

THE JAIL AND ITS METHODS, FACE TO FACE WITH THE DELINQUENT

Mirela Cristiana NILĂ STRATONE*

Abstract

The Jail has evolved over time thanks to various critics brought to the address of the two purposes: custody and reeducation. Of course, the custody and the reeducation have functioned on the basis of specific methods. In their turn, these methods have suffered critics, which led to change in penitentiary system.

The prison's methods have evolved in the sense of respecting the human rights, of positive moral values as well in the culturalization purpose of those in detention. The prison conditions change at the same time with the society and social values are projected on prison life.

The current study refers to the issues related to setting up of prisons in Romania and at the seven optimal conditions of the prison life, as a first step towards a more complex work, about a analysis of costs between detention and alternatives to the sentence with imprisonment.

Keywords: *prisoner, delinquents, penitentiary life, deprivation of liberty, social risks*

1. Introduction

Increasingly more and more people learn about the high costs for maintenance offenders in penitentiaries. The media contribute greatly to our knowledge to this issue. The economic crisis has triggered great conflicts in human society and for this reason the people are wondering if during the period of prison custody is achieved social goal established: the reeducation of prisoners.

The cost required for the maintenance and the reeducation of a prisoner often compares to the necessary costs for husbandry and care of a child, the necessary costs to protect the health of an adult who has produced consumer goods, or the cost of care necessary of an old man who has made a positive contribution along the his life to the social progress. After this comparison, the result is revolting: a delinquent costs the society more than a child. The child? Represents the future. The prisoner? He risks to come out of prison as a far greater danger for society than it was at the start of detention.

In this case the deprivation of liberty still represents the rehabilitation solution or not? It needs of change for this issue? Perhaps an alternative to the sentence with imprisonment gives more efficient solutions and definitely reduced expenses.

But how did it get here? It is very important to analyze the reasons that led to the current situation and which have created dissatisfactions entire society.

For this, we can see how it evolved the penitentiary system from Romania and which were the specific methods of penitentiary activity that have formed his base.

* Mirela Cristiana Nilă Stratone, PhD Lecturer, Faculty of Social and Administrative Studies, "Nicolae Titulescu" University of Bucharest (mrl_cristiana@yahoo.com).

2. Content

In his work "*Penitentiary psychology*"¹, the psychologist *George Florian* takes over the idea at *Beccaria*, such that the society bears the main blame regarding unlawful action of the individual. Under these conditions appeared contradictory discussions about prison treatment policy applied to the offender, he can not be tried for the society's fault, in her place.

In "*Discipline and Punish. The Birth of the Prison*"², *M. Foucault* explains the functionality of penitentiary treatment, which is always based on the abuse of power. From legal point of view, detention can be considered deprivation of liberty.

Of course, it should be mentioned that the transition from the grotesque spectacle dominated by supplicants specific defined of rituals, all dressed in a ceremonial of suffering, "to the punishment with the closing in prison buried in massive architectures and guarded by the administrations secrets, is not the passing to the undifferentiated penalty, abstract and confusing, is the transition from one art of punishing to another, with nothing less scholarly than the first. Technical change."³

- the historian of the penitentiary system from ROMANIA

After the wars of 101-102 and 105-106 which marked the conquest of *Dacia* by the *Roman Empire*, the *Emperor Traian* has imposed the Roman law application. This measure remained in force after the withdrawal troops from 274.

Relations between the *Roman Empire* and *Dacia* have continued under the effect of social change of the epoch, through the Byzantine world. This situation continued until 1453, when the *Ottoman Empire* conquered *Byzantium*.

Until on the 14th century, the legislation from the Romanian voivodeships has functioned under the name at "*Romanian law*."

In 1380 – there appear dates about *Ocna Troțușului* where the labor was done by the prisoners, those convicted of robbery, murder etc. The prisoners were down into jail, wherefrom they was taken out only at the end of the detention period.

