

Procedural justice in prison environment and decreasing the risk of reoffending

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Abstract: *Compliance with the human rights standards in Romania's penitentiaries has been interdisciplinary analyzed by social and legal researchers. Several issues underlined by such studies, mainly the dynamics of recidivism and the influence of the penitentiary environment on the behavior of the inmates and prison staff, are essential elements for the framework analysis of the standards for human rights protection in penitentiaries. A perspective which has not been used frequently in Romania for the study of the social reintegration and risk of reoffending is the theoretical framework of procedural justice, which argues that when the individuals consider that a measure is just and applied in a fair manner, they more easily accept its legitimacy and the institutional authority. The present article's objective is to underline the positive effects of implementing a procedural justice approach in penitentiaries, coherent with the standards for protection of human rights, which positively impacts on the risk of reoffending and with on safety during detention, respectively decreasing the violent incidents between inmates or between inmates and prison staff.*

Key words: *Procedural justice, penitentiary, recidivism, human rights, legitimacy.*

Framing subdomain: *Criminal Law*

Introduction

Compliance with human rights protection standards in Romanian penitentiaries is an area of particular interest for researchers in the field of legal and social sciences. Criminal justice administration and mechanisms for the protection of the fundamental rights of persons deprived of liberty have been the subject of specialized studies that have focused mainly on the analysis of the legal framework and, in some cases, they facilitated the improvement of the procedures for penitentiary administration (Băla, 2011; Bălan et al., 2003; Chiș, 2007; Rusu, 2015).

Some of the studies dedicated to this field have focused on human rights issues in the penitentiary system from the perspective of European law or international law regarding detainees' rights. Some decisions of the European Court of Human Rights (ECHR) have sanctioned the conditions of detention, speeding up a series of measures to improve them (Popescu et. al., 2013). Although the European system of human rights protection is the most advanced and effective international system for the promotion, protection and implementation of individual rights, it is important that the impact of ECHR decisions should be analyzed not only in terms of the measures taken for individual cases, but also with regard to their effect on the legal framework, given the fact that the pressure exerted by condemning the Romanian state in similar cases (the conditions of accommodation in penitentiaries) have generated a series of legislative changes.

1. Theoretical considerations regarding procedural justice

The European system for the protection of human rights is consistent with the principles of procedural justice, specifically with regard to ensuring the guarantees of justice and fairness, but also with regard to institutional transparency and legitimacy. Procedural justice theory argues that when individuals consider a measure to be fair and properly applied, they more readily accept institutional legitimacy and authority (Lind and Tyler, 1998). Summarizing the theoretical framework to which Professor Tom R. Tyler has made a special contribution (Tyler 2003, 2010), it can be stated that the main objective of procedural justice, related to the penitentiary environment, is the acceptance by the detained persons of the importance of the decision-making

process and its evaluation as being fair, an aspect that is separated from expectations regarding the outcome of the decision. Procedural justice has four operating principles: inclusion, the emphasis being on taking into account the opinions of those affected by the effects of the decisions taken, neutrality, trust and respect. The subjects should have the opportunity to express their opinion on the application of a decision and to perceive that the authorities will take into account the position expressed. Detainees should see the authority's representatives as neutral persons, who apply the rules in a transparent, consistent and objective manner. It is necessary for any person deprived of liberty to feel respected and to trust that they enjoy the same rights as their peers, and the issues they are facing are taken into consideration. They must also see in the representatives of the authority reliable persons, who are sincere and honest, who listen and who try to implement fair measures.

Studies conducted to identify the best methods of managing the prison population are generally focused on strategies that use a system of rewards and sanctions, while the impact of procedural justice is not analyzed in detail, in terms of long-term effects caused both by detention and also after release. Penitentiaries are an appropriate environment for assessing the effects of procedural justice, because interactions between staff and detainees are frequent and prolonged, there are a multitude of requests from inmates and procedures for their management, and the detainees' behavior is carefully documented. Procedural justice represents an alternative strategy to maintain an atmosphere of order and safety in prisons, to improve the quality of life during detention, and to facilitate the social reintegration of prisoners after release.

