

ISSUES ON SCIENTIFIC RESEARCH IN PLACES OF HOLDING

Ioan CHIȘ*
Oana Alexandra CHIȘ**

Abstract

Scientific research in prisons is not a new problem. New is the way of granting benefits to persons who show such while serving sentences of imprisonment. Some shortcomings in establishing the criteria, rules and way of determining the authors, led to the emergence in 2016 of over 300 works published under the name of condemned authors.

Keywords: *scientific research in prisons, innovations and inventions, books in prisons, intellectual work in prisons.*

Topic discussion

A controversial issue lately is the possibility of scientific research in prisons, the development of published papers, innovation and inventions, work performed by persons convicted and serving sentences of imprisonment.

Execution of custodial sentences aims, among others, to "form a correct attitude towards the rule of law, to the rules of social coexistence and to work, as to reintegrate into society of persons detained or hospitalized."¹

As such one of the activities considered essential for socialization is lucrative activity, open and semi-open detention schemes being directly related to participation in work of the convicts, even more, parole is about following the steps of the two regimes. Under these conditions, in prison, work becomes an essential support for socialization activities, thereby obtaining the necessary revenues to improve living conditions, payment of obligations to the state and civil injured parties or directly supporting the families of those convicted prisoners.

Physical labour, skilled or unskilled, industrial type of work or provision of services, work in the interest of the prison, work under voluntary activity as a hobby are known, in prison, as the most frequently used. Intellectual work in places of detention, although rarely highlighted, is possible, where those sentenced had such concerns before sentencing, being part of social groups where work of this kind was the basic concern of those regarded.

Even during the totalitarian era, the use at work represented the main pillar of "re-educating" prisoners, who were considered "special labour force" for achieving industrial and agricultural

objectives, and when "forces of skilled labour were satisfied, those who have a professional qualification could be used even for unskilled labour."² Intellectual work had a greater appreciation at that time, money legally assigned for this type of activity being 50% of those charged "as a reward for inventions, innovations and rationalizations"³, compared to the 10% of incomes allocated, resulting from the use of skilled and unskilled labour. Although there was no emphasis on any intellectual activity of prisoners, it was recognized that there may be such a source of income, 50% of the reward for such work being done was considered income to the state.

After the great reforms in Romanian criminal law, introduced by the advent of new criminal, procedural criminal, criminal executional and probation legislation, forms and methods of re-socialization of convicted or institutionalized persons reflect European views on the matter, especially after the implementation of Council of Europe Recommendation no. 2006/2, which states as an organizing principle of programs in places of detention the idea of not differentiating work of intellectual activity. Concretely, it is established that all the advantages enjoyed by those participating to work, would be recognized for those participating in intellectual activities (education, training, social and educational activities, scientific research or intellectual work)⁴. The provision includes the idea, in principle, of the prohibition of financial or other penalty for participating in educational activities.

Law 275 of 4th of July 2006 on the enforcement of sentences, at this moment repealed as a result of the new provisions in executional criminal law, had generous provisions on the assimilation of

* PhD Professor, Faculty of Law, "Nicolae Titulescu" University of Bucharest (e-mail: profchisioan@gmail.com).

** Law Master Candidate, "Nicolae Titulescu" University of Bucharest, IPJ Ilfov Officer (e-mail: oana.tofoleanu@gmail.com).

¹ Law 254/2013 art. 3, para 2.

² Law 23/1969 art. 9.

³ Law 23/1969 art. 11.

⁴ Recommendation of the Committee of Ministers to member states on the European Prison Rules Rec (2006) 2 of 11 January 2006, art. 26 point 6 and art. 28 section 1 and section 4.

intellectual work with manual labour⁵, even pay by the minimum wage to those who participated in such activities, which was actually a positive discrimination to all citizens who were enrolled in some form of study⁶.

Recommendation No. R(87) establishes a more pronounced correspondence between work and intellectual activities, rule 78: "Education should be regarded as an activity of the prison regime as well as the productive activity - the same status and the same basic remuneration, provided that it be integrated into normal schedule of activities and part of the authorized individualized treatment program."

