

OVERCROWDING – CURRENT ISSUES IN ROMANIAN DETENTION CENTERS. CAUSES, EFFECTS AND REMEDIES

Dorian CHIRIȚĂ*

Abstract:

The overcrowding phenomenon in detention centers generates serious issues with respect to the human dignity – corollary of the fundamental human rights. Both international legislation and the jurisprudence of the European Court of Human Rights relating to article 3 and 8 of the European Convention of the Human Rights address the issue of prison overcrowding, stating that this can lead to violation of fundamental human rights, causing severe physical and psychological trauma, which is aggravating as the prisoners spend more time in the detention center.

If this issue wasn't given much attention in the past, being considered an inevitable mental sufferance of the execution of punishment, respectively a reasonable constraint determined by the conviction, lately it has been approached more seriously, at both national and international level and, as a result, new standards are set for ensuring the protection of the fundamental human rights.

The purpose of this study is to identify the problems that prison overcrowding generates for both the detainee, on a personal level, and for the detention centers, from the administrative point of view. Moreover, this study critically analyses the national and international evolution of the legislation and the national policies of the competent institutions and authorities in dealing with this issue. At the same time, the author offers practical legislative and administrative solutions which may lead to reducing the phenomenon of prison overcrowding.

Keywords: *Conditions of detention; treatment of detainees; prohibition of inhuman and degrading treatments; relevant international and European standards, legislative measures on prison overcrowding.*

Introduction

Prison overcrowding has currently become a social issue in contemporary times and this phenomenon generally occurs when the necessities of the detainee space in prison within a certain jurisdiction exceed the capacity of the facilities to hold the detainees provided in that jurisdiction.

The prison overcrowding phenomenon is a current problem for the government of all countries. Considering its negative impact on the people directly involved in the process (detainees and the prison staff) and on the society in general, it requires a quick and efficient intervention.

This article is aimed at showcasing the problems created by prison overcrowding on both the personal and administrative levels, on the one hand, and at describing the efforts of the competent national authorities to solve these problems, on the other hand. Moreover, we propose administrative and legislative solutions that would lead to a decrease in the prison overcrowding phenomenon.

In Romania, the problem of prison overcrowding is not of late interest, but it has recently been brought to the attention of the competent state bodies and the society, as a result of the numerous European Court of Human Rights judgements holding the State responsible for the conditions of detention in prisons and in the detention facilities attached to police stations, and of the Pilot judgement in the case of *Rezmiveş and others vs. Romania*¹, in which the Court

held that there had been a violation of Article 3 of the European Convention on the Human Rights (prohibition of torture and of inhuman and degrading treatment) and that Romania had to implement a series of measures and remedies to address these problems.

This pilot judgement has also led to the initiation of legal actions against the State in which the detainees, unsatisfied with the overcrowded prisons and the conditions of detention, attempted at holding the state and the relevant institutions responsible for moral prejudices suffered during their detention period caused by the breach of fundamental rights, such as the right to health and human dignity. This state of affairs imposed that Government should adopt immediate measures, hasty measures in our opinion, which not only proved inefficient, but also produced a negative social impact. The efficiency of these measures will be further analysed hereinafter.

Paper Content

Examining the evolution of the detention conditions in Romania and the legislator viewpoint regarding the minimal standards of living for a detainee demonstrates that, although the overcrowding phenomenon in the Romanian prisons is not recent, it has increased so much in the late years that it is currently seen as a major problem for the detention system and implicitly for the judicial system.

* PhD Candidate, Faculty of Law, "Nicolae Titulescu" University, Bucharest, Judge (e-mail: dorian.chirita@yahoo.com)

¹ Case of *Rezmiveş and others v. Romania* (Applications nos. 61467/12, 39516/13, 48231/13 and 68191/13) - <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%7B%22document%22,%22itemid%22:%7B%22001-173351%22%7D>

During the Communist Regime, the overcrowded prisons or the conditions of detention had not held the attention of the competent authorities in the sense of trying to find urgent solutions to this problem. On the contrary, the prisons had been used as a means of torture against the political detainees. After 1989, this phenomenon has gradually become of maximal interest and the state, alongside its empowered institutions, was compelled to look for measures in order to remedy the situation.

