

THE RIGHT OF PRISONERS TO EDUCATION: AN ABSOLUTE OR A RELATIVE RIGHT?

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Abstract

This paper examines the legal nature of the right to education of persons deprived of liberty, analysing whether it should be regarded as an absolute right or a relative one subject to limitation. The study is grounded in Article 79 of Law no. 254/2013 on the execution of custodial sentences in Romania, as well as in the relevant European human rights standards, particularly the jurisprudence of the European Court of Human Rights, including the case of Velyo Velevev v. Bulgaria.

The main objective of the research is to determine the scope and limits of the right to education in the penitentiary context and to assess the extent to which national legislation complies with European standards. A secondary objective is to identify the balance between the educational needs of prisoners and the legitimate interests of the penitentiary administration, including security, order, and resource constraints.

Methodologically, the paper uses a doctrinal and comparative legal analysis, combining national legal provisions with European case law and relevant scholarly commentary. The analysis highlights that while the right to education is strongly protected under international and European instruments, its implementation in detention settings is often subject to practical and administrative limitations.

The study concludes that the right to education of prisoners cannot be considered absolute in a strict legal sense, but neither can it be reduced to a purely discretionary benefit granted by penitentiary authorities. Instead, it represents a qualified right that requires effective and meaningful access, subject to proportional limitations. The paper ultimately argues for a reinforced interpretation of positive obligations incumbent on the state to ensure real educational opportunities within prisons.

Keywords: prisoners' rights, right to education, penitentiary law, European Court of Human Rights, Law no. 254/2013.

1. Introduction

This paper addresses the legal characterization of the right to education of persons deprived of liberty, with a particular focus on whether this right should be understood as absolute or relative within the penitentiary context.

The subject is important due to its direct implications on the rehabilitation and social reintegration of prisoners, as well as on the obligations of the state under both national and European legal frameworks. Education in detention is widely recognised as a key instrument for reducing recidivism and promoting social inclusion, yet its practical implementation often raises legal and administrative challenges.

The author aims to answer this issue by analysing the relevant provisions of Romanian legislation, especially Law no. 254/2013, in conjunction with the standards developed in the case-law of the European Court of Human Rights. Particular attention is given to the proportionality of restrictions imposed on the exercise of this right in penitentiary institutions.

This paper is also situated within the broader scholarly debate concerning prisoners' rights and the scope of positive state obligations under Article 2 of Protocol No. 1 to the European Convention on Human Rights. It seeks to contribute to existing literature by offering a structured analysis of the tension between normative guarantees and practical limitations in correctional environments.

2. The right to education of the convict from a legal perspective

This right is provided and guaranteed by Article 79 of the Law no. 254/2013, which mentions that, depending on the possibilities of the prison, the convicted persons may participate in school or university training courses, under the terms of the collaboration protocol concluded with the Ministry of National Education, taking into account the following aspects:

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3. Pivotal Judgment: Case of Velyo Veleve v. Bulgaria¹

The applicant, who was in pre-trial detention at Stara Zagora Prison, where he claimed to have been housed together with “repeat offender” inmates.

Having never completed secondary school, the applicant requested to be enrolled in the school operating within Stara Zagora Prison. In August 2005, he submitted a request to the Governor of Stara Zagora Prison, seeking enrollment in the 2005/06 school year. By the start of the school year on 15 September 2005, he had received no response. Consequently, on 29 September 2005, he addressed the Governor again and additionally contacted the Ministry of Education and the Public Prosecutor’s Office (in Bulgaria, the prosecutor is the authority responsible for supervising the lawful execution of pre-trial and post-conviction detention).

The applicant received a letter from the Public Prosecutor’s Office dated 6 October 2005, stating that the prison administration, taking into account the applicant’s prior conviction, had considered the possibility of the applicant pursuing his studies. Furthermore, the prosecutor noted that the applicant’s allegations concerning a denial of the right to education had not been substantiated. On 24 October 2005, the applicant also received a response from the Ministry of Education. The letter confirmed that persons deprived of liberty had the right to continue their education within the prison system, without making any reference to pre-trial detainees.

The applicant complained that he had been denied access to the school at Stara Zagora Prison, in violation of Article 13 of the Convention and Article 2 of Protocol No. 1 to the Convention. The Court considers that this complaint should be examined under Article 2 of Protocol No. 1, which provides as follows:

“No one shall be denied the right to education. In the exercise of any functions which it assumes in respect of education and teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

3.1. Arguments of the Parties

The applicant argued that national legislation does not explicitly prohibit the participation of pre-trial detainees in the prison’s educational programs and, therefore, he should have been treated in the same manner as convicted prisoners and allowed access to education. In particular, in his view, the provisions regarding the access of convicted prisoners to educational facilities should apply to all categories of prisoners. In support of his claim, the applicant maintained that the national authorities had misinterpreted the relevant provisions and, as a result, had treated him in a discriminatory manner; his rights had been restricted more than necessary for the purpose of detention; and he had been automatically and arbitrarily deprived of the right to education.

Furthermore, the applicant contested the reason invoked by the prison authorities and the Government in their observations, namely that, as a person who could potentially be sentenced as a “repeat offender,” his exclusion from school was justified in the interest of “first-time offenders” attending it. He emphasized that during the time he was held at Stara Zagora, there were “repeat offender” inmates attending the prison school. In his view, this demonstrated that the principle of separating “repeat offenders” from other prisoners had not been respected.

