THE JUDGE'S ROLE OF SURVEILLANCE OF DEPRIVATION OF LIBERTY IN THE EXECUTION OF THE CUSTODIAL PENALTIES

Dantes MARCOVICI[*]

Abstract

In this study, I decided to analyze the activity of the judge of surveillance of deprivation of liberty in relation to the amendments made by Law no. 254/2013 on the execution of sentences and custodial measures ordered by the court during the criminal trial, published in the Official Gazette no. 514 of August 14, 2013.

I will also analyze its role, both in terms of the powers of an administrative nature, especially those with administrative-jurisdictional nature in establishing and changing the arrangements for enforcement and custodial, educational measures for the solving of the complaints regarding the disciplinary sanctions and the complaints regarding the exercise of the rights provided by Law no. 254/2013;

Keywords: *judge, surveillance, deprivation of liberty, powers, administrative, administrative-jurisdictional, Law 254/2013.*

Introduction

The domain covered by the theme of the study is the judge's institution of supervision of deprivation of liberty in relation to the amendments made by Law no. 254/2013 on the execution of sentences and custodial measures ordered by the court during the trial.

The importance of the proposed study lies in the fact that the institution of the Judge of surveillance of deprivation of liberty has a huge impact in terms of the rights of persons deprived of their liberty, as well as of establishments and arrangements for enforcement that is applied in one form or another to all detainees, both those who are serving a penalty applied by a final judgment, as well as persons against whom preventive detention was ordered.

It should be noted that the institution of the delegated judge is a relatively new Romanian law, the first time being regulated by Law no. 275/2006, it has the powers which, in a lesser or greater extent, have an administrative character (either purely administrative - as if refusing food or participation in the commission of parole from the prison, either mixed, administrative and judicial, as if resolving complaints made by prisoners or prison administration).

The objective of the study is the presentation of the work of the delegated judge for supervision of deprivation of liberty, his contribution to the rights of persons deprived of freedom, censorship, according to functional competence, of the mode of establishment and individualization regimes and changes during the execution of punishment, the solution of the complaints having the object of disciplinary sanctions for the detainees and other administrative tasks with a direct impact on how relationships are established in case of life imprisonment.

Since preparing the detained person for release must be made on the first day of detention, and this is the goal of all actions undertaken, following the fundamental objective of increasing the capacity of the convicted person of social reintegration, to facilitate the rehabilitation of the prisoner to life in freedom, to an attitude of compliance and respect for societal values, the role of the judge regarding the surveillance of deprivation of liberty, through the tasks he performs, is essential to respect the rights of the convicted persons but also in reference to the progressive changes, during the detention, of the enforcement regime in one sentence less severe, which has a special importance in reaching this goal.

In the first section of the study I will present a brief history of the institution of the Judge regarding the surveillance of deprivation of liberty, including the Romanian relevant legislation, and in the second part I will present the role of the judge in the surveillance of deprivation of liberty, the way of appointing the report by the prison administration.

The base of the study will be established in the third section of the presentation of the judge's duties regarding the surveillance of deprivation of liberty, including on the interpretation of the European Court on Human Rights, on field art. 3 and 6 of the Convention.

1. Brief history of the judge's institution for the supervising of deprivation of liberty. Legislative provisions.

The institution of the delegated judge (now called in the Romanian legislation, judge of surveillance of deprivation of liberty) first, in history, appeared in Brazil in 1923 and the first European country to implement it was Portugal in 1924 through the creation

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

of the Court of Enforcement of penalties, but his duties were limited to safety.

In Italy, the institution of the delegated judge, appears in 1930 and was not adopted by the Anglo - Saxon countries nor in the Scandinavian and Eastern European countries, including in Romania was published into law after the fall of the Iron Curtain.

As regards the legal nature of the powers of the delegated judge there are three guidelines. The first relates to purely administrative duties, the second to the exclusive jurisdictional nature and the third to the mixed.

For example, the Execution Italian Criminal system adopted as a model the administrative judge, while in the French system, although it was inspired by the Italian model, the judge has more powers, in that it disposes the deprivation of liberty, decides matters of parole, sets when the sentence is considered served, or controls the safety periods after the release.

