a problem for society since ancient times. In order to find out what is the most appropriate way to proceed with the retouching of deviant behavior, we must know about the cause of the criminal urge, look for the psychological springs that impel an individual to resort to committing violations of the criminal law. A determining factor is also played by the significant discrepancy between social categories through the unequal distribution of income, which also influences the quality of living standards, living and purchasing power. In this respect, it was desired to join the OECD, being perceived as a means of activating national reforms that have as main objective the improvement of the material situation of citizens. The Organization for Economic Co-operation and Development is an international body that aims to ensure sustainable economic growth and social stability of 35 developed countries that accept the principles of democracy and free market economy. With Romania's accession to the European Union, it was also desired to get closer to the other European states in order to borrow the methods and measures applied that contribute to maintaining a state of general stability. However, integration did not occur with accession, as demonstrated by repeated refusals and barriers to acceptance into various European and international organizations, the most famous case being the desire to enter the Schengen area, a wish rejected, even if the accession criteria are met. Due to such a vast history with reference to the penitentiary setting, but also due to the worldly character attributed to the execution of custodial measures in recent years, we will go through together the evolution of the penitentiary regime and of the rights and obligations of convicted persons, so that in the end we will see if all these measures to correct those who conduct themselves deviate from the rules admitted by society lead to the expected result.

Keywords. convicted person, penitentiary, types, code, regime

1. Getting started with the penitentiary system

1.1. Penitentiary environment in Romanian society

The need for protection of society, of the safe coexistence of citizens of a state from delinquent elements is closely related to the emergence and development of the penitentiary environment.

The two penitentiaries that marked the history of the Romanian penitentiary environment were founded during the communist regime, these being: the Pitesti Experiment and Sighet Prison.

Pitești Prison is the name of the former penitentiary famous for its brutal re-education attempts, carried out under the authorization of the communist authorities during 1949-1952,

also known as the Pitești Experiment or the Pitești Phenomenon. The experiment consisted of daily direct beatings and torture in order to completely re-educate political prisoners, mostly students, members of groups banned by communists such as the National Peasants' Party and the National Liberal Party, as well as those inspired by the Iron Guard or Zionist members of the Jewish community in Romania. The purpose of the experiment was to cast off the political and religious beliefs and ideas of the prisoners, and eventually to alter their personality to the point of absolute obedience. Total estimates of the number who underwent this experiment range from about 1,000 to 5,000. It was the largest and most aggressive torture brainwashing program in the Eastern bloc.

Sighet Prison was a prison in the city of Sighetu Marmatiei, Maramureș County, one of the most notorious political prisons in Romania. Immediately after the establishment of the communist regime in Romania, intellectual, political and religious elites who posed a danger to the communist authorities were imprisoned in Sighet. The prison was decommissioned and turned into a museum.

At the same time, during the communist period, forced labor camps of Soviet socialist inspiration were born. These work units aimed to restore moral and political values through work of people who represented a danger to Romanian socialism, for reasons of social origin, economic position and historical past. The establishment of the camps was ordered by *Decree nr. 6 of the Presidium of the Grand National Assembly of 14 January 1950*.¹

If previously the purpose of deprivation of liberty was strictly one of punishment, of awareness of the wrongful fact committed, now it tends to put more emphasis on the recovery of the person who deviated from social and moral norms, who will benefit from re-education and will be tried to reintegrate into society.

"Condemnation and detention in prison is the societal consequence that individuals who have engaged in deviant behavior must bear, in particular those forms of deviance provided for by criminal law."²

Imprisonment and life imprisonment shall be enforced by issuing the execution warrant. The writ of execution is issued by the judge hearing enforcement on the day on which the decision becomes final at the court of first instance or, as the case may be, on the day of receipt of the extract.³

At the same time, the penitentiary is not intended to become the permanent home of the offender unless he has the penalty of life imprisonment. Therefore, "the preparation of prisoners for release begins immediately after admission to the place of detention and proceeds progressively, irrespective of the duration of their sentence and the regime of execution employed."⁴

According to the *2014 ANP Activity Report*, there were 33 penitentiaries throughout the country, 6 hospital penitentiaries, 3 detention centers, 2 educational centers, 2 training, rest and recovery centers, 4 vocational training centers and a security and escort subunit for transferred detainees.

¹ Mădălin Sofronie - History of gulags in Romania. Who was the infamous leader who sent to their deaths 20,000 anti-communists, labeled "particularly dangerous elements", 24 December 2015, newspaper "Adevărul", accessed 22 May 2018

² Nicolae Jurcău (coord.) – Penitentiary – Distinct psychosocial environment, Casa Carte de Științe Publishing House, Cluj-Napoca, 2008

³ Ivan Anane – Elements of criminal procedural law, Pro Universitaria Publishing House, Bucharest, 2015

⁴ Art. 43, para. (4) of the Regulation for the application of Law nr. 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings ANP activity report for 2014

During 2014, in the units subordinated to the National Administration of Penitentiaries there were "253 foreign citizens, with a preponderance of Turkish (46), Moldovan (29), Italian (18) and Bulgarian (13) citizens".⁵

After the publication of the ANP Activity Report in March 2018 for 2017, one more penitentiary was added to the 33 penitentiaries and the number of detention centers was reduced to two. At the same time, there is no reference to the security and escort subunit of transferred detainees.

Starting with October 19, 2017, *Law no. 169/2017 amending and supplementing Law no. 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings* takes effect by setting up a compensatory system for providing a benefit, which was limited to the fact that for 30 days of detention in inappropriate conditions, 6 days were considered to have been served.

Although the ANP also encountered difficulties in applying Law 169/2017, between 19.10 and 31.12.2017, 3,630 detainees were released. Of these, "912 detainees were released on time, and 2,718 detainees were released on parole".⁶

In the *Official Gazette of Romania* nr. 822 of 18 October 2017 was published the *Order of the Minister of Justice* no. Law no. 2773 of 17 October 2017 approving the *centralized situation of buildings that are inadequate from the point of view of detention conditions*. The situation concerned the affirmation or denial of the following: accommodation in a space ≥ 4 sq. m., lack of access to outdoor activities, lack of access to natural light or sufficient air or availability of ventilation, lack of adequate room temperature, lack of possibility to use the toilet and comply with basic sanitary norms, as well as hygiene requirements, the existence of infiltrations, dampness and mold in the walls of detention rooms, compliant accommodation places and compliant penitentiary-hospital units throughout 2017.

Terminals worth 576,000 lei were purchased for the implementation of the videoconferencing system at the last 14 penitentiary units. On this occasion, the stage of equipping the entire penitentiary system was completed, and the process of finalizing and signing the collaboration protocols with the courts⁷ will be carried out, which creates the premises for a potential reduction of transfers of detainees between penitentiary units.

The National Administration of Penitentiaries claims that it is permanently oriented towards evaluating and identifying solutions for resizing and improving existing spaces or building others. If in 2016 a number of 672 new detention places were built, the infrastructure investment process continued in 2017, with the completion of 170 new detention places at the Giurgiu Penitentiary, and through the Norwegian Financial Mechanism 2009-2014, modernization works were carried out on 200 accommodation places at the Bacău Penitentiary.

According to ANP, there are over 22,000 detainees in Romanian penitentiaries, the lowest number recorded since 2008. The criminal phenomenon increased in 2013, when there were on average over 33,000 inmates in prisons.

Despite the fact that the number of detainees in Romania is steadily decreasing, the situation of prison cramping remains the main problem of the Romanian penitentiary system, to which are added the poor detention conditions.

⁵ ANP activity report for 2014

⁶ Annual activity report 2017, March 2018, ANP

⁷ Anane Ivan, Investigation of criminal investigation bodies, Pro Universitaria Publishing House, Bucharest, 2014

In Romania, penitentiaries exceeded their capacity by almost 50%, the shortage of spaces, according to the ECHR, being 8,000 places. Despite the start of works to improve detention conditions, in order to limit the effects of overcrowding, the proposed objectives did not take shape, and the phenomenon of crowding even prospered.