Undoubtedly, after Romania adopted the European Convention of the Human Rights and after our country joined the European Union, the way in which the competent authorities perceived the conditions of detention, the overcrowding phenomenon and the minimal living standards in prisons has subsequently changed. Thus, the Romanian State was forced to take action and adopt measures so that to address this situation and to comply with the European standards.

Starting from the premise that the effects produced by a problem and the solution proposed for that problem have to stem from the causes which led to that particular problem, we consider it necessary to begin this endeavour with the analysis of the causes and effects of the overcrowding phenomenon.

1. Causes

Contrary to popular opinion, we consider that the crime rate does not represent a major cause for the prisons overcrowding phenomenon. The answer has to be looked for elsewhere, since the crime rate indicator has constantly decreased in the last twenty years, reaching half of its maximal value registered at the end of the 1980s.

The explanation for this decrease lies in the analysis of the socio-economic factors which have significantly influenced the evolution of the crime rate in Romania, and according to the statistics provided by Eurostat², in our country the crime rate related to patrimony offences in principal, but also related to offences against life and bodily integrity in particular, is not the highest in the European Union, despite the fact that the overcrowding issue is more serious in our country than in other member states of the European Union.

Therefore, from this perspective, the responsibility must be placed on the inadequate state policies in the justice system with regard to the regime of application and enforcement of deprivation of personal liberty punishments.

Firstly, it should be taken into consideration that the most obvious factor is the insufficient number of available detention centres. The reason is that most of these detention centres were built and used at the applicable standards prior to 1989, and as mentioned above, the need to create decent detention conditions

for the detainees was not regarded as a priority at that time.

It should be noted that only 3 detention facilities have been built after 1989 in Romania and, given the existent financial politics, the state was not interested in investing funds in this domain.

In addition to the above mentioned causes of prison overcrowding, we point out that until quite recently the regime of punishment enforcement was very strict and there have hardly been situations in which the legislator allowed for preventive measures to be taken or for a form of executing the punishment involving the deprivation of personal liberty other than detention.

Accordingly, an important step was the adoption of the current Criminal Procedure Code which regulated the institution of house arrest as a preventive measure and led to a decrease in the number of detainees in the detention facilities attached to police stations.

Among the causes that generate the overcrowding phenomenon, we should not overlook the judge's sentencing harshness in delivering the punishments, there having been many cases presented in the media in the which some people were sentenced to deprivation of personal liberty despite the fact that their wrongdoings were not so serious as to require such sanctions and the deprivation of personal liberty.

Paradoxically, the causes can be partially found in the effects that detention conditions have on the individuals deprived of personal liberty and on their evolution subsequent to the moment they are released from prison.

The impossibility to assure a proper education in prison, that would allow the detainees to acquire useful work-related abilities so that to enable them to find a job after detention or to make them acknowledge the negative effects of their deeds on the life of the victims and on the society, deemed the educational role of detention unattainable. Therefore, in many cases, the detainees end up committing wrongdoings after their release and so they return to prison.

Against this background, we also note that beyond the lack of engaging the detainees in different activities, there are other factors that determine this state of affairs, namely the lack of culture, the lack of proper psychological support, all these contributing to the perpetuation of aggressive conduct at liberty. Moreover, it should be highlighted that in the case of the recidivists, successive detention periods, cumulated with the lack of rehabilitation programmes, create an affective depression when confronted with the conditions in the prison, so that the effect of enforcing the punishment has a diluted nature.

² <https://ec.europa.eu/eurostat/en/web/products-statistics-in-focus/-/KS-SF-13-018>;

2. Effects

With regard to the last aspect presented above, one of the negative effects caused by the inability of the state to adopt policies suitable for the detention system regime is on the society, which is at risk of reincorporating persons prone to continually committing criminal offences.

Considering the impact that the overcrowding phenomenon has on the prison conditions, the most important effect is certainly felt by the detainees. The lack of sufficient space and adequate detention conditions led to the violation of fundamental rights, as constantly stated by the European Court of Human Rights in the cases regarding other states, as well as in the legal actions initiated by detainees from Romania.

