

Some considerations on reducing the risk of recidivism in the institutional system

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***Abstract:** The paper is in line with some concerns in the specialty literature regarding the role of the detention institutions in the re-education of people confined and effect of the applicable prison regime. In this sense, a series of international, European and national regulations, as well as the measures and practices in prisons built to reduce the risk of relapse are explored.*

***Keywords:** detention; detainee; risk; relapse; prison.*

Introduction

Reducing the risk of relapse imposes a social and criminal policy at the tertiary level of intervention, respectively after committing the act and applying the custodial sentence. So, depending on specific contexts, social cohesion programs are adopted, under the preventive aspect, including, in general, direct intervention programs in improving the behavior of the violent, drug addicts and alcoholics, programs specialized in the treatment of victimized persons, offenders while in custody, as well as a policy, at the post criminal level, of support in the direct reintegration in society.

The law also provides for a series of coercion and restraint measures of the rights and freedoms of individuals, in order to ensure the safety and protection of the institutions, groups, communities and properties.

Crime prevention is materialized through the intervention of the State in pursuing the social processes characteristic of society, from the perspective of the killer phenomenon and prison community intervention to achieve the societal level of desirability.

Thus, the postdelictum prevention takes place within an institutionalized environment (prison), and consists in reducing the risk of recidivism, with emphasis on the offender's personality and offense' characteristics.

In this sense, choosing the measure of preventing a relapse, at the level of sentencing, rests with the Court, and during the execution of the criminal sentences, with the authority responsible for the enforcement of the sanction.

1. The legal framework for reducing the risk of recidivism in the institutional system

The execution of punishments is carried out in accordance with the following international, community and domestic regulations:

a. The Universal Declaration of Human Rights of the ONU, in December 1948, affirms the prohibition of torture, cruel, inhuman and degrading punishments or treatments, (article 5); equality of individuals before the law (article 7); the right to be judged by a impartial and independent court (article 10).

b. The International Pact in relation to the civil and political rights adopted by the ONU, in December 1966, wich were regulated some provisions. They regarded the prohibition of torture, degrading and inhumane treatment, prohibition of medical or scientific experiments without the consent of the person (article 70), permission to work for the prisoners, special sanctioning regime for young people sentenced, with the purpose of social reinsertion.

c. The European Convention on Human Rights, which in article 3 prohibits torture, and inhuman and degrading treatments or punishments. In this respect, the European Court of Human Rights is competent to examine not only the conditions of arrest or detention, the duration of these measures, the procedure of law, but also the prison and the treatment to which the detainees are subjected to, in particular the issues that held in disciplinary cases, conditions of punishment execution, safety measures, etc.

d. Also, European penitentiary rules approved by the European Council in 1987, establish a series of common principles in the field of criminal policy. In this respect, the recommendation 3 (87) contains 100 provisions relating to the fundamental principles of the administration of prison establishments, staff, the objectives of the regime and prison treatments, the rules applicable to the category of convicted. Enshrining the fundamental principles in this regard, the Recommendation 2 (2006) provides that in prisons the following must be assured: respect for human dignity, equality and impartiality of prison treatment; the prison regime must be aimed at social reintegration of the convict. Also, the prisons' settlements must undergo inspection conducted by the independent authorities and permit accessibility and publicity of penitentiary rules.

e. The working document, prepared by the Secretariat of the VI Congress of the United Nations with respect to the prevention of crimes and the treatment of offenders (Caracas, Venezuela, 1980) finds that, "*imprisonment is not able to improve the chances that a delinquent follows the right path and that the prison institutions have failed to decrease crime*".

Prison tends to accentuate the criminal trends of the convicted offender and from the comparative analysis of the cost/benefit ratio, it follows that being in prison is expensive and represents a waste of human and social resources.

In the context of the mentioned guidelines, the *Committee for crime prevention and the fight against delinquency* has recommended the following:

- a) other solutions should be found than prison (supervised freedom, probation or parole);
- b) we should militate for sending to prison the smallest number of offenders, after exhausting all means and rehabilitation solutions;

The underlying principle of re-socialization action and treatment of offenders is represented by normalization, by approximating the conditions of life in prison to the conditions of the outside world.