The high ranking criminals were imprisoned in the monastery. The oldest monastery who owned such criminals appears to have been *Monastery Snagov* near Bucharest, built by *Vlad Tepes* in the 14th century.

From the 15th century, in Transylvania this law has acquired a specific characteristic, namely "Hungarian right for judgment and punishment of those responsible, once with reinforcing of the power of the Hungarians feudals"⁴.

Starting with the 17th century, we have information on the condition of the custodial units in Wallachia and Moldavia: cellars of royal courts, abandoned houses, salines, where can not speak about a differentiated detention regime or hygiene.

In the late of 18th century and early of 19th century Hungarian nobles demanded building of prisons in the capitals of Transylvania counties. In the work "*Deprivations of liberty in feudality in Hungary*" - as referred in *Penology*, 2004 by the authors Bălan, Stănișor, Mincă - we find information about the beginnings and the organization of prisons in Ardeal.

1788 - In Transylvania, led by the Austro-Hungarians were in force the provisions of paragraph 61 of the criminal proceeding. This law was promulgated by *Emperor Joseph the Second*, which strictly refers to the cleanliness on each prison, its natural illumination, in order to protect the health of prisoners.

¹ Gheorghe Florian, *Psihologie penitenciară*, Ed. Oscar Print, București, 2001, (*op. cit.*)

² Foucault M., *A supraveghea și a pedepsi. Nașterea închisorii*, (french: *Surveiller et punir: Naissance de la Prison*), Ed. Humanitas, București, 1975, *op. cit.*

³ *Ibidem*, p. 377.

⁴ Bălan A, Stănișor E., Mincă M., *Penologie*, Ed. Oscar Print, București, 2002, p.24.

Under Austro-Hungarian domination, in Transylvanian towns were built special buildings for penitentiary custody. These benefited of the *Mary Theresa* support (1740-1780), also of her son *Joseph the Second*, who comes on the throne since 1765.

1790 - In the Romanian Countries, *Prince Nicholas Mavrogheni* (1786-1790) separating the prisoners by grounds of gender.

1802 - At the beginning of the 19th century we witness to the extension, consolidation and modernization of prisons. Occurring new buildings, especially infirmaries near each prison. *Prince Michael Șuțu* (Romanian State and Moldova - 1783-1802) asks weekly reports on: number of prisoners, crimes, convictions. An important novelty is the use of prisoners in the public works in order to increase food quality.

1831 - The Organics Regulations arise in Romanian Country and Moldova. They foresee the enforcement regime of punishment.

An important document in that it speaks about prison regime at that time is "*The Organic Rules*" of 1834, which describes a revolution in the penitentiary system of time, namely it comes to safety, hygiene, food, and other requirements, of course at the lower limit.

It is time when appears the necessity of takeover the European model of penitentiary custody, which will require an adaptation to Romanian social conditions. For the first time, according to this model, is applied the separation rule by sex, degree of guilt, prevention and final conviction.

1851 - Appears *The Prison Regulation from Iași* - the first provision in Romanian law system, in which stops the insult and beating of the prisoners. Appears also *The Prison Regulation from Tg.Ocna*, important milestone in modern law on execution of custodial sentences by implementing detention regime "*Auburian*" and the first regulations on the moral education of prisoners. Appears, therefore, the first step for reeducation. It was oriented in two directions: one religious and one of the trades. Both forms were compulsory.

-1 October 1862 - under the reign of Al. I. Cuza was dissolved the prisons administration and was approved *The Regulation for organizing the service of penitentiary establishments and charity in Romania*.

-1 February 1874 - *The King Carol I* has promulgated the *Prison's Law* . Here arises the separation between the mixed cellular system and the juvenile prisons, set up on this occasion.

The Regulation on the prison's regime that has governed the execution regime of prison sentences until 1930, imposed in prisons a regime of solitary confinement on the night and work together on the day. The emphasis on reeducation was remained, the possibilities are diversifying. It is considered that a more rough punishment, lead to a lower chance of recidivism.