Moreover, the applicant argued that it was illogical to exclude him from school on the ground that, as an unconvicted detainee, there was a possibility that he might be acquitted and therefore would have to leave the school before the end of the school year. In any case, he spent nearly two full school years in pre-trial detention at Stara Zagora Prison. If the prison authorities had any doubt regarding the duration of his pre-trial detention, they could have referred the matter to the Public Prosecutor’s Office.

The applicant maintained that, until he was convicted, he was entitled to the presumption of innocence and should not have been denied the right to education during this period. Once convicted and transferred to Pazardjik Prison, he no longer had the opportunity to continue his studies.

While the Court is mindful of the Committee of Ministers’ recommendations that educational facilities should be made available to all prisoners (see paragraphs 21–24 above), it recalls that Article 2 of Protocol No. 1 does not impose an obligation on the Contracting States to establish educational facilities in prisons where none exist (see *Natoli v. Italy*, no. 26161/95, Commission decision of 18 May 1998, unpublished; and *Epistatu v. Romania*, no. 29343/10, § 63, 24 September 2013).

¹ Available at: <https://hudoc.echr.coe.int>, accessed on 17 April 2026.

However, in the present case, the applicant's complaint concerns the refusal of access to an already existing educational facility, namely the Stara Zagora Prison School. As noted above, the right of access to an existing educational institution falls within the scope of Article 2 of Protocol No. 1. Any restriction on this right must therefore be foreseeable, pursue a legitimate aim, and be proportionate to the objective pursued.

Although Article 2 of Protocol No. 1 does not impose a positive obligation to organize education in prisons, where such a possibility exists, it must not be subject to arbitrary or excessive restrictions. The Court considers that, in the context of Article 2 of Protocol No. 1, the foreseeability of the restriction applied to the applicant is questionable. The relevant legislative framework provided that convicted prisoners aged 16 or over had, upon request, the right to be included in educational programs and that, in the absence of clear contrary rules, the provisions regarding convicted prisoners would apply equally to pre-trial detainees. The only express provision regarding the right to education of pre-trial detainees was that the prison authorities should "encourage" their participation in the prison's educational programs.

The lack of clarity in the legislative framework was also reflected in the fact that, during the domestic proceedings and before this Court, the national authorities cited various reasons for refusing the applicant's request to enroll in school. His request was initially denied by the Department for Execution of Sentences within the Ministry of Justice on the grounds that, "once convicted," he would be transferred to a prison for "repeat offenders" and that, in the meantime, allowing "repeat offenders" to mix with "first-time offenders" in the school would violate the legal obligation to separate them. Subsequently, the Governor of the prison also refused his request for similar reasons.

When the applicant appealed the prison authorities' decision to exclude him from school, the Stara Zagora Tribunal found that he could not be classified as a "repeat offender" and ordered the prison Governor to enroll the applicant in school. Following the Governor's appeal, the Supreme Administrative Court quashed the tribunal's decision on the grounds that the applicant was not entitled to participate in the prison's educational programs, as the right to education, according to the relevant legislation, was intended to apply exclusively to persons deprived of liberty following a final conviction, and not to those held in pre-trial detention.

Furthermore, during the proceedings before the Court, the Government relied on three different reasons to justify the applicant's exclusion from school. First, it argued that, as a pre-trial detainee, it was inappropriate for the applicant to attend school together with convicted prisoners. Second, it claimed that, as a detainee held in pre-trial detention for an indeterminate period, it was not appropriate for him to attend a school intended for prisoners sentenced to 12 months or more of imprisonment. Third, the Government asserted that, since the applicant risked being sentenced as a "repeat offender," it would not be in the interest of the "first-time offenders" if the applicant were allowed to attend school.

For the Court, it is noteworthy that the Government did not support its arguments with any evidence concerning the conditions applicable at Stara Zagora Prison. The need to protect the applicant by keeping him separate from convicted prisoners, due to his status as a pre-trial detainee, was not a reason relied upon by the prison authorities when they rejected the applicant's requests. Moreover, from the numerous requests submitted by the applicant to be allowed to attend school, it was clear that he had no objection to participating in this activity alongside convicted prisoners. The evidence submitted before the Court contains no indication that, in a supervised and controlled educational environment, pre-trial detainees would have been affected in any way, or that, at Stara Zagora Prison, they were separated from convicted or "repeat offender" prisoners, and if so, whether such segregation applied to all aspects of the prison regime.

The second reason invoked by the Government was the indeterminate nature of pre-trial detention and the requirement under national law that prisoners must be serving sentences of one year or more before they could be enrolled in prison schools. However, the Government did not explain why this was a necessary condition for admission to the prison school. With particular reference to pre-trial detainees, such as the applicant, the Court does not consider that initial uncertainty regarding the total duration of pre-trial detention should justify depriving them of access to educational facilities, except in cases where, for specific reasons, it is clear that detention will be of short duration. Furthermore, the Government did not provide the Court with statistical information regarding the school's available resources to justify, for example, a policy of concentrating limited resources on prisoners serving the longest sentences.

Finally, regarding the last reason invoked by the Government, namely the need to separate the applicant from other prisoners due to the risk of being sentenced as a "repeat offender," the Court does not consider this

to be a valid justification, since at the time in question he was an unconvicted detainee enjoying the presumption of innocence.

