

Providing Material and Financial Resources for the Social Reintegration Process

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ABSTRACT: Compliance with Article 3 of the European Convention on Human Rights, ie the prohibition of torture and inhuman or degrading treatment, entails, inter alia, the provision of appropriate conditions of detention. In order to be considered as suitable conditions for the accommodation of persons deprived of their liberty, it is necessary to ensure, in an optimal way, an accommodation capacity according to the number of detainees in the respective detention rooms, as well as decent material conditions. As regards the Romanian penitentiary system, it has undergone numerous legislative changes recently, in line with the imperative to comply with European and international standards in the field and has resulted in an improvement in the treatment of persons deprived of their liberty and conditions of detention, as well as the increase of the institutional capacity, so that it can be seen that at present the cases in which Romania is condemned to Cedo are more and more rare.

KEYWORDS: Cases of Romania's conviction at the European Court of Human Rights for not ensuring adequate conditions of detention, national legislation, the phenomenon of overcrowding, human resources, financial resources

Introduction

The first cases of Romania's convictions at the European Court of Human Rights for non-compliance with the obligation to ensure adequate conditions of detention (art. 3) were registered in 1998. Subsequently, in 2012, in the *Case of Iacov Stanciu* (ECHR Decision no. 35972 of July 10, 2012), the ECHR found that, despite the efforts of the Romanian authorities to improve the situation of detention conditions, there was a structural problem in this area.

The decisive element in this context is the well-known *Case of Rezmiveş and others v. Romania* (ECHR Decision no. 22088/04, 61467/12 of 25 April, 2017), by which the Court ordered the Romanian state, within 6 months from the date of finality of the judgment, to provide an exact timetable for the implementation of appropriate solutions to the problem of overcrowding and inadequate conditions of detention. The Court also decided to postpone similar cases that had not been communicated to the Romanian Government until then, until the necessary measures were adopted at national level.

According to the Court's Decision, beyond the legislative measures aimed at an effective remedy for the injury suffered, ensuring the conditions of detention in accordance with art. Article 3 of the Convention depends on the increase and modernization of accommodation capacity and, on the other hand, on the improvement of material conditions of detention.

In this context, we can see that the Romanian penitentiary system (Annual activity report 2018) has been characterized, in the last decade, in particular, by numerous legislative changes.

These permanent legislative changes have taken into account the imperative to comply with European and international standards in the field and have resulted in improved treatment of persons deprived of their liberty and conditions of detention, as well as increased institutional capacity, provided that this obligation to respect human rights, has been constantly emphasized by national (the judge supervising deprivation of liberty and the

courts have repeatedly found, as we noted in the previous chapter, violations of the fundamental rights of persons deprived of their liberty) and international (respectively, the European Court of Human Rights, as well as European bodies with powers in respect of human rights, mainly the European Committee for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment, as described in the previous chapter) jurisdictional authorities.

In the same vein, we note that, with the entry into force of the New Criminal Code (entered into force on February 1, 2014), alternative punishments to deprivation of liberty were introduced in the legislation, i.e., a new system of sanctions for juvenile offenders, education receiving an adequate place, its role in resocializing minors, increasing. Thus, at least from this point of view, Law no. 254/2013 represents one of the most evolved normative acts, in our country, regarding the execution of custodial sanctions.

Through this normative act, the measures assumed by our country were implemented through the Memorandum on “Approval of the Calendar of measures 2018–2024 for solving the prison overcrowding and detention conditions”, after the pronouncement, on April 25, 2017, of the Pilot Decision Rezmiveş and others against Romania. In the same sense, in order to manage as efficiently as possible, the activities related to the implementation of the compensatory appeal, the degree of computerization of the penitentiary system was raised.

The development of specific activities, the quality and quantity of the results of the social reintegration process depend decisively on the existence and level of use of the allocated resources, regardless of their nature (material, financial or human).

In accordance with the provisions of art. 62 para. (1) lit. b) of Law no. 500/2002 on public finances, the financing of the activity of the National Administration of Penitentiaries and of the units subordinated to it is made from the state budget.

On the other hand, according to art. 2 of Law no. 351/2018, the National Administration of Penitentiaries, penitentiaries, youth penitentiaries, women's penitentiaries, educational centers, detention centers, may achieve, as the case may be, own revenues from rents and leases, from service activities, from capitalizations of goods taken out from operation and waste, re-invoicing of utilities from rented space, penalties and compensations, subsidies for agriculture, participation guarantees, guarantees of good execution, as well as from the sale of specifications, from participation fees in competitions, fees/rates on psychological testing, the organization and functioning of the outlets of the units and the unit kitchens, as well as from the quota applied to the menus served to the persons outside the penitentiary administration system, from donations and sponsorships, voluntary transfers.

