

EVOLUTION OF THE JURIDICAL REGULATION REGARDING THE PENITENTIARY ADMINISTRATION IN ROMANIA

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Abstract

To deeply analyze the evolution of the regulation regarding the penitentiary administration, one has to make an incursion into the straight modalities of the executioner punishment but also to well know the conditions, treatment and modality of the execution of the punishment in prisons all together with the obvious purpose of maintaining our citizens' safety. According to our history the conception regarding the purpose of the punishment and their modalities of execution we are in permanent evolution throughout the years, this presentation is having the purpose to demonstrate this fact.

Romanian's ratification, by the Law no.30/18.05.1994, of the Convention for the human rights and the fundamental liberties, enforced high exigencies, determined by the necessity of improving the conditions for the persons that are deprived of liberty in accordance to the international standard. The period that preceded the Romania's integration into European Union determinate the necessity of realization of process of reform in the Romanian prison system, as an integrated part of this whole process of reform in the field of justice.

Although the Romanian system tried very hard to be in line with the European Union, this process will last a long while and it is very far to be closed, the new legislation and the process have to be sustained by human and material resources which represent major problems the penitentiary administration is dealing with at the moment. The proportion between the number of personnel for guarding and safety and the number of the condemned in Romania is 1/4,7 much lower than in France - 1/2,7, England - 1/2,4, Denmark - 1/1,4, Finland - 1/1,4, Sudden - 1/1,4, Austria - 1/2,6.

On the other hand, while the Europeans built a lot of special prisons, depending on the applied regimes which are the followings: - opened, semi opened, closed, maximum security, Romania is still far away from this process. More than that, our prisons gather all categories of condemned, fact that makes the scientifically individualization of application of punishment privative of liberty to develop much too slowly. The administration of the prisons – being still at the beginning of a road – must fulfil in good conditions, two main objectives: safety of the citizens and reintegration into the society of the condemned ones – this two important things must be very well sustained by the state programs for the people who were liberated from the prisons.

Keywords: evolution, penitentiary administration, human rights, reform justice

Introduction

This paper was written with a view to make an analysis regarding the evolution of the main regulation concerning the penitentiary administration, for a better historical knowledge of this phenomenon in our country and for a better understanding of the utility that this administration represents on the society. To deeply analyze the evolution of the regulation regarding the penitentiary administration, one has to make an incursion into the straight modalities of the executional punishment but also to well know the conditions, treatment and modality of the execution of the punishment in prisons all together with the obvious purpose of maintaining our citizens' safety.

According to our history the conception regarding the purpose of the punishment and their modalities of execution we are in permanent evolution throughout the years, the next presentation having the purpose to demonstrate this fact.

A definition of penitentiary administration, from an organically point of view, it is given by law no.293/2004 concerning the public servants' Penitentiary National Administration legal status

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which in clause 2 pre-scients: Penitentiary National Administration and subordinated organisation enters to public defence institutions, public array and state national security and establishes, in the sense of heteronomy, Penitentiary National Administration,'. Preponderet between Penitentiary National Administration subordinated organisations, penitentiaries find their legal commitment within law no. 275/2006 concerning penalty execution and proceedings disposed by judicial organs during the capital case, which defines it as being certain places intended for executing life long prison or prison. Apart from the legal settlement we find a lot of definitions of prison given by different authors: 'Institution organised to protect community from those who deliberately represent a risk for it.' (Hoffman, 1970). 'A place where are held persons unable to conhabit socially, because of the high awkward they have (Pro Humain Rights Association., 1983).

Regardless of the definition that seems more suitable to us, it is obvious that prison has a social control function on those persons unable to conhabit socially because of the high awkward they have. It deals with avoiding these behaviours consequences and citizens security underwriting. From a functional point of view, I rate that penitentiary administration represents the whole activities, managerial processes, theories and proceedings used for applying legislation concerning penalty execution and proceedings disposed by judicial organs during the capital case up to be within their competence. In the light of those presented, I consider it pertinent, below, to try to recompose, as much as i can, the evolution of penitentiary system in our country using historical sources, works and scripts that exist up to this moment and which, even if they offer very important information for the touched subject, do not present a chronological evolution including transformations in the field and Romanian legislation alignmet necessary to Romania's inegration within the U.E's structures.