As a general rule, normalization requires that, during the execution of the sentence, the prisoner retains and exercises most of the civil and political rights (the right to vote, freedom of religious conscience, the right to property).

In order to diminish the risks of adverse effects of detention, normalization implies the realization of two desiderata:

a) by internment in open establishments, the opening provides inmates with living conditions close or identical to those outside the place of detention (the right to unlimited correspondence, constant contact with the family, watching TV and radio programs, the right to conjugal visits, or the right to visit the family during holidays, the only restrictions being those relating to free movement outside the establishments);

b) empowering, by strengthening the sense of responsibility and personal confidence of the detainees by involving them in daily activities at the place of detention, re-adjusting them with life outside jail;

Detention and deprivation of liberty must be used as a last resort (*ultimo ratio*), so that, before the national courts decide on deprivation of liberty, they must take into consideration all the other, less radical possible penalties.

The decision regarding the deprivation of liberty must be adopted, when it is considered that the other possible measures, that the Court might take, do not lead to correcting the offender.

In accordance with the *Rules of the European prisons* adopted by the European Council in the field of prison, re-socialization and the treatment of offenders must be subordinated to some specific outcomes, intended to ensure the maintenance of the health status and respect of the detainees, by ensuring some living conditions compatible with human dignity and standards accepted within the community.

The purpose of detention should reduce as far as possible, the psychological trauma of the convicted person, thus preventing the emergence of emotional disturbance, obsessive ideas, infantilism, suicidal ideas, violent, aggressive behavior, encouraging those based on individualization of prison treatment, this being understood as a series of measures, activities performed and conducted under the supervision, assistance and advisement of the prison staff or other volunteer specialists. Thus, the sentenced person is observed, guided and supervised throughout the duration of detention, in compliance with the fundamental human rights and the rules governing the treatment of detainees.

In this regard, the legal internal and international framework, suitable to the European Union and international legislation, has been set up. It regulates the following rights and activities: the right to information; the right to petition; the right to live after an orderly program; the right to maintain contact with the family; development of activities related to life in prison and post-detention.

Thus, the Romanian Constitution in article 23 by enshrining the individual freedom and safety of the person, establishes two fundamental principles of the new legal system: the presumption of innocence and the legality of penalty.

In addition, The Criminal Code and The Code of Criminal Procedure contain a number of rules among which, those relating to the enforcement of criminal penalties.

Law no. 275/2006 concerning the enforcement of sentences, includes provisions relating to the execution of main punishments, according to detention regimes and regulations regarding the implementation of the preventive arrest measure.

2. Policies and measures to reduce the risk of relapse

According to all international, community and national rules, the objectives of the Romanian criminal policy are:

- effectiveness of correctional programs and practices;
- improvement of detention conditions;
- respect for the rights of convicts;
- improvement and diversification of prevention methods, within and outside the prison environment.

For the purposes of this policy, the application of the imprisonment penalty is aimed at [1]:

- remuneration;
- the individual, general prevention or intimidation;
- protection of the public (social protection);
- social improvement, recovery or correction of the offender;

Relapse prevention activities aim at straightening, correcting and re-educating the convicted, in order to ease the reintegration into the opened society. In this sense, a series of measures and activities are regulated. I mention: development of a useful activity within the community; psychological prevention; probation; parole; prevention programs within collectivity, etc.

Thus, the prison regime is differently applied, depending on a number of features such as:

- the personal circumstances of the detainee;
- the nature and gravity of the offence committed;
- the duration of punishment, etc.;

The prison also runs several programs aiming at:

- cultural and educational activities;
- training, professional qualification and retraining;
- special social assistance;
- individual or group specialized therapies;
- activities of training and stimulating the communication ability;
- other programs;

The purpose of these programs is to develop the mental and social skills of prisoners and prepare them for life after prison.

Convict's correction can only be achieved through education, psychological and social assistance, work and the development of cultural, sporting, recreational activities, etc.