Stimulating the participation of convicts in formative activities such as schooling, job qualifications, retraining, specialization, individual study of fictional or scientific literature, scientific research, innovation and inventing activities, writing of fictional, scientific or other type of papers, participation in creation workshops (theatre, music, painting, hobby), participation in religious events and holidays, meetings with volunteers, participation in organized collective sessions (conferences, lectures, contests like "Who knows wins", literary evenings, and others) are particularly monitored and classified as degrees of socialization through which they accumulate "credits". In addition to those activities, there can be organized formative cultural and recreational activities that contribute to the intellectual development of convicts.⁷

Among the manifold activities of the universe of prison, scientific research and the innovation and inventions activities occupy a modest but important place, especially since some convicts, benefiting from the absence of clear regulations, became "writers' overnight, with works that were published in various publishing houses, then invoking the provisions of Law 254/2013 benefited from days

considered executed, when analyzing the conditions for parole proposal.

No wonder that in prisons there are people who can invent, discover what others have not been able to, write books or can even address specific science areas. It is natural because those sentenced come from society, and conviction does not apply to what they know but to the crimes that they committed. Long gone is, we hope, the time during which by court orders, orders of the Services or by abusive administrative measures, men of culture, science, researchers in various fields were sent behind bars precisely because they belonged to a higher class that did not accept leadership by a pseudo intellectuals.⁸

Over time, during the long days and nights of solitude in the cell or by the company of other prisoners in the same room, prisoners were trying to create objects, instruments, tools, toys, books, paintings, tattoos in order to complete the period of sentence more quickly or were attempting to manufacture weapons of offense or defence tools needed for the escape from the places where they were detained, drugs, alcohol, braids to dress, or all sorts of figurines used to sell or in the try to corrupt other detainees or even those who were guarding them.

With the humanization of detention regime, the multitude of goods and objects that are allowed to be in the keeping of convicts are very many and can increase the degree of civilization of days of detention, and even create a false illusion that the detention life is similar to that of freedom, that detainees are granted rights, again and again, well above what they deserve, especially those who have committed acts condemned not only by law but also by public opprobrium.

Given that, by Sentencing Law 254/2013 and its implementing regulation, and by administrative

⁵ Art. 57 section 10: "It is equated to work the activity done by convicted persons who participate in activities for education and training".

⁶ Art. 61 pt. 3: "Persons sentenced to imprisonment that participate to educational courses or qualifications or retraining receive, during courses, monthly, a remuneration equal to the minimum wage".

⁷ M.J. Order no. 2199 / C / 2011:

Article 105: Artistic activities are such as: a) painting, drawing, graphics, pottery, sculpture, technical applications, fretwork, handicraft, embroidery, tapestry, basketry, fabrics, garments; b) reading groups, literary clubs, theatre, music, dance; c) other artistic events.

Article 106: Cultural dissemination activities are of the following type: a) exhibitions, films, performances; b) conferences, lectures, debates, book reviews, book releases, editing magazines, local radio and TV broadcasts. Article 107: Sports activities aim to maintain a physically and psychologically tonus and an adequate health status.

Article 112: Activities to be held in a community could be like: viewing and presentation of shows, participation in religious services, participation in sport and occupational activities, organization and viewing of competitions, organizing and viewing of exhibitions, book presentations, visits to cultural sites, public and private institutions, governmental organizations and NGO's, trips and camps.

⁸ Law 254/2013 art. 96 Part of the penalty is deemed as served based on the work performed and /or training school and training:

"(1) The punishment deemed as served based on work performed or training school and training in order to grant parole is calculated as follows:

- a) in the case of paid employment there are deemed 5 days to 4 days of work performed;
- b) in the case of unpaid work there are deemed 4 days 3 days of work;
- c) if the work is done at night, there are deemed 3 days for two nights of work;
- d) in case of participation in general education for compulsory general education forms there are deemed 30 days for completion of a school year;
- e) in case of participation in training courses or retraining, there are deemed 20 days for completion of a qualification or requalification;
- f) in case of published papers or patented inventions and innovations, there are deemed 30 days for each scientific paper or patented invention and innovation.

(2) The reduction of penalty fraction which is deemed as served based on work performed or training school and training cannot be revoked."

decisions, convicts are allowed to have on them, in the holding chambers, an impressive variety of goods, new methods of spending time in detention began to appear, through creative, sports, cultural, social activities, hobbies and manufacturing of items, goods, equipment, crafts, scientific works, innovations and inventions serving prisoners for barter, to "buy" various services from other inmates, to corrupt staff, to demonstrate to socio-educational services the "progress in resocialization", to win days deemed as executed according to an algorithm established by law, to send for marketing outside the prison different items, to give to orphanages, retirement homes garments made by the convicts.