Consequently, the Court does not find any of the reasons invoked by the Government persuasive, particularly as they are not supported by any evidence regarding the precise means of ensuring access to education at the Stara Zagora Prison school. On the other side of the balance must be placed the applicant's undeniable interest in completing his secondary education. The value of education in prison, both with regard to the individual prisoner and the prison environment and society as a whole, has been recognized by the Committee of Ministers of the Council of Europe in its recommendations on prison education and through the European Prison Rules.

In the present case, the Government did not provide any practical reasons, such as a lack of school resources, nor any clear explanation of the legal grounds underlying the restriction imposed on the applicant. In these circumstances, based on the evidence before it, the Court finds that the refusal to enroll the applicant in the Stara Zagora Prison school was neither sufficiently foreseeable, nor did it pursue a legitimate aim, nor was it proportionate to such an aim. It follows that, in the present case, there has been a violation of Article 2 of Protocol No. 1.

Accordingly, the application is declared admissible.

From this case, it can be observed that a prisoner's right to education must be respected, even in the context of a transfer to another prison, and that the factors that may influence the exercise of this right include:

Thus, in a situation where the prison has available resources and refuses the prisoner access to education without a legitimate aim, this may constitute a violation of the prisoner's right to education.

4. National Jurisprudence

4.1. Judgment no. 625 of 22 April 2024 of the Oradea Court ²

The Court found that, by the complaint, the applicant Administration of the Penitentiary, through its legal representative, contested the decision issued by the delegated judge within the Penitentiary through the ruling pronounced in case no. 1, regarding the measure taken by the prison administration in relation to the refusal of the applicant's request to enroll in university courses at University X—specialization in Journalism, on the grounds that the person deprived of liberty did not cumulatively meet the conditions for enrollment in a new faculty, according to the provisions of Article 79, Article 89 paragraphs (5) and (8) of Law no. 254/2013 and Article 86 paragraph (2) of the Ministry of Justice Order no. 1322/C/2017.

Subsidiarily, it requested the partial acceptance of the complaint filed by the convicted person, in the sense of granting the possibility of enrollment in a second faculty, specializing in Journalism, at University X, and not at University Y, so that the Penitentiary could ensure, in a balanced and reasonable manner, the resources necessary for attending examinations, within the territorial competence limits established for the performance of escort duties.

In the reasoning of the contestation, the applicant Administration of the Penitentiary stated that, through several internal requests submitted during 2023, the person deprived of liberty requested approval for enrollment in two additional faculties, in addition to the Faculty of Law, which had previously been approved, namely the Faculty of Psychology and later the Faculty of Journalism at University X.

In both cases, the refusal measures adopted by the Penitentiary were based on the same arguments, namely that the applicant is already a fourth-year student at the Faculty of Law (final year, which also involves preparation for the graduation examination), being assigned to a closed regime of execution, with a disciplinary offense committed in connection with attendance at courses. The current possibilities of the Penitentiary do not justify prioritizing enrollment in a new faculty, taking into account the closed execution regime, the security measures specific to this restrictive regime, the stage of the execution process, and the limited human, material, and time resources available to the prison administration. These resources are intended for equitable distribution, so that persons deprived of liberty can benefit from equal treatment, adapted to their identified needs.

It is further noted that, as a result of the refusal to approve enrollment in the two faculties, the prisoner filed a complaint invoking the Administration of the Penitentiary's violation of the provisions of Article 79, in

² Available at: <http://rejust.ro>, accessed on 17 April 2026.

conjunction with Article 91 of Law no. 254/2013 and Article 192 of Government Decision no. 157/2016, requesting permission to initiate procedures for re-enrollment at UBB — Faculty of Psychology and Educational Sciences, specialization in Psychology, for the 2023–2024 academic year.

On the merits, it is considered that the person deprived of liberty does not cumulatively meet the conditions for enrollment in a new faculty, pursuant to the provisions of Article 79, Article 89 paragraphs (5) and (8) of Law no. 254/2013, Article 92 of Government Decision no. 157/2016, as well as Article 36 paragraph (4) of Law no. 254/2013 and Article 86 paragraph (2) of Ministry of Justice Order no. 1322/C/2017, because the condition of good conduct is not fulfilled. The prisoner remains in a closed regime following a disciplinary offense committed in close connection with attendance at the Faculty of Law courses, consisting of accessing the internet and viewing videos with pornographic content during class hours.

Moreover, following his return to the Penitentiary, the prisoner repeatedly refused, during October 2023 (after the start of the academic year), to sign the written commitments regarding the use of IT equipment provided by the prison administration for the individual study program and class attendance. The commitments were only signed on 23 November 2023, approximately two months after the start of the academic year.

The applicant Administration considers that ignoring the first condition, regarding the prisoner's conduct, would undermine the obligations and prohibitions incumbent upon persons deprived of liberty and affect the very purpose of social reintegration measures, namely fostering a proper attitude towards the rule of law and social coexistence rules, in accordance with the purpose of sentence execution provided in Article 3 of Law no. 254/2013 and Article 4 paragraphs (4) and (5) of Government Decision no. 157/2016. Both provisions link the achievement of the purpose of sentence execution to the good conduct of the prisoner (a proper attitude towards the rule of law and social coexistence rules) and emphasize that the formalities required by the present regulations, to be fulfilled before a prisoner exercises a right or benefit, are subject to measures necessary in a democratic society for national security, territorial integrity, or public safety, maintaining order and preventing crime, protecting health or morals, protecting reputation or the rights of others, preventing the disclosure of confidential information, or guaranteeing the authority and impartiality of the judiciary.