The Regulation on prison's regime was compared at the time and later with the *Belgian Law of 1870* and the *French Law of 1875*.

The Law of 1874 decided the classification of the prisons on the prevention's criterion and conviction: prisons of prevention and jails of doom (correctional, forced labor, imprisonment and reclusion).

- 1929 - occurred the Law for the penitentiary's organization and of institutions of prevention.

The Congress of International Criminal and Penitentiary Commission which was held in Prague in 1930 has assimilated the same principles for execution that Romania adopted the year before, and some of them are found in *the Standard Minimum Rules for the prisoner's treatment*, adopted by the O.N.U. in 1955.

After August 23, 1944, was adopted *the Royal Decree by general amnesty*, accompanied by *the Decree Law 442*, which provided for the abolition of all the detention camps.

- 1944 -1 of November - has appeared *the Regulation for the establishment and operation of internment centers* which foresees among others a payment to for the purchase of the bed and lingerie, which remains the property of the center after the internees left the center.

The Colonies of work, the compulsory domicile and labor battalions they came in the composition of *Decision Council of Ministers no. 1554/1952*. Thus, to achieve the gigantic projects of national interest, the inmates had the opportunity and the obligation to work on the Danube - Black Sea channel, the hidropower complex Bicaz etc.

1969-18 of November - *the Law no. 23 about the execution of the sentences and the Regulation of the execution of sentences* that are also present today. The regulations contained herein refer to: organize places of detention, the regime of the convicted persons, their rights and duties, and the penalties who may apply. The normative acts of the time they put a special emphasis on the prisoner's re-socialization under various forms: participation in productive activities, the completing of the general education and literacy, qualification in a trade, cultural and educational activities, contact with family and rewards for the conformist behavior. Another measure was taken regarding the personality, skills and dignity of the prisoners, in order to increase their self-esteem on their part. All these normative acts were at that time in line with European regulations at the level of prison system and has ensured the work basis in prison for about 25 years.

1989 - December - until to revolution, the prison system has functioned under the leadership of socialist ideology, with all the shortcomings and negative consequences.

1990 - the prison system leaves behind the communist reeducation model and passes from *the Ministry of Interior to the Ministry of Justice*.

1994 - the ratification by Romania by *the Law no. 30/18.05.1994, of Convention for the Protection of Human Rights and Fundamental Freedoms*, has led at raising standards on conditions of detainees detention's at the international level.

The prison system reform has aimed mainly: humanizing detention regime, increasing the quality and quantity of food, the supplementation the rights granted to detainees at packages, visits, cigarettes and shopping, access to information and media.

2003 - O.U.G no. 56 / 25.06.2003 on: certain rights of persons in execution of custodial sentences, the repealing of *Regulation of execution of some punishments and the measure preventive arrest of 1969*, the prison practice alignment to european standards.

2004 - 28 September - *The Law no. 293/2004 on the Statute of civil servants in National Administration of the Penitentiaries*. It took the demilitarization of the prison staff. Those placed in the reserves have acquired the quality of public servant, with special status.

2006 - *The Law no. 275/2006 on execution of punishments and measures ordered by the judiciary authorities*. This introduces new elements such as: the judge's institution for the execution of sentences and the personalization of the custodial sentences.

- the critique of prison and of her methods

M. Foucault describes in "*Discipline and Punish. The Birth of the Prison*" (*op. cit.*) the occurrence of the prison's critics and its method's from 1820 -1845. Also today, this criticism has kept some formulations⁵ who even in regarding of figures underwent minor changes:

- the prisons do not contribute to the decrease in crime, despite the modernization detention units, and the diversification of education programs from carceral area: does not decrease the number of crimes and increase the number of relapses;

- in most cases, the detention provokes recidive: most of those released have relapsed;

⁵In the work "*Discipline and Punish. The Birth of Prison*", (*op. cit.*), 1977 p.378 ... Foucault M. insists on the aspects who have not undergone almost no changes during the transition from one society to another.