Overcrowding in prisons is one of the reasons why the ECHR sanctioned the Romanian state. In Jilava alone, 14 people are crammed into one room, each with just over a square meter to live. The occupancy rate at Jilava Penitentiary, according to European norms stipulating a minimum space of four square meters per detainee, was over 190%. Jilava Penitentiary was a special one because of the high traffic of detainees.

There is also a problem of overcrowding at the women's penitentiary in Târgșor, Prahova County, where many renovations have been made over the years, but being the only detention space exclusively for women, the occupancy rate is about 50% higher than the European norms.

The Gaesti Penitentiary, in Dâmbovița County, makes a discordant note. Two of the three detention spaces were completely renovated, in almost all cases the space allocated to each detainee was respected, a dining room, a large gymnasium, a sports field with a running track and three parks where detainees could walk during the day.

According to European reports, it is worth noting, however, that "the occupancy level of prisons in Romania is lower than in Albania, Czech Republic, Estonia, Lithuania, Latvia, Poland or Slovakia".

„Romania was sentenced to the ECHR 130 times from 2010 to 2016 for degrading and inhumane prison conditions. Since 2012, Romania has been under the effect of a semi-pilot conviction on detention conditions, which obliges our country to improve conditions in the penitentiary system, without imposing an implementation deadline.”⁸

After the implementation of ECHR decisions on improper prison conditions, the Romanian state paid compensation of over 11,500,000 lei, and between January and March 2018, the amount of compensation reached over 1,000,000 lei.

In its pilot judgment of 25 April 2017 (*Rezmiveș and Others v. Romania*), the European Court of Human Rights requested the Romanian State, within six months from the date of the final judgment, to provide a precise timetable for the implementation of appropriate general measures capable of addressing prison overcrowding and inadequate detention conditions. in accordance with the principles of the Convention as set out in the pilot judgment.

The observance of individual rights by public authorities is one of the essential criteria in the assessment, by international bodies, of the state of democracy in our country.⁹

One of the good practices highlighted at the level of the penitentiary system consisted in approving the *National Strategy for Social Reintegration of Persons Deprived of Liberty*, 2015 – 2019, by Government Decision nr. 389/2015. The strategy aims to: develop institutional and interinstitutional capacity in the field of social reintegration of persons deprived of liberty and persons who have served custodial sentences, develop educational, psychological assistance and social assistance programs during detention and inform the public opinion and last but not least, facilitate post-detention assistance at systemic level.

⁸ Andrei Luca Popescu - One man dies every 3 days in Romania's prisons. Image of an unreformed system for over 25 years, 15 February 2017, "Gandul" newspaper, accessed on 19 May 2018

⁹ Monica Macovei; Diana-Olivia Călinescu – Judgments of the European Court of Human Rights: selective collection, POLIROM Publishing House, Iasi, 2003

During 2017, 36,357 persons deprived of liberty participated in one or more of the social reintegration efforts carried out, corresponding to the fields of education, psychological assistance and social assistance.

In order to ensure a quality medical act, in 2017, the National Administration of Penitentiaries aimed at: ensuring the human and material resources necessary for carrying out the medical activity, developing disease prevention programs, hygienic-sanitary education, as well as health promotion, both among detainees and staff, but also efficient collaboration with the public health system.

According to ANP, most deaths found in Romanian penitentiaries occur due to medical causes, mainly neoplasia, circulatory diseases, respiratory diseases, digestive diseases, but also due to violence or suicide. The most common cause of death of custodial persons in the penitentiary system in recent years is cardiovascular disease. At the same time, the number of deaths caused by HIV/AIDS infection has increased.

According to the National Administration of Penitentiaries, the Romanian state spends 2,500 lei per month for each detainee, reaching a total of 6,400 euros per year for each incarcerated person. Official data show that "out of the amount allocated by the state for one detainee per month, 457 lei represents the maintenance cost, 140 lei are destined for food, 83 lei for health, and about 1,800 lei are personnel costs, to which is added the cost of investigations."¹⁰

Romania should find solutions to solve the real problem of limited prison space, reduce expenses, pay more attention and support to the probation system and make prisoners pay at least for their food through labor.

Over the years, in Romania, a predominance of crimes against property and those against the person could be observed.

After the entry into force of the new Criminal Codes, Criminal Procedure and other normative acts included in the criminal reform package, one of the great challenges for the IT specialists of the penitentiary institution was the reconfiguration of the integrated PMSWeb application, intended for recording and calculating sentences, as well as the rights of persons deprived of liberty.

According to the ANP Activity Report for 2014, "over 250 detainees attended professional initiation courses in the fields of data entry/processing, training of trainers, textile making, landscaping, wood processing and plant culture, and around 2,300 convicted persons, of whom 18 minors, 122 young people and 47 women, benefited from professional qualification courses in approximately 20 trades".

For the social reintegration of detainees, activities were organized in which representatives of central and local administrations, civil society, governmental organizations, as well as former detainees were actively involved.

In support of the community, the ANP, through its subordinated units, has continued to participate with detainees in greening, park cleaning, flooding and snow removal activities over the years. These actions aim to develop civic sense, change the negative perception of public opinion regarding penitentiaries and, implicitly, people serving custodial sanctions. Another objective was to empower detainees through work and to preserve the idea of protecting the environment.

The project ESF/POSDRU/70/6.2./S/33488, entitled "The return of former detainees to the labor market and their integration into society" had as objective: social integration of former detainees by creating a network of social inclusion centers and by increasing their skills in

¹⁰ State spends €6,400 per year on a detainee, 31 January 2018, newspaper "Constanta de azi", accessed 22 May 2018

alternative, ecological professions, respectively by removing prejudices and stereotypes of society regarding detainees and former detainees.

Therefore, we can see that in contemporary society, the space dedicated to deprivation of liberty is intended to be a center of behavioral remodeling and insertion into the consciousness of each individual of a new set of values unanimously accepted by the rest of the community. At the same time, the science of criminal law comes to establish the measures that are necessary to be adopted to prevent and combat crime.¹¹

1.2. Effects of deprivation of liberty on the offender

Sanctions specific to criminal law are measures of coercion and re-education, which are applied in case of committing acts or omissions provided for by criminal law, in order to restore the violated legal order and defend social relations protected by criminal rules.¹² Such a sanction is also deprivation of liberty in the form of detention.

Deprivation of liberty has numerous effects on the offender. They are more pronounced in the attitude towards people, towards oneself and towards values.

John Stuart Mill, one of the most influential liberal thinkers of the nineteenth century, divides human freedom into four types arising from the existing relations between the individual and society, as follows:¹³

- freedom of conscience;
- freedom of lifestyle choice;
- freedom of expression;
- freedom of association freely consented.

It should be noted that all four forms of human freedom conceived in the Victorian era are found in the content of the Constitution of our country, which came into force on October 31, 2003, in Chapter II, entitled "Fundamental Rights and Freedoms".

According to Isaiah Berlin, one of the most important contemporary liberal thinkers, the concept of "freedom" comes in two forms: negative freedom and positive freedom. The positive sense derives from the individual's desire to be his own master, and the negative sense from the simple fact that there is no interference from other people in the actions taken.

Isaiah Berlin found that there is a link between positive freedom and selfishness. Selfishness is an exaggerated attention to oneself, manifested by seeking the satisfaction of personal interests and pleasures at the expense of others. Man has shown over time an exclusive tendency to fulfill strictly personal interests, to totally disregard the concerns of others or the community.