Regarding the other criteria provided by law, Article 79 (right to education) of Law no. 254/2013 provides that convicted persons may participate, depending on the possibilities of the penitentiary, in school or university training courses, under the conditions of the cooperation protocol concluded with the Ministry of National Education, taking into account the priority intervention needs identified, the state of health, the type of execution regime, and the security measures applied.

From the content of the provision, it follows that the formalities established by the legislator for the exercise of the right to education (i.e., participation) refer to the assessment of the following criteria: the possibilities of the penitentiary, the priority intervention needs identified, the state of health, the type of execution regime, and the security measures applied.

It is noted that the possibilities of the penitentiary are limited both in terms of staffing levels (43% staffing rate for officer-educator positions) and in terms of the existence and provision of equipment and infrastructure necessary for the implementation of all activities in the daily program, taking into account the number and complexity of operational missions, as well as the social reintegration needs of all persons deprived of liberty, the diversity of identified needs, and the necessity to adapt rehabilitative interventions to the characteristics of each group.

It is considered that the legislator intended for existing resources to be allocated in a balanced manner, so that the administration of the place of detention can ensure participation in social reintegration activities for as many persons deprived of liberty as possible, thereby guaranteeing equal opportunities for the fulfillment of recommendations established through individualized evaluation and educational and therapeutic intervention plans.

Regarding the priority intervention needs, it should be noted that the convicted person is already enrolled in a faculty, thus ensuring the exercise of the right to education. In this context, enrollment in a new faculty could be considered at this stage of sentence execution only provided that it does not infringe upon the rights of other persons deprived of liberty.

In close connection with the possibilities of the penitentiary, the type of execution regime and the security measures applied must be taken into account. In this regard, the convicted person is assigned to a closed regime, and the provisions of Article 36 paragraph (4) of Law no. 254/2013 apply:

"(4) Convicted persons serving their sentence in a closed regime may perform work and engage in educational and cultural activities outside the penitentiary, under continuous guard and supervision, with the approval of the director of the penitentiary."

Evidently, the security measures specific to the closed regime require the allocation of additional resources for guard duty, supervision, escort, and accompaniment, compared with the semi-open or open regimes, which offer greater freedom of movement, including the possibility to participate in activities outside the penitentiary without supervision (in the case of the open regime).

The fact that the convicted person remains in a closed regime, after more than seven years since incarceration (admitted to the penitentiary on 28 March 2016), is also the result of conduct during this period, in the sense that there have been periodic breaches of the obligations and prohibitions set out by the penal enforcement legislation.

Regarding the criterion related to the recommendations included in the individualized plan, the convicted person was assigned a recommendation for university courses in 2017 by Penitentiary, which corresponds to the university courses pursued at the Faculty of Law.

In this context, the provisions of Article 92 of Government Decision no. 157/2016 are considered relevant.

In conclusion, the measures implemented by the Penitentiary administration are designed to plan rehabilitative actions in accordance with the criteria established by law and its implementing regulations, so that existing resources are allocated in a balanced and equitable manner to as many detainees as possible. The revision of recommendations for the convicted person is triggered by a change in the execution regime (from closed to semi-open), which will allow participation in a larger number of reintegration activities, with fewer resources required to ensure security measures.

Furthermore, the petitioner emphasizes that the recommendations included in the Individualized Evaluation and Educational and Therapeutic Intervention Plan are complemented by specialists from the social reintegration sector, from a multidisciplinary perspective, based on priority intervention areas and not solely according to the wishes of the person deprived of liberty. From this perspective, it is clear that pursuing a new university degree will constitute an optional/facultative action, while it is desirable that the range of activities offered within the penitentiary encourages convicted persons to work in order to understand the social value and importance of labor, including fulfilling civil obligations established by the sentencing decision, in accordance with the purpose of sentence execution.

From the case files submitted by the judge supervising deprivation of liberty within the Penitentiary, the court notes the following:

Through the complaint received and registered at the Office of the Supervisory Judge within the Penitentiary on 04.01.2024, the inmate invoked the violation by the Penitentiary administration of the provisions of Article 79 of Law no. 254/2013, in relation to Article 91 of the same normative act and Article 192 of Government Decision no. 157/2016, essentially requesting the admission of the complaint and permission to enroll at U.B.B. — Faculty of Political, Administrative, and Communication Sciences, specialization Journalism, Year I, distance learning. Case file no. 10/C/2024 was established.

The inmate was heard on 17.01.2024, by rogatory commission, by the judge supervising deprivation of liberty at the Penitentiary, who declared the following:

"I maintain my complaint regarding the reasons invoked in writing, including in relation to the probation request made, for the violation of the mentioned provisions, requesting that the Penitentiary administration be obliged to allow me to participate in undergraduate university studies at U.B.B., Faculty of Political, Administrative, and Communication Sciences, ID, specialization Journalism, Year I of study."

The supervising judge within the Penitentiary noted that the petitioner-inmate is a student in the fourth year of the Faculty of Law, in distance learning, and, according to the Penitentiary administration's statements, he had independently undertaken steps to also be admitted to the Faculty of Political, Administrative, and Communication Sciences, specialization Journalism.

Through the request registered under no. II/I/1989 on 22.11.2023, the petitioner-inmate asked the Penitentiary administration to approve enrollment in university studies at the Faculty of Political, Administrative, and Communication Sciences, ID, specialization Journalism, Year I, invoking the provisions of Article 79 of Law 254/2013 and Article 86 paragraph 1 of O.M.J. no. 1322/C/2017.

