

# COMPARATIVE STUDY ON THE RIGHT TO HEALTH CARE SYSTEM PRISON LAW INTENDED TO ROMANIAN NATIONAL HEALTH LAW

Florentina Laurenția GĂIȘTEANU\*

## Abstract

*Health protection represents a protection measure for persons being a guaranteed right in Romania provided by the 34 Article of Romanian Constitution. The state is liable for taking measures of protecting physical and mental health, both for free persons and for those persons serving custodial measures.*

*Starting from the Recommendation of the Committee of Ministers of the Member States relating to the European Prison Rules Rec (2006) 2, which provides in paragraph 2 of subparagraph 40 – “The organization of health care in prisons”- that health policy from prison will be integrated in national health policy, being compatible with that. That comparative study aims at the implementation of European’s recommendations in different medical specialty areas.*

*During this presentation are highlighted identical or different provisions stipulated in the relevant legislation of both two health systems, concluding that in certain areas of prison system, the state provides extra healthcare legislation.*

*Comparative study between the right of medical assistance provided by Romanian Prison Legislation and the right of medical assistance provided by Romanian National Health Care System.*

**Keywords:** *health care, legislation, health policy, recomandations, prison*

## 1. Introduction

Staying healthy is one of the fundamental rights of every person, regardless of race, nationality, religion, gender, sexual orientation, age or social origin.

The World Health Organization has provided since 1946 the definition of health as, *the good functioning of the body*<sup>1</sup>, requiring each state acceptance of amendments provided for by the Constitution of the World Health Organization, the right to protection health.

In Romania, right of health protection is a measure of protection a person is a right guaranteed, provided by the Article 34 of the Constitution, the rule criminalizing and penalizing any infringements on public health<sup>2</sup>.

Also, this law is regulated and in legal norms adopted by Parliament (Law), Government (ordinances, resolutions) and other public institutions that provide the organization and functioning of the health system and the conditions for granting medical assistance (orders, decisions).

With a view to ensuring exerting effective right to health care to citizens of Romania and those who are separated from society for a time imposed a consequence of committing a crime, the State has adopted legal provisions regarding the right to care for

persons deprived of liberty under the criminal sanctions enforcement regulations.

The living environment of the prison system is recognized as one with specific medical needs. The aggressive behavior of some detainees, precarious sanitary education among them, increased risk of sexual transmission disease, poor state of prison conditions in some penitentiaries are factors conditioning the maintenance and health protection of persons deprived of their liberty<sup>3</sup>.

Recognise that medical assistance in prisons is important for public health in general has been stipulated in the Council of Europe recommendations on "European Prison Rules" and health policy in Romania had to regulate legal standards for providing medical assistance to private persons freedom, creating for the prison system an own health network that is similar to the public.

National Prison Administration is a public service responsible with the implementation of the detention regimes and ensuring recuperative interventions, but under conditions that guarantee respect for human dignity, helping ensure all necessary rights<sup>4</sup>.

Lately, Romanian prison system has faced numerous interpretations concerning about organization and functioning of the healthcare system from the institutions/organizations for human rights, the media and the European Court on Human Rights (ECHR).

---

\* PhD Candidate, Faculty of Law, "Nicolae Titulescu" University of Bucharest (email: [laurentiastefan@yahoo.com](mailto:laurentiastefan@yahoo.com)).

<sup>1</sup> Health Medical Dictionary "site [www / sfatulmedicului.ro](http://sfatulmedicului.ro) accessed on 03.16.2017 hour 18.22.

<sup>2</sup> Law 286/2009 Penal Code Art. 352 thwarting disease control, venereal contamination art.353, 354 transmission of AIDS, Art.355 spread of diseases in animals and plants, water Art.356 Infection.

<sup>3</sup> Draft Strategy prison system from 2009 to 2013 - Strategic Objective 3 - quality care for inmates, protecting and promoting health and preventing illness page 10.

<sup>4</sup> Penitentiary system strategy project 2009-2013 - page 8 paragraph Mission.

*We live in a society constantly changing and with its evolution we are witnessing a change in perception of the role of the prison service in the community.*

Frequently the cases reported by the media on the prison system are focused on presenting inducing flaws of this system inducing in society, a negative image. Communication with all relevant community, transparency decisions and actions with significant impact on the prison system and improve the organizational functioning of this segment are essential for a true penitentiary administration system<sup>5</sup>.

The proposed study concerns from the need to highlight the legal provisions developed by the prison system and aims to remove first the concept of division between the two health systems and demonstrate that in terms of regulatory health policy in prison is organized in accordance with national health policy.