The role of the penitentiary administration system is to guarantee the maintenance of a social balance, to form a correct attitude of detainees towards social values, the rule of law and the rules of social coexistence.¹⁴

Social reintegration has obvious advantages for the delinquent person, although there will always be a risk of recidivism. The possibility of recurrence of the intention to violate criminal laws is based on the development of the individual in a harmful psycho-social

¹¹ Mariana Mitra-Niță – Seminar book: Criminal Law: general part, vol. I, Pro Universitaria Publishing House, Bucharest, 2015

¹² Mariana Mitra-Niță – Seminar book: Criminal Law: General Part, vol. II, Pro Universitaria Publishing House, Bucharest, 2015

¹³ John Stuart Mill – About freedom, Humanitas Publishing House, Bucharest, 2005

¹⁴ Buzescu Gheorghe, Elements of Public Order, Pro Universitaria Publishing House, Bucharest, 2016

environment. Added to this is genetic baggage. Those with low resistance to everyday neuro-psychic demands, those with volcanic temperament, those impulsive, aggressive or those suffering from an inability of self-control, a pronounced irritability, often resort to negative actions resulting in individualism, waste, greed, frustration, envy or stubbornness.

According to public opinion, it is believed that the penitentiary environment represents a ticket in the envelope for many of the socially misfits, those who have a non-conforming attitude towards the vicissitudes of life. When a person commits a serious crime, such as murder, they are put in a cell, they are offered three meals a day, they are given the opportunity to work or learn a certain trade, and they also have the chance to be educated or to continue their studies already started but not completed. The essential problem is that for all these benefits the honest working class must make a sustainable effort both physically and pecuniarily, while the person deprived of liberty is offered everything free of charge.

The prison environment can also have a negative influence on a prisoner, due to the mixing of individuals and the crimes committed by them. Thus, a criminal convicted of international drug trafficking may even coordinate or commit a new crime, such as "accident" cheating, from inside the penitentiary. Therefore, it is considered necessary to block or diminish, as the case may be, the GSM signal in the units subordinated to the National Administration of Penitentiaries, in order to eliminate or at least reduce the possibility of illegal use of mobile telephony by detainees.

At the same time, it seems that the first offense presents difficulties, because in most cases, the defendants in question get the taste of breaking the classic typology, that of being an honorable citizen. This is demonstrated by the speed shown by those who evade respect for order¹⁵ and morals and commit one crime followed by another as soon as possible. According to a local newspaper¹⁶, a man who was released on parole after serving half of his sentence was detained the same day for committing a crime while serving his main sentence.

Due to the complexity that man presents in all his characteristics, the process of reeducation and social reintegration does not always bear fruit, justice remaining powerless sometimes in front of incapable of following the normal course of a community.

The detainee is physically and legally obliged to stay in a penitentiary institution, where, in addition to the suffering caused by the loss of liberty, he is obliged to observe the rules of execution of the sentence, the rules on order and safety in prison, to observe internal discipline and to work, if he is fit for this activity.¹⁷ The internal discipline of the penitentiary is a means of training, modeling and re-education of the convict.

The rules of discipline are instituted on the consistent to correct and discipline the convict during the execution of the sentence, but also to prevent disorder and escape attempts.¹⁸

Disciplinary liability does not exclude civil or criminal liability, for the latter, the prison administration staff having the obligation to notify the criminal investigation bodies. The system of rewarding and stimulating convicts who give proof of correction¹⁹ is a set of

¹⁵ Buzescu Gheorghe, Particularities of contravention law, Sitech Publishing House, Craiova 2017

¹⁶ Citizen of Năvodari handcuffed on the day he left the penitentiary! Act through the "Accident" method, 17 May 2018, "Replica" newspaper, accessed 19 May 2018

¹⁷ Anamaria Cercel – Aspects regarding the closed penitentiary regime and the execution of punishment in this environment

¹⁸ I. Popescu, E. Mosconiu, Improving the disciplinary status of detainees, in the Penitentiary Bulletin, nr. 2/1984.

¹⁹ Anane Ivan, Elements of computerized evidence of the person, Pro Universitaria Publishing House, Bucharest, 2015

measures aimed at encouraging detainees in their efforts of reeducation and social reintegration. Thus, good conduct provides a vocation to parole.

The execution of the sentence in a closed environment due to isolation, deprivation of liberty as well as the restrictions and limitations inherent in this way of serving the sentence, such as the prohibition of movement, the establishment of contacts with detainees from other sections, is preferable for dangerous detainees, who are resistant to discipline norms and who are serving long sentences.

For primary offenders, when serving short sentences, this penitentiary regime can have negative effects, by accentuating the feeling of separation from family, work, social environment, which are not compatible with the educational purpose of the punishment, preventing normal reintegration into society after serving the sentence. Moreover, primary offenders can come into contact with repeat offenders and "improve" in criminal activity.

In this regard, Justice Minister Tudorel Toader stated "the need to develop a draft law for electronic home surveillance of detainees." This creates the possibility to no longer keep detainees urgently in prisons and facilitates the execution of punishment through electronic bracelet surveillance.

In an official report of the Court of Auditors, it is underlined that "the use of persons deprived of liberty for productive activities, the main element of the regime for the execution of custodial sentences, has as a major objective the adaptation of the convicted person's behavior to the social values recognized by law, supported by changes in attitudes and the development of competences". Also, beyond the economic character of this activity, there is also the social character, respectively the beneficial impact that work has in the case of persons deprived of liberty.

At the same time, the inspectors of the Court of Auditors complete with the observation that "adapting the behavior of the convicted person to the social values recognized by law leads to: reducing the probability of violation of the criminal law after release, improving interpersonal behavior, including the respect for diversity, improving the prospects of social reintegration and reducing the number of aggressive manifestations".

The performance of work is an important component of the execution of prison sentence, being an element of internal necessity of any punishment and a decisive factor in the re-education and social recovery of convicts. The formation of work skills makes it possible for the prisoner, once released, to earn honestly the income necessary for living and thus prevents recidivism.

More than 10% of the total prison population refuses to carry out gainful activities. Many of them are in transit, respectively just transferred or about to be transferred, some of them pose a high degree of risk, and in the case of others they lack qualification in a profession. At the same time, a problem is the lack of security and surveillance personnel.

According to the law and legal regulations in force, "persons deprived of liberty who do not choose to work cannot be forced to do so, the principle being that of reward, both financially and in terms of additional rights".²⁰

Figures show that the integration into society of those who have had problems with the law before is still deficient, given that almost 13,000 of all prisoners are repeat offenders and 6,400 have criminal records.

²⁰ Why detainees in Romania do NOT work. How much can I earn per hour and how many volunteered to have "lucrative activities", 27 September 2015, "Gandul" newspaper, accessed on 19 May 2018

Through the programmes and activities in which persons deprived of liberty participate and the fact that they are counselled and given particular importance, the chances of recidivism are minimal. Conversely, if the convicted person experiences collective marginalization and contempt, then he feels compelled to return to the objections prohibited by law and moral norms.

In the case of detainees sentenced to life, because they have nothing to lose, they adopt aggressive behavior, representing a danger to fellow detainees and prison staff, and less to society in general.

We must always find out and start from the reason that led the offender to commit the act, in order to find his "cure" and prevent further delinquent acts from occurring in the future.

Family background can be the root of the predisposition to commit crimes, which is acquired hereditary. Family can be a pronounced criminogenic factor, as can the entourage.

Paradoxically, the values unanimously accepted by society acquired in the family environment can be annulled by integration into a harmful entourage. The education received from the family may pale in front of external factors.

Alexandre Lacassagne, professor of forensic medicine at the University of Lyon, acknowledged the role of the biological factor in explaining criminal behavior, but gave it a secondary role and assigned a leading role to the social factor. Man is compared to the microbe, and society to the culture environment in which the microbe develops. Thus, it refutes the idea of the existence of the born criminal, arguing that from birth man has only certain tendencies to criminality, which will manifest themselves only in relation to the material conditions of existence. At the same time, it outlines the influence of the social factor on criminal behavior and even develops the idea of social responsibility.