Content

1. The first wombs of judicial regulation to the XVIIth century

About the judicial system and penalty implementation in antique Dacia we don't have written news. On account of science and culture elements of this ancient people, as they are reflected in the antique writings, we can assert without going wrong that they existed and functioned on the lines of social structure which commanded Dacian world. Servants patriarchal time which grew in Dacia before the Roman conquest was characterised by using servants for classical labours or public works, but relations with the lords were going off with certain human limits. After Dacia's conquest by the Roman Empire (101-102 and 105-106) emperor Traian asserted in this new Roman theme their law enforcement, implicit the guilty's punishment system, an evidence on this line being the Roman coliseum from Sarmisegetuza. The Aurelian back down in 274, ordered by the Roman emperor Aurelian, didn't create in Dacia a legislative blankness, Roman laws and rules continued to be enforced simultaneous with the punishments and justice manners applied as the natives did. The contact between the Roman Empire and Dacia continued through the Byzantium world to its conquest by the Ottoman Empire in 1453. This length of time meant centuries in which Byzantium legislation influenced the one from the Romanian's voievodeships, that up to the XVIth century functioned in all three regions (Moldavia, Walachia, and Transylvania) under the name of Jus Valachicum or Romanian Law, which was composed by Dacian Gets over which there was imbricated the Roman Byzatian law and to which there were added migratory rights elements that were assimilated by the natives. These were integrated on the unwritten people law or 'people custom'. If up to the XVth century this Romanian law worked the same in all the three regions; after this date, in Transylvania, simultaneous with Hungarian feudal power reinforcing was asserted the Hungarian law for judging and punishing the guiltiest.

Apart from this unwritten people law there was also a written law based on the Roman emperors laws and Tarigrad as well as on the clerkly synod decree. There were prisons everywhere: at the monasteries, in the church's bell tower, away from administrations, but nowhere were organised. The first laws that were overwrought and which set things right to apply punishments

were those from the XVIIth century: 'The Small Law from Govora' – 1640 – worked up by Lord Matei Basarab's order (1633-1654); 'The Romanian tenet of imperial law' printed at Three Hierarchs monastery decreed by Vasile Lupu (1634-1653). Although we can't talk about Romanian prisons organization up to the second half of the XVIIIth century, their origin in our country is very old. Their incarceration and the use of some prisoners to work in salt works it is found even on the period when Dacia entered under Roman domination. Romans used to dispose incarcerated people to different works as extracting gold and other precious metals as well as salt. So, from Hunedoara's area there was extracted iron, and the salt works from Ocnele Mari along Mures keep hints of galleries from that time.

2.The evolution of penitentiary activities in the XVIIIth century. The wombs of concept, constructions, and penitentiary practice modernization.

In Transylvania in that time being under the Austro-Hungarian domination, the 61 paragraph of the penal procedure approved by Josef the Second in the year 1788 shows: "every prison must be clean, dry, must have air and light, altogether not to put the health of the defended into danger".

Being under the Austro-Hungarian domination, all the cities from Transylvania – benefited of special constructions, having served as prisons, all of them having been made during Maria Teresa reign (1740-1780) and also during Josef the Second (his son) reign, from the year 1765. In the year 1790, in Romanian Countries, the prince Nicolae Mavrogheni (1786- 1790) demands that the women should not be imprisoned together with men, and when this thing is not possible the woman should be sent to a married and good man. But in spite of all these regulations, prisons remained the same: dirty and primitive.² These are more common measures concerning prison organization in the XVIIIth century in our country; in comparison with what we have seen in the XVIIth century, these measures mean a real progress and a beginning of preoccupation with this field. Although they have a predominant administrative state, however disposals proposed by lords for prison will bring some improvements to their awful condition aspiring to a humanization of the state in them. All these fit in with the sight of new ideas in Europe and the establishment of the most cellular prisons in Europe.

3.Penitentiary system and reform of prisons appointed according to Organic Law and latter under Romania's kings kingship.