- the prison does not succeed in to reinstate in freedom the individuals brought on track, but rather spread in society people with great potential for crime – a number of people played back annually in society are same number of criminal risk factors, of murder and corruption, spread in the social mind and body;

- the prison doesn't succeeds to not produce criminals: they "make them" even by their lifestyle mode which is imposed on them - isolation in cells, the performance an unnecessary work for them, meaning they will not have where to apply what they learned in prison (the reference is make at the positive skills); in *The Report of the General Council of the Society of Prisons*, 1819, F. Bigot Preameneu, mentions: "The feeling of injustice that him trying a prisoner is one of the main reasons that him can stiffen he falls into a state of aggressiveness towards everything that surrounds him; he sees executioners only, in what is representative of the authorities: does not believe in his guilt, he accuses the justice itself."⁶ Not the least the corruption, the fear and the inability of guards, is a factor of "production" of delinquency. This is because the guards, for the personal security, resorted to the corruption which implemented themselves. Regarding to work in detention, that in conditions imposed by the prison regulation can not have educational character, in 1842, the newspaper *L'Atelier*, publish a protest of the imprisoned worker for association: "Is protesting against the treatment applied of the blacks. The prisoners are not sold it in the same way by entrepreneurs and are buying of manufacturers? ... have received the prisoners in this regard lessons of honor? Are not they demoralized even worse by these examples of the appalling exploitation?"⁷

- the prison creates conditions for the development and organization of a criminal environment, hierarchically and compact from point of view of solidarity's of its members regarding complicity; is the place in which the young delinquent acquiesces to the culture of the penitentiary.

- the liberation time is expected with great joy and impatience during the entire period of detention, by majority of prisoners, especially the women prisoners; so seen from the outside, but the reality is different: At this moment, as the closer, the more powerful generate disorientation, fear of the unknown, due to rupture of the society, with the moment of accession to the penitentiary regime; "Beyond" for the majority of women that is running custodial sentence, no longer exists anything they let: husband divorced or is in prison (in some cases to another penitentiary than the wife), the children grew up without maternal emotional support, parents have died, the social relations existing prior to detention were adversely altered or have simply disappeared, and the examples could continue.

Worth noting that these women no more have that back, nothing binds them free civil society, and to this is added of course, the impossibility to satisfy the requirements of living that were commonplace in penitentiary: from where until liberation much of women prisoners longer doing regarding food (by fraudulent means in relations with other at cell level, department, or illegal relationships with prison staff) regarding personal hygiene, there are mouse free means of solving problems; about medical care, things are resolved or resolved more than before the penalty start, the accommodation is provided free; from the liberation, she was in a situation that more or less anticipated and taking overshadowed the joy of liberation, namely: does not have home, does not have livelihood, most likely its own family disintegrated, and the family of provenance (where fitted) is not capable to satisfy the demands of living.

In the same context, we can also speak of lack of own income, as well as the impossibility of finding a job.

- the conditions that awaits them out of prison unquestionably condemns them these women to relapse: the impossibility to find a job in view to obtaining of income necessary

⁶ ***The Report of the General Council of the Society of Prisons, 1819.

⁷ Foucault M., p. 389.

daily living, the lack of shelter, the vagrancy and prostitution - one of the most convenient solutions for acquiring income in such situations, are among the most common causes of relapse.

- the penitentiary produced delinquents not only in prisons, as noted above, also indirectly, condemning to rupture the prisoner's family: a family without mother, so without emotional binder, remains a group that will divide, because father may not, in most cases to fill the mother role.

Moreover, he left without life partner will seek refuge in various relationships fleeting. This is not constructive for minor children who will lose direction in everyday life most easily; in families with adult children at home, they will be involved without much discernment in shady business and relationships; of most times these will take the penitentiary's way.

In cases where the mother runs a custodial sentence, implicitly leaving the family home for reasons of delinquency, the children who remain at home they usually come in groups of alcoholics, addicts and other similar categories.

