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Is it or is it not necessary to apply alternative detention methods in Romania? ⁽¹⁾

Est-il ou pas nécessaire de promouvoir le recours aux mesures alternatives à l'incarcération en Roumanie ?

Francisc Csimarik *

Riassunto

L'articolo, partendo da una breve analisi della situazione degli istituti penitenziari in Romania, giunge alla conclusione che, per un utilizzo efficace e proficuo delle misure alternative alla detenzione, è necessario poter seguire nel tempo l'evoluzione dei modelli di buone pratiche ed avere il pieno coinvolgimento delle istituzioni statuali.

Résumé

À partir d'une brève analyse sur la situation des prisons en Roumanie, cet article conclut qu'afin d'assurer une utilisation efficace et fructueuse des mesures alternatives à l'incarcération, il est nécessaire de suivre dans le temps l'évolution des modèles de bonnes pratiques et d'avoir l'engagement intégral des institutions étatiques.

Abstract

Starting from a brief analysis of the prisons situation in Romania, this article concludes that, in order to ensure effective and successful use of the alternative detention methods, it is necessary to follow the evolution of best practices models and to have the commitment of government institutions.

Key words: alternative detention methods; Romania; best practices.

1. The situation of people held in detention in Romania.

In July 2016 there were a series of protests manifested in Romanian prisons, as the demands started in the North of the country, in Iasi, after which they extended in Botosani, Tulcea, Bistrita, Constanta, Miercurea Ciuc, Arad, Oradea, Vaslui, Giurgiu, Rahova... The protesters burned mattresses and clothes they throw out the windows of their cells, they climbed on the buildings and some of them refused food... The movement was stopped by the public intervention of the Minister of Justice, Raluca Pruna who declared: "The protests are the results of an expectation that was fed by the imminence of legislative stipulations. I believe that as soon as I came out and explained that I, as a

minister, will not suggest any measures under pressure, things settled down with the help of the National Administration of Prisons (ANP). When I say this I don't only refer to ANP, but to those from each and every prison who took the necessary measures in order to calm the protests supported in certain prisons".

The truth is that due to the poor conditions, there are prisoners who came to protest in forms that include self-mutilation, some of them even sowed their mouths with string after they were beaten by the authorities because they had the courage to speak up, others cut themselves up with glass or

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they beat nails in their heads. Crowdedness, the very small and rusty beds, only one toilet that had to be shared every day by tens of prisoners, are only part of the issues that prisons in our country face.

According to prisoners' complaints, some prisons are full of roaches, mosquitoes and bugs, the healthy prisoners are held together with the sick ones, some of them suffering from AIDS or other sexually transmitted diseases, prisoners who suffer from hepatitis work in the canteen. The risk of becoming severely sick is very high even when being consulted by a dentist, as prisoners claim that all the instruments are only washed in cold water. Regarding crowdedness, the data published in the report issued by the People's Attorney regarding the situation in the Romanian Penitentiary System are relevant: in the prison from Iasi, at the end of 2015, there were 1534 prisoners under a legal capacity of detention of 763 prisoners. In the building where there were prisoners of maximum security, each room had 33 square meters and there were 24-26 prisoners in each.

At the prison in Craiova there were 1174 prisoners at a legal capacity of 674 places (occupancy factor of 174%); there were 500 prisoners above the legal capacity of detention. After randomly visiting some rooms we noticed that the prisoners who were accommodated in bunk-beds on two and three rows. Regarding the used surface of the prison cells (without including bathrooms and the room for keeping food), in relation to the number of prisoners, after measurements, we came to the following conclusions:

- Women's section in open system – in the detention room no. E1.5, with a surface of 23 square meters, there were 23 prisoners, so that each prisoner had about 1 square meter.