School education and professional training are essential components of the process of correction, which take place in the detention institutions. In some European countries, it has certain features, such as:

- in Lithuania, all prisoners who have no high school education, are obliged to follow these studies during the period of detention;

- in Denmark, about 40% of those in prisons, in particular those within an open regime may receive education outside the prison environment;

- in Belarus, all prisoners aged under 30 years, must follow the general school courses, the secondary school is optional;

- in Hungary, the Roma prisoners have a specialty high school;

- in Romania, the prisoners follow different forms of education. Thus, in the education year 2012 - 2013, a number of 2696 detainees were enrolled in school and University training courses. A number of 1465 also attended courses of professional initiation in the fields: computer operator, technical photographic art, construction, woodworking, brickwork, services.

Psychological and social assistance are other components of the prisoners' correction process, consisting in carrying out counseling programs, organized in prisons. In some countries such as Norway, they continue even after the release of the detainee. These programs are meant to help the inmates keep in touch with family, to integrate into society after serving criminal sentences and prevent post-condemnatory relapse. Other programs are intended for consumers of drugs, sexual crime authors, etc.

Religious education is carried out by the priests, who usually are employees of the prisons, through prayers, study of religious books, etc.

Also, work in prisons is a useful social activity and it usually is compulsory and remunerated, from it a certain percentage is being retained. In some States, such as Slovakia, prisoners who work full-time and get good results are paid, ensured against accidents and benefit from pension insurance.

The differentiation and division of delinquents in prisons is done after criteria such as: gender, age, nature and severity of the committed act, special treatment needs (medical care, psychiatric treatment, continuing school or professional training).

A special category is that of inmates aged between 18 and 21 years, which require a special approach, because they have less life experience, some have failed to integrate into society, haven't completed their studies, have no professional qualification or are not normally, mentally and morally, developed. They can be re-socialized and socially reintegrated, through participation in programs based on age category, level of education, taking into account the behavior in the prison environment.

As part of the psycho-social program certain actions are conducted. They involve individual counseling, legal support, personal and social needs, establishing relationships with social services.

Within the education and professional training program it is envisaged the literacy and completion of studies, achieving professional qualifications, developing positive qualities and skills of the young prisoner.

Another program meant to lead to the re-socialization of young inmate is the program of cultural, sporting, recreation activities. Young drug addicts with special psychiatric problems also benefit from special programs.

As I observe the activities in prison are multiple and diverse which needs a competent and specialized personnel (sociologists, psychologists, doctors, teachers, educators, theologians, etc.), but in addition to this there is the need of political will and managers capable of initiating and implementing programs and measures in this regard. Thus, it is important to be able to waive the hiring and promotion on ideological bases of "substitutes" based on "nepotism and patronage", whose sole criterion is the fact that they claim to be loyal to

a particular political party, but in fact, this is the case only as they extract from the "lifeblood" of the Romanian economy, making the politic field one of the most lucrative professions in Romania [2].

3. The main controversy on reducing the risk of relapse

The penitentiary institution is a closed environment. Even though it speaks of transparency at the level of theory, here reins the silence in respect to certain behaviors and practices of wardens and inmates, reported at various characteristics of persons in detention.

Based on the observations and data obtained, I have noted a few relevant issues relating to the characteristics of persons in detention.

Though almost all of them had studies and qualifications at the time of the arrest, none have occupations.

Most are repeat offenders, most of them convicted of repeated thefts and robberies, which shows that, for them, crime is the only way of life, a condition of existence.

The criminal history of the family of origin and the social conditions in orphanages, can explain to a large extent, this type of behavior.

As regards the activities undertaken during the period of detention, the majority declare that these activities will not help them too much after their release.

Indeed, the integration into the workplace, after the release from prison of former detainees, constitutes a special problem, whereas in the conditions of crisis some companies have restructured and closed the activity, on the one hand, and on the other hand, they are hardly accepted or they are rejected when they declare that they have suffered a conviction. To this, add poverty, alcoholism, unemployment, drug trafficking, promoting violence in the media, abuse and discriminations, which are the major scourges of Romania [3], and also some of the risk factors of crime.