For that purpose, the Court argued that Article 3 of the Convention “imposes that the State be held responsible for the protection of the physical comfort of the people deprived of personal freedom, in the sense that it should offer, for example, the necessary medical assistance. The Court lays emphasis on the right of all detainees to detention conditions compatible with the human dignity, so that to guarantee that the manner and method of executing the imposed measures does not bring hardship or suffering beyond the unavoidable level of suffering inherent in deprivation of liberty; additionally, except for the health of the detainees, their comfort is to be adequately assured, taking into consideration the practical circumstances of detention “(the cases of *Bragadireanu vs. Romania*³, *Kudla vs. Poland* [MC], no. 30.210/96, § 94, ECHR 2000-XI⁴, and *Mouisel vs. France*, no. 67.263/01, § 40, ECHR 2002-IX⁵).

Likewise, in the case of *Micu vs. Romania*, the Court held that there had been a violation of Article 3 of the Convention, concluding that “the respective detention conditions of the applicant, especially the overcrowding in his cell, cumulated with the length of his incarceration in these conditions, constitute inhuman and degrading treatment”.

It should be noted that during 2007-2012, the European Court of Human Rights has delivered 93 judgements against the Romanian state for violations of Article 3, finding that there had been cases of overcrowding and inadequate detention conditions in prisons and in the detention facilities and custody centres, and delivered the Pilot Judgement in the case of *Rezimveș and others vs. Romania*, in which the Court held that Romania had to implement urgent measures to remedy the situation.

Hence, in the pilot judgement of 25 April 2017, the Court requested that no later than 6 months the State provide, in cooperation with the Committee of Ministers of the European Council, a calendar for the

implementation of suitable general measures to remedy the problem of overcrowding and inadequate detention conditions, in accordance with the principles of the Convention as stipulated in the pilot judgement. The Court has also ruled in favour of postponing similar cases that were not yet communicated to the Government of Romania until the implementation of necessary measures at the national level⁶.

In the Pilot judgement, the Court recommends the Romanian State to take general measures for the remedy of the structural problem. These measures are of two types:

1. Measures for prison overcrowding decrease and improvement of detention conditions
- d) With view to pre-trial detention, the Court stated that the detention centres attached to the police stations were considered by CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) and the Committee of Ministers as “structurally inadequate” for detentions exceeding the duration of a few days. Moreover, the Court reasserts that these detention centres are intended for very short-term detentions. Considering all the above, the internal affairs must make sure that the persons deprived of personal liberty be transferred to prison at the end of the temporary custody. Likewise, the Court encouraged the Romanian State to explore the possibility of facilitating the implementation in a greater extent of alternative measures to temporary custody.
- e) With view to post-trial detention, the Court acknowledged the reform initiated by the Government focused, among other things, on reducing the punishment terms for certain crimes, on criminal penalties as alternative to detention and on postponing the enforcement of the sentence, as well as on the positive effects of the probation system. Although the immediate results of this reform have not significantly influenced the prison overcrowding rate, which still is at rather high levels, such measures, dubbed by diverse alternative punishments to detention, could have a positive impact on decreasing the number of prison population. Other ways to be explored, such as simplifying the conditions on renouncing at punishment enforcement and delaying punishment enforcement, and especially extending the possibilities to access probation and increasing the efficiency of the probation service, could constitute sources of inspiration for the State in their endeavour to remedy the problem of the inflated number of detainees and the inadequate material conditions in detention.

³ <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22001-83879%22%5D%7D>;

⁴ <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22001-58920%22%5D%7D>

⁵ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-60732%22%5D%7D>

⁶ <https://www.juridice.ro/507966/hotararea-pilot-cauza-rezmives-si-altii-impotriva-romaniei-materia-conditiilor-detentiei.html>

Referring to the necessity to provide additional detention places, the Court made reference to Recommendation No. R (99)22 of the Committee of Ministers, according to which this measure of extending the prison capacity is not likely to offer a sustainable solution for the remedy of the problem. Moreover, considering the precarious living conditions and hygiene of the Romanian detention centres, the State should continue to invest in refurbishing the existent detention facilities.