The Romanian legislation, by Law no. 275/2006, adopted predominantly the mixed doctrine regarding the powers of the delegated judge, which is a guarantor of the rights of persons deprived of their liberty, but not their lawyer.

By Law no.254 / 2013 on the execution of custodial sentences imposed by judicial bodies during the criminal trial was proposed a new name - the judge of surveillance of deprivation of liberty, which as shown in the explanatory memorandum to the bill, is a name more concise and suggestive, for the judge who, being employed in prisons, arrest and detention centers, remand centers, educational and detention centers, has as main attribution the supervision and control of the legality of the execution of punishments and measures of deprivation of liberty, whether in prisons or other places of detention or arrest.

Concurrently, unlike the previous law, through the current framework law regarding the execution of penalties, were listed explicitly all the powers that it has, separating clearly the work of its management activity from the administrative-jurisdictional activity, the distinction is meant to end controversies after the entry into force of the previous law, regarding the legal nature of the activity of the judge: custody surveillance.

2. The Judge's oversight role regarding the deprivation of liberty, the way of appointing and the report with the prison administration.

Through the execution of sentences are pursued goals established by Law 254/2013, focusing on preventing the committing of crimes by applying criminal coercion.

The subsidiary aim would be of an individual order and refers to the formation of an attitude to the rule of law, to the rules of social coexistence and to work to reintegrate into society of persons detained or interned[1].

The Criminal proceedings are the activities regulated by law, the work carried out by the competent authorities, with the participation of parties and other persons[2], and the procedural rules are designed to ensure the effective exercise of the powers of judicial bodies to guarantee the rights of parties and other participants in criminal proceedings.

The Criminal proceedings distinguish several stages, of which, important for this paper work is the phase of enforcement of criminal judgments that became final, resulting in the achievement of the purpose of criminal law and criminal procedure law.

Thus, during sentencing, the judge's role to oversight the imprisonment, highlights the relationship between the judiciary power and the administration of execution penalties, between the enforcement of a final judgment and the taking of the steps to enforce specific content of mandate of imprisonment or other educational measures of deprivation of liberty. The executory effect of sentence gives birth, for the penitentiary institution or educational center, to the right to enforce sanctioning provisions and convict must obey these provisions[3].

The Institution of the judge for the surveillance of deprivation of liberty comes to reinforce and express the option of the Romanian legislator for effective control of how people are deprived of freedom, and on the line to improve and streamline the work of these judges, but also for the practical delimitation of their activity by the one held by the prison administration, the framework law contains rules on the appointment of replacements and some clerks, and the obligation of the competent state institutions to provide the necessary means to carry out the activity under optimum conditions.

In relation to the manner of appointment, according to art. 8 and 9 of Law no. 254/2013 and the provisions of art. 8- 9 of the judgment of the Superior Council of Magistracy no. 89/2014 for the approval of the organization of the activity of the judge of surveillance of the deprivation of liberty[4], in every such units are annually appointed one or more judges from courts across the court of appeal, and several alternates judges who will exercise their powers of those designated judges during the period in which they are unable to perform their duties. Appointment is made with the written consent of the judge concerned, from

[1] The law 254/2013 - art. 3.

[2] Ion Neagu, *Criminal Procedure Treaty. General Part*, Third edition, revised and enlarged, Universul Juridic Publishing House, Bucharest, 2013, p. 19; Mihail Udroiu, *Penal Procedure. The General Part. The special part*, The Second Edition, C.H.Beck Publishing House, Bucharest, 2011, p.1.

[3] Nicolae Volonciu, Raluca Moroşanu, *The Penal Procedure Code Commented. Art. 415-464. Execution of penal resolutions*, Hamangiu Publishing House, Bucharest, 2007, p. 3-6.

[4] Published in The Official Gazette, **Part I no. 77** of 31st of January 2014.

those who had this quality or were part of the court's criminal chamber executions.

To ensure smooth conduct of business of the supervision judge for the deprivation of liberty, the president of the appeal court annually appoints clerks and alternates clerks needed for the registration and registry office.