Besides this so-called legal "occupations" of convicts in realizing various products that can be useful and harmless for the detainment or staff supervision, using objects received legally can help in the making of a number of other prohibited items to find on prisoners during detention. Nothing prevents inmates to manufacture from players or radios, from the microprocessors of electronics, equipment used for listening or transmission of information or data, nothing stops them to manufacture weapons like stiletto, knife, electric shock guns, chemical 'weapons' that can burn skin or eyes, or even more to "create" alcoholic beverages, hallucinogen or toxic substances.

In the aftermath of the events of 1989, prisoners have been granted by the state with far more European-style rights, constitutional rights as well as specific features and output permissions, which enabled them to buy, legally or illegally, objects that "they need "to break the law. By law, regimes were established on a progressive basis, in the sense that convicts may take various personal conducts with control becoming less severe, which facilitates their activities outside supervision, control, searches. In these conditions, the time in which they can make up things or objects is increasingly out of concern that they will be discovered.⁹

Daily, in prisons, there are found mobile phones, drugs, alcohol, and crafted weapons. It is well known that prisoners "prepare" meals on makeshift stoves, realize sweets, drinks, various desserts for them or to trade them for cigarettes or items of clothing or shoes. Crafting games of chess, backgammon, dice, playing cards, is no longer an occupation for convicts, those above being allowed to prisoners as social games, like listening to music or reading magazines, newspapers, books. In these

conditions of humanised regimes of imprisonment, the fact that some convicts with upper intellectual qualifications use their knowledge to write books of literature, research, travel, history or in various fields seems to be quite a positive fact.

The question is whether writing papers in prisons, along with innovation and inventing solutions to problems are possible in such conditions. To what extent should prisoners have the benefit of such occupations? Yes, we believe that the development of works of any kind is consuming time out of a day of work, and if this time is counted in hours and the work, the paper is part of the individualized socialization programme, it can be considered "intellectual work" with all the positive consequences that can be drawn from it. We must always bear in mind that for every convicted person, on the occasion of commencement of the deprivation of freedom, an individual program of social reintegration¹⁰ is designed, which will consider:

- determining educational, psychological and social needs, identified in the prison population, requiring the development of new programs;
- development of the program itself;
- submission to advisement and approval by superiors at the place of detention;
- submission for approval by the specialized department;
- piloting the program and recording observations necessary to adapt the content;
- review of the program in terms of content or methodology of work;
- submission to advisement by superiors and for approval by the head of the unit of the revised program;
- the implementation of the revised program;
- submission by the specialized department for the dissemination in all places of detention.

Whether these works are "scientific" or not should not be concern of the detention facility, but of those institutions and state bodies (institutes relevant for organization of those activities, universities, Romanian Academy, polytechnics, publishers or other such institutions) that have jurisdiction of such assessment, approval, recognition, issue of patents, certificates or diplomas such as to assess the scientific nature and importance of the work or the quality, originality or novelty, usefulness, popularity enjoyed by the public.

Like other authors¹¹, we believe that errors in the assessment of such works, which appeared after 2014 and have been the delight of the media¹², were

⁹ In the period after the 1989 Revolution, during riots in the year 1990, in the detainment places occupied by convicts there were made hundreds of crowbars, knives, daggers, incendiary bottles, a cannon with nails and carbide the Jilava penitentiary, a bomb made of an oxygen tube, wrapped in grease and tied to electricity cables to be armed within distance, at the prison Baia Mare.

¹⁰ ORDER by Ministry of Justice no. 2199 / C / 2011, art. 10.

¹¹ Marin Bucur - „A legislative monster created sham and debauchery in prison!" - Source SNL Penitentiary internet site.

¹² Speech of the Justice Minister in the SCM meeting: "You must know that the number of papers in preparation is growing exponentially and I will give some figures. December 31 (...) there were 45 papers in preparation, according to data that are given to me by the National

also due to misunderstanding of responsible parties such as Justice Minister, whose opinions were rejected by the Superior Council of Magistracy in the meeting on January 28, 2016.

The errors of assessment were due to the fact that although Law 254/2013 provided that the authors of works would gain days considered executed, there is no implementing regulation of Law 254/2013 (not even the day I was working on this paper the regulation was not published) to detail their rules under which the assessment in the Commission for conditional release must be made, therefore, taking advantage of the lack of regulations, some prisoners have "written" and "published" even 5 works each benefiting for every one of 30 days considered as executed, which seems a nonsense.