During the debate on United States criminal justice policies and considering the very large number of persons deprived of their liberty, over 2.3 million, Tyler (2010) emphasized the need for policies that allow detainees to return to the community with a lower risk of recidivism, and procedural justice can play a key role by developing and implementing clear management procedures for incarcerated persons, as well as by promoting a correct decision-making model and a dignified treatment regarding detainees. Any contact that individuals have with law enforcement institutions has an impact on the perception of the legitimacy of judicial institutions, both on the persons directly involved, as well as on their families or other indirect participants. It is confirmed that the fair treatment of inmates in penitentiaries is associated with an increased degree of satisfaction, acceptance of decisions, an increased level of cooperation and trust in the authority of the institution, as well as attitudes predominantly in compliance with the law (Tyler et al., 2007). Authorities need to be more interested and focused on policies that promote procedural fairness, that will most likely maximize legitimacy and minimize both the violence and indiscipline of detainees, as well as subsequent offending (Tyler, 2010).

In the Netherlands, a study on a group of 1,241 inmates examined whether their perceptions of procedural justice influence criminal behavior after release and whether the relationship between procedural justice and reoffending is mediated by inmates' perceptions of legitimacy of the criminal justice system (Beijersbergen et al., 2016). Dutch researchers have shown that detainees who felt that they were being treated in a correct procedural manner during detention had a recidivism rate with 5.3% lower after 18 months of release compared to those who considered treatment as neutral. The conclusion of the study was that, since it is difficult to change the individual characteristics of the detainees, a more pragmatic approach could be to improve the treatment that prison staff apply to persons deprived of their liberty, especially since it depends on the law, internal rules and the administration of the penitentiaries. Thus, penitentiary institutions can contribute to lowering the rate of recidivism by treating prisoners correctly and with respect during detention (Beijersbergen et al., 2016, pp. 79-80).

The procedural justice principles can be applied through specific programs in the Romanian penitentiary system, in order to strengthen the prisoners' perception of the correctness and transparency of the treatment they receive, an attitude that is correlated with a high level of acceptance of the rules and authority of the staff, with a visible decrease of the number of negative events produced by prisoners and an overall reduction in the reoffending rate. Integrating the model of procedural justice into the general framework on compliance with human rights standards in the Romanian penitentiary system can be a good practice, with sustainable effects in terms of improving conditions and experiences during detention, associated with lowering the rate of reoffending after release.

The conclusions drawn from the literature review converge on the idea that the procedural measures for compliance with human rights standards in prisons, as well as the staff's efforts to ensure the respect of these rights, support the procedural justice and generate a positive perception of the inmates on the way they are treated and a behavior compliant with the internal rules, with positive effects for prison staff and inmates during detention, and, after release, with beneficial effects for society and former detainees, by facilitating social reintegration and lowering the rate of recidivism.

2. Methodology of research

Considering the state of the research in this area, as well as the results with a high degree of similarity obtained from studies carried out in different countries in Europe and the USA, confirming the strong relationship between compliance with human rights, procedural justice and social reintegration, the dynamics of these relationships have been analyzed for Romania and, in comparison with the results of the research from other states, emphasis has been placed on identifying areas in which the transfer of standards and good practices can contribute to increasing the efficiency of the Romanian penitentiary system, from the perspective of facilitating the return to the society of former inmates and reducing reoffending.

Using the theoretical framework of procedural justice and for testing in the Romanian penitentiary system the conclusions resulting from the studies carried out in other states, in the context of the current debate in the society regarding the educational role of the sentences which includes deprivation of liberty, the main research hypothesis analyzed is that the degree of the implementation of the minimum standards regarding the human rights protection in penitentiaries is correlated with the achievement of re-education and social reintegration of the inmates. The secondary research hypothesis is that the perceptions of persons deprived of liberty regarding the observance of their rights, during the execution of the sentence, are correlated with the level of physical security, both for the persons deprived of liberty and for the prison staff.

The theoretical framework of the research was based on the model of procedural justice, and the semi-structured interview was used for the collection of primary data, with the subjects being inmates and staff from prisons and centers for preventive detention. Based on literature review, as well as on other reports with regards to the penitentiary environment, an interview guide was compiled to collect data on the perceptions of persons deprived of liberty regarding the observance of fundamental rights in penitentiaries, as well as the interaction between prison staff and inmates. Within the research project, during the year 2019, 20 inmates from the Slobozia Penitentiary were interviewed, as well as 16 front line officers from the preventive detention centers.