## 2. Text content

No doubt over Romania developments, manner of delivering health faced many legislative health reform last being represented by Law no.95 of 2006 Republished. According to the normative act invoked sure patients are divided into social health insurance and uninsured.

Health insurance is the main system of health care financing that ensures access to a basic package for sure<sup>6</sup>.

The objectives of the social health insurance system are: protecting policyholders with respect to medical costs in case of illness or accident and protect universally insured, fair and non-discriminatory in terms of efficient use of the single fund health insurance<sup>7</sup>.

Article 221 of the Law no.95/2006 \*\*\* Republished on healthcare reform provides in para. (1) d) that people are not proof of being insured is not ensured only a minimal package of services that includes health care services, medications and medical supplies only if surgical emergencies and illnesses potentially endemoepidemic, monitoring of pregnancy and child wife, family planning, prevention and care services to community healthcare.

Due to the fact that the right to health care of inmates is a right guaranteed legislature has provided that inmates should have the status of people insured and not uninsured, but with payment of the contribution from other sources, a fact stated in letter c) para. 2, art. 224 of Law no. 95/2006 \*\*\* Republished on health reform.

*„Are insured persons involved in one of these situations, the duration, the payment of the contribution from other sources, according to this law: a sentence of imprisonment, are under house arrest or in custody and*

*those enforcement measures referred to in art. 109, 110, 124 and 125 of the Criminal Code, as amended and supplemented, which is the period of deferment or interruption of sentence of imprisonment, unless they have income.”<sup>8</sup>.*

Transposition of the aforementioned regulation, legislation is given in the Criminal Execution provisions of the *Order of the Minister of Justice and Minister of Health no.429 / C 125/2012 on healthcare insurance of detainees in the custody of the National Penitentiary Administration.*

### Art. 2

*Inmates are secured with payment of contribution for health insurance from the state budget through special purpose amounts by National Administration of Penitentiaries budget.* „Following these issues, health service costs are paid by the prison unit from the funds available to them. Because the health insurance applies to all prisoners, regardless of their financial situation, resulting consequently that those who, when they were free and not being insured, for various reasons, will benefit from health insurance under and in accordance with law.

The process of granting prophylactic and curative healthcare in Romania are represented by the three important levels: primary care (family medicine), specialist outpatient care and hospital care.

### Law no.95 / 2006 - Art. 30

*(1) preventive and curative health care is ensured through:*

*a) outpatient medical offices of family physicians and other specialties, diagnostic and treatment centers, medical centers, health centers, laboratories and by other public and private hospitals;*

*b) public and private hospitals with beds.,,*

In order to ensure quality medical care, at least equivalent to the health network public after 2000 prison system has entered into contract with home health insurance (CASAOPSN AJ) and primary healthcare (medical cabinets unit). At that time, entry into contract with CASAOPSN AJ aimed at relieving the Directorate General of Prisons, major financial efforts on providing medical assistance, especially since that legal norms that Law No.23 / 1969 on the enforcement of sentences, require that healthcare to be provided with funds from the state budget.

For understanding the concept of primary healthcare medical specify the following terms and definitions according to Law no. Republished 95/2006 on health reform.

### ART. 63

*(2) The term defines primary health care providing comprehensive health care, first-contact,*

<sup>5</sup> Draft Strategy prison system in June 2009 - Strategic 2013biectiv 4 - Transparency and true picture of the penitentiary system in society, p.11.

<sup>6</sup> Art. 219 para. (1) of the Law no.95 / 2006 republished on health reform.

<sup>7</sup> Art. 219 par. (2) a) and b) of the Law no.95 / 2006 republished on health reform.

<sup>8</sup> Art. 224 para. (2) c) of Law No. 95/2006 Republished on health reform.

regardless of the nature of the health problem in the context of ongoing relationships with patients, disease presence or absence.

(3) Scope defined in par. (2) subject to the specialty of family medicine.

#### ART. 64

f) family medicine cabinet - private health unit specializes in providing medical services in primary care, organized under the law.

Exceptionally, ministries and institutions with own health network may establish the structure of family medicine cabinets, as public health units;,,

I mention that on 28 April 2006 when Law no.95 take effect, in Article 60 it makes no reference about the establishment of family medicine cabinets for ministries and institutions with own health network. However, to support the work of medical and other institutions including the prison system since 2008, from the legislator courtesy was promulgated Government Emergency Ordinance (OUG) no. 93/2008, which amended article 60 paragraph f) at that time for the purposes of establishing by exception, as public health units, family medicine cabinets and for ministries and institutions with own health network.