The Penitentiary administration rejected the petitioner's request through the resolution of 10.08.2023, stating that the conditions provided for in Article 79 of Law 254/2013 were not met.

The judge notes that, according to Article 79 of Law no. 254/2013, convicted persons may participate, depending on the capabilities of the penitentiary, in school or university training courses, under the conditions of the cooperation protocol concluded with the Ministry of National Education, taking into account the identified priority intervention needs, health status, type of execution regime, and the security measures applied.

Also, according to Article 192 paragraph 1 of the Implementation Regulation of Law no. 254/2013, inmates may, with the approval of the penitentiary director, attend university courses in distance learning or reduced-attendance formats, bearing all expenses, including travel costs. For courses with reduced attendance that require travel outside the penitentiary, only inmates classified in an open regime may participate. For enrollment in distance learning courses, all inmates have equal chances, regardless of the regime in which they are serving their sentence.

According to the provisions of Article 85 paragraph 1 of O.M.J. no. 1322/C/2017 of 25 April 2017, regarding the approval of the Regulation on the organization and conduct of educational, psychological assistance, and social assistance activities and programs in places of detention under the authority of the National Administration of Penitentiaries, CHAPTER VI — Methodology and rules regarding enrollment and participation in courses and exams for university education, convicted persons may, with the approval of the director of the place of detention, attend university courses in distance learning, regardless of the execution regime of their sentences.

Article 86, paragraph 1 of the same order provides that, for the approval of the initiation, by the convicted person, of the steps to enroll in or continue university courses, they must submit a request to the director of the place of detention. According to Article 86, paragraph 2 of O.M.J. 1322/C/2017, approval is conditioned on the conduct of the inmate, the other criteria provided by law, and may be granted based on the recommendations contained in the individualized plan.

In the present case, the supervising judge essentially noted that the Penitentiary administration did not approve the inmate's request for re-enrollment at the Faculty of Psychology and Educational Sciences, specialization Psychology, because the inmate is already enrolled in a faculty (fourth-year student at the Faculty of Law).

Considering the overall situation of the petitioner-inmate, the judge deemed that the refusal by the Penitentiary administration of the re-enrollment request at the Faculty of Psychology and Educational Sciences, specialization Psychology, is unjustified.

Indeed, according to Article 86, paragraph 2 of O.M.J. no. 1322/C/2017, approval of such a request is conditioned, among other legal criteria, on the conduct of the inmate.

In the present case, the petitioner was sanctioned on 08.06.2023, in the Penitentiary, with a warning for violating the Internal Regulations, for an infraction committed on 20.05.2023 while attending online courses, and the sanction was final.

Therefore, regarding the criterion of the inmate's conduct, it can be noted that, indeed, it was not appropriate, given that the inmate was disciplinarily sanctioned for committing a disciplinary infraction during the attendance of university courses.

On the other hand, it should be noted that, according to Article 79 of Law no. 254/2013, convicted persons may participate, depending on the capabilities of the penitentiary, in school or university training courses.

In this regard, it is noted that, considering the specific conditions of the closed execution regime in which the petitioner is currently held, continuous supervision and security must be provided during activities related to university courses, daily, three hours per day for individual study. One supervising officer must ensure the presence of the inmate and supervise the activities performed. Additionally, for the three hours per day, several more hours are required (sometimes after the evening roll call) on days when courses are scheduled for at least six subjects. A supervising officer and a specialist from the Education Service must be engaged each calendar day to monitor updates and posting of courses on the Microsoft Teams platform, as well as to prepare tables and attendance charts requiring multiple approvals.

The mentioned aspects concern the courses of a single faculty, and attending the courses requires internet access, the deployment of a supervising officer, and supervision for at least two hours per course. Access is restricted for education officers, meaning that checking the schedule on the university platform is carried out by the Head of the Education Service / Deputy Director of Social Reintegration, with the schedule sometimes changing daily, experiencing delays or rescheduling.

It is considered that all these defenses of the penitentiary, although pertinent and realistic, are not sufficient to restrict the right to education that the inmate must enjoy and which is necessary for full reintegration upon release from the penitentiary.

The supervising judge within the Penitentiary appreciates the efforts made by the petitioner-inmate to acquire knowledge in various fields, noting that his behavior and actions have been constructive.

It should also be emphasized that this situation—attending courses at two faculties simultaneously—will take place for a short period of time; theoretically, during 2024, the inmate should complete the courses at the Faculty of Law.

On the other hand, given that the petitioner is already a fourth-year student at the Faculty of Law (the final year, which also involves preparation for the licensure exam), the assertions of the Penitentiary administration, stating that under the given circumstances the inmate's right to participate in university courses for an additional faculty is limited, are entirely unjustified.

For these reasons, the supervising judge admitted the inmate's complaint and ordered the Penitentiary administration to allow the inmate to attend university courses at U.B.B.—Faculty of Political, Administrative, and Communication Sciences, distance learning, specializing in Journalism, first year.

The court, upon reviewing the case file and documents, finds that the conclusion of the supervising judge of deprivation of liberty is well-founded and lawful and, consequently, the appeal does not need to be admitted for the reasons invoked by the penitentiary petitioner.

In this context, it can be observed that the regime in which the convict serves his sentence does not justify the refusal of his right to education and training. This criterion may influence the manner in which this right is exercised, specifically how the inmate's attendance at courses will be ensured.

Therefore, it must be noted that the regime of sentence execution is a criterion for individualizing the exercise of this right, not a reason to deny its exercise.