From our investigations show also that social reintegration penitentiary achieved only a portion of all offenders. We should bear in mind that a percentage of approximately 44% of inmates have confirmed this.

Therefore, without finding jobs, the former prisoners are "forced" to commit "offences of necessity" (theft, robberies, etc.) in order to ensure their existence, and not long after, they end up behind bars again.

Statistics show that over 60% of the men released, after having been convicted and having served their punishment in the United Kingdom, are re-incarcerated within four years from the commission of the original crime. The actual rate is much higher, as some of them are not trapped or are caught up later.

In Romania, at the end of 2012, a rate of 45.78% is the share of recidivist detainees, based on the total number (31817 prisoners), this representing a slight increase to previous years: 2009 – 44.82%, 2010 to 44.93%, and a slight decrease compared to the year 2011 - 45.87% [4].

To help those released from prison a *partnership with the civil society and the community* is necessary to be established. It involves, in an imperious and necessary way, a joint action, among all the public Government institutions and NGOs that have powers and legal concerns in the field of preventing and combating antisocial acts, cause for which this very important task requires coordination at the level of managers [2]. We agree, at the same time, specialists, noting that "criminal status indicators in Romania also shows that to stem the tide of threats to the rule of law, public order and safety, produced by crimes of great violence, by the economic and financial crime, organized crime and transnational crime, all associated with a strong bureaucracy and endemic corruption" [5], believes that "require a new approach, much more complex and flexible, in an integrated system, with responsible participation of all national and international decision-makers" [5], aspect that I think applies to activities aimed on reducing the risk of relapse.

In addition, a number of companies could provide jobs, according to the qualification of the ex-detainees, without being apprehensive, if there were a tax relief in this respect.

The small reduction of relapse risk and inefficiency of some measures give rise to many controversies between the specialists and practitioners in the field of criminology, sociology and psychology

with respect to the prison as an instrument of social control. In this respect, some specialists consider that the reeducation in prisons does not lead to good results, by contrast, has a dehumanizing effect on human personality.

Thus, Petre Pandrea [6] criticizes the prison institution for the following reasons:

- the disappearance of the feeling of honor in prison, due to the promiscuity in which they live in, which lowers morale;

- emergence of antisocial complexes;

- the ability to adapt to the environment diminishes in prisons because of the artificial atmosphere;

- the prison easily turns in the "School of crime";

The convict is not a passive being. He develops cooperative or conflicting relations with the ones around him (inmate-inmate, personnel-inmate). So, Harbourdt has identified among the inmates, the following types of relations: pro-social; pseudo-social; antisocial; social.

The nature of these relationships should be the basis for the process of re-socialization, whose success depends on the nature and treatment of the prison.

The atmosphere in the prison is not gentle, as the representatives of these institutions present it. Various cases are reported: cases of mistreatment of prisoners by wardens, mistreatment applied between inmates, to who fall victim those with less robust physical training and newcomers "*baptized*" in the particular way of the inmates.

These things do not lead to the reeducation of the inmate, but on the contrary they make him become worse than he is, thus becoming a potential recidivist.

The system of disciplinary measures instituted in the prison environment has an important role in the discipline of the convict, but we believe that it has some shortcomings. Thus, the balance sheet of the National Penitentiary Administration shows that in the year 2012, a number of 1192 inmates were punished with the suspension of the right to participate in cultural, artistic and sports activities for a period not exceeding one month, and 288 prisoners have been sanctioned with the suspension of the right to work for a period not exceeding one month.

In our opinion, these disciplinary actions come into conflict with the mission of prison to reeducate the convicts. On the contrary the attendance at such activities should be mandatory; against the prisoner other disciplinary measures should be taken.