National Penitentiary Administration was forced to use a decision of the Director General No. 619 of 2011, which was anyway repealed by the appearance of Law 254/2013, which set rules about publication in journals recognized by CNCIS or publishers recognized by CNCIS or that were part of the communications published in the proceedings of international or national conferences. It also required a recommendation from a professor in the specialty of the content or work objectives.

I believe that the view of SCM on the need to create "objective, fair and transparent criteria in terms of establishing the scientific character of the works developed and published, as well as some more rigorous criteria for the drafting of the work" is in the position to determine the correct executive procedures.¹³ Looking for the "guilty" among members of the parole committee, among judges who have ruled over parole commission proposals, among prison directors or general manager of NAP, is only a matter without support, since the chronology of the regulatory framework has produced such a situation. If Law 275/2006 introduces the possibility of parole and accumulation of days considered as executed by developing scientific works, its implementing Regulation HG 1897/2006 does not introduce the procedures and criteria of assessment, requiring the issue of Decision 610/2011, which sets the methodology. This Decision shall ultra activate even after the advent of Law 254/2013, as there hasn't appeared within the statutory period (or 3 years) a regulation

implementing that law. Here's how the detainees came to write in 2015 331 works, 5 times more than in 2014, noting the possibility of gaining days considered as executed on "written and published papers."

Compared to the old regulations where the convict gained 3 days considered as executed for 2 days spent working on the development of a scientific paper, Law 254/2013 introduces a new system by which you gain 30 days considered executed for each published work. Convicts with outstanding financial possibilities saw the opportunity to publish even five books a year, designed under entirely unclear conditions, but certainly not by their own research, so that publishers have received a number of works, some of which are particularly valuable, not having the ability to verify the authors. Moreover, parole commissions recorded that the papers were published, the authors on the cover were the convicts requesting release and, not having expertise on the scientific character or scientific content thereof, had no choice but to grant them the 30 days considered executed. Certainly shallow work in the committees was due to lack of investigating the charts of working days, of working hours, space and utensils or tools used, not investigating, even randomly, if the "authors" know the contents of works purported to be written by them. The role of public opinion and the media was decisive in taking measures to halt the charade of "prison academics."

In January 2016 the Judicial Inspection performed a control in all prisons¹⁴, to identify the administrative and judicial practice concerning the application of Law 254/2016 art. 96 para. (1) f), followed by a report to the Superior Council of Magistracy, which decided to refer the Ministry of Justice with the following proposals:

The urgent adoption by GD of the Implementing Regulations of Law no. 254/2013 on the execution of sentences and custodial measures ordered by the court during the criminal trial.

Inclusion in the draft Regulations to Law no. 254/2013 of the definition of the term 'scientific work', used by the legislator in art. 96 para. (1) f) of Law no. 254/2013, regulating the procedure for drawing up scientific papers, the criteria for granting winning days and the procedure for contesting the

Administration of Penitentiaries. January 6th, there were over a hundred works and nobody knows the figure right now. And I make this conversation in SCM because we are not talking here only about teachers, publishers, we are talking about delegated judges, we are talking about courts before which these works were presented. I want to say it is just as discriminatory for so-called intellectual labour, although I do not have any reason at this time to identify a work from the list of 2015, which by European standards can be considered scientific, so I see that we have a very detailed procedure (...) I say that point of law did not apply and that is to say by the prosecutors, not me. But the result is over 350 written works, and the benefit is 30 days, so we still discriminate between physical work, where we get a day off for four days of work, and give 30 days to a collection of papers which is called scientific work. And I, as Minister of Justice, have the obligation to see this."

¹³ http://www.romaniatv.net/scandalul-cartilor-scrise-de-detinuti-judecator-csm-renuntarea-la-reducerea-pedepselor-poate-crea_270875.html#ixzz3yXjnB5r0

¹⁴ Judicial Inspection Report no. 5619/IJ/3329/DIJ /2015 regarding the identification of administrative and judicial practice in the application of art. 96 para. (1) f) of Law no. 254/2013 by judges of custody and supervision of the courts.

measures taken by the commission for granting such rights.