At the beginning of the XIX century the authorities showed a greater interest for the safe and safety of prisons. They built new buildings where sick rooms were disposed with infirmaries. During that period the prince Mihail Șuțu required to be weekly informed about the causes, situations that all the people imprisoned for, he also asked that all the people from prison to be put to do the public work, in order to be better fed. It is to underline the fact that he successively reigned from 1783 to 1802 with very short breaks, he also reigned both in Romanian Country and in Moldavia.³

When the Organic Regulations appeared in Romanian Country in the year 1831 and in Moldavia in 1832 they contained similar provisions and stipulations, this was a step forward in the direction of the execution of the punishment: "the leading will have the in mind that the prisons will be more secure, so that the health and safety, food, clothing, lightening and fire wood will be bought from the amount of money allotted by the state. In the year 1851 the first regulation that regards beating and insult of the prisoners is drown up in the Iasi city. It was also drown up the regulation of the prison from Tg.Ocna by Anastase Panu, manager of Ministry of Justice in that period. This opens the epoch of modern legislation of the execution of the punishment that are cons emend of liberty.⁴

The regulation follows the auburnian system and makes the first mentioned lines related to the moral education of the condemned people that is to be made through religious education, the

² Jack Missliwetz, *Recht für Aerzte und Medizinstudenten*, Ed 2 Universitätsbuchhandlung, Viena, 1995, p. 132

³ *Prințul Nicolae Șuțu*, *Notions statistiques sur la Moldavie*, Editura S.N., Iași, 1849, p. 74.

⁴ I.C. Filitti, D.C. Suchianu, *Contribuții la istoria justiției penale în Principatele Române*, București, 1970, 54

prisoners being also obliged to learn a trade. The Regulation of the prisons regime in the year 1874 appears which governed the regime of the punishment execution until the year 1930, during period the auburnian regime of isolation during the night and work in common during the day is instituted. General regulations for the central prisons, from 24 of May 1874, did not propose as a distinct activity the resocialization of the prisoners, but it stipulates that condemned ones must work, proportional to sex, power of work, age, learning of a job, reading of the religious books, learning.

The regime imposed was the one of total deep silence and all the games of any kind were condemned. The idea of those times was to apply a severe, drastic punishment to determinate the prisoner not to repeat the evil deed. The provisions this regulation could be compared with the Belgian Law from the year 1870 and also with the French Law from the year 1875, with even some advantages as against the last ones. According to the law from 1874, the prisons were divided into: preventive prisons and sentence prisons that were at their turn divided into: correctional prisons, hard work, and detention prisons. The prisons should have been organized according to the laws but in reality they remained the same, in the primitive regime of common staying.

The administration of the prisons was under the authority of the Ministry of Interns and was managed by a General Director this situation being kept until the year 1914, when the prisons are passed under the control of the Ministry of Justice. This transition to the Ministry of Justice patronage was seen as a progress by the jurists of those times Tanoviceanu and Traian Pop. On the 1 January 1930 the Penitentiaries and Prevention Institutions Law adopted in 1929 comes into force. This law contains generally same regulations as Law from 1874, but improved by instituting of English progressive system.

This system was constituted by three phases in order to prepare the prisoners for a free life:

- Individual isolation for a period of maximum three years, depending on the quantum of punishment;
- In the second phase, the convicts were kept all together during the day and separated at the night;
- In the last phase, they worked in common during the day and were kept bedrooms at the night.

On the 21st of April 1938 appears the Regulation regarding the regime of execution of the punishment appears which the best European regulation of that period war. The idea of the social recovery of the people that were condemned was very well presented under a separate title "Educational Measurements".⁵

4.The evolution of penitentiary system up to December 1989 Revolution

Taking into account the fact that this regulation overtook developed the Law that regarded the organization of the prisons from the year 1929, one can say that quarter of a century before the publication of the Minimal Rules for the Treatment of the Prisoners (ONU, 3 August 1955), Romania had a legislation regarding the line of social recovery conformably to the subsequent next international recommendations. In the year 1944, the victory of the Allied determined the falling down of the Romanian Country under the influence of the Stalinist Russia, fact that will mean the starting point of a break for a long term, of the modern conceptions regarding the execution of the punishment. This fact was very well effected in that period of time by changing the specialty ruling personnel (majority graduates of the Law University) and by compromising of personnel by naming them servants of old bourgeoisie and also by a visible regress into applying the penitentiary treatment.