Selecting and interviewing inmates implied an effort to adapt the research methodology, in order to ensure participation and to obtain relevant data. Thus, the target group was selected from repeated offenders, with convictions from 3 to 10 years, who executed a period of their penal sentence in other penitentiaries and who are not registered with behavior problems. The selection of the subjects included, especially for the first interviews, "popular" detainees among their peers, so that the information communicated informally about the research is correct and credible, thus preventing a possible premature failure of the interviewing exercise. A unique feature of the penitentiary studies is that most of the members of the target group know each other and will certainly discuss with each other and evaluate the research project just before it begins (Newman, 1958, p. 130). The result of this approach had the anticipated effect, on the day following the beginning of the interviews in the penitentiary, the personnel involved in the organization of the interviews informed the researcher that a large number of prisoners, who were not on the list for interviews, expressed their interest to participate in the research.

Interviews were conducted in an environment which could ensure a certain degree of privacy, in designated areas, in offices located within detention units, where staff members or other detainees did not have access. Semi-structured interviews were oriented to identify real experiences of the inmates during the execution of the prison sentences. To create an increased level of transparency and trust, the offices where interviews were conducted had windows, so that the activity could be observed by other inmates, but without being disturbed by noise or other interventions. Another potential issue considered was the fact that certain questions asked may be more difficult for the subjects, and, in order to obtain real and relevant information,

good practices from the activity of some experts in the field of qualitative research in penitentiaries were employed, respectively the researcher explained in detail the usefulness of the research and the fact that the data provided can contribute to the improvement of the penitentiary environment (Kristin, 2016, p. 522).

Interviews with inmates from Slobozia Penitentiary is the first stage of data collection. The next stages involve interviews in two other penitentiaries in Romania and two penitentiaries abroad, in order to allow comparative data interpretation and identification of good practices that can be adapted and transferred.

3. Procedural justice and the reduction of recidivism in Romanian prisons

Since only one stage of data collection has been completed, their interpretation has partial relevance, limited to one location, with regards to the research hypotheses. After the completion of the three stages of data collection, the volume and quality of the data obtained will allow comparisons between the degree of implementation of the human rights protection standards in penitentiaries and the perceptions of persons deprived of liberty in Romania with other states in the region.

Considering the conclusions of the studies carried out in penitentiaries in several states of Europe and in the USA, identified following the literature review, some particularities of the Romanian penitentiaries can be identified and compared with the same facilities from Western Europe or the USA.

Thus, based on the preliminary data obtained, one finding is that the inmates from Romania have predominantly negative perceptions regarding the conditions of detention (infrastructural elements), indicating that these elements generate a general negative state during the detention. Also, the state of the infrastructure attracts most criticisms regarding the compliance with human rights in the Romanian penitentiaries, also influencing perceptions regarding the lack of physical security (overcrowding is considered as generating conflicts). The perception of the inmates regarding the relationship with the prison staff is predominantly positive in Romania, which has an effect regarding the acceptance of some rules regarding the detention regime. The fact that the prison staff has better communication competences and takes the wishes of the prisoners into consideration, makes visible their involvement and effort to try to ensure the observance of inmates' rights (communication, healthcare); it also generates a relatively positive perception about the fairness of applying the detention rules. From this point of view, the Romanian inmates are more likely to consider that the rules of the penitentiary are applied with fairness, that they have been treated correctly, which is correlated with a low rate of violent incidents in penitentiaries and subsequent reduction of reoffending rate.

Comparatively, the perceptions of inmates in Western European or US states are predominantly positive regarding the conditions of detention (with the exception of US federal prisons where individual incarceration rules apply) and neutral or negative regarding the interaction with the staff (Beijersbergen et. al, 2016). Differences in perception may also be caused by the different expectations of inmates in Romania compared with the same group from other countries, being more likely that detainees in Romania will expect an empathy-free treatment from the staff, and an interaction, even if minimally positive, could generate a greater appreciation effect.

Legitimacy in the penitentiary environment is likely to be perceived as lower in Romania, compared to penitentiaries in other states. This aspect is contrary to the principles of procedural justice theory, but, in interpreting this aspect, the predominantly negative image of the Romanian penitentiaries, supported by an intense media campaign which took place in 2017-2018, with emphasis on the degrading conditions of the penitentiaries and the inhuman treatment of the detainees, should also be taken into account. Thus, although the Romanian detainees have a relatively positive perception of how they are treated and the interaction with the staff, considering that the treatment they are subjected to is generally correct, under the influence of the media messages and the general depreciative image regarding the public institutions, it is viewed that in the penitentiaries there is a low degree of legitimacy.