Thus, it can be observed that in the case of an inmate in a maximum-security regime, the mere denial of his right to education, invoking only the execution regime, amounts to a violation of his rights. Consequently, the inmate will be able to participate in courses and online workshops.

Regarding the good conduct of the convict, this is a sensitive point, because in cases where disciplinary infractions occur during participation in courses, it must be analyzed whether the courses are not merely a pretext to escape from the prison environment, rather than serving the purpose of social reintegration. The seriousness of the committed infraction must also be considered.

In the present case, the convict has already committed a disciplinary infraction but has applied for enrollment in two additional universities.

The following issues must be analyzed: is a single disciplinary infraction, as in the present case, sufficient to disregard the inmate's right and intention to acquire knowledge in various fields, which would evidently contribute to his reintegration into society?

Indeed, the conduct of the inmate is a determining criterion regarding the manner and possibility of exercising the right to education. Disciplinary infractions may lead to restrictions in the way this right is exercised, but not to its denial.

In this case, the inmate was a fourth-year student at the Faculty of Law and was preparing to take the licensure exam, which demonstrates his concrete involvement in educational programs, a fact that influenced the decision in his favor.

4.2. Decision no. 1465 of 31.10.2024 of the Târgu Jiu Court³

On 27.08.2024, the appeal filed by the appellant-inmate against the decision of the judge supervising the deprivation of liberty at the Penitentiary was registered on the court's docket.

In the justification of his complaint, the petitioner essentially stated that education in the penitentiary is carried out formally rather than in practice, and that formalities alone cannot lead to performance, a situation that resulted in him failing to pass the baccalaureate exam.

Upon analyzing the case file documents, the court notes the following:

By the decision of the judge supervising the deprivation of liberty at the Penitentiary, based on Article 56(6)(b) of Law no. 254/2013, the petitioner's complaint was dismissed as unfounded.

³ *Ibidem*.

In issuing this decision, the judge supervising the deprivation of liberty noted the following:

It was noted that the provisions of Article 56(2) of Law no. 254/2013 establish a special procedure, and therefore a procedure of strict interpretation, intended to serve as a guarantee of respect for the rights granted to persons deprived of liberty. This procedure applies only in cases where the rights provided in Chapter V of Law no. 254/2013, entitled “Rights of Convicted Persons,” are violated.

Moreover, the complaint must concern a specific measure taken by the penitentiary administration, regarding which annulment or modification can be ordered, with the purpose of stopping the violation of the right (by “measure” is also understood the failure to fulfill an obligation correlated with one of the rights enshrined in Chapter V of Law no. 254/2013), a measure that must be taken by the administration of the place of detention.

Consequently, the provisions of Article 56 of Law no. 254/2013 establish the obligation to meet certain preliminary conditions before examining the substance of such a complaint: the requirement that the complaint concerns a specific measure taken by the administration of the place of detention; and the requirement that the measure relates to the exercise of the rights provided in Chapter V of Law no. 254/2013, and not to other rights.

With regard to the factual grounds invoked by the petitioner, the judge supervising the deprivation of liberty found that, in the submitted complaint, the petitioner invoked a violation of the right provided by Article 79 of Law no. 254/2013.

Thus, according to Article 79 of Law no. 254/2013, convicted persons may participate, depending on the possibilities of the penitentiary, in educational training courses, taking into account the identified priority intervention needs, health status, the type of execution regime, and the applied security measures.

Regarding the aspect raised, namely the violation of the right to education, the judge supervising the deprivation of liberty noted that, based on the information provided by the penitentiary administration, the field of education encompasses all programs and activities of learning, training, skill and vocational development, moral-religious education, creative activities, sports, and recreational activities aimed at acquiring and consolidating prosocial behaviors, in order to facilitate the social integration of persons deprived of liberty. Accordingly, the detainee participated consistently in educational activities and programs during the execution of the sentence, completing a professional qualification course—an IT operator course for data entry and processing—graduated on 29.03.2013, as well as numerous participations in educational activities and programs, including in August 2024, according to the data provided by the IMS-Web computerized application.

Furthermore, as evidenced by the administration’s response, the petitioner was involved in various thematic competitions and educational activities, as well as moral-religious and sports activities.

Therefore, in light of these considerations, the judge supervising the deprivation of liberty concluded that the petitioner’s right to education and instruction, as described in the provisions of Article 79 of Law no. 254/2013, was neither limited nor restricted, and consequently, the complaint of the petitioner on this aspect must be dismissed as unfounded.

Before the judge supervising the deprivation of liberty, the petitioner declared on 20.08.2024 that he maintains the complaint regarding the restriction of the right to education and professional training, because in the Penitentiary he was unable to benefit from cook-waiter courses that would help him after release, and for this reason he requested to be transferred to another penitentiary, where he identified such courses.

The petitioner also stated that he did not request to take professional qualification courses in agriculture or animal husbandry; in this penitentiary, he took courses to complete the 12th grade and sat for the baccalaureate exam, which he failed.

At the same time, in this penitentiary, he participated consistently in educational activities and programs, since, due to illness, he is unable to engage in work.

Regarding the professional qualification courses, it was explained that these are conducted in collaboration with the County Employment Agency. In this regard, the petitioner had an individual conversation to clarify the requested aspects (specifically, professional qualification courses), and it was also explained to him that, at that time, no professional qualification courses were being offered in the penitentiary where he was serving his sentence by representatives of the County Employment Agency.