Concurrently, during the exertion of the duties regarding the surveillance of the execution of penalties and of the custodial measures, the judge of surveillance of the deprivation of liberty can not carry out other activities in which the court has been designated.

In art. 3 of the Higher Magistrates Council Resolution no. 89 of 31.01.2014 it is stated that in the exercise of its attributions, the supervising judgeof deprivation of liberty is independent, impartial and is subject only to the law.

The Regulation provides many more cases of incompatibility, respectively the situation in which the judge of surveillance of deprivation of liberty has to resolve complaints or requests concerning the spouse, relative or his in-laws, or up to grade IV inclusively, or may be located in a different situation from those set out in art.177 of Law no. 286/2009 on the Criminal Code, as amended and supplemented, or on who we believe would be affected impartiality, they shall be settled by alternate judge. The existence of such circumstances shall be immediately informed to the President of the Court of Appeal in whose territorial jurisdiction is the place of detention.

These provisions shall be applied accordingly and where the hearing or the research aim a misconduct committed in the presence of the judge of supervision of deprivation of liberty.

Regarding its activity, should be noted that the judge of surveillance of deprivation of liberty may hear any convicted person or working in the prison system, may request information or documents from the administration of the detention, can make spot checks and has access to individual file of prisoners, to records and any other documents or records necessary to fulfill the duties provided by law, with the respecting of confidentiality and professional secrecy, obligation incumbent to the Registrar appointed by the President of the court of appeal.

Concurrently, any person, organization, institution or authority is obliged to respect the independence of the judge supervisory of imprisonment and to provide it with requested documents and information. Space available to judge of surveillance of deprivation of liberty must be equipped with furniture and cabinets for storage of archives, IT equipment and to enable him access to the Internet, the program legislation and computerized system of registration of persons deprived of freedom in detention.

Consequently, the prison staff is bound to support the office of the judge of surveillance of deprivation of liberty, by forwarding all complaints and appeals made by inmates to communicate closings, to submit files to the court, to notify those concerned about receiving in audience, or for other hearings to resolve complaints.

Regarding the logistical conditions in which must operate the judge of surveillance of deprivation of liberty and the delegated Registrar, the penitentiary administration or, where appropriate, of the center of detention and arrest, of the Centre of arrest, of educational center or detention center, is bound to provide the judge of surveillance of deprivation of liberty with the space arranged to enable the conduct of its work in good conditions and are used exclusively by it.

In order to implement these provisions in most places of detention such requirements are met, the judge and the clerk being given one individual desk that they use exclusively, located in the building related to the prison administration; Each office is equipped with appropriate furniture and IT equipment (computer, printer) with Internet access, the legislative program and the ANP database - records of detainees.

Also, the consumables necessary to the work of the Office of the judge, shall be provided by the prison administration, and the hearing of the persons sentenced by the Judge of surveillance of deprivation of liberty takes place in a room made available to this effect by the administration, located inside of the prison.

3. The powers of the judge of surveillance of the deprivation of liberty in relation with the amendments brought by The Law no. 254/2013

It can be said after analyzing the legal duties that the primary role of the judge of surveillance of deprivation of liberty is to monitor and control the execution of sentences and ensuring the legality of custodial measures and the respecting of the rights of convicted persons.

1. The main **judicial administrative duties** of the judge of surveillance of imprisonment provided for in art. 9, paragraph. (2) of Law 254/2013, as follows:

handles complaints of prisoners on exercise of the rights provided by this law;

2. handles complaints regarding the establishment and changing of regimes for enforcement and educational measures involving deprivation of liberty;
3. resolve complaints from prisoners regarding disciplinary sanctions; In art. 9 para. (2) of Decision Of the Superior Council of Magistracy No. 89/2014 are provided also the administrative duties of the judge of surveillance of imprisonment respectively: provides audiences to the detainees; exercise the powers provided by the law on the procedure for refusal of nourishment; participates as chairman at meetings of the commission for parole; participates as president, in the procedure to replace the measure admission to the detention center or educational center with daily assisting

educational measure; participates as president, in the procedure for granting the release from the educational or detention center; participates as president, in the procedure to continue the execution of the educational measure of imprisonment in the penitentiary; grants approval for collection of biological samples for testing convicted person, if there are indications that it has consumed drugs, alcohol or toxic substances or ingested without prescription drugs likely to cause behavior disorders; carries out spot checks in places of detention. "

The difference between these functions is that the duties of administrative jurisdiction are exercised within the special procedures prescribed by law and are terminated by an administrative-jurisdictional act called closing and the closings of the judge of surveillance of deprivation of liberty that became enforceable according to the law, are required.