Gabriel Tarde, career magistrate, but also philosopher, sociologist and psychologist, argues in his work "The Laws of Imitation" that there is no innate criminal, but crime is learned, like any profession, through imitation. People imitate each other, depending on how close the contact between them is, and especially young people learn from the elders.

Man is born with an instinct of association. Socialization is part of the genetic fingerprint of the human being and is divided into two categories, namely: positive socialization and negative socialization.

Positive socialization is that behavioral attribute through which the individual correctly appropriates the system of values generally accepted by society. As for the second type, negative or reverse socialization is that by which the individual does not appropriate the value system, but another code or value system, which is not accepted by society.

Resocialization is a complex, lengthy process that involves remodeling the individual after having experienced negative socialization, to avoid the risk of relapse.

Even after rehabilitation, you are not allowed to climb certain positions in society. Even if you are released, you have convicted status.

The social reaction against acts that deviate from the law and their perpetrators is achieved both by preventive action against social and individual causes and conditions, and by social reaction against acts already committed and discovered, in order to cease and prevent their recurrence.²¹

We must emphasize that for a moment of rational error that led to the commission of an act provided for and punished by law, the separation of a person from his family affects the right to family life, to the physical, mental and intellectual development of the individual, if he

²¹ Gheorghe Gladchi – General criminology, Museum Publishing House, 2001

is young, and if he has children himself, deprives them of values essential and indispensable for their harmonious growth and improvement.

However, error should not be confused with doubt, because in case of doubt, there is no wrong knowledge of reality, but uncertain knowledge, which means that, acting under these conditions, the person concerned has accepted the possibility of the socially dangerous outcome of his action or inaction.²² Likewise, it cannot be regarded as error, incapacity or professional negligence, which led to ignorance leading to a miscalculation or misapplication of a scientific procedure in the exercise of a profession or profession, because in such cases the person concerned had a legal obligation to know the reality.²³

At the same time, we must also discuss the phenomenon of miscarriages of justice. They may creep into final court decisions as a result of the court's ignorance of facts and circumstances which, had they been known, would have given a different course to the criminal proceedings, or of basing the decision on the basis of an offence of perjury committed by an expert, witness or interpreter, or as a member of the bench, the prosecutor or the person who carried out criminal prosecution acts committed an offence that influenced the outcome of the case, or when the decision was based on a legal provision that was declared unconstitutional after it became final, or when the European Court of Human Rights found a violation of fundamental rights or freedoms.²⁴ Even if the institution of revision corrects and eliminates errors found in final criminal decisions, if it involves a long time, it has no relevance to the extent of the criminal sanction incurred.

Also, the legislator underlined in the Code of Criminal Procedure, the obligation of the criminal investigation bodies to collect and administer evidence, both in favor and against persons suspected of committing an act provided by law, acting on the rejection or non-recording, in bad faith, of the evidence proposed in their favor.²⁵

Despite efforts to give a more human face to the penitentiary, it remains marked by the lack of funds necessary to ensure satisfactory comfort. The attribution of the negative significance to the execution of the prison sentence and the low degree of culture make most convicts not correctly appreciate the work done by the staff to ensure their living conditions provided by law. Most detainees consider that aspects concerning the life of detainees, such as food, medical assistance, hygiene or sports activities, are neglected. This affects the natural relations between prisoners and staff and often generates tensions and riots.²⁶

Unfortunately, for many detainees, even minimal conditions found in the penitentiary unit are far beyond what their own home and lifestyle offers. This may be one reason for the existence of the recidivism rate, which is currently over 40%.

²²Supreme Court, Dec. No. 31/1975, C.D.

²³ C.Bulai – Criminal Law. General part, Bucharest, 1987

²⁴ Marian Alexandru – Appeal and extraordinary remedies in criminal proceedings: the new criminal procedure code, SITECH Publishing House, Craiova, 2017

²⁵ Marian Alexandru – Criminal procedure – general part: The New Code of Criminal Procedure: university course, Pro Universitaria Publishing House, Bucharest, 2015

²⁶ George Neamțu (coord.); Dumitru Stan (coord.) – *Social work: studies and applications, POLIROM Publishing House, Iasi, 2005 To err is human, but to persevere (in mistakes) is diabolical*

1.3. The importance of prisons worldwide and the role and place of prisons in the current system

The Latin adage "errare humanum est, sed perseverare diabolicum"²⁷ belonging to the Roman Stoic philosopher Seneca outlines the importance of holding accountable the person with a deviant character, especially when one action is followed by another with the same destructive effects in terms of society and values protected by national law and morals.

Isolation in a secure space can also present an advantage for the convicted person, because civil society often tends to resort to making and applying private justice, driven by the idea of doing justice as quickly and as harshly as possible.

Currently, the United States ranks first in the ranking of countries with the highest number of prisoners. There are more than 2.19 million prisoners in this country.²⁸

The idea of a classical prison is replaced in a few countries by the idea of comfort and the presence of implicit facilities, supported by easier reintegration into society after serving sentences. Halden and Bastøy Prison in Norway, the Justice Centre in Leoben, Austria, Aranjuez Prison in Spain – the only prison in the world for families, Sollentuna Penitentiary in Sweden, Otago Corrections Facility in New Zealand or Champ-Dollon in Geneva, Switzerland are some of the most significant examples in this case.

Bastøy Prison in Norway is considered one of the best in the world, offering inmates comfort, freedom and social support to learn the moral values needed to become honorable citizens. This detention center emphasizes the appropriation of moral values by detainees, meant to help them not repeat the crime that brought them to prison. They can also learn a profession such as mechanic, carpenter, confectioner or cook, which will help them easily find a job after serving their sentence. And those who support them to acquire this knowledge are precisely the guards, who do not necessarily have the role of guarding the prisoners, but rather of guiding them to become honorable citizens again. Bastøy Prison in Norway is considered one of the best in the world, offering inmates comfort, freedom and social support to learn the moral values needed to become honorable citizens. This detention center emphasizes the appropriation of moral values by detainees, meant to help them not repeat the crime that brought them to prison. They can also learn a profession such as mechanic, carpenter, confectioner or cook, which will help them easily find a job after serving their sentence. And those who support them to acquire this knowledge are precisely the guards, who do not necessarily have the role of guarding the prisoners, but rather of guiding them to become honorable citizens again.²⁹

The Netherlands, which has applied these policies to "humanize" prisoners, also plans to close five detention centers due to a decrease in the number of convicted criminals.

Countries that have invested in building new detention centres and encouraged prisoner rehabilitation programmes include Austria, Switzerland, Germany, Spain, Scotland and Britain.

The penitentiary is not only an institution where those who committed crimes are punished with deprivation of liberty, there are prisons in the world that have become terrible places where torture and bloody acts are always present. A worldwide survey of the toughest prisons found that Carandiru prisons in Brazil and San Quentin in the US are by far the scariest.

²⁷To err is human, but to persevere (in mistakes) is diabolical.

²⁸ Harrison, Paige M., Allen J. Beck (2006). *Prison and Jail Inmates at Midyear 2005*. Bureau of Justice Statistics.

²⁹ Countries closing their prisons for lack of prisoners. What a 5-star penitentiary looks like. "Our goal is not to humiliate people, but to change them", 13 April 2017, "Gandul" newspaper, accessed on 24 May 2018

The famous island of Alcatraz became a federal prison in August 1934 after it had been upgraded to meet safety standards. The island's location, surrounded by the cold waters and strong currents of San Francisco Bay and the safety rules adopted, have contributed to its reputation as the safest prison in the United States and the prison from which there is no escape. In 1963, U.S. Attorney General Robert F. Kennedy decided to close the prison due to high maintenance costs. The prison was turned into a museum, becoming one of San Francisco's main attractions. Currently, more than 1.5 million people visit Alcatraz prison every year.