The human rights standards and the measures implemented regarding the observance of fundamental rights in the Romanian penitentiaries have seen a positive evolution during the last years, as it results from the systematic analysis of the reports of the People's Advocate, APADOR-CH and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), prepared for regular visits

to Romania. Particular incidents, as well as deficiencies in the penitentiary system, are periodically identified, being reported to the penitentiary administration and the Romanian governmental institutions, but no systemic deficiencies with significant impact on the rights of the penitentiary population have been reported, except for the inadequate infrastructure, which has an impact on the quality of life in Romania's penitentiaries, but cannot be remedied in a short time.

The partial results of the present research, however, outline another systematic deficiency, with a major impact on the rights of the penitentiary workers, namely that, as a result of the underfunding of the penitentiary system and the major personnel deficit, a situation of constant over-loading of the existing staff is created, with potential negative effects with regards to the physical and psychological well-being of the workers, which has an indirect negative impact on the interaction between prison workers and detainees. In the situation where workers are constantly overworked and subjected to a very high level of professional stress, the willingness to engage in a positive interaction with prisoners is limited, primarily due to the tasking of penitentiary staff with very different activities, but also as a result of physical and mental exhaustion.

The research hypotheses are confirmed by the preliminary data collected, according to the theoretical predictions of the procedural justice, respectively the effort to align to the minimum standards regarding the protection of human rights in penitentiaries is correlated with a higher degree of acceptance by inmates of the measures applied during the detention, as well as with a lower reoffending rate of penitentiary population, as confirmed by 2008-2018 statistics (ANP, 2018). It is also confirmed that the perceptions of persons deprived of liberty regarding the observance of their rights, during the execution of their convictions, are correlated with a higher level of physical security, both for the persons deprived of liberty and for the prison staff. Regarding the second hypothesis, the fluctuation of the physical and verbal acts of aggression on the staff in the period 2016-2018 (ANP, 2018), was influenced, in a way that requires further analysis, by the predominantly negative image of the justice act from the media, sometimes in the form of press campaigns, with effects in creating the perception of inmates regarding the lack of legitimacy of the measures implemented in penitentiaries, an effect which is consistent with the predictions of the procedural justice theory.

Therefore, although in terms of legal and procedural framework, there is progress in aligning with the European standards on detention, and the correct implementation of the procedures is relatively systematic at the level of the Romanian penitentiaries, therefore formal and partially substantive conditions for implementing procedural justice principles in the penitentiary environment, adverse effects, respectively delegitimization, are generated, on the one hand, by negative media campaigns regarding the penitentiary system or the act of justice and, on the other hand, by the deficient infrastructure and the under-financing of the penitentiary administration.

Conclusions

Based on the data obtained at this stage of the research, some preliminary conclusions can be outlined regarding the implementation of procedural justice principles in Romanian penitentiaries, reflected by the alignment with the standards on human rights protection, the inmates' behavior during the execution of the custodial sentence and reoffending after release from prison. Thus, first of all, it is noted that the reform of the Romanian prison system has facilitated the incorporation into the legal framework and working procedures of the minimum standards provided by international law and Council of Europe. Deficiencies in the implementation of these standards are caused by structural dysfunctions, both in terms of accommodation capacities and medical facilities in the penitentiary system, as well as the overload, lack of training and insufficient motivation of the prison staff. Specific measures can be taken to remedy some issues, mainly regarding recruiting new staff, personnel training, career management of prison workers, ensuring inmates better access to social and medical services, including religious assistance, as well as involving non-governmental or civic organizations in projects to maintain the connection of detainees with the family and the community.

Recommendations from international bodies for improving the conditions of detention in penitentiaries, caused by the lack of material resources, have generated changes in the legislative framework

through reducing detention length that, although, on the one hand, compensate the inadequate conditions of detention, on the other hand, have the potential to affect the main purpose of the criminal justice sentencing for reducing social danger, specifically re-education and social reintegration. From this point of view, the legal provisions in Romania for granting of compensation days by reducing the detention duration due to inappropriate conditions of the penitentiaries, from the perspective of the dynamics of the reoffending should be analyzed, when sufficient data will be available, respectively during 2020, for integration in the compared analysis to the situation in other Member States of the European Union.