Since the procedure is an administrative judicial one and the conclusion was not a judgment, it is not necessary that it contains all the specific judgments (*for example: pending, at the roll call, pronounced in open court; pronounced in the council chamber of* ....).

In addition to the mention expressly made in the law, another argument that the procedure completed by a judicial-administrative conclusion and not a judgment is that it has a special regulation established by Law no. 254/2013, different from the hearing of the criminal procedure code.

Thus, first, the hearing requires the compliance with rules and principles that can not be applied in the procedure of the delegated judge that takes place in prison (ex: officialdom, contradictory, advertising, provide legal assistance, etc.);

Concurrently, in the prison in which is operating the judge of surveillance of deprivation of liberty, often is not possible the managing of evidence in terms of the Criminal Procedure Code (ex. Hearing of witnesses under oath, the bringing before the court of people who are not in prison, for hearing, etc.; as a matter of fact, the law does not use the terms of witnesses or parties);

This conclusion is based on the fact that the detained person unhappy with the solution of the judge given in this procedure, can make an appeal in the court, where he will have all procedural guarantees specific to hearing.

As a way of working, the complaints are submitted by the prison authorities through the secretariat, with an address and a registration number from the computerized application and at their receipt, the complaints are registered in the general register, in the register of administrative-judicial complaints and in the alphabetic list, in the order they were received.

After registering the complaints in the records, the file is formed, which received number in order to highlight the register of complaints with an administrative-judicial character and on the cover of the file is specified the file number, the name of the complainant, the subject of the case, and after settling the complaint, number and date of conclusion.

After the managing of evidence, the judge of surveillance of deprivation of liberty shall prepare a reasoned conclusion that resolves the complaint, which has two parts. The first part includes: case number, the name of the judge of surveillance and the name of the prison, number and date of conclusion of the proceedings, the object of the case and the date of notification, the name of the person deprived of liberty, the pleas and the evidence, the facts retained, the motivation of the solution and the presentation of the grounds of law justifying the solution.

Part two includes: the rendered outcome, the mention that this is subject to appeal, the deadline until the appeal can be filed and the court to whom is addressed, date of delivery, the signature of the judge.

The decisions handed down by the Judge of surveillance of deprivation of liberty receive a number from the register of conclusions in the order of delivery. Date and number of conclusion are listed in the register for administrative-judicial claims. The conclusion is drawn up in 5 copies. Of these, one copy is kept at the map of conclusions, one is lodged in the case file, and the other three copies shall be communicated to the prison administration to ensure that a copy will be forwarded to the representatives of the prison in exercising the right to appeal the decision, another to be handed to the person deprived of liberty and the last to be submitted to the individual file of the prisoner.

Appeals against the solutioning of complaints shall be forwarded by the penitentiary administration by address (with proof of communication of the conclusion) to the Judge of surveillance of deprivation of liberty, who mentions on the address, the date of receipt of the appeal, and after registering in the registry for complaints with an administrative-judicial character, the disputes shall be submitted to the competent court, along with the case file (bonded, sealed and numbered) within two days of receiving them, based on address, through the Secretariat / mail of the penitentiary administration.

The Shipping data of the files is referred by completing the relevant headings in the register of complaints with administrative-judicial character and in the delivery-receipt of correspondence Register(ledger), where the employee of the prison signs.