"Tadmor military prison in eastern Syria, 200km from Damascus, is a real extermination camp. The peak of cruelty in Tadmor was reached on June 27, 1980, when after the attempted assassination of President Hafez al-Assad by the Syrian branch of the Muslim Brotherhood of Islamists, Syrian commandos led by his brother, Rifaat Al-Assad, killed about 500 detainees without cause as a warning. This was the largest massacre in the entire history of prisons around the world."³⁰

According to estimates by an international team of journalists collecting data from 25 European countries, Morocco is the country with the highest number of prisoners in prisons in the European Union, with 11,700 citizens imprisoned. Romania follows with 11,511, Turkey with 4,798 and Poland with 4,449.

The international study "Space 2011" conducted periodically by the Institute of Criminology and Criminal Law in Lausanne for the Council of Europe, published in May 2013, shows that most European prisons are full, half of them even overcrowded. What sets them apart, however, are the amounts spent by those states on the maintenance of these re-education spaces.

According to a 2016 report published by the Council of Europe, Hungary has the busiest prisons in Europe.

Currently, there are several private prisons in the European Union in countries such as France, Belgium, England, the Nordic countries or Hungary. In France, in just three years, i.e. between 2006 and 2008, three PPP projects had financial closure, reaching 13,000 new places in just 4 years.³¹

In the Republic of Moldova there are a total of 17 penitentiaries where approximately 8,000 detainees serve their sentence. According to the Department of Penitentiary Institutions, out of the 8,000 detainees across the country, only 1,000 are employed and receive their salaries on special accounts.

For almost 25 years, a tailoring workshop has been operating at the penitentiary for women in Rusca village. Every day, around 100 detainees come to work here and make uniforms for the Romanian police forces, equipment for the employees of the Department of Penitentiary Institutions. The administration offered training courses, and after qualification, detainees were paid a monthly salary of over 2,000 lei, and three days worked shortened their stay behind bars by one day. In exchange for their services, detainees benefited from a social package in addition to their stable salary.³²

³⁰ Radu Eremia - The toughest prisons in the world, 17 April 2015, "Adevărul" newspaper, accessed 27 May 2018

³¹ How the project of the first private prison in Romania failed. Are private penitentiaries the solution?, 14 July 2016, "Digi24" newspaper, accessed 28 May 2018

³² Business behind bars. In the 17 penitentiaries of the Republic of Moldova there are 63 enterprises, 17 December 2017, newspaper "Prime", accessed on 20 May 2018

Although the Rusca Women's Prison in Moldova has a capacity of 310 places, in fact over 370 women are held. The quickest method is the parole of some women who are nearing the end of their detention term, but the court refuses most of the applications due to non-fulfillment of mandatory conditions.³³

It can be seen that contemporary society creates facilities on the one hand, and violates the principle of humanism on the other, alternation that leads to the irrecoverability of the individual from a social point of view. Some prison systems tend to deviate from the main purpose of creating units, namely to correct the conduct of the person who deviates from the rules admitted by the community and to reintegrate into the social system.

2. Regimes for the execution of custodial sentences

2.1. Types of regimes and changes in legislation

Law nr. 275/2006 on the execution of sentences and measures ordered by judicial bodies during criminal proceedings was repealed and replaced by *Law nr. Regulation (EC) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings*, entered into force on 1 February 2014. The amendments brought by the new law are not radical in terms of execution regimes, but only in detail, keeping the four types of regimes, namely: maximum security regime, closed regime, semi-open regime and open regime. They are divided according to the degree of danger of the crimes committed and their perpetrators, in descending order.

The execution regimes have specific features due to the degree of restriction of the freedom of movement of detainees, the way of conferring rights and carrying out daily activities, compared to the legal situation, age, state of health and conduct at the time of serving the sentence.

"The precepts that persons deprived of liberty are bound to observe, as well as the prison staff, are established by the Internal Regulations, in order to properly administer the execution regime. The director of the penitentiary approved the Internal Regulations. The prison administration was obliged to display, in visible places, or make available through electronic documentation and information points, closed circuit radio-TV studios or any other means, information on the content of the internal regulations."³⁴

Under the watchful regulation, there was no provisional application of the execution regime, according to which "the convicted person for whom the execution regime has not been established shall be provisionally applied the execution regime corresponding to the amount of the sentence he is serving".³⁵

The application of the provisional regime is based on the enforceable and final decision of the director of the penitentiary, until the first meeting of the commission for establishing, individualizing and changing the regime of execution of custodial sentences.

Apart from the right to perform work, during the period during which the provisional regime applies, the person deprived of liberty shall enjoy all the rights conferred on detainees definitively included in that execution regime.

³³ The women's prison in Rusca is too small. Several parole applications denied, June 29, 2017, "Prime" newspaper, accessed May 20, 2018

³⁴ Art. 46, para. (3) of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

³⁵ Art. 33 of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

If initially the maximum security regime applied to persons sentenced to life imprisonment and persons sentenced to imprisonment for more than 15 years, now it applies to persons sentenced to life imprisonment, persons sentenced to imprisonment for more than 13 years and those who pose a risk to prison security.

"The maximum security regime is carried out in penitentiaries specifically designated or in specially designed sections or spaces."³⁶

If the rule is individual accommodation for maximum security detainees, as an exception they can also be accommodated jointly, but only in certain situations.

"Detainees under the maximum security regime who did not perform work or did not participate in school or vocational training activities carried out, within a minimum of 3 hours a day, walking, educational, psychological and social assistance, sports and religious activities."³⁷

The new regulation wanted to emphasize the need for school and vocational training, including in the most severe enforcement regime, because "without forgiveness there is no future", even if the person concerned has committed an act that attracts acute social revulsion, with a minimum chance of reintegration into the collective he comes from.

Within the categories of persons who are not subject to the maximum security regime, but are serving custodial sentences under closed regime, two changes have occurred. The first concerns minors, who have been excluded from the legislative listing, and the second concerns the age limit, the number of years of age required being 65. At the same time, the gender gap is excluded, the age limit being the same for both men and women.

"The staff assigned to apply the maximum security regime is selected, trained and specialized, equipped with means of self-defense, alarm and communication, in a sufficient number, so as to ensure strict supervision of detainees, both inside and outside the penitentiary, as well as operative intervention, if necessary."³⁸

As regards the second type of execution regime, whereas initially the closed regime applied to persons sentenced to imprisonment of more than 5 years but not exceeding 15 years, it now applies to persons sentenced to imprisonment of more than 3 years but not exceeding 13 years.

A provision, in addition to the repealed rule, are the mentions related to the security measures specific to the closed regime that "apply to convicted persons, other than those under the maximum security regime, temporarily transferred to another penitentiary, for presentation before judicial bodies and detainees admitted to penitentiaries-hospitals and penitentiary infirmaries".³⁹

At the same time, emphasis is also placed on the behavior of the convicted person until the establishment of the execution regime, with the possibility of aggravating one's own situation, which entails mutation to a higher regime in severity.

An element specific to both the closed regime and the maximum security regime was an article related to escorting and accompanying detainees on trips outside the penitentiary.

³⁶ Art. 55 of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

³⁷ Art. 57, para. (2) of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

³⁸ Art. 61 of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

³⁹ Art. 36, para. (5) and (6) of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

The daily schedule of detainees held under the closed regime "included work, educational, cultural, therapeutic and sports activities, psychological counseling and social, moral-religious assistance, school and vocational training, medical assistance, walking, rest time and other activities necessary to stimulate the interest of detainees to assume responsibilities".⁴⁰

The semi-open regime shows changes in terms of the maximum length of sentence to which the person concerned is sentenced, while the minimum remains the same.