- Section 3 preventive arrest – the detention room E3.23 – closed system, with a useful surface of 38.5 square meters, there were 27 prisoners, so that each prisoner had about 1.42 square meters.
- Section 4 – closed system, youth and transit – detention room no. E 4.25, with a useful surface of 20.6 square meters there were 10 prisoners, so that each prisoner had about 2.06 square meters.
- Section 5 – closed system – detention room 5.36, with a surface of 32.2 there were 20 prisoners, so that each prisoner had about 1.61 square meters.
- Section 6 B – maximum security system – detention room E6B.74, with a useful surface of 6.30 square meters, there were 3 prisoners, so that each prisoner had about 2.1 square meters.
- Section E7 – maximum security system, vulnerable non-smokers – detention room no. E7.101, with a useful surface of 11.75 square meters, there were 6 prisoners, so that each prisoner had about 1.95 square meters.
- Section 8A – closed system – detention room no. E8A.108, with a useful surface of 46.40 square meters, there were 38 prisoners, so that each prisoner had about 1.22 square meters.
- Section 8B – closed system – detention room E8B.113, with a useful surface of 32.00 square meters, there were 25 prisoners, so that each one had about 1.28 square meters.

At the Galati prison there were 979 prisoners on a legal capacity of 496 places (occupancy factor of 197.38%). The prison had 1081 beds. According to the information provided by ANP (form registered with the People's Attorney under no. 6362 in May 13th 2015), the number of places calculated according to European norms is 18 986, and the number of beds was 37 137 (4374 on one row, 15 494 on two rows, 17 269 on three rows).

The discontentment of prisoners according to the information communicated by ANP on May 13th 2015, during 2014-2015, there were 8508 requests, complaints, intimations. Among these, there were 1549 complaints focusing on the following:

- there is an over crowdedness on certain systems of the space, minimum air volume allocated to each prisoner, according to the system in which they have been sentenced and in some situations, some prisoners don't have their own beds;
- inhuman/degrading prison conditions, dangers (roaches, bugs, mice, rats);
- not observing the Deontology Code and Law no. 293/2004 regarding the Statutes of public clerks in the National Administration of Prisons, republished;
- having higher prices compared to the reference commercial ones. This aspect was noticed in a few prisons (for example: Aiud, Margineni, Slobozia), as it is shown in the specific chapter;
- not respecting certain rights (access to information of public interest, petitions, correspondence, walks, visits, shopping, food, medical assistance, hygienic products, etc.);
- aggressions/threats of prisoners upon others and aggressions/threats of personnel upon prisoners;
- non-inclusion in educational programs and psycho-social assistance;
- not observing the stipulations regarding selecting and allocating prisoners to productive activities, as in norming and respective assurance for benefits from these activities.

The impossibility of ensuring accommodation norms according to the Order of the Ministry of Justice no. 433/C/2010, cumulated especially with high temperatures, lead to tensions among prisoners, which lead to negative events, sickness

and also many complaints based on detention conditions and implicitly over crowdedness and obtaining sentences towards Romania for the cases in CEDO (European Court of Human Rights), based on not observing these minimal conditions.

The Ministry admits the acute lack of qualified medical personnel and intends to employ very soon 81 physicians. Besides this, for the about 2600 prisoners with psychiatric diseases, there will be psychiatric wards.

The revolts were barely over and after about a month, employees' revolts started within the prisons in Romania. The main demand of ANP (the Prison Administration) employees were focused on the fact that they don't have the same wages rights as the employees in the system of defense and public order. According to the letter written to the Ministry, the representatives of the Union from ANP mentioned that the personnel from the prisons work in the same conditions that the Minister of Justice disapproves regarding the prisoners. However, there is no plan to improve work conditions for the personnel, although ANP took the responsibility through successive agreements to do that.

Currently, within the prison system in Romania, there are 1.5 million hours in overtime for the personnel, most of which are impossible to make up for due to the lack of personnel of 8000 employees, estimated by ANP through reports according to official personnel standards. As a consequence, the employees notified the Employer regarding their lack of agreement to exceed the 180 hours of annual overtime, and regarding the initiative under coordination and Union protection to refuse working overtime, expressed by all employees, actions that will get prisons stuck in the month of October of the current year.

2. Romania and the European Court for Human Rights.

In addition to the above presented, there are also the sanctions that Romania risks to receive from the European Court of Human Rights for the conditions that prisoners are kept in detention centers across the country. The current Minister of Justice has sent a letter to Strasbourg underlining these conditions, in order to postpone the decision regarding this situation in prisons.

