

PENITENTIARY – PENAL AND EDUCATIONAL INSTITUTION

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Abstract: *The purpose of this paper is to highlight the penitentiary, the profile of delinquents that have committed offences against society. The subject of this paper considers persons deprived of liberty being in the custody of Romanian penitentiary.*

Key words: *law transgression, penitentiary, persons deprived of liberty, sanction, punishment*

In order to apply the sanctions decided by the law courts, the State most often turns to imprisonment, considering that the deprivation of liberty will have not only recovering effects upon the imprisoned person, but also security effects upon the other members of the society.

The sanction must first intimidate, so most of the members of the community, knowing its consequences, may willingly comply with these rules, from the moment the penology rules come into force.

The Romanian language Explanatory dictionary defines sanction as a punishment decided by law for those who have infringed on its provisions. Punishment is a repression and constraint measure against the one who has committed a divergence from the law.

The aim of the punishment is to caution against the perpetration of new infractions. The execution of the punishment wishes to form a better attitude towards work, the right order and towards the social cohabitation rules.

After the perpetration of an infraction, when the punishment is effectively applied, it fulfils a complex of functions:

- way to redress the transgressors and to prevent them from harming (morally or physically, by temporary isolation or definitive elimination);
- useful for the re-entry of the judicial order in relation with the victim and the social group, while through the direct application of the punishment one will give satisfaction to the victim and as well as to the community, avoiding the disorder that could arise, if the victim or the social group react alone;
- it consolidates the intimidation force that the sanctions should exert on the recipients of the penology rules, while through its effective application the punishment becomes an example for all those who would be tempted to commit antisocial acts¹.

The functions that tend to prevent the transgressor from repeating the wrong behaviour in the future serve the special warning and the functions that intend to prevent the disturbance of the judicial order by other persons than the transgressor serve the general warning.

The categories and the general limits of the punishments are indicated in the 3rd Title, Punishments, of the Romanian Penal Code. Article 53 indicates three types of punishments: main, complementary and accessory punishments.

The main punishments are:

- a) confinement for life;
- b) imprisonment from 15 days to 30 years;
- c) fine from 100 lei to 50.000 lei.

The complementary punishments are:

- a) forbiddance of some rights from one to 10 years;
- b) military degradation.

The accessory punishment of forbiddance of some right consists of the forbiddance of some of the following rights:

¹ apud E. Stănişor, 2003, p. 20

- a) the right to elect and to be elected within the public authorities or in public elective functions;
- b) the right to occupy a function implying the exercise of the state authority;
- c) the right to occupy a function or to exert a profession or to carry on an activity of the kind of that the convicted used in order to commit the infraction;
- d) parental rights;
- e) the right to be a tutor or a custodian.

The forbiddance of the right to occupy a function implying the exercise of the state authority can not be pronounced except together with the forbiddance of the right to elect or be elected within the public authorities or in public elective functions, unless the law decides so.

Out of these punishments the confinement for life and imprisonment from 15 days to 30 years presumes the individual's deprivation of liberty, while all other punishments do not presume the deprivation of liberty. Here we add the sanction of obligation of the offender to carry out an activity for the use of the community, indicated by Law no. 82/1999.

There is a greater and greater anxiety of the public in front of criminality. It seems to conquer new spaces on the vertical and horizontal line of the social structure. Each day newspapers manage to bring proves in this sense and to produce a generalized state of apathy. The attitude "come what may, I may not be exactly the one who has to confront himself with it" expresses for most of us a real philosophy of life, when they go out on the street or get in a car.²

Out of the array of concerning data existing in the archives of the specialized institutions we observe the following aspects:

- the criminality increase from 202 at 100.000 inhabitants in 1989 to over 1.000 at 100.000 inhabitants, the number of infractions increasing with over 5 times in comparison with 1989; remarkable is the explosion of robbery (over 9 times bigger);

- increase of the number of persons from the penitentiaries, to 26440 confined persons (31st of December 2008), convicted for graver and graver infractions (infractions against persons and patrimony);

- increase of the number of persons from the penitentiaries, who have no high education, for infractions of false or at working place or related to their working place (558 persons);

- the enormous increase of the juvenile delinquency, getting to a number of 1390 persons sent to penitentiaries (2,88 % from the total number of the persons from the penitentiary), this becoming a major problem for the present and the future due to the infractions with a high level of social danger (robbery, crime, drugs consume and trading);

- in economy, the fictional created companies that carried out underground economic activities, unauthorized bankruptcy, tax evasion, false, use of false, fraud proliferate;

- corruption starts from the administrative level of the country – ministries, the main financial-banking institutions;

- proliferation of the games type „Caritas”, supported by the politic power of the country;

- proliferation of the casinos and the games of chance, true "washing machines" and/or machines for screwing money;

- proliferation of the contraband, of the traffic with drugs, guns and radioactive materials;

- surmounting the contemporary slavery – especially the traffic with "flesh" – women and children fed into the prostitution industry;

- organized crime, even though not admitted at the beginning, has become so evident, that it was registered on the list of priority dangers for the state, after terrorism;

- phenomenology of the Satanic groups.