He was also informed that a request had been submitted to the County Employment Agency to identify an instructor for two professional qualification courses in agriculture, but no instructor could be identified to conduct the proposed courses.

Concerning the issue raised, namely the alleged violation of the right to education, it was clarified that the field of education includes all programs and activities of learning, training, skill and vocational development, moral-religious education, creative activities, sports, and recreational activities, which aim to acquire and consolidate prosocial behaviors, in order to facilitate the social reintegration of persons deprived of liberty. Accordingly, the detainee participated consistently in educational activities and programs. During the execution of the sentence, he completed a professional qualification course: IT operator – data entry and processing operator.

During the hearing before the court, the petitioner-complainant stated that he maintains the statements made before the judge supervising the deprivation of liberty. He specified that he attended the 13th-grade courses in the penitentiary, and at their completion, he took the baccalaureate exam, which he did not pass.

Furthermore, the petitioner declared that he has been incarcerated in this penitentiary since 2019 and that, from that time until the present, no professional qualification courses have been conducted, with the education instructor verbally explaining that such courses could not be held because there were no teaching staff available to conduct them.

He emphasized that he submitted a new transfer request to the same penitentiary and mentioned that he requested to take professional qualification courses as a cook, but the Director of the National Administration of Penitentiaries rejected this request as well, citing that there were no available places for him to attend those courses, as they were already occupied.

He considered that, in this penitentiary, he is completely unable to attend professional qualification courses, thereby obstructing his access to education.

Additionally, the petitioner mentioned that the penitentiary is unable to provide adequately trained educators capable of identifying his weaknesses and helping him obtain a passing grade on the baccalaureate exam, noting that in 2024 he obtained a general average of 5.83, i.e., below 6.

In conclusion, the petitioner stated that he wishes to remain in the current penitentiary and that, within this facility, he should be granted access to the education he requested, meaning he should be able to take professional qualification courses and have teachers who can provide him with better preparation.

The court considers, based on the petitioner's statements and the evidence in the file, that, overall, his right to education within the penitentiary has been respected, through his participation in numerous educational activities. Therefore, the administration of the detention facility cannot be held responsible for the fact that he did not pass the baccalaureate exam.

Regarding the measures undertaken by the detention facility to ensure the detainee's participation in courses in the field of agriculture, which the petitioner does not wish to attend, opting instead for professional qualification courses as a cook, the court also considers that this aspect cannot be attributed to the detention facility. For this reason, the petitioner's request is dismissed as unfounded.

In the present case, it can be observed that the petitioner attended school courses within the penitentiary, even taking the baccalaureate exam. From this, it is evident that he had access to education and training.

The manner in which he prepared for the baccalaureate exam and the grade he obtained are not matters that can be attributed to the Penitentiary Administration, especially since each penitentiary is equipped with a library, which the detainee could have used to consolidate his preparation.

Moreover, the fact that he attended the professional qualification courses available at that time in the penitentiary, rather than those he desired, does not constitute a violation of this right. As can also be observed in the case of *Velev v. Bulgaria*, cited previously, the resources of the penitentiary represent a factor that influences the way in which the detainee can exercise this right.

Professional qualification, regardless of its nature, is a means to promote the social reintegration of the detainee, as once released, he will be able to earn income through the practice of that profession.

Thus, regardless of the type of qualification, once a course has been completed, it contributes to the development of the detainee as an individual in society and, at the same time, prevents the commission of new offenses, because with a qualification, he will be able to find employment and earn income.

4.3. Decision no. 1121 of 08.07.2024, Deva Court⁴

By the petition registered on the court's docket on 14.06.2024, the petitioner filed an appeal against the ruling of the judge supervising the deprivation of liberty at the penitentiary where he was serving his sentence.

The appellant submitted a complaint in which he alleged the violation of several rights, including the right to educational activities, psychological and social assistance, and professional training of the convicted person, claiming that these activities were not conducted in accordance with legal provisions. He also argued that his preparation for conditional release was not ensured and that he had not carried out activities in the period preceding or following the review by the conditional release committee. Furthermore, he claimed his right to education was violated because he could not continue his studies and was not included in professional qualification courses in various trades according to his skills.

Regarding the alleged violation of the right to educational, psychological, and social assistance activities and professional training of the convicted person, the claim that these were not conducted according to legal provisions, that preparation for conditional release was not ensured, and that no activities were performed before or after the conditional release committee, as well as the claim concerning the right to education, insofar as he could not continue his studies or participate in professional qualification courses, the court considers the provisions of Article 79 of Law no. 254/2013.

According to the cited legal text, convicted persons may participate, depending on the penitentiary's capabilities, in school or university training courses, under the framework of a cooperation protocol concluded with the Ministry of National Education, taking into account the priority intervention needs identified, the state of health, the type of execution regime, and the safety measures applied.

According to Article 89, paragraphs 1–8 of the same normative act, educational, psychological, and social assistance activities are organized in each penitentiary and aim at the social reintegration of convicted persons. For each convicted person, upon admission to the penitentiary, during the quarantine and observation period, a multidisciplinary assessment is carried out from educational, psychological, and social perspectives.

Based on the assessment conclusions, an Individualized Plan of Educational and Therapeutic Intervention is prepared for each convicted person, respecting priority intervention needs and in consultation with the convicted person. This Individualized Plan is updated and modified as necessary. Inclusion of convicted persons in activities recommended in the Individualized Plan is carried out taking into account the identified needs, the execution regime of the custodial sentence, and the stage of the sentence execution process.