Transferring and adapting good practices from other states in the field of public-private partnership for the construction or administration of penitentiaries, facilities and services to support the transition from prison to community and social reintegration, can relieve the state budget of significant costs in the field of criminal justice administration and can ensure full implementation of international recommendations regarding detention. However, it is necessary to avoid negative experiences in the field, such as in the case of private penitentiaries, for which it has been shown that the administration by commercial entities, focused on maximizing profits, decreases the quality of life in the penitentiary environment, generating psychological and medical problems for inmates (Palaez, 2014).

The procedural justice has as potential benefits the improvement of the working conditions in the penitentiaries, improving the relations between staff and inmates, enhancing the living conditions offered to the detainees, but also increasing the efficiency of the rehabilitation process. Starting in 2006, the Romanian penitentiary system has benefited from a constant improvement of the law regarding the execution of the prison sentences. These elements led to a reduction in the reoffending rate recorded in the prison population in the period 2008-2018, from 46.3% in 2008 to 38.4 in 2018 (ANP, 2018). Compared to the situation in other states, the average rate of recidivism of the prison population in Romania is below the international average, but the complexity of the methodology regarding the collection and interpretation of the data regarding the reoffending reported by the different states requires an additional research effort (Fazel and Wolf, 2015).

Preliminary conclusions converge on the idea that legitimacy is closely linked to respecting human rights and the social reintegration of detainees after release. The data are consistent for several geographical areas, namely South-Eastern Europe, Western Europe, United States of America and for different types of penitentiaries, and the prisoners' perceptions that they are being treated by fair procedures is closely linked to both a safe and secure prison environment and positive relations between detainees and prison staff, as well as with facilitating and sustaining a compliant behavior of inmates, which is maintained after release and has an effect on lowering the reoffending rate.

Although the literature review and the analysis of the primary data confirm the links in the triad human rights compliance - procedural justice - social reintegration of prisoners, there are indications regarding the influence of other variables in this complex relationship, with particular relevance in the context of the research project. Thus, in the mentioned triad, the role of mediation for legitimacy is not systematically confirmed by all the analyzed studies (Beijersbergen et al., 2016). This is a point that requires further investigations on the theory of procedural justice because, according to the theoretical model, legitimacy has a mediating role in the relation fair procedural treatment applied to prisoners - conformity to rules, seen as a virtuous cycle that could facilitate the physical safety of prisoners and prison staff, as well as social reintegration after release. Although the theoretical framework predicts the increase of legitimacy with the perceptions regarding procedural justice, the data collected in Romania during the research does not confirm this aspect, as most prisoners consider that they are treated correctly, but their answers denote opinions on the low legitimacy of the prison system. For Romania, the explanations of this antagonistic development against the principles of the theory can be related to external factors, respectively the strongly negative media campaigns against justice and the penitentiary system, or to internal factors, respectively the inadequate state and the degradation of the penitentiary infrastructure.

Adopting the principles of procedural justice into the internal rules for administration of prisons can have a significant and measurable impact within the Romanian penitentiary system. Enabling specific measures for informing the inmates on the decision-making process and ensuring the transparency of the decision-making process will support the prisoners' perception that they are subject to a fair treatment and will

support the implementation of human rights standards in Romanian prisons. Also, resources must be allocated for enabling other factors that can influence the positive relationships in the penitentiary environment, such as increasing the number of employees, training programs for staff, improving the criminal justice legal framework and working procedures. These measures, when properly documented, tested and evaluated, can become good practices with applicability in all Romanian prisons, but can also be part of a process of mutual exchange of practices with other penitentiary systems in Europe, in order to improve the conditions of the inmates, ensuring a high level of security and offering better opportunities in the process of social rehabilitation and reintegration after release.

The preliminary data of the research support the conclusion that, for the Romanian penitentiary system, the procedural justice framework is applicable and practical, being able to support the alignment with the European standards regarding compliance with human rights and to maintain a safe environment in the penitentiary, suitable for the educative purpose of the criminal sanction. Through its principles, namely the fair treatment of the inmates and strengthening the legitimacy of the penitentiary system and, indirectly, of the criminal justice system, as well as by encouraging the compliant behavior towards the detention rules, the procedural justice has beneficial effects through decreasing the risk of reoffending and supporting social reintegration after release.

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