It is necessary to establish rigorous prerequisites to be satisfied cumulatively, namely:

- development of scientific works only in areas where university studies are organized;
- proof of specialization of custodial person in the field in which he wants to develop a scientific work;
- specification by the custodial person of the type of scientific work that is intended to be developed (treaties, research reports, studies, articles, scientific papers, etc.);
- the estimated time necessary to elaborate the scientific work, taking into consideration its complexity;
- written recommendation on relevant topics in the field chosen from a professor or an associate professor in the specialty of the paper to be drafted, with their handwritten signature, confirmed by the university where they belong and accompanied by a provisional work plan which includes the main issues to be addressed, a structure of the work, bibliography to be consulted, minimum information sources and an estimate of the volume of work;
- the custodial person must present, both the teacher / associate professors who give the recommendation, and the board of education and psychosocial assistance, an initial plan of work, the theme / themes to be addressed, the structure, sources of information, means of writing / editing;
- the commitment of the person who ordered the work of scientific development to comply with the rules of good conduct in scientific research, technological development and innovation;
- it should be required that the person would give an affidavit, under penalty of criminal law (art. 326 Criminal Code regarding false statements), of showing that he is the author of the work developed and the work is not plagiarism;
- setting by the Commission for selection and allocation at work of the time appreciated as necessary to elaborate the scientific paper based on documents that accompany the request of the custodial person and recommendation of Professor / Associate Professor.

Regulating of objective, fair and transparent criteria in establishing the scientific nature of the work developed and published, namely:

- scientific character of a paper drafted by custodial persons must be determined by the National Authority for Scientific Research from the Ministry of Education and Research, the only institution empowered nationwide with responsibilities in this regard;
- attaching to the request, additional to the scientific work, a copy of the manuscript, compiled

by the custodial person as submitted in original to the publisher, in order to remove any doubt regarding its development during the period of execution of sentence;

- regulating how to quantify the benefit of the work of several authors of scientific papers, among whom there are custodial people, using a similar document sheet FRACS (Chart of Reporting scientific research) used by higher education institutions with the approval of the National Authority for Scientific Research;
- granting a different number of gained days as a result of the elaboration of scientific work, depending on the type and complexity of scientific work developed.

Preparation by the specialized committees in prisons, completely, thoroughly and in accordance with the proposals previously formulated of minutes, based on which the court can verify how they have been granted certain benefits (gained days / compliance or not with conditions of parole);

Altering or supplementing of legal provisions, by providing the supervisory judge / the court the procedural tools necessary in order to check and censor proposals / measures taken by committees in the penitentiary, enabling them to remove the reducing fraction on the punishment prescribed by the Commission, in case it is found that the measure was taken in violation of the law;

Removal, through legislative change, of the finality attribute of the measure to reduce punishment fraction, considered as executed based on work performed or training school and training, according to art. 96 para. 2 of Law no. 254/2013.¹⁵

Following CSM Decision no. 37 of 27 January 2016, the Government decided to suspend the application, until September 1st 2016, of the legal provisions relating to the reduction of sentences for prisoners who publish scientific papers. Regarding the timing of this decision many different opinions may arise, personally I consider that authors of papers, inventions and innovations among convicts will open lawsuits on failure to apply Law 254/2016 because of an act without legal force.

Pending the completion of rules, criteria and executive procedures on scientific research in places of detention, draws attention a particular invention inspired by a convict, V.B. Convicted as a hacker to 5 years for establishing a criminal group with the purpose of cloning and use of credit cards, V.B. has created one of the most popular inventions in the world: a new type of ATM fraud-resistant by hackers. The invention, filed with OSIM 2010 "Method and system for securing the use of cards with magnetic strip", called anti-skimmer, received at the 41st edition of the International Exhibition of Inventions in Geneva, the Press International award

¹⁵ Judgment of the Superior Council of Magistracy no. 37 of January 27, 2016

and attention of all Swiss banks. This award is ranked 6th in the 50 of the Exhibition. We shall see whether he receives 30 days considered as executed.

Conclusions

Scientific research in prisons, the development of published papers, innovation and inventions

performed by persons convicted and serving sentences of imprisonment is a legal activity, as provided by the Law 254/2013 and the New Criminal Code and New Criminal Proceedings Code. The many discussions and issues that arise from this activity are due to the fact that the Parliament and the Ministry of Justice have failed to concieve and pass regulations for a correct implementing of these provisions.

References:

- "Execution of criminal penalties", PhD Prof John CHIS, dr. Bogdan Alexandru CHIS, ed. Legal Universe, 2015;
- The new Penal Code;
- New Criminal Procedure Code;
- Law 254/2013.