Italy has been in the same situation, and the European Court for Human Rights made it pay 8 euros/day for each prisoner held in detention. This means that Italy is paying 78 million euros/year. For Romania, according to the declaration made by Minister Raluca Pruna, even if the amount would be halved, and Romania would pay 4 euros, for the approximately 28 000 people who are held in prisons, Romania would have to pay approximately 80 million euros.

The Romanian Government wrote a letter through which took the responsibility to come up with an improvement plan for all prisons, but it is very clear that it cannot be done. The 8 month-period established by the Romanian authorities seems unachievable for the employees in the detention system.

The president of the national Syndicate for Works within Prisons declared: “improving the situation in Romania is almost impossible, it can at the most be postponed. No matter how much the Minister of Justice and the Government manages to postpone these fines, sooner or later we will find ourselves in this situation, because managing to come up with 10 000 places for detention in such a short time is absolutely impossible. This means 10 new prisons, which considering the value already set for the

European standards, would amount to very high figures. Such a prison would cost approximately 500 million euros. European standards, even viewed in their basic form, focus on the surface allocated to each prisoner, of 4 square meters”.

At the moment, the European Court for Human Rights has lots of cases in which the Romanian state is accused regarding bad detention conditions. The Court has over 1000 cases to review. Romania has already paid high amounts for these cases.

The European court for Human Rights might make Romania pay upon releasing the prisoners a compensatory amount of money for the bad conditions under which they have been imprisoned. We are talking about approximately 10 000 euros/prisoner for 3 years of imprisonment.

3. Probation system in Romania.

In the conditions mentioned, alternative measures to detention are more than welcome. The Department of Parliamentary Politics and Studies EU – section of legislative documentation within the Chamber of Deputies made an inventory of penal sanctions for not un-imprisoned criminals used in some of the European countries, members in the EU. We are talking about a synthetic presentation of punishments to be executed outside of prison and the way these could be applied in countries like France, Great Britain, Germany, Belgium, Finland, Sweden, Italy, the Czech Republic, Croatia, Ireland and Portugal.

The authors of the study identified two main categories of alternative non-custodial measures – some that imply a control of the defendants and some that do not involve this control. These measures are applied within certain conditions established by a judge and unlike the detention punishments, they lead to re-educating the criminal

without isolating him from his family, allowing him to improve his antisocial behavior and the mentality that motivated him to commit the crime he was sentenced for.

The conclusion of the study is that due to social and economic advantages it implies, non-comital penal punishments are a preferable alternative to imprisonment when we talk about less severe crimes and criminals who represent a low social risk. Administered mainly by probation services, alternative measures to imprisonment are a remedy for eliminating negative consequences of imprisonment and a consequence of evolution and humanizing of punishments.

More than two years ago, when we first started working on this European project (“Reducing Prison Population: advanced tools of justice in Europe”), alternative measures represented a brand new concept for the whole of the Romanian society. Enclosed in the New Penal Code, they represent an addition of good practices or the non-comital alternative measures, applied in more developed European countries. But, good intentions and all the documentation of the clerks in the Justice Ministry, mainly those who wrote the New Penal Code, are not applicable in sentences, but only with great hold-backs.

There are well-known cases in which there were sentences to prison for fathers who stole food of a few euros in value because they had no food for their children, mothers who stole bread or a hen for the same reasons or old people sentenced when they were over 65 years of age for violent crimes determined by conflicts regarding property rights. In none of the examples above, alternative punishments were not even tried, but people were condemned to long years of imprisonment.

Perhaps because in Romania, the concept of “the one who made a mistake must pay”, comes from way back in the past, the Romanian society is not yet fully prepared to embrace alternative measures. Moreover, there is a lack of financial resources for the functioning of probation services, of non-involvement of NGOs in these cases, but also because of the lack of trust generated by corruption, favoritism in certain severe cases of corruption of well-known people, and we would like to give a few examples.

As it is already known, Romania is trying to align itself to everything that means a legislative system as dictated by the existing norms of the European Union. If we only look at the written documents, Romania has very good alternative measures. But, because of the lack of financial resources, probation services are in a critical situation. This is a unnatural situation due to the large amount of work reported by insufficient human resources, although dramatic consequences that result from this are many: illegal delays in applying court orders, low quality, lack of motivation, professional dissatisfaction, stress and chronic exhaustion. For example, at the beginning of 2016, in the records of the 42 probation services there were 53 009 cases instrumented by 324 employees (282 probation councilors and 42 bosses). In all services, bosses work alongside the employees, because the their workload exceeds the objective capacity of assimilation, and so the average number of cases within the country that a probation councilor is responsible for is very high, about 188 and it very slowly decreases due to the involvement of the managers, to 164.