Penitentiaries, youth penitentiaries, women's penitentiaries, educational centers and detention centers can generate their own income from the work of persons deprived of liberty, according to the provisions of Law no. 254/2013, respectively:

- Income from the provision of services to persons deprived of their liberty inside or outside the place of detention; income from services with persons deprived of their liberty inside the place of detention are such as laundry services, maintenance and car wash services, food preparation for pre-trial detainees in police custody, as well as for persons deprived of liberty from other units of the system the penitentiary administration;

- Income from the capitalization of products obtained from one's own activity, such as vegetable products, animal products, meat/milk preparations, bakery and pastry products, carpentry articles, as well as products made by persons deprived of liberty in occupational educational activities;

- Other income, according to the law.

The financing of the penitentiaries-hospital is made in accordance with the provisions of Law no. 95/2006 on health care reform. At the same time, the penitentiaries-hospital, in addition to the incomes established by Law no. 95/2006, republished, with subsequent

amendments and completions, may also generate income from rents and leases, from transport services in the interest of their own staff, natural and legal persons in the justice system or persons deprived of liberty, from copying documents based on the personal requests of the detainees, as well as from the participation fees in competitions, capitalization of decommissioned goods and waste, re-invoicing of utilities from rented spaces, penalties and compensations, participation guarantees, guarantees of good execution, as well as from the sale of specifications.

Providing human resources

Human capital is essential in achieving the strategic objectives assumed institutionally, in which sense the staff has a central role in the organizational culture.

Particular attention should be paid, in this context, to the development of mechanisms to encourage performance and the development of professional skills. Staff recruitment and selection procedures, initial and continuing professional training must emphasize the integrity, human qualities, professional skills of the candidates, as well as the skills required to perform the complex work that awaits them.

Among other European documents in this field, Recommendation 2006/2 stated that, as a minimum standard, the employment of prison staff should be for an indefinite period of time, with staff members to acquire the status of civil servants or law enforcement officers, by virtue of which the safety of the workplace is guaranteed to them, provided that they behave appropriately, demonstrate efficiency, have good physical and mental health and have an adequate level of education.

With regard to staff selection, the same Recommendation stipulates that the selection procedure must be provided for by law, on the principles of non-discrimination, political independence and integrity. State authorities must establish their own methods and means of organization and their own personnel management systems, which ensure high standards of efficiency in the management of detention institutions, in compliance with the norms contained in international treaties and conventions on human rights.

Transposing these imperatives into the national legislation, Law no. 145/2019 on the status of penitentiary staff conditions the acquisition of the quality of penitentiary policeman by persons fulfilling the following criteria: to have Romanian citizenship and domicile in Romania, to know the Romanian language, to meet the conditions of study and seniority provided by law, to be 18 years old fulfilled, full capacity to exercise and to be medically and psychologically fit to perform the function, not to have a criminal record and not to be prosecuted or prosecuted for committing crimes.

They must also not have ceased their employment in a public service, for disciplinary reasons, in the last 5 years, have behaved in accordance with the principles governing the profession of prison police officer, have not been agents or collaborators of security bodies or any intelligence service and obtain authorization for functions involving working with classified information after the promotion of the competition.

The selection process of the penitentiary police officers is carried out on the principles of equality, merit and professional capacity, but also of transparency.

Recruitment as a prison police officer can be done in the following ways:

a) The distribution with priority on the places reserved for this purpose of the graduates of the educational institutions that prepare personnel for the penitentiary police - officers and agents;

b) Competition, from external source;

c) The transfer of military personnel and police officers from other public institutions of defense, public order and national security of the state.

Regarding the professional training of the penitentiary staff, this must be ensured before the beginning of the activity, in the initial training process, through general and specialized training courses, at the end of which theoretical and practical tests will be taken.

Also, the state authorities have the obligation to ensure, throughout the career of the penitentiary staff, continuous training and improvement programs, organized periodically, in order to raise the level of professional knowledge and skills.

Therefore, special attention should be paid, from the perspective of the Recommendation, to continuing education and training courses, organized at appropriate intervals, especially with regard to the training of staff with specific responsibilities, working with vulnerable categories of detainees, such as women, minors, the mentally ill or aggressively detained, training that must be properly focused on knowledge of international and regional human rights norms, in particular the European Convention on Human Rights, the Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as the European Prison Rules.