A specific problem of this system is the amplification of small-scale corruption in the prison, in the sense that some prisoners are given some advantages that are not allowed to in prison (possession of mobile phones, drugs, leave, etc.), in exchange for money and other material benefits. Referring us to petty corruption in prisons, I agree with one of the authors, which shows that it corresponds to the bureaucratic and administrative corruption, common to the institutions of the central and local public administration bodies (prisons), where the citizens (inmates) have direct contact with the officials who have to implement the policies, strategies and laws of corruption which manifests itself in the most subtle ways, relating to claiming and accepting money or other material benefits in order to perform, not perform or delay the performance of an act, with respect to their work duties [3].

Prisoners suffer from a number of privations: are deprived of freedom, absence of family and friend's entourage etc., plus some customs specific to the prison environment. Thus, the "newcomers", take note of the head of the room to whom they must unconditionally obey, comply with any of his requirements or those of the other convicts and rapists, pedophiles and incestuous, become victims of rape in the prison environment.

The small, overcrowded prisons, the unconditional execution of orders coming from the guard personnel, the strict adherence of order and discipline, the inadequate behavior, at times, of the prison staff, abuses of human rights, corruption, trafficking in influence, as well as other risk factors, lead to the creation of an artificial "*wall*" between the detainees and the human community located outside of the prison.

Our investigations show that 41% of inmates deem that a partial blame for the confrontational atmosphere belongs to them, but also it is due to overcrowding, stress and conditions of detention (about 12%).

Human rights violations continues to be a problem for the Romanian state. Thus, as a result of the monitoring process regarding respect for these rights, the Romanian state was sentenced by ECHR for violating inmates' rights in 10 judgments in 2012, compared with 19 in 2011 and was obliged to pay compensation in the amount of 119950 euro, compared to the amount of 278615 euro in 2011.

We also should add the cost of maintenance of the inmates found in the prison network, considering that for the maintenance of a prisoner it is allocated on a monthly basis, an average of 417 Ron and 77 Ron CASS contribution.

The numbers are indicative in the sense that the state supports both the cost of maintenance of a prisoner, as well as the damage caused as a result of miscarriages of Justice.

In relation to the allocated sums, the risk of relapse is high, the prison has rather become a "school" where the detainee "specializes" in committing other offences than that for which he was sentenced or, as the case may be, completes the knowledge with new techniques to commit it.

If the goal of detention is prevention and the number of imprisoned recidivists is higher than 30%, the question which arises is if this institution is efficient ?

In Romania, in 2012, the share of recidivist inmates represented 45,78%. Reported to the overall number, this represents a slight increase compared to previous years: 2009 - 44,82%, 2010 - 44,93% and insignificant compared to the year 2011.

To put an end to this state of things, the one who commits such errors, must also bear the prejudice. Therefore, the legal liability measure should be established for all state officials who are guilty of human rights violations, ranging from the one who does the research, institutes and solves the case, administers evidence, judges and finishing with the prison workers.

Referring to the role the prison plays, Daniel Glaser [7] showed that: "*emphasizing the criminal trends in offenders, bringing together in the same place primary offenders and hardcore recidivists, small offenders and professional criminals, often leads to the transmission of the values of the criminal society to the newcomers but also propagates the values and techniques of criminal activity*".

As an institution, prison has a discouraging effect for the potential offenders. In this sense, Wrightsman [8] asserted that the holding of particularly dangerous offenders in special institutions, ensures a high level of psychological security for the citizens.

Conclusion

The prison continues to be, alongside other legal mechanisms and levers, the main institution in a position to reduce the risk of recidivism. Therefore cannot be put into discussion the issue of abolishing them.

The prison's mission is primarily to rehabilitate the convict, to prepare him to be integrated into social life.

To accomplish this mission, the adoption of a social policy is imposed. It will lead to the implementation of effective measures in the reeducation activity of persons deprived of liberty and reintegration after serving the sentence.

Accordingly, the suspension of the right to participate in cultural, artistic and sports activities and the suspension of the right to perform work are not likely to ensure the discipline and reeducation of the convict; therefore they should be removed from the range of disciplinary measures.

At the same time, I consider that the work done by inmates must be regulated so that different carried out activities to be considered work experience, so when leaving the prison, the person can enjoy the rights conferred by law in this regard: pension, unemployment allowance, etc.

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