Mainly, this regime applies to detainees sentenced to imprisonment for more than one year, but not exceeding 3 years, and in the alternative, the semi-open regime also applies to: "detainees initially classified under closed regime who had good conduct and made thorough efforts for social reintegration and detainees initially classified under open regime who committed serious disciplinary misconduct or serious disciplinary misconduct, repeatedly, and which due to misconduct have become incompatible with this type of regime".⁴¹

"Convicted persons serving sentences under semi-open regime may perform work and carry out educational, cultural, therapeutic, psychological counseling and social assistance, moral-religious activities, school training and vocational training, outside the penitentiary, under supervision including electronic supervision"⁴², compared to the old regulation that provided only for the faculty to work both inside and outside the unit.

As in the case of the closed regime, the accommodation of detainees was carried out jointly, but this time, the law stipulates a series of criteria that must be taken into account in terms of accommodation and arrangement of detention spaces under the semi-open regime. These are::

- respect for the principle of separation of women and men;
- separation of young people from other adults;
- interest in participating in resocialization activities and use at work;
- intellectual and cultural compatibility.⁴³

In contrast to the rigor of the daily schedule applicable in the first two execution regimes, under the semi-open regime, detainees "organized their time and carried out administrative-household activities, under supervision, in compliance with the schedule established by the administration."⁴⁴

If, in the case of maximum security and closed regime, the detention rooms are permanently closed and secured, the semi-open regime has greater flexibility from this point of view, during the day, after the morning call and until at the latest 30 minutes before the evening call, depending on the visibility conditions, the detention rooms were open.

⁴⁰ Art. 68, para. (1) of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁴¹ Art. 74, para. (2), letters a) and b) of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁴² Art. 37, para. (4) of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁴³ Art. 76, para. (1), letters a) and b) of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁴⁴ Art. 77 of the Regulation implementing Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

The last regime in the hierarchy keeps intact the criterion regarding the length of the sentence to which the person in question was sentenced.

The open regime allowed detainees to move unaccompanied inside the place of detention, to work and to carry out educational, cultural, therapeutic, psychological counseling and social assistance, moral and religious activities, school education and vocational training, outside the place of detention, without supervision.⁴⁵

The open regime applies in case of committing minor offences entailing minimum penalties, in the sense of imprisonment of up to one year.

The open regime is based on freely consented discipline, on a sense of responsibility towards the community from which prisoners come and encourages them to use in good faith the freedoms conferred on them.⁴⁶

Unlike the semi-open regime, detainees under the open regime had free access to the places and areas established by the prison administration, and the accommodation rooms were kept unlocked both day and night.

With the approval of the director of the penitentiary, detainees under the open regime could attend schooling, qualification or university education, receive medical assistance, including dental medicine, at the recommendation of the unit doctor, participate individually or in groups in cultural, educational, sports, artistic, religious programs and lucrative activities, outside the place of detention, without supervision.⁴⁷

A new element attributed to the open regime is the risk of the convicted person being included in an execution regime of a higher degree of austerity.

At the same time, within the mildest enforcement regime we can find a section dedicated to obligations and prohibitions specific to this type of regime. Thus, Art. 87 by para. (3) of the Regulation for the application of Law nr. 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings, specifies the actions prohibited for detainees under open regime. These are::

- leaving the places where they are planned, before the end of the program, without the approval of the person appointed by the management of the detention facility to coordinate the activity;

- purchasing, possessing, selling and consuming alcoholic beverages or psychotropic substances, frequenting public places, driving motor vehicles under conditions other than those established by the administration of the place of detention, entering into contact with certain persons or moving to certain places, carrying, procuring or possessing weapons, ammunition, toxic or explosive substances of any kind;

- travel without carrying identification documents issued by the administration of the place of detention, which they are obliged to present, upon request, to the competent authorities.

Failure to comply with the provisions may result in disciplinary or criminal liability, according to the law.

⁴⁵ Art. 80 of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁴⁶ Art. 81, para. (3) of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁴⁷ Art. 86, para. (2), sentence I of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

2.2. Establishing, changing and individualizing the regime for the execution of custodial sentences

If the old rule does not accept the application of the provisional regime, the new rules expressly provide for it. After application of the provisional regime, the regime for the execution of custodial sentences is established by the commission for establishing, individualizing and changing the regime for the execution of custodial sentences, consisting of: "the director of the penitentiary, who is also the chairman of the commission, the head of the service or office for the enforcement of the regimes and the head of the education service or bureau or the head of the psychosocial assistance service or bureau".⁴⁸ The members of the committee shall determine by open vote the applicable regime to be approved by simple majority.

There are a number of criteria that are taken into account when establishing the execution regime, such as: the length of time of the custodial sentence, the level of risk of the convicted person, the criminal history, the conduct of the convicted person, the age and state of health of the convicted person, the possibility of the convicted person to work and participate in educational activities, cultural, therapeutic, moral-religious, social assistance and psychological counseling, professional training and school training, but also the identified needs and skills of the convicted person, imperative to be included in educational programs, psychological assistance and social assistance.

The deadline for appealing against the method of determining the execution regime is 3 days from the date of notification of the decision establishing the regime of execution of the custodial sentence.

The obligation to hear the convicted person disappears with the entry into force of the new law, regulating only the faculty of the judge supervising the deprivation of liberty to make use or not of this possibility.

At the same time, the deadline for solving the complaint drawn up by the convicted person is shortened by 5 days, respecting the principle of celerity. The detainee takes note of the conclusion of the judge supervising the deprivation of liberty, which may admit, reject or confirm the withdrawal of the application.

The new regulation presents a more detailed approach to establishing the regime for the execution of custodial sentences, thus encountering the notion of "legal aid", which is not binding, but presents itself as a possibility.

"The decision establishing the execution regime, the conclusion of the judge supervising the deprivation of liberty or, as the case may be, the sentence of the court shall be implemented on the date of registration in the penitentiary, by the staff designated by an administrative act issued by the director of the place of detention."⁴⁹

On the change of the regime of execution of custodial sentences, decides the commission for establishing, individualizing and changing the regime of execution of custodial sentences, which erases this competence from the portfolio of the judge delegated for the execution of custodial sentences. 'After serving 6 years and 6 months in the case of life imprisonment sentences and one-fifth of the term of imprisonment, as well as at the date of termination of the case giving rise to the non-application of the maximum security regime, the commission is

⁴⁸ Art. 32, para. (1) of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁴⁹ Art. 90 of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings - Implementation of the decision laying down the enforcement regime

obliged to analyse the conduct of the convicted person and the efforts for social reintegration, drawing up a report which shall be brought to the attention of the convicted person, under signature.”⁵⁰ Also, in the case of convicted persons who have reached the age of 65, the commission will order the change of the maximum security regime in closed regime.

Two aspects are defining for passing into a lower regime in terms of degree of danger, namely: the good behavior of the convicted person and active participation in the work process and in the activities established in the Individualized Plan for Evaluation and Educational and Therapeutic Intervention.

The transition to a more severe regime is relatively simple conditional, any serious disciplinary misconduct being the just basis for applying the transfer.

Law nr. 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings provides for the feasibility of drawing up a complaint against the decision of the Commission to change the regime of execution of custodial sentences within 3 days of notification to the judge supervising deprivation of liberty, while interrogation of the convicted person is possible.

Even in case of change, the deadline for solving the complaint drawn up by the convicted person is shortened by 5 days, the judge supervising the deprivation of liberty being able to admit, reject or confirm the withdrawal of the application. The capacity to resolve the complaint is expressly mentioned and belongs to the judge supervising the deprivation of liberty of the penitentiary whose commission ordered the maintenance or change of the execution regime.