Out of the 42 probation services, in 22 services, the average for councilor was 200 cases and in this critical overlook, there were even more critical

elements: in 13 services, the average was 200-250 cases, in 7 services, the average was over 250 cases, as for example in the counties of Alba, Braila, Gorj, Ilfov, Maramures, Mures and Suceava, and for Arad the average was over 300 cases and in Teleorman over 400.

A simple search on the site of the National Administration of Prisons for protocols, networking highlight the fact that for the tens of documents signed, only two were signed with religious organizations and make references to developing certain programs regarding the re-insertion in society of sentenced people or offering alternative solutions.

Precept Ministries (2) is the first organization we can find on the list of the National Administration of Prisons and it is actually a center for Bible studies, set up as a resting place, a spiritual establishment for camps, conferences and rest, where they teach computer courses, English, they hold conferences and seminars. There is no reference to having programs of alternative programs for detention.

The second organization is also religions, Pentecostal, the Betesda Humanitarian Christian Association. We could not find any information on this organization either, to confirm the fact that they really develop alternative programs for detention. If we search the Internet for this organization reveals no results.

The only NGO that really has a collaboration with the probation service on a national level and that offers programs to people who are under the incidence of the service, is the Association for Promoting Communitarian Sanctions. The Association has workshops in which they work on old objects for home use and consequently the resulted objects are separately valued. Up to last

year, APPSC had centers in a few cities in the country, but due to difficult financial situations, there are only two such locations left, in Brasov and Bucharest.

Regarding the lack of trust of the population or better said its reserve regarding alternative measures to detention, it is due to the media attention given to those called "luxury detainees". Especially people who were lately sentenced in Romania, who have been given all sorts of favorable circumstances both regarding home arrest and work for the community, measures for a lowered sentence, based on intellectual activities, the semi-open regime, etc. In all the cases that got the media attention, it has been discovered not only that these measures did not have a re-educational purpose for re-integration in society, but they have been deficiently applied, or even worse, based on suspicious cases of corruption. These aspects increased the lack of trust the society has towards any non-governmental organization, which would like to develop alternative programs. From the very beginning, such an organization would be suspected of favoritism.

There is no doubt, as one of the most important factors for putting alternative measures into practice is up to the personnel called to apply them, which means the clerks from the Ministry of Justice. This summer, the Ministry announced that it is analyzing the opportunity of the proposal of some legislative changes regarding alternatives to going to prison or conditional release as part of the plan of sustainable reduction of over-crowdedness and to improve detention conditions. There is an information and public consulting process that has been launched, and as a consequence the Minister of Justice awaits suggestions from the civil society in order to set up a package of integrated short-term, medium and long-term measures, which could lead to the

reduction of over-crowdedness and to improve detention conditions. There is a focus on measures for consolidating the infrastructure, improving life quality for those in detention, facilitating social re-integration, probation consolidation etc.

Reality shows that in Romania, for the alternative measures to detention to be effectively applied and to be successful, there needs to be an evolution in time and examples of good practices. If we talk about the non-governmental sector, for the beginning, we need information on the work methods that gave the real results (see the recovery programs of Comunità Papa Giovanni ⁽³⁾).

There need to be experience exchanges and a better dissemination of information regarding these alternative programs. Of course, beyond determination, there must be a collaboration with the state and understanding the fact that a mad is recovered most of all as a gain for the society.

Notes.

(1). The article is based on information collected over the two-year duration of the project, from discussions with

officials of the Ministry of Justice, and based on discussions with detainees.

(2). www.precept.ro

(3).

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- <http://www.luju.ro> (Website with some information on Romanian prisoners' complaints about ill-treatment to which they are subject)
- <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19953&LangID=E> (United Nation torture prevention experts urge Romania to tackle prison overcrowding", United Nations Human Rights)
- <http://www.precept.ro> (Website of the Precept Ministries)