In 1945, was perfected the penitentiary reform, which included seven principles, called the seven universal precepts best prison conditions. Today they constitute yet the foundation of reeducation of persons deprived of liberty, in view of their social recovery.

1. *The principle of correction* - the essential function of criminal detention is the correction (re-socialization) and social reintegration of the convicted person.

2. *The principle of classification* - in terms of prisoners' accommodation, is necessary to make a difference by sex, gravity of punishment, the type of offense, age, their transforming stages: in the choice of methods used, it is necessary to be taken into account the physic differences, moral, unequal chances of straightening, etc.

3. *The principle of the punishment modulation* - the guilty would be desirable to be released once it is found its moral recovery, so the punishment would not be executed in its entirety, but does not specify what happens when the detention period expires and the guilty not trusted a guarantee of moral regeneration after the treatments applied; in this case shall be extended the detention period up to correction, re-internalization of the moral and social values, or the prisoner is released as a real danger into society? (This is not specified).

4. *Principle of the labor viewed as obligation and law* - the labor is the main method in the re-socialization process of prisoners. The penal labor is considered both compulsory and useful, offering the opportunities to learn a trade (nowadays, prisoners both men and women, benefit from training courses, practice in penitentiaries, as well as the release of acts of study recognized by the Ministry of Education and Research).

5. *The principle of educating in penitentiary* - the penitentiary has an obligation both towards society and towards prisoner to educate him. The education is the penitentiary instrument through which is realized the correction, the information, the learning by delinquent of norms and social values.

6. *The principle of the technical control of detention* - appears the necessity of activation in the team of penitentiary staff, to the specialized personnel. It is about the medical and socio-educational services.

7. *The principle of the appendices institutions* - since that period is raised "the tracking problem" of the prisoners after release and supporting their social reintegration. This means involving other institutions to complete the effort for rehabilitation and social reintegration.

3. Conclusions

The deprivation of liberty tends to become a increasing inefficient rule. On the one hand we have high social costs for the maintenance of a prisoner and, on the other hand, the high social costs due to the reduced opportunities for the reintegration of prisoners into

society after release. The alteration of social relations of the prisoners by separating them of the free social environment, especially their altered family relationships, all lead to the need to choose an alternative to the sentence with imprisonment.

It outlines the importance of the institutions appendices of penitentiary, and the cooperation of society to achieve social reintegration.

References

- Bălan A, Stănișor E., Mincă M., *Penologie*, Ed. Oscar Print, București, 2002
- Foucault M., *A supraveghea și a pedepsi. Nașterea închisorii*, Ed. Humanitas, București, 1975
- Gheorghe F., *Dinamică penitenciară*, Ed. Oscar Print, București, 1999
- Gheorghe Florian, *Psihologie penitenciară*, Ed. Oscar Print, București, 2001
- Gonsa H., *Organizarea detenției*, Revista de Știință Penitenciară nr. 3-4, 1991
- Haslam, S. A. & Reicher, S. D., When prisoners take over the prison: A social psychology of resistance. *Personality and Social Psychology Review* 154–179, 2012
- Haslam, S. A. & Reicher, S. D., When prisoners take over the prison: A social psychology of resistance. *Personality and Social Psychology Review* 154–179, 2012
- Hedwig Lee, Lauren C. Porter, Megan Comfort, *Consequences of Family Member Incarceration. Impacts on Civic Participation and Perceptions of the Legitimacy and Fairness of Government*, in *The Annals of American Academy of Political and social sciences*, January, 2014, vol. 651, nr.1
- Herman F., *The emancipation of prisoners*, Edinburgh Univ.Press Ltd, 1995
- ***The Report of the General Council of the Society of Prisons, 1819
- <http://jama.jamanetwork.com/article.aspx?articleid=325254>
- <http://cjb.sagepub.com/content/39/9/1131>
- <http://archpsyc.jamanetwork.com/article.aspx?articleid=497592>
- <http://ann.sagepub.com/content/651/1/44>