In criminal doctrine, a distinction is made between the individualization that takes place in the elaboration phase of criminal legal norms, in the phase of application of punishment and other sanctions of criminal law and in the phase of execution. In the enforcement phase, administrative individualization is carried out by the executing administrative bodies, which results not only in changes in enforcement regimes, but also in reducing the duration of execution by means of conditional release and pardon.⁵¹

The individualisation of the regime for the execution of custodial sentences is divided into two sections: one concerning generality and another relating to young people in particular. At the same time, it can be noted the exclusion of minors from the second category referred to in the customization.⁵²

Depending on the conduct, duration of conviction, degree of risk, personality, age, identified needs, state of health, and possibilities of social reintegration of the convicted person, the commission for establishing, individualizing and changing the regime of execution of custodial sentences concludes on the individualization of the regime of execution of custodial sentences and draws up an individualized plan for evaluation and educational and therapeutic intervention for each convicted person. In relation to these assessments, the convicted person is included in programs regarding vocational training, school training, cultural, educational, therapeutic, social assistance and psychological counseling activities.

At the same time, "rewards are a means of individualizing the regime of execution of custodial sentences that are granted to detainees who have good conduct and have proven

⁵⁰ Art. 40, paragraph (2) of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁵¹ Alexandru Boroi – Criminal law: general part. According to the New Criminal Code, second edition, rev., C.H. Beck Publishing House, Bucharest, 2014, p.569

⁵² Art. 28 of Law nr. Regulation (EC) No 275/2006 on the execution of sentences and measures ordered by judicial bodies during criminal proceedings - Individualisation of the regime for the execution of custodial sentences for minors and young people

persistence in work or in educational, cultural or therapeutic activities, psychological counseling and social assistance or school and vocational training, as well as those who prevented the occurrence of situations of risk to the safety of the penitentiary or staff, for other prisoners, or other persons.”⁵³ They can usually be granted only once during 30 calendar days.

Convicted persons up to 21 years of age are offered special educational, social assistance and psychological assistance programs. "Young people serve custodial sentences in specially designated penitentiaries or in specially designed sections or spaces, in order to ensure their social, school, educational, professional, psychological, medical and physical protection and assistance, which are necessary according to their age, gender and personality.”⁵⁴

The reassessment of the educational and psychological assistance requirements and needs of the convicted young man is required with his transfer to an adult penitentiary.

3. Rights and obligations of convicted persons

3.1. Current rights conferred on persons deprived of their liberty

Detainees have the chance to assert all their civil and political rights, except for those lifted by final conviction, but also for those whose failure to exercise or exercise restrictions naturally results from deprivation of liberty or from the consideration of maintaining the security of detention. The limits on the exercise of the rights of convicted persons are expressly provided for by the Constitution and the law.

It is the judge supervising the deprivation of liberty who may admit, reject or take note of the withdrawal of the complaint if against a measure ordered by the prison administration regarding the exercise of a right specified by *Law nr. 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings*, the convicted person made such a request. At the same time, he is the one who ensures the observance of the rights conferred by law on detainees.

At the very beginning of *Chapter V of the Law Enforcement Regulation nr. Regulation (EC) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings* stresses the need for and importance of actions taken by non-governmental organisations in the field of human rights to improve detention conditions and respect for prisoners' rights. At the same time, the Recommendation adopted by the Committee of Ministers of the Member States on the European Prison Rules on 11 January 2006, during the 952nd meeting of the Delegated Ministers, highlights that "detention conditions and treatment of prisoners must be controlled by one or more independent bodies, and their conclusions must be made public, these bodies being encouraged to cooperate with international bodies authorized by law to visit detainees.”⁵⁵

The legal norm provides a comprehensive enumeration of prisoners' rights. These can be found in the law, as follows: freedom of conscience, opinions and religious beliefs, the right to consult personal documents, the right to information, the right to petition and the right to correspondence, the right to legal aid, the right to online communications, the right to telephone conversations, the right to receive visits and the right to be informed about special family

⁵³ Art. 208, para. (1) of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁵⁴ Art. 93 of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings - Individualisation of schemes for the execution of custodial sentences for young people

⁵⁵ Art. 93, paragraphs 1 and 2, Part VI of ECN(2006)2 - Inspection and control

situations, the right to daily walking, the right to receive, buy and own property, the right to intimate visitation, the right to diplomatic assistance, the right to medical assistance, treatment and care, the right to enter into marriage, the right to food, clothing, accommodation and minimum accommodation, the right to rest and weekly rest, the right to education, the right to vote and the right to work.

As every moment and every event in a person's life awakens certain feelings in his soul, such as regret in case of committing an act provided for and punished by law and which is also contrary to order and good morals, the Penitentiary Administration takes care to provide clerical staff to detainees to meet the spiritual needs of each detainee.

In order not to lose touch with reality and the social situation outside the penitentiary, detainees had access to information of public interest, publications, television and radio shows.

Detainees' defenders may carry out visits on the basis of their capacity as a lawyer and attorney-at-law, as well as have access to consultation of personal documents if there is the written consent of the person deprived of liberty.

At the expense of each individual detainee or from the budget of the administration of the place of detention, if the situation so requires, both the right to correspondence and the right of petition may be exercised. In order to avoid suspicion of terrorism, envelopes received by persons deprived of liberty are subject to specific control.

The detainee may maintain contact with family members, with his spouse, relatives up to and including the fourth degree, persons with whom he has established relations similar to those between spouses or between parents and children, with legal representatives when appointed, as well as, in exceptional cases, with persons with whom strong emotional relations have been established, through visits with separation devices or without separation devices, telephone, correspondence and online communications.

Convicted persons may spend time in exercise yards and other premises specially designed for this purpose. They can also participate in recreational and sports activities.

Detainees holding foreign citizenship have the possibility to contact representatives of diplomatic missions and consular offices to assist in procuring judicial or extrajudicial documents from the country.

We must point out that some rights were not provided for in the old law, and here we refer to: the right to legal aid, the right to online communications, the right to intimate visitation, the right to food, clothing, accommodation and minimum accommodation conditions, the right to education, the right to vote, the right to work, the right to rest and weekly rest. Therefore, one can observe the vehement intention of social reintegration, of accommodating to the normal course of things, of not losing pace with society, totally excluding the idea of complete isolation and treating the prisoner as a failure of social-democratic ideology and tactics.

According to *art. 79 of Law nr. 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings*, "convicted persons may participate, depending on the possibilities of the penitentiary, in school or university training courses, under the terms of the collaboration protocol concluded with the Ministry of National Education, taking into account the identified priority intervention needs, health status, the type of enforcement regime and security measures applied".

At the same time, the Regulation on the application of the enforcement law provides for the possibility of organizing qualification, improvement, requalification and specialization courses in vast fields, according to the skills and options of convicted persons.

Out of the desire and necessity to combat illiteracy and school dropout, detainees who have difficulty reading and writing, especially young people, have priority in school training activities. Young people also have priority access to vocational training programs.

School dropout in Romania is a growing phenomenon: approximately 400,000 children in grades I-VIII drop out of school annually.⁵⁶

The right to receive goods was joined by the possibility to buy and own goods compared to the old regulation that did not provide for the current addition. At the same time, if the *Law no. 275/2006 on the execution of sentences and measures ordered by judicial bodies during criminal proceedings* instructed the Minister of Justice to establish by order the quantity of packages and objects useful to the convicted person, from the date of entry into force of the new law, these are established by the Regulation for the application of Law nr. 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings.