Adopting the measures recommended by the European Court of Human Rights in the pilot judgement will certainly determine the allocation of supplementary budgetary funds in this domain, additional to the current expenses of the detention system, expenses which are necessary for the provision of food and shelter to the detainees, as well as expenses for prison staff salaries and employment.

Therefore, even the State experiences the negative effect of prison overcrowding and reflects this effect mostly at the financial level, as a result of the additional costs that the detention system generates for the state budget and, finally, for the contributors who pay fees and taxes to the state budget.

3. Solutions

Considering the effects discussed in the previous section of this article, the State has looked for urgent solutions to solve the problem of prison overcrowding, yet some of the measures taken did not have a positive impact.

If measures such as allowing the prisoners to benefit from early release for good conduct during detention or regulating the house arrest as a preventive measure proved to be useful, leading to a decrease of the overcrowding phenomenon up to a certain extent, in our opinion solutions such as the appeal for compensatory measures has not yet been proved beneficial.

According to Law no.169/2017, known to the public as the law of the compensatory appeal, for the amending and completion of Law no. 254/2013 regarding the enforcement of punishments and freedom-privative measures laid out by judiciary bodies during the criminal cause, it is stated that when calculating the executed punishment, regardless of the regime of executing the punishment, it should be taken into consideration, as a compensatory measure, the execution of punishment in improper conditions, a case in which, for every 30 days of detention in improper conditions, even if these are not consecutive days, 6 more days are added and considered executed. These dispositions are also considered when calculating the executed punishment in preventive detention facilities and centres of improper conditions.

In determining the notion of improper conditions, the aspects generated by the prison overcrowding phenomenon were also taken into consideration, namely the confined space accommodation of the detainees of less or equal to 4 sqm per detainee, which

is calculated excluding the area for sanitary and food storage facilities and dividing the total surface of the detention rooms to the number of accommodated persons in the respective rooms, regardless of the facilities provided.

The adopted legislative act mentioned above has not reached its stated purpose and this is proved by the fact that, from the 14,000 inmates who benefited from early release based on the enforcement of this law, more than 900 of them returned behind bars for committing serious violent offences - murders, rapes and robberies.

The cases presented in mass-media, such as the case of the rapist released on the basis of this law who raped and robbed a young woman returning from a club during night time, shortly after his release, or the case of the man charged with robbery and attempted rape, released on the basis of the same law, who violently attacked a young woman at the entrance of a block of flats with the purpose of robbing her, are all relevant examples in support of this view.

Consequently, the enforcement of this normative act was exclusively based on considering the detention conditions without any regard to the difference between the non-violent inmates and the dangerous ones, namely without taking into consideration the offences of the inmates executing their freedom-privative punishments and the consequences brought along to the society by the early release of these individuals, before executing the entire punishment or the minimum period required for early release.

In this article, we show that from our point of view, not time is the factor that generates the negative effects in the post-release period presented above, but the fact that the early-released detainees have not finished their educational programmes and have not acquired aptitudes, job-related skills and capacities that would help them earn a living in the post-release period. This implies that the purpose of re-educating the detainees has not been reached.

As a matter of fact, in the Pilot judgement of 25 April 2017, the European Court of the Human Rights did not impose on the Romanian state the initiation of legislative measures that would have the immediate result of early-releasing a great number of detainees from prisons, by abandoning the educational programmes and activities. The Court recommended instead a set of correlated measures that would generate an extension of the detainee's space in detention on the one hand, and prevent the overcrowding problem in the future, on the other hand.

Equally so, it can be observed that the conventional court recommended that the Romanian state should adopt viable solutions, with long-term effects, not with short and very short-term palliative effects.

The non-governmental associations regarding the protection of the human rights have also criticized the measures taken by the legislator in Law no.169/2017, expressing their concern for the negative social impact of these measures.