Of course, the Penal Code usually indicates punishments for the persons who commit these infractions. The judges balance them out so they can be useful: to get better the one who violated the law, but also to efficiently protect the community of free people.

² Florian, G. 2003, p. 15

The penitentiary is an institution that renders a distinct social service, its main aim being to serve the community, on one hand by defending its members from those who transgress the rules admitted by the society and, on the other hand, by encouraging and offering support to the delinquents, in order to become pacific citizens by exerting a reasonable, absolute and human control over them.

The influx of alcohol addicts, drug addicts, victims of the unemployment and mental patients into the penitentiaries have made the specialists affirm that this tend to be, more and more obviously, one of the relevant factors showing the incapacity of the society to integrate as many people as possible. The „excluding machine”, the „hospital with no medical care”, the „social garbage can”, prison becomes, day after day, a huge deposit destined to isolate the persons with no value, categories that already are in a precarious social situation and not only those who are punished for their delinquencies by the law.

The penitentiary compasses a function of the justice that determines the increase of the quality of the life of the communities that it serves. The main principle that sustains the organization of these institutions is the fact that the best way to protect the society is to help the prisoners socially reintegrate and to reduce to minimum the relapse risk.

As a result, the two main functions of the penitentiary is to safely and under human conditions watch those who serve their sentence that deprives them of liberty and the stimulation of their participation in adequate programs that, in time, could allow them to socially readjust and reintegrate as citizens that observe the laws.

This means that the role of the penitentiary and of the people working there does not end with the infliction of the punishment, but they should also contribute to the orientation and support of the delinquents to change their behaviour.

The administration of the penitentiary places at the disposal of the delinquents, through different programs and treatments, the support they need and that will influence their criminal behaviour, changing it according to the normative exigencies of the society.

All the activities carried on in the penitentiary are a sign of respect for the dignity of the individuals, for their rights and trust in their potential of development as human beings.

We understand the human rights, as the sum of the elementary conditions considered indispensable for the harmonious development of each individual; people need to live in a certain way; they need to be secured especially from the power. During the last years, when analyzing the regime of the penitentiary, one must take into consideration if and how the human rights of the prisoner are respected. The present context that is to be found in our country, a real policy of social defence and conformation to the fundamental rights, requests special efforts. Of course, a part of it will be intended for a quick improvement of the living conditions of the persons deprived of liberty.

In this sense, the unifying role of the European Council, related to the standards of the prisoners' lives is obvious. The Recommendation no. R (87) 3 concerning the European Rules of the Penitentiary represent the basis of the progress of the penitentiary administration, being a real deontological code for all the categories of personnel working with the prisoners. As a result, more and more voices ask for the transformation of the European Rules for Penitentiaries in a constraint instrument for the member states of the European Convention for Human Rights. This thing is explained by the need of some more adequate forms of defence for the two categories of rights less protected by the Convention, and namely, the general rights and the special ones of the prisoners that come from their own country, admitting their particular situation and the risk they are subjected to because of the penal measures that condition their existence everyday.

A series of rights are injured by coming in the penitentiary: freedom of movement, the free development of the personality, participation in the economic and social life, the right to sexual satisfaction and family life, the right to work, the right to properties (the ability to administrate your own goods), and the right to self-determination.

When starting and carrying on the activities from the penitentiary one should take into account the fact that most of the delinquents have to serve a punishment of imprisonment with a set period and, subsequently, they will go back in the community. Except for a relative small number of

prisoners that have to serve a punishment of imprisonment for life, the reclusion offers the population only a temporary protection. So, the best way to secure the safety of the population is to apply a strategy that could favour and support the efforts made by the prisoner in order to reintegrate in the society as a peaceful citizen. All along the delinquent's serving period, the workers from the penitentiary intervene weighing the encouragement, support and control measures, always having in mind the prisoner's returning in the society and the protection of the public.

At a European level, the places destined for the execution of the punishments and for the penal measures are different from one state to another in terms of type, size and number of institutions.

The places destined for detention may be classified according to more criteria:

-according to the safety degree, most of the European penitentiary administrations have institutions of maximum safety, closed, semi-opened and opened, with different denominations;

-according to the category of persons imprisoned in the penal institutions, all the penitentiary administrations have places for preventive detention, for persons that are definitive convicted, institutions for young people and adults, for men and women;

According to the serving period, there are penal institutions for shorter and longer punishments³.

Beside these, there are also: transit penitentiaries, work colonies, re-education centres for minors and young people, private penitentiaries, institutions for social therapy, judicial psychiatric hospitals, and probation institutions.