As regards the deadlines for dealing with complaints by the judge for supervision of imprisonment, according to art. 39 para. 6 and art. 56 para. 7 of Law no.254 / 2013, the judge is obliged to settle the complaint within 10 days of its receipt (in case of complaint against the establishment or modification of the regime for penalty) or 15 days (in case of complaint concerning the respecting of the rights of the sentenced persons) and by the pronounced conclusion, he will be able to dispose one of the following solutions:

a) allows the complaint;
b) rejects the complaint if it is unfounded, late or inadmissible and / or devoid of purpose;
c) notes the withdrawal of the complaint.

From the formal point of view, after the solution of the complaints regarding the duties provided for in art. 9 paragraph. 2 letters a-c of Law 254/2013, the conclusion of the custodial surveillance judge shall be communicated to the convicted person and to the penitentiary administration within 3 days from the date of delivery thereof, and against the conclusion, the convicted person and the prison administration can make an appeal to the court in whose jurisdiction is located the prison, within three days or five days from notification, as appropriate.

The legislator has provided this remedy for respecting the constitutional principle of free access to justice and the censorship by a court of an administrative decision, as the one of the committee establishing or modifying the regime of execution or enforcement of a disciplinary sanction, constitute an additional guarantee to the convicted person.

The appeal does not suspend the execution of the conclusion and is examined in open court, summoning the convicted person and the prison administration and the convicted person is brought to court only when ordered by the court, in this case being heard. Legal aid is not compulsory, and if the prosecutor and the prison administration participate in the trial, they make conclusions and the court will pronounce a definitive sentence.

Regarding the Administrative Judicial attribution of solution of the Complaints of the inmates regarding the application of the disciplinary sanctions, should be noted, (in terms of fairness and of the reasonable duration of the disciplinary proceedings of detainees in relation to the interpretation of the European Court on Human Rights, on the field of the art. 6 of the Convention for the subject of this study, although the article in question refers explicitly only to the "criminal" allegations), that the Court made three criteria governing the conditions under which Article 6, along with its safeguards, is applied in disciplinary proceedings in the execution of custodial sentences.

The Court first established that should be considered the classification of the offense in domestic law and even if it is not a crime but is classified only as a disciplinary offense, in the proceedings, the Article 6 may be used, being the situation in which the offense can be equated with a criminal offense, in terms of its nature and by this principle, the Court sought to prevent from the start the removal of procedural guarantees stipulated in Article 6 for some misbehaviors, based on internal classifications.

Thus, the court established, independently of the autonomously, internal law, what is meant by the accusation "criminal" and investigating the facts that, under national law, are not criminal offenses, if they can be equated to an offense, in terms of their nature. Also, the Court examined whether the imposed penalties can be equated to a criminal penalty, in terms of the nature and severity (see ECHR, June 8, 1976, Engel and others / Netherlands, no. 5100/71, 5101/71, 5102 / 71, 5354/72, 5370/72, pt. 81.82), and in this respect, recognizes the particular context which characterizes the internal disciplinary procedures in prisons.

The Court considered that there may be practical reasons and fundamental considerations, to determine the need for a special system in prisons to maintain discipline, a system that should not be considered as a procedure of accusation "criminal" in this category being found the considerations safety, public order, a rapid resolution of cases of inappropriate behavior of inmates, the existence of sanctions tailored to the this sector and the obligation of management of the place of detention to take responsibility for safety and order in the place of detention (see ECHR June 28, 1984, Campbell and Fell ./. United Kingdom, no. 7819/77, 7878/77, pt. 69)

However, in The European court’s sense, the guaranteed right to a fair trial is a fundamental principle of a democratic society. Despite the particular context of internal discipline in prisons, stating that "dividing line" between the disciplinary measures that do not fall under Article 6 and the "criminal" accusations under Article 6, shall be determined having regard to the intentions and purposes of this article.(ECHR, June 8, 1976, Engel and others ./. The Netherlands, no. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, pt. 81, 82; ECHR June 28, 1984, Campbell Fell ./. United Kingdom, no. 7819/77, 7878/77, pt. 69)

Thus, the Court specified all these in its case in the cause Campbell and Fell v United Kingdom, that the plaintiffs protested the mistreatment of other detainees, sitting down in the corridor of the prison and refusing to get out of there, being lift by force. Campbell and other inmates were disciplined for mutiny or incitement to mutiny. It should be noted that at the time, in the United Kingdom, if it was pronounced a sentence of imprisonment for a limited period of time, each person deprived of liberty had the automatic right to a sentenced reduced by one third, and the penalty was imposed to several prisoners, including Campbell, in disciplinary proceedings, and the sanction consisted of denying the right to release before the deadline, given that one of the persons concerned, could benefit from a total reduction of the sentence of 570 days and this was, in the light of the Court, a serious consequence for the duration of the penalty, so that this penalty must be classified, under the Convention, as a criminal charge, although technically, the punishment was not directly imprisonment.

