OBSERVANCE OF THE FUNDAMENTAL RIGHTS OF CONVICTED INDIVIDUALS DURING THE RE-EDUCATION AND SOCIAL REINSERTION PROCESS

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Abstract

The recent criminal justice reform brought by the entry into force of the new Criminal Code and the new Criminal Procedure Code carries forward the changes in approach with regard to sentence execution, introduced following the adoption of Law No. 275/2006 on the execution of sentences and the measures ordered by judicial bodies during the criminal trial. Having as a point of departure the joint standard set by Recommendation 2006/2 of the Commission of Ministers, this scientific paper is aimed at presenting the evolution of the Romanian legislative system in terms of sentence execution and the manner of regulation of the new institutions, including custodial educational measures that may be ordered for juvenile offenders, but also in terms of the positive obligations incumbent upon the institutions of the State involved in sentence enforcement and sentence execution supervision.

Keywords*: International and European recommendations transposed into national criminal legislation, organising custodial sentence execution, re-socialisation for convicted individuals, rights of convicts, execution of custodial educational measures, national strategy for social reinsertion of former convicts.*

1. Introduction

The overall national legal system and the laws governing the serving of criminal sentences cannot be approached in isolation. It is paramount to correlate them to the relevant European benchmarks and values.

This is actually the very reason for which the Romanian state undertook ample reforms in the matter of criminal law and criminal trial, but also in the field of sentence execution, the latter being started by the adoption of laws on the enforcement of sentences and measures ordered by judicial bodies during the criminal trial.

This legal science paper provides a significant contribution, by dealing distinctly and specifically (in relation to the common standard set by Recommendation 2006/2 of the Committee of Ministers) with the development of each legal institution in the matter of criminal sentences, the regulation of the new institutions, but also the positive obligations incumbent on the different national entities responsible for the enforcement and supervision of sentence execution.

Thus, this comparative research furthers the existing relevant literature, by carrying out a critical review of each principle set forth in Recommendation 2006/2 of the Committee of Ministers, and by presenting their integration in the national laws, indicating the level of internalisation of these guiding principles and pointing out

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specific challenges encountered in the process of integration.

On the other hand, this paper does not only provide a comparative legal iteration, but also a historic perspective of the relevant international and national values set forth by Resolutions no. 663C (XXIV) of 31 July 1957 and no. 2076 (LXII) of 13 May 1977, Recommendation R (87) 3 of the Committee of Ministers of the Council of Europe, Recommendation R (93) 6, Recommendation R (98) 7, Recommendation R (99) 22, Recommendations R (79) 14, R (82) 16 and R (79) 14, Recommendation R (2003) 23, Recommendation R (2003) 20 and Recommendation R (75) 25, Recommendation (2006) 2 and not only, at international level, as well as Law no. 275/2006, Law no. 253/2013, Law no. 254/2013, Criminal Code, Criminal Procedure Code, at national level. This paper explicitly illustrates the qualitative leap of the national law in the matter of sentence execution, but also areas that should be improved in the future.

2. Paper content

Adopted on 11 January 2006 by the Committee of Ministers during the 952nd meeting of Ministers' Deputies, the Recommendation of the Committee of Ministers to Member States on the European Prison Rules **(2006) 2 arises from constant international and European concerns with standardising minimum rules on the treatment of convicted prisoners, thus being included in a series of international documents of maximum relevance for defining the concept of social reaction to crime**.

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva, in 1955, adopted Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in its Resolutions no.663C (XXIV) of 31 July 1957 and no.2076 (LXII) of 13 May 1977. Recommendation R (87) 3 of the Committee of Ministers of the Council of Europe established the "European Prison Rules". These were followed by an series of recommendations on the rights of convicted prisoners and execution of sentences: Recommendation R (93) 6 on prison and criminological aspects of the control of transmissible diseases including HIV/AIDS and related health problems in prison, Recommendation R (98) 7 concerning the ethical and organisational aspects of health care in prison, Recommendation R (99) 22 concerning prison overcrowding and prison population inflation, as well as Recommendations R (79) 14 and R (82) 16 on release/leave from prisons, Recommendation R (2003) 23 on the management of life-sentence and other long-term prisoners, Recommendation R (2003) 20 on education in prisons, and Recommendation R (75) 25 on prison labour.

Recommendation **(2006) 2 on the European Prison Rules was one of the benchmarks for harmonising Romanian laws with international regulations in the matter. In the successive development of all the regulations covering the enforcement of custodial sentences, the** 107 Rules set forth by the Recommendation were considered alongside the above-mentioned international documents, and provided the foundation for a radical reform of the national sentence execution system.

This international instrument provided a premiere in collecting the rights of convicted prisoners in a veritable code of rules, and setting forth correlative obligations for the Member States to

implement the contents of such rules[1], of which the following should be recalled:

- All persons deprived of their liberty shall be treated with respect for their human rights.
- Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
- Prison conditions that infringe prisoners' human rights are not justified by lack of resources.
- Life in prison shall approximate as closely as possible the positive aspects of life in the community.
- All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.
- National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.
- Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.
- Prison authorities shall ensure that prisoners are able to participate in elections, referenda and in other aspects of public life, in so far as their right to do so is not restricted by national law.
- While prisoners are being moved to or from a prison, or to other places such as court or hospital, they shall be exposed to public view as little as possible and proper safeguards shall be adopted to ensure