From an article that was published in the "Problems in Prisons" magazine in August 1948, entitled "Reeducation of the prisoner – one of the main aims of Prisons" results that this reeducation cannot be realized as long as "the political condemned, the fearest enemies of the work class and also

⁵ .J.F.Auby .Les services publique en Europe,Presses Universitaires de France,Paris,1998,p.219

of the Republic will not be treated with an appropriate hate of class and as long as moral adeptness and also the value of the condemned, victims of the old society will be neglected". The regulation from the year 1952, regarding the implementation of the regime in the prison and also the Regulation regarding receiving, guards and protection, of the condemned, from the year 1955, both approved by the Ministry of Interns, do not have any disposal related to the reinstatement of the condemned. The prison had conceptually and in actual fact the reserved mission of the physical constraint.

The Regulation regarding the application of the regime in prisons approved through the order approved by the Ministry of Interns Affairs no.4045/20.11.1962 shows the followings: using the people to the work, the respect for the discipline, the educational and cultural action, stimulation, and also rewarding. By organizing this activity it was meant to assure the accommodation to the social pulse of the ones that were amnestied in the year 1964. Taking into value the Romanian experience before the war and following attentively the recommendations that were in the Minimal Rules for the Treatment of the Prisoners that were adopted by ONU in the year 1955, at the General Directive of the Prisons, two projects will be elaborated and become the Law no. 23/1969 and the applicable Regulation approved by HCM no. 2282/05.12.1969.

Regarding the disposals from the section 4 – Reeducation of the prisoners, will be realized by work, qualification, re-qualification in a job, development of a better activities, educational and also cultural, stimulation and rewarding of the ones that likes works and give very good proves that they want to became a better people. In the article 36, in prisons are organized the following activities cultural–educational: school actions, work contest, reading books, watching TV, watching movies, reading of the newspaper, sports activities, reading the present laws, the analysis of the discipline of the condemned.

The normative acts from the year 1969, respected point by point the minimal recommendations of the ONU, with one exception: religious and moral assistance. In the year 1977, when the system in prison was in a very good direction, "brilliant" idea that a socialist society does not generates criminals, will determinate a political measure by reducing with 80% from the buildings and also from the personal (from 80 out of places – prisons, remained only 16), with all the negative consequences that we all feel the effects of even today.

5. Romanian penitentiaries at the end of the XXth century and the beginning of the XXIth

Despite all criticism that we brought in the period after the December 1989, the law regarding the execution of punishment, from the 1969, was at that time a very modern regulation – internationally speaking – which developed a very good activity of execution of punishment, comparable to other European systems.

By its effects the Law no. 21/15.10.1990, brings a new trying regarding the system. The transitional period from the Ministry of Interns to the Ministry of Justice, of all personnel, was a much tensioned moment that didn't become dramatic thanks to the maintenance of all military structure, competence, responsibilities and professional education of the personnel in the spirit of the military regulation. Romanian's ratification, by the Law no.30/18.05.1994, of the Convention for the human rights and the fundamental liberties, enforced high exigencies, determined by the necessity of improving the conditions for the persons that are deprived of liberty in accordance to the international standard.

The period that preceded the Romania's integration into European Union determinate the necessity of realization of process of reform in the Romanian prison system, as an integrated part of this whole process of reform in the field of justice. This process can be appointed at the beginning of the year 2003 when the OUG no. 56, was elaborated and adopted by our Government, this law regards some rights that the prisoners have and abrogates the Regulations of the execution of the punishment from the 15.12.1969. By this law all persons' rights who are in prisons are lined to the European standards. Although the OUG no.56/2003 opened a new process, by lining the condemned

persons to the European legislation, a major step was done on 28 September 2004, when the Law no. 293/2004, regarding the statute of the public persons from the National Administration of Prisons came into effect. In other words from then on demilitarization of the personal from prisons took place. The applicance of this law made that 12.000 military persons to be put as reserve and also as civilians they become public persons with distinct status. The rights of the public persons, and also the incompatibilities and restrictions in public functions are established in prisons. Besides the legal actual rights there are recognized the legal right of syndical association or in other professional organization, the liberty of meetings, protection against violence into the exercitation of work activities.