Following this, national health policy for integration into the prison system has developed legal rules with references to primary health care organization, raised by Decision no. 1897/2006 approving the Regulation implementing Law No. 275/2006 on execution of punishments and measures ordered by the court in criminal proceedings<sup>9</sup> thereafter Decision no. 157/2016 approving the Regulation implementing Law No. 254/2013 on execution of punishments and measures ordered by the court in criminal proceedings<sup>10</sup> and Order of the Minister of Justice and Minister of Health no.429 / C 125/2012 on healthcare insurance of detainees in the custody of National Administration of Penitentiaries<sup>11</sup>.

I mention that for countries like Germany, Norway, Northern Ireland, Holland, Denmark, Latvia, Lithuania, health care is provided entirely by the state budget.

Currently, the difference between nationally family medical care and the penitentiary system is more practical because in 90% of cases, detainees invoke the law enforcement - Article 71 of Law no.254 / 2013 which states that:

#### Art.71

„(1) The right to healthcare, treatment and care of sentenced persons is guaranteed without discrimination as regards their legal situation. Right to healthcare includes medical intervention, primary care, emergency care and specialized medical assistance. The right to treatment includes both health care and terminal care.

(2) Health care, treatment and care in prisons shall, trained staff, free of charge, by law, on demand or whenever necessary.

And they require the presentation to cabinet whenever they wish, cabinets registering an estimated 100 presentations to cabinet / 8 hours against a cabinet from public national family health network which is privately and do not accomplish more than 20 presentations to cabinet, programmed according to rules providing medical assistance in social health insurance. Any request to the family doctor's office of public health network over programming is made against cost.

Prisons Law no.254/2013	Health (Order no.763/2016)
Health care, treatment and care in prisons shall, trained staff, free of charge, by law, on demand or whenever necessary	<p>Note no 3</p> <p>1.1.1.1 It gives a single visit per person for each emergency situation observed, which was provided first aid or which was resolved at the medical office / home.</p> <p>1.1.2.1 For each episode of illness acute / subacute or acute to chronic conditions / insured settles a maximum of two consultations.</p> <p>1.1.3. Periodic consultations for the general care of insured persons with chronic diseases - will be done by appointment</p> <p>1.1.4 Patient monitoring includes two consultations scheduled which include the evaluation of disease control, screening for complications, patient education, laboratory investigations and treatment and a new monitoring is done after 6 consecutive months, calculated versus where it was performed a second examination of the monitoring previous case management.</p>

#### Healthcare specialist

Specialized medical assistance is regulated similarly in both health being carried out in accordance with the Contract Framework conditions for granting medical assistance within the health insurance system and the methodological norms for its

<sup>9</sup> Art.25.

<sup>10</sup> Art.153.

<sup>11</sup> Chapter II Section 1 - Organization of primary care.

application<sup>12</sup>, which may be granted both in outpatient specialist for the prison system and in outpatient specialized health centers profile public or private homes under contracts with health insurance.

The provision of specialized medical care is contained in Article 155 of Decision no. 157/2016 approving the Regulation for enforcement Law no.254/2013 on execution of punishments and measures ordered by the court in criminal proceedings and Article 37 of the Order of the Minister of Justice and Minister of Health no.429/C-125/2012 on healthcare insurance detainees in custody National administration of Penitentiaries.

The vast majority of investigations recommended in the specialized clinic (ex.computer Scanner (CT), magnetic resonance imaging (MRI)) which are need to be made, many times against cost, in order that the detained person to benefit from making swift them, and not wait for a possible appointment to a date too far removed from the time the recommendation shall be borne by the prison units.

#### *Dental Healthcare*

Public health network in over 90% of dental offices are organized privately. Even if there are legal provisions for granting conditions of the minimal basic package of health services in outpatient specialist dentistry (Annex 14 of the Order of the National Health Insurance nr.763 / 2016), the vast majority of dental offices are not in contract with the health insurance fund, so that Romanian citizens even if their insured status, receive dental services only against payment.

In the prison system according to law, stipulated in executional-criminal legislation, detainee persons have secured the services of basic dental, free, and in case of making a dental prosthesis, national house health insurance covers a percentage of 60% and the detained person, if it has cash funds, a percentage of 40%, representing personal contribution. If the detained person lacks the funds to cover his personal contribution, prison unit is forced to cover the person deprived of liberty.