The national legislation, through the provisions of Law no. 145/2019, ruled, in accordance with these recommendations, that the novice penitentiary police officers have the obligation to follow, during the internship, a training and specialization course organized by the National Administration of Penitentiaries, called initiation course, and the penitentiary police officers finalists have the obligation to follow a training course corresponding to the position in which they were appointed, except for those employed according to the provisions of art. 13 para. (2), (3) and (5).

In the current provisions of the national law, the career of penitentiary police officers is regulated by law and detailed in the Career Guide, approved by order of the Minister of Justice, currently training and training of penitentiary police officers is based on the general requirements of prison administration and specific to the duties of the service.

With regard to the status of the penitentiary policeman (Note: By art. 1 of Law no. 145/2019 on the status of penitentiary police officers, civil servants with special status within the penitentiary system were appointed penitentiary police officers), it should be mentioned that, in accordance with disp. art. 73 para. (3) lit. j) of the Constitution, the special status of the civil servant in the penitentiary administration system must be regulated by organic law. By Decision no. 90/2019, the Constitutional Court highlighted the fact that the essential aspects regarding the occupation of executive and management positions are related to the birth and, respectively, to the modification of the employment relationship, so that they must be regulated by organic law and, regarding the rules related to the procedure occupation of executive functions, the latter must be detailed by order of the relevant minister. Moreover, by the same Decision, the Court pointed out that the law in force (at that time Law no. 293 of June 28, 2004 on the Statute of civil servants with special status in the National Administration of Penitentiaries) on the Status of Civil Servants with Special Status in the National Administration of Penitentiaries was in force) regulates only the general conditions for participation in and the conditions of seniority for the occupation of management positions, while the other essential aspects, respectively the type of competition tests but also the conditions in which the candidates are admitted or rejected, are regulated by order of the Minister of Justice. In view of the above, the Court found that the provisions of law governing these matters by administrative acts violate the provisions of art. 73 para. (3) lit. j) of the Constitution.

The Court also considered that this could lead to an illegal situation in which key issues concerning the establishment or alteration of the employment relationship of a civil servant in general and of the prison police officer in particular were regulated by an administrative act, which would be inconceivable, since, by plan, the legal rules regarding the occupation of

executive and management positions must comply with certain conditions of stability and predictability.

Indeed, the delegation of the power to establish these rules, so important for the penitentiary system, to a member of the Government, by issuing administrative acts of an illegal level, leads directly to a state of legal uncertainty, because the latter category of documents has a high degree of changes over time, and, on the other hand, according to Law no. 24/2000 regarding the norms of legislative technique for the elaboration of normative acts (published in the Official Gazette of Romania, Part I, no. 139 of March 31, 2000 and, subsequently, republished in the Official Gazette of Romania, Part I, no. 260 of April 21, 2010), in the version republished in the Official Gazette of Romania, Part I, no. 260 of April 21, 2010, normative orders are issued only on the basis and in the execution of the law and must be strictly limited to the framework established by the acts on the basis and in the execution of which they were issued, without which the law can be completed.

According to the National Strategy for Social Reintegration of Persons Deprived of Liberty (2015-2019), although there are qualified staff in the field of social reintegration, this is insufficient to ensure the recovery of persons deprived of their liberty.

Vulnerabilities were identified according to the same act and in terms of continuing vocational training, the Strategy emphasizing the need to diversify the curriculum.

It is necessary to highlight, in this context, the institution of the compensatory appeal (introduced by Law no. 169/2017 on amending and supplementing Law no. 254/2013 and appeared in Official Gazette no. 571/18.07.2017), part of the legislative reform initiated as a consequence of the Pilot Decision in the *Rezmiveş* case, which had an immediate consequence in terms of human resources as a result of the adopted legislative measures. Thus, in September 2018, a unique moment was registered at the level of the National Administration of Penitentiaries, by reporting the largest number of staffs employed at the same time with the lowest number of people in custody. However, by reference to the international standards in the field, the problem of staff shortage at the level of most detention units remains, the solution of which cannot be an immediate one, given the current budgetary constraints (Filling the vacancies was one of the objectives of the Human Resources Strategy of the Penitentiary Administration System 2015-2018).

Conclusions

In order to improve the conditions in the penitentiaries, it is necessary to modernize the penitentiary infrastructure, to improve the hygiene conditions, to redistribute the detainees within the penitentiary system, but also to take measures of a legislative nature.

It can be seen that Romania has made efforts in this regard, a fact reflected by the numerous legislative changes to comply with European standards but also to no longer have convictions from the ECHR. However, these legislative changes must continue in parallel with the change in the mentality of the notion of re-education.

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