Regarding the number of penitentiaries, this varies between the limit of 2 in Andorra and 564 in Turkey.

The capacity of the penitentiary institutions differs from one country to another according to the type of the place. Finland and Slovakia have penal institutions with 20 places, Denmark has 270 places in opened penitentiaries and 180 places in the closed ones, the Irish penitentiaries have 590 places and those from Austria have at most 990 places. We find penitentiaries with over 1.000 places in Turkey (2.500), Romania (2.300), Bulgaria (2.100), Lithuania (1.900), Czech Republic (1.500) and Latvia (1.200).

The prosecution and the control committees of the Parliament execute the control over the penitentiary system. Judges (Portugal, Macedonia, and Italy) or organs of the local authorities make the judicial control. Moreover, the international non-governmental organizations and mass media can make inspections in the penitentiaries.

In Romania, the penitentiaries are subordinated to the Ministry of Justice. It administers them with the help of an autonomous body, the National Administration of the Penitentiaries. It has 43 units under it, including a penitentiary for women (Târgșor) and 2 penitentiary for minors and young people (Craiova, Tichilești). We also have 3 re-education centers for minors (Găești, Buziaș, Târgu-Ocna), 6 penitentiary-hospitals (2 in Bucharest, Colibași, Dej, Poarta-Albă, Târgu-Ocna). There are penitentiaries in the most counties of the country, except for Buzău, Covasna, Caraș-Severin, Dâmbovița, Neamț, Olt, Sălaj, Suceava, Teleorman, Vâlcea, that are served by the penitentiaries from the bordering counties.

According to the provisions of Law no. 275 from 2006, the penitentiary provides the custody of the persons being convicted to imprisonment by the law courts, as well as of the persons being preventively arrested.

The Application Regulation of Law 275/2006 sets the following attributes for the penitentiaries:

-apply the legal provisions related to the profiling of the detention places and separation of the persons deprived of liberty;

-guard and security of the detention places and the work points, escort and surveillance of the persons deprived of liberty;

-differentially applying the detention regime;

-maintenance of order and discipline among the persons deprived of liberty;

³ European Penitentiary Administrations, 2002, p. 134

-giving the rights indicated by law for the persons deprived of liberty;
-presentation of the persons deprived of liberty in front of the law courts and penal suit organs;

-nominal evidence of the condemned persons;

-carry on activities meant to help the social reintegration of the persons deprived of liberty.

The pathological dimension of the detention universe is explained with the help of some specific elements: the affective and moral support coming from the immediate social relations is minimum; during the first experiences in the penitentiary one gets a resignation that becomes an invariant of the prisoner's personality; losing control over the environment frequently generates depressions; for most of the prisoners the personal efficiency feeling is annulled out of an acute lack of possibilities to bring to light own skills and to be successful.

The continue stress during the investigation period, entering a new community, the rigorous control of the behaviour, the dependence on the personnel, the over-agglomeration, the loss of intimacy favours the occurrence and development of a specific pathology.

The relations between the prisoners are sometimes based on manipulation and control. A prisoner says that you have to be strong, wide-awake, trickster and not to care about the others: „in prison you first tell stories, then you lie and then you start thinking”. They tend to exaggerate the gravity of the transgression in order to impose themselves in front of the others, this being a surviving strategy in prison.

The space for movement is very small, this leading to the occurrence of the territoriality phenomenon. The individual defends what belongs to him, his own space where he lives. This phenomenon often appears in the over-agglomerated places and leads to a great aggressiveness. Life in detention may lead to the occurrence of the penitentiary neurosis. It takes shape in apathy, repression of the personal enterprise, lack of interest in one's own goods, in people and events, in making plans, fatalism and installation of an affective anaesthesia.

In the penitentiary the equilibrium of the personality is disturbed based on a triple reduction: the living space, the personal time (suspension of the future, relativization of the past) and the social behaviour (isolation, abandon). The absence of a refuge, the lack of an intimate space, the emaciation of the discussion topics with the cell-mates and monotony often lead to affective breakdowns, degradation of the self-esteem and pathology.

In order to deal with the living conditions from prison, the persons deprived of liberty need to adapt to a new lifestyle. So, some of them adopt a “philosophical” attitude, avoiding to solve the inconvenient problems. Even the individuals with a robust personality before the detention, during the execution of the punishment develop sensitivity to the environment and an emotional intolerance, accentuated by the impossibility to change the situation. Here are other characteristics regarding the accommodation methods in the penitentiary of the persons deprived of liberty. For instance, the inhibition of the territorial instinct because of the impossibility to delimitate the allotted space, addiction, manipulation of information, sharing the food packets with another person that can offer protection etc.

Especially the supervising agents that insist upon the observance of the rules regarding the hierarchy and impose its keeping repress the aggressive tendencies.

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