The new regulation creates the right of stability at work, and stipulates the conditions of disengagement, delegation, adjournment and ceasing of working rapports as well as disposal relate to the disciplinary system and disciplinary procedure.

Another major step in realization of the process of reform is made by the penal law modifications, the most important among these being the Law 275/2006 regarding the execution of the punishment and the measures that this last one imputes to the juridical organs during the penal process. Among the new elements that the law makes on provision one can mention the Institution of judge delegated for the execution of the punishments who controls and also assures the legality regarding the execution of punishments, and also they give a solution regarding the complains made by the persons in prison.

The law also regards the individualization of the execution regime of the punishment privative of liberty, so that a commission for the individualization of the execution of the punishment privative of liberty was set up in every single prison. Although the Romanian system tried very hard to be in line with the European Union, this process will last a long while and it is very far to be closed, the new legislation and the process have to be sustained by human and material resources which represent major problems the penitentiary administration is dealing with at the moment. The proportion between the number of personnel for guarding and safety and the number of the condemned in Romania is 1/ 4,7 much lower than in France - 1/2,7, England - 1/2,4 , Denmark - 1/1,4, Finland - 1/1,4, Sudden - 1/1,4, Austria - 1/2,6.

In reality the proportion personnel/condemned from our system is less than the countries that were mentioned before, as the personal of the National Prisons of Administration execute also missions inside and outside the prison. On the other hand, while the Europeans built a lot of special prisons, depending on the applied regimes which are the followings: - opened, semi opened, closed, maximum security, Romania is still far away from this process.

More than that, our prisons gather all categories of condemned, fact that makes the scientifically individualization of application of punishment privative of liberty to develop much too slowly. The administration of the prisons – being still at the beginning of a road – must fulfill in good conditions, two main objectives: safety of the citizens and reintegration into the society of the condemned ones – this two important things must be very well sustained by the state programs for the people who were liberated from the prisons.

Conclusions

I presented the settlements history regarding penitentiary administration, proving the fact that these developed from the moment when the punishment execution had only the role of law breakers termination to modern concepts according which to the punishment execution must come, apart from the preventively and vindictory aspect, the role of restyling the personality and behavior of the convicted persons acting on more directions as to enhance their chances to readmission in society. It is the reason for which appeared as evident the necessity to work up a new law concerning punishment execution as well as of an adequate legislation for the category of public servants with a special status in Penitentiary National Administration. No matter how many advantages presented the military structure through which the penitentiaries were managed up to 2004 it is indisputable the

adopted legislation unity concerning the penitentiary administrative employees because, on the one hand it creates the sumption of manning some specialists (sociologists, psychologists, social assistants) very necessary for reaching the challenges above mentioned, but on the other hand, it establishes adequate work conditions, leaving out arbitrary, employees overcharging and stress, act meant to concur definitively to establish some normal relations between the employees and the persons deprived of freedom with direct consequences to administrative act quality. Although Romania boasted before the Second World War of a modern legislation among the European States , the down-come of our country in the Soviet reach produced a crack whose consequences we feel even now. Without denying the achievements undertaken in the penitentiary substructures after the December 1989 revolution, nevertheless I consider that these were away from solving the problems of this system in the moment of dictatorship down-come. The legislative reform made wasn't assisted with the corresponding provision of human and material resources so the appliance of the new legislation was made difficultly by the effort of the whole employees. Adopting the new legislation without the necessary financial aid determined the appearance of other phenomena which penitentiary administration deals with now - the extreme prosecution , in many cases dishonestly, of procedural rights by the deprived persons. A particular importance in realizing the reform is a correct public opinion note. The social importance of the penitentiary system reform exceeds the strict administrative frame of the Penitentiary National Administration and even of the Ministry of Law, this system reflecting in the whole world the preoccupation with society , in its whole to provide its status of moral health, public order and order by rights. Not lastly collaboration with European penitentiary administration are to bring benefits to the Romanian penitentiary system , in the past few years noticing a constant preoccupation of the National Penitentiary Administration in enrolling the common programs with other administrations of the European member states.

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