Each penitentiary operates a library. The book collection is provided by the National Administration of Penitentiaries, through budgetary subsidies, own revenues, and donations or sponsorships. Convicted persons who work may participate in the activities provided in this chapter, respecting the work schedule. The conditions for organizing and carrying out educational, psychological, social, school, university, and professional training activities for convicted persons are established by order of the Minister of Justice.

In agreement with the supervising judge of the deprivation of liberty, the court notes that there can be no question of an absolute right of inmates to be included in all requested activities and social reintegration programs. On the contrary, the inclusion of inmates in school courses is subordinated to the existence of such opportunities at the level of the penitentiary, and participation in other social reintegration programs is subordinated to the prior determination of the necessity of attending them by the specialized personnel who carry out the assessment of the risks and vulnerabilities of the inmate.

From the response communicated by the administration of the place of detention, it is noted that during the mentioned period (01.01.2024 – present), the inmate did not submit requests to participate in school instruction activities. In the same vein, the Penitentiary also organizes school instruction activities for inmates at the level of grades I–VIII. Considering his level of education, he cannot participate in school instruction activities within the Penitentiary.

Regarding the period preceding the analysis by the Parole Board, it is noted that the inmate, in the current year, participated in 8 programs and activities in the educational field.

It is also noted that the inmate completed grades IX, X, XI, and XII during the execution of his custodial sentence.

Concerning the need for vocational qualification of the appellant, it is noted that this was addressed through the completion of a vocational qualification course in the profession of barber, conducted during the

⁴ *Ibidem*.

execution of his sentence at Aiud Penitentiary, in the period 01.07–05.10.2011. During the execution of the sentence at Penitentiary #####, he did not submit a request to attend vocational training courses. These matters have res judicata authority, having already been analyzed by the supervising judge on several occasions and remaining final through the judicial decisions that dismissed the inmate's appeals.

In the psychological domain, it is noted that the person deprived of liberty, in the period preceding the analysis by the Parole Board, completed 12 activity programs. Subsequently, following the analysis by the Parole Board, the person deprived of liberty was not included in psychological interventions, since the identified psychological needs had been addressed and the objectives proposed within the interventions had been largely achieved, and therefore no psychological intervention was required.

Regarding intervention on issues specific to the social assistance domain, it is noted that in the period preceding the analysis by the Parole Board, the person deprived of liberty completed 8 programs and activities.

Since, in the period following the analysis by the Parole Board, no other social needs or risks were identified, and given the fulfillment of the objectives established in the Individualized Plan, the person deprived of liberty did not participate in further social programs and activities.

Taking these aspects into consideration, the court, based on Article 56 in conjunction with Article 39 of Law no. 254/2013, dismisses the appeal filed by the Appellant.

In the present case, it can be observed that the convicted person benefited from school instruction, completing grades IX, X, XI, and XII during the execution of the custodial sentence, as well as vocational training, by attending a qualification course as a barber, which fulfills the purpose of social reintegration.

Furthermore, he was involved in and participated in numerous psychological and social assistance activities and programs. It should be noted that the identified priority intervention needs represent one of the factors influencing the assignment of the convicted person to such activities.

Therefore, it must be considered whether the inmate actually requires participation in such programs.

It follows that not including him in all requested social reintegration activities and programs does not constitute a violation of his rights, especially given that the inclusion of inmates in school courses is influenced by the concrete possibilities of the penitentiary, and participation in other social reintegration measures is based on the prior determination of the necessity of attending them by the specialized personnel who assess the risks and vulnerabilities of the inmate.

Conclusions

Summary of Main Outcomes. The analysis demonstrates that the possibilities of the penitentiary represent a primary criterion influencing the manner in which the right to education is exercised by convicted persons. These limitations cannot be attributed to the Penitentiary Administration. As noted in the pivotal case of *Velev v. Bulgaria*, the Court first assessed whether the penitentiary had the necessary resources to ensure the prisoner's access to education. Once resources are established, several factors determine how this right is exercised:

- o identified priority intervention needs;
- o the prisoner's state of health;
- o the type of detention regime;
- o the security measures applied.

It is important to emphasize that a more restrictive detention regime, such as maximum security or closed regime, does not equate to a prohibition of this right but rather determines a stricter manner of exercising it. Additionally, the good conduct of the prisoner may temporarily influence the manner of exercising the right to education. Failure to pass examinations offered by penitentiary educational programs is not attributable to the penitentiary, particularly when the prisoner has received formal schooling during incarceration. Finally, completing a professional qualification course different from the one requested by the prisoner does not constitute a violation of this right. Even if the course pursued is not the prisoner's first choice, it still fulfills the purpose of social reintegration.

Expected Impact of the Research Outcomes. This analysis provides clarity regarding the relative nature of prisoners' right to education: it is not absolute but conditional on penitentiary resources, security measures, and individual assessment of needs. Understanding these factors will help policymakers, penitentiary

administrations, and legal practitioners better ensure the effective implementation of educational rights for prisoners, balancing security concerns with reintegration objectives.

Suggestions for Further Research. Future research could focus on:

- comparative studies across jurisdictions to evaluate how resource availability affects prisoners' access to education;
- empirical assessment of the impact of different detention regimes on educational participation;
- investigating the role of professional qualification programs in reducing recidivism and supporting post-release employment.

References

- Ioan Chiş, Alexandru Bogdan Chiş, Execution of Criminal Sanctions, 2nd revised and enlarged edition, Universul Juridic Publishing House, Bucharest, 2021.