*Order no.429 / C-125 on healthcare insurance of detainees in the custody of National Administration of Penitentiaries*

#### **ART. 39**

*(1) Preventive dental health care and dental treatment laid down in the rules for the application of the Framework Contract on conditions for granting medical assistance within the system of health insurance and dental radiographs ensure free and are settled Fund single national health insurance under the terms of the framework contract on the conditions for granting medical assistance within the system of health insurance and methodological norms for its application, the personal contribution unsettled the*

*national fund for health insurance It is borne by the budget unit.*

*(2) Any other dental treatment, except as provided in par. (1) requested by the inmates will carry a fee.*

*(3) Prosthetic treatments are provided according to the rules for the application of the Framework Contract on conditions of granting medical assistance within the health insurance system.*

*(4) The cost of prosthetic treatments personal contribution to be paid by the person deprived of liberty.*

*(5) Where the person deprived of liberty lost masticatory function in detention with impaired concurrent and function of digestion, and is found in analyzing its income that does not have financial means necessary to pay personal contribution, this falls the unit who was sentenced budget, allocated funds for this purpose or other sources, according to the law.*

*(6) If the prosthetic treatment is necessary due to an accident when due in connection with the work that was assigned to the detained person or the fault of proven employees of the National Administration of Penitentiaries, consideration therefor shall be,, unit covered by the budget.,,*

In the case of dental medical care for inmates, European Court of Human Rights (ECHR) ruled against Romania judgment of violation of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, retaining as maltreatment cases of delays in providing dentures to certain prisoners who lacked funds and penitentiaries had not provided funds to cover personal contribution to the detained person. (*Fane Ciobanu against Romania no 27.240/03/2012*).

#### **Hospital care**

Hospital care for inmates in prisons is performed inpatient hospital and other hospitals of similar homes under contracts with health insurance<sup>13</sup>.

*Law no. 254/2013 on execution of punishments and measures ordered by the court in criminal proceedings within prisons-hospital Art.12 par. (2) c) as special prisons.*

First of all the operation of prison-hospital is primarily and necessary operation of the prison system, which is consistent with the provisions of the Standard Minimum Rules of the United Nations Universal Declaration of Human Rights, which states: "*The medical care were paramount and detainees' health should be a priority in jail. The level of health care in prison and medication must be at least equivalent to those of society.*"

Prisons-hospital are in contract with the health insurance fund (CASAOPSNAJ) empower funds for hospital services provided to inmates, relieving the

<sup>12</sup> Order National Health Insurance House nr.763 / 377/2016.

<sup>13</sup> Article 158 para. (1) GD no.157 / 2016 approving the Regulation implementing Law No. 254/2013 on execution of punishments and measures ordered by the court during the criminal trial.

budget of the National Administration of Penitentiaries of the major financial efforts on healthcare insurance.

So far the health reform law (Law no.95 / 2006) failed to integrate the specificities prison-hospital, they are often required to apply rules that conflict with execution - criminal practice. Following these aspects prison hospital they were considered as any hospital unit in the public system is obliged to secure funding in the first laugh from their own income as required by Article 11 para. (8) of *Decision no.756/2016 organization, functioning and powers of the National Penitentiary Administration and the amendment of the Government Decision nr.652 / 2009 on the organization and functioning of the Ministry of Justice.*

*„(8) Prisons-hospital are providing special prisons, law, medical services under the specific conditions of the prison system. Prisons hospital are funded entirely from own revenues through social health insurance system and other own revenue; they may receive money from the state budget under the law,,*

It must be emphasized that the organization of prison-hospital may not be similar to any hospital unit in the public system or in the system of defense and public order, their work entails obviously a special specific, given the nature of the disease, the risk posed to the staff, specific modalities of action, guard and

escort. Regarding financing regime it certainly can not be like other establishments of public health or those of the defense system, as these special prisons do not provide health services surcharge for other people outside the prison system.

Applying the same hospital for prisons specific funding regime in the public hospitals, while the legal status and scope of activity is totally different, which created over time problems financing and operation of these units.

### 3. Conclusions

Specifics of healthcare in the prison system imposed adapting and harmonization of all regulations which relate both to the execution of sentences and the health care.

A comparative analysis of legal norms underpinning of the right to health care in the prison system to the public health network, health policy highlights that the prison system has made significant progress in recent years. As measures to improve the regulatory framework is necessary for the public health system to accept the specifics of the particular peculiarities prison hospital and to integrate these units in health reform legislation.

#### References:

- [www.sfatulmedicului.ro](http://www.sfatulmedicului.ro);
- Law no.286/2009 Penal Code;
- Project penitentiary system Strategy 2009-2013;
- Law no.95 / 2006 republished on health reform;
- Law No. 254/2013 on execution of punishments and measures ordered by the court during the criminal trial;
- GD no.157 / 2016 approving the Regulation implementing Law No. 254/2013 on execution of punishments and measures ordered by the court during the criminal trial;
- Decision no.756/2016 organization, functioning and powers of the National Penitentiary Administration and the amendment of the Government Decision nr.652 / 2009 on the organization and functioning of the Ministry of Justice;
- European Court of Human Rights (ECHR) jurisprudence;
- Order National Health Insurance House nr.763 / 377/2016.