Thus, APADOR CH, an important non-governmental organisation involved in the protection of the human rights took public stand and acted against the adoption of the law granting compensatory appeal by stating that:

„Both full-term release, much too hasty as a result of the enforcement of the compensatory appeal law, and the conditional release of convicts who had not proven themselves rehabilitated or ready to be reinserted, an excess stimulated by the lack of sufficient detention space, do nothing but encourage the criminal phenomenon. The availability of this release option induces the idea that offenders might easily escape after committing a crime, no matter how serious the crime may be. Thus, they end up committing new crimes, in fact more and more serious crimes, having more new victims as a result of these crimes, and finally, returning to prison after their much sooner release, without the chance to be fully rehabilitated and socially reinserted. Accordingly, it is quite likely that prisons will be overcrowded as a direct result of hasty early release”⁷.

In agreement with the opinion stated above, we envisage that the measures adopted for the reduction of the overcrowding prison phenomenon should not ignore the interest and security of the citizens, being necessary to maintain a balance between the right of the inmates on the one hand, by assuring a proper detention regime, and on the other hand the right of the citizens, whose rights to safety, physical integrity and property are equally important and need to be protected.

Starting from the benefits brought along by the regulations regarding house arrest as a preventive measure for the reduction of overcrowded detention facilities, we propose *de lege ferenda* to adopt similar measures regarding the execution of freedom-privative punishments, by means of regulating the possibility to execute the punishment as house arrest, at present being available technical devices to electronically monitor the activity of the convicted offenders within the perimeter of their homes. Such a measure would be beneficial as it allows the convicted individuals to remain within their own community, having the possibility to find jobs and keep in touch with their families, reinserting and rehabilitating themselves at a much rapid pace.

Another solution that could favourably solve this problem is to build new detention centres or to renovate and refurbish the existent ones, providing larger spaces which satisfy the demand and exigencies imposed by the compliance with the fundamental rights of the detainees.

Furthermore, there is also the need to organise and develop in the detention centres and facilities modern programmes for the rehabilitation and reinsertion in society of detainees. This naturally implies the creation of mechanisms for inter-institutional cooperation so that to encourage the social reinsertion of former detainees after their release, to provide employment possibilities and social protection with the aim of preventing recidivism.

Conclusions

The prison overcrowding phenomenon has continued to be part of the Romanian detention system, despite the recent measures adopted by the authorities, which have had minimal effect on the reduction of this phenomenon. However, the only visible effects were the numerous negative effects on the social level.

Prison overcrowding is distinctively complex and with a powerful social impact, so a new approach to this issue should be implemented, not a unilateral approach but one that would involve a series of longer term measures at different levels (legislative, administrative, psychological, social).

As pointed out in this study, there is a complex set of causes and effects, characterised by diverse intensity and targeting multiple levels, which are of interest for both the society, and the detainee - future free individual. It is at this complex set that the European Court for Human Rights has drawn attention in its jurisprudence in the domain, holding each state responsible for the necessity to deal with such issues, since a minimization of these aspects could lead to a waste of human, financial-economic resources and not only, whose effects might be contrary to the intended purpose.

References

- Case of Rezmives and others v. Romania (Applications nos. 61467/12, 39516/13, 48231/13 and 68191/13) -<https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D,%22itemid%22:%5B%22001-173351%22%5D%7D>;
- <https://ec.europa.eu/eurostat/en/web/products-statistics-in-focus/-/KS-SF-13-018>;
<https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D,%22itemid%22:%5B%22001-83879%22%5D%7D>;
<https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D,%22itemid%22:%5B%22001-58920%22%5D%7D> ;
- <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-60732%22%5D%7D>;
- <https://www.juridice.ro/507966/hotararea-pilot-cauza-rezmives-si-altii-impotriva-romaniei-materia-conditiilor-de-detentie.html>;
- <https://www.g4media.ro/apador-ch-cere-abrogarea-legii-recursului-compensatoriu-efectul-specific-vizibil-si-cu-adevarat-negativ-este-dublarea-numarului-celor-eliberati-la-termen.html>

⁷ <https://www.g4media.ro/apador-ch-cere-abrogarea-legii-recursului-compensatoriu-efectul-specific-vizibil-si-cu-adevarat-negativ-este-dublarea-numarului-celor-eliberati-la-termen.html>.