Regarding the administrative-jurisdictional task of the judge of surveillance of imprisonment, provided for in art. 9 paragraph. (2) of Law 254/2013, to solve the complaints of prisoners on exercise of rights under this Law, should be noted that the legal rights of detainees are set out in art. 56-80 of Law no. 254/2013,

and any person is not allowed to restrict the exercise of these rights more than does the law or the Constitution.

In the execution of this task, the judge sees over the respecting of the rights of detainees, to assess the conditions of detention and the magistrate must take into account the cumulative effects of these conditions also considering the period during which a person is held under those special conditions.

Given that the acute shortage of space in the cells of prisons from Romania has an increased share, this should be considered in particular by the Judge of surveillance of deprivation of liberty at the time when the complaints are analyzed, following to determine whether the conditions of detention may be considered degrading, including in terms of art. 3 of the Convention. Art. 3 of the European Convention on Human Rights enshrines one of the most important values of democratic societies categorically prohibiting torture or inhuman or degrading treatment or punishment. Incident to be applied treatments must meet a minimum threshold of gravity, and in this context, the state is assigned two types of obligation: a negative, overall one, not to subject a person within its jurisdiction to treatment contrary to Article. 3:01 and substantial positive obligation, to take preventive measures to ensure the physical and moral integrity of detainees, such as the provision of minimum conditions of detention and adequate medical treatment.

The European Court has admitted on several occasions that it was a violation of Article 3 if the detention rooms were small, overcrowded or unbearable renovation conditions and hygiene.

Thus the cause of Kalashnikov against Russia, the detention room was permanently overcrowded. Each person had only 0.9 to 1.9 m2, two or three people had to share a bed, and thus can only lie flat sequentially. The detaining room was light during the day and night. The 18 to 24 inmates were continuously producing noise, the smoking was allowed, no ventilation, and the prisoner was entitled to spend only two hours a day outside the detention room. At the same time, the sanitary equipping was poor, there was no disinfection, and in the four years of detention in these circumstances, there was a substantial worsening of his health. Considering these aspects, the Court held that it is a degrading treatment within the meaning of Article 3 (ECHR, 15 October 2002 Kalashnikov./ Russia, no. 47095/99, §. 92-103).

At the same time the Court held in the case Iacov Stanciu against Romania, application no. 35972/05, paragraph 166, that custodial measures applied to a person can sometimes involve an inevitable element of suffering or humiliation but, nevertheless, suffering and humiliation involved must not go beyond the inevitable element of suffering or humiliation connected with some form of treatment or punishment with legitimacy.

With respect to detainees, the Court showed already in previous cases that a prisoner does not lose, through the mere fact of his incarceration, his rights guaranteed by the Convention. On the contrary, people in detention have a vulnerable position and the authorities are obliged to defend them, and under art. 3, the state must ensure that a person is detained in conditions compatible with respect for his human dignity, that the manner and method of execution of the measure are not subject to distress or hardship for the detain person, exceeding the unavoidable level of suffering inherent in detention and that, given the practical needs of imprisonment, his health and well-being are adequately secured.

According to art. 48 para. 5 of Law 254/2013, the minimum binding rules on conditions for accommodation of sentenced persons shall be established by the minister of justice. According to art. 1 para. Annex 1 of the Order of the Minister of Justice no. 433/2010, spaces for the accommodation of detainees must respect human dignity and must meet minimum standards of health and hygiene, taking into account the conditions and climates, especially the living space, air volume, lighting, heating and ventilation. In terms of the living space, art. 3 letter b of the same law provides that the accommodation rooms from the existing prisons must ensure at least 4 square meters per person deprived of liberty, framed in incarceration regime or maximum security regime.