Detainees were used for work only with the approval of the penitentiary doctor, under conditions of labor protection that were properly applied.⁵⁷

"Detainees had the right to buy weekly food, fruits, vegetables, mineral water, soft drinks, cigarettes and other goods of the nature allowed to be received from the commercial points inside the penitentiary, within the limit of 3/4 of the gross minimum wage in the penitentiary. The materials necessary for exercising the rights of petition, correspondence and telephone calls can be purchased from the commercial points inside the penitentiary without affecting the limit of 3/4 of the gross minimum wage."⁵⁸

Also, if under the old law the right to daily walks was associated with the right to receive visits, the new rule separates the two benefits and gives rise to a third privilege, namely, the right to be informed about special family situations. Convicted persons were notified by the prison administration about the serious illness or death of their spouse or a first-degree relative shortly after learning of the event.

Last but not least, the right to healthcare is complemented, joined by the notions of "treatment" and "care". The services of medical assistance, treatment, care and medicines are provided from the Single National Health Insurance Fund, under the terms of the Framework Contract on the conditions for providing medical assistance within the social health insurance system and the Methodological Norms for its application, from the funds of the units of the penitentiary administration system, approved for this purpose, and from other sources, according to the law.⁵⁹

Detainees were provided with dental offices, pharmacies, medical offices, infirmaries, penitentiaries-hospitals, medical staff, all in order to provide the necessary medical assistance services, treatment, care and medicines.

A special provision is the medical assistance of the convicted pregnant woman. 'Pregnant women or women who have given birth while in detention and care for children under

⁵⁶ FONPC: 400,000 children drop out of school annually and remain semi-illiterate, in Adevărul, February 12, 2013

⁵⁷ Anamaria Cerceș – Aspects regarding the closed penitentiary regime and the execution of punishment in this environment

⁵⁸ Art. 151, para. (1) of the Regulation for the application of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

⁵⁹ Art. 71, para. (4) of Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

one year of age shall be provided with an appropriate diet for themselves and their children.”⁶⁰ At the same time, the physical and psychomotor development of the child is carefully supervised by a family doctor or, as the case may be, by a pediatrician.

Detainees can enjoy rewards consisting in lifting a disciplinary sanction previously applied, if after the passage of 2 months, respectively 5 months, no disciplinary offense took place and they showed regular behavior, in addition to the number of online conversations, in addition to granting a social visit or in intimate interest and / or a package, but also in permission to leave the penitentiary.

The system of rewarding and stimulating convicts who give proof of correction is a set of measures aimed at encouraging detainees in their efforts of reeducation and social reintegration.

3.2. Obligations and prohibitions of persons serving a custodial sentence

Compared to the multitude of rights offered to convicted persons, the obligations displayed in the law are found in a much smaller number. It is true that compared to *Law nr. 275/2006 on the execution of sentences and measures ordered by judicial bodies during criminal proceedings*, which established only four obligations for detainees, the new law is somewhat harsher, tripling the number of duties of persons in the penitentiary unit.

The following obligations shall be borne by persons deprived of liberty::

- compliance with the rules set by the penitentiary administration during the period of time they were allowed to leave the penitentiary or when activities were performed outside the penitentiary without monitoring;
- compliance with the rules of personal and general hygiene in the detention room and other common places, as well as the doctor's recommendations;
- honoring each day's program;
- manifesting an attitude that respects the rules of decorum towards any person with whom they come into contact;
- performance in good conditions of the occupations in which he participates;
- compliance with the search upon receipt into the detention unit, but also during the performance of the custodial sentence, whenever required;
- Submission to orders transmitted by judicial bodies;
- adequate maintenance of the goods put into use by the penitentiary administration and of the objects endowed by the institution where he carried out specific work activities;
- Observance of the distribution by detention rooms;
- truthful statement of the degree of vocational training or school instruction, as appropriate;
- presenting a decent, neat and clean outfit;
- fulfillment of any other obligation arising from the executing law, the applicable regulations, orders and decisions issued thereon and the internal regulations of the penitentiary.

A matter of novelty compared to the old regulation is the introduction of prohibitions of convicted persons in a significant number, expressly enshrined by law through an individual article, written exposure that is not found in the content of the execution law. Thus, according to *art. 82 of Law nr. According to Regulation (EC) No 254/2013 on the execution of custodial*

⁶⁰ Art. 160, para. (6) of the Regulation implementing Law nr. Regulation (EU) No 254/2013 on the execution of custodial sentences and measures ordered by judicial bodies during criminal proceedings

sentences and measures ordered by judicial bodies during criminal proceedings, persons deprived of their liberty are prohibited from following:

- establishing, supporting or joining riots, riots, passive or active acts of disobedience or other acts of group violence likely to endanger the order, discipline and safety of the penitentiary unit;
- insertion into penitentiary, manufacture, possession, sale or use of narcotic drugs, alcoholic beverages or toxic substances or taking medicines without medical prescription, likely to create behavioral disorders;
- inciting other convicted persons to commit disciplinary offences;
- misconduct or damage to property or valuables at work or owned by the penitentiary, staff, persons performing activities in the penitentiary or visiting, as well as property belonging to other persons, including convicted persons;
- insertion into the penitentiary, procurement, production, possession, removal, receipt, use or transmission of weapons, explosive materials, objects and substances endangering the safety of the penitentiary, missions or persons, money, medicines, mobile phones, mobile phone accessories, goods or other valuables, under conditions other than those approved;
- intentionally stopping the programs and activities taking place in the penitentiary;
- acquiring or attempting to obtain, by violence, coercion, promises, services, gifts or other means, moral or material benefits from staff, from persons fulfilling missions in prison or passing through or from other convicted persons, as well as from any other person;
- intimidation of staff, persons carrying out missions in the penitentiary or visiting, other detainees, and any other persons;
- disturbance of daily hours or silence, even after curfew until awakening;
- thwarting or trying to hinder finding out the truth in case of incidents occurring within the penitentiary;
- self-aggression in any form and by any means;
- smoking in spaces other than those intended and permitted;
- performing or attempting to inflict acts of aggression on staff, persons performing missions within the penitentiary or visiting, other convicted persons, as well as any other persons;
- organising or participating in acts of evasion of custodial sentences;
- avoiding enforcement of a disciplinary sanction;
- establishing relationships with convicted persons or persons inside or outside the penitentiary unit, with the intention of hindering the execution of justice or the implementation of the rules of the regime of execution of custodial sentences;
- staying in areas that were not allowed or at prohibited hours in certain spaces of the penitentiary, specified in the internal regulations, as well as non-compliance with the time of return to the penitentiary;
- Replacing the identity of another person;
- presentating and giving money or other benefits to prison staff;
- connection with the outside of the penitentiary, in other circumstances and by means other than those established by all the legal rules in force;
- improper use or for other causes of property provided by the prison administration;
- manifestation, in public, by indecent gestures or acts or which attract social contempt;
- performing acts aimed at damaging the reputation of the prison administration or other persons;

- any discriminatory act which undermines human dignity by differentiation, exclusion, restriction or preference;

- the use of gambling in order to obtain benefits;

- performing any other actions not permitted by law.

'No detainee may be disciplined except in accordance with the provisions of the law and the implementing regulations, and never twice for the same offence.'⁶¹ At the same time, sanctions involving the use of physical force, collective force, immobilization, corporal punishment, use of means of coercion, degrading or inhuman treatment or application of the measure of isolation in spaces that do not have access to light and without ventilation are prohibited, some having use in cases strictly specified by law.

Also, there are a number of goods that are forbidden to be received, bought, kept and used by detainees, because they can harm other persons or destroy certain assets, can be used to record systems or activities related to ensuring the safety of the penitentiary, affect or interfere with the utility system of the place of detention, as well as other supporting reasons.

Convicted persons may be required to perform work in production departments and centers, as well as in investment works and capital repairs carried out within the penitentiary, under a service contract, for household activities necessary for the penitentiary, within social economy structures or for removing the effects generated by disasters.

Because we are used to valuing only when we lose, prison conditions are designed to awaken our self-awareness and give us a second chance at an honest and compliant life.

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