In its jurisprudence, (*Iacov Stanciu, par. 168),* The Court decided that, in the causes in which the applicants were given less than 3 m² of living space, it found that overcrowding was severe enough to justify, itself, the violation of art. 3 of the Convention.

Regarding the administrative attribution of the judge of supervision of the deprivation of liberty, to participate in the refusal of food is found that the refusal constitutes a severe form of protest of detainees, which can cause health consequences or consequences regarding their lives, but also with respect to the execution of custodial sentences, because during detention, convicts are in state custody, who has the duty to enforce penalties. For this reason, essential duty of the state is to ensure the conditions for the execution of penalty and to ensure the protection of life, health and bodily integrity of the detainees.

According to art. 54 of Law 254/2013, in the situation in which, a convicted person intends to refuse food, notifies the supervising agent, verbally or in writing and submits to it any written claims on the reasons for refusal of food, and if the convicted person refuses to receive three consecutive meals, notifies the prison's director.

At the same time, the director of the prison, hears the convicted person stating the reasons for refusal of food, notifies the judge of surveillance of imprisonment, about reasons of the refusal to eat of the prisoner and his decision to continue to be in denial of food. From the moment when the judge of surveillance is notified, it is considered that the prisoner is in refusal of food and in some cases, the judge of surveillance has the obligation to hear the prisoner and and to resolve by conclusion the notified aspects.

After hearing, if convicted person keeps refusing food, the Judge of surveillance of deprivation of liberty may make proposals to the prison's director.

In this context, it is very important that the judge of surveillance of deprivation of liberty to identify and analyze the reasons that led the person to enter into refusal of food, and whether they are within its fold or in the prison's administration fold, to order the appropriate measures.

The refusal of nourishment shall be recorded in an established special register, entitled 'Register of refusal of food "and notices and work done is kept in chronological order, in the file of refusal of food, but there are cases when are made folders for each referral.

In most cases, they proceed to the hearing by the judge of the person deprived of liberty, the issues shown by it being recorded in a statement written either by the prisoner or by the delegated Registrar or delegated judge or typed and signed by person in the refusal of food, the delegated judge and the clerk.

Regarding the place for the hearing of inmates entered in the refusal of food, this is done inside the prison or detention center and even in the court when the judge fulfills other duties within it.

From the practice of the delegated judges, was revealed that in some cases, the detainees resort to this form of protest only in order to gain access as soon as possible to judge without respect for the audience program.

Conclusions

With the implementation of judge institution of supervision of the deprivation of liberty, in the Romanian legal system appeared certain animosities and struggles of egos between magistrates and directors of prisons, and the latter, following the transfer of administrative duties to the judge, found that there was a decrease of their authority in the eyes of their subordinates, or even the inmates.

The Judge of surveillance of the deprivation of liberty does not have organizational attributions, though to verify aspects shown by the persons convicted regarding the conditions of detention, can make checks in the prison, and the administration of the prison is obliged to provide the necessary support for such actions.

If upon inspection resulted in deficiencies to be rectified, the findings of the supervisory judge of imprisonment, shall be notified by address, to the director of the prison and the judge may make proposals on the measures it considers necessary to remedy the situation.

However, the judge is not the director of the prison nor above him, he must be impartial and be a guarantor of the rights of persons deprived of liberty without turning into an advocate for them.

Between the judge and the prison management is not beneficial to have a relationship of rivalry, because they must work together to find solutions for prevention of occurrence of discontent among the detainees on the application and enforcement of laws, and to limitate the complaints made often in bad faith by some inmates.

However, although the new legislative provisions are generous in terms of the judge's role of surveillance of deprivation of liberty, which has a predominant role in the observance of the rights of detainees, in the establishment and modification of the regimes of enforcement, the Romanian prison system is still in crisis, suffering from overcrowding and underfunding detention places and application of the new provisions of Law no. 254/2013 is a costly undertaking that transfers crime problems especially to prisons and to a lesser extent even to the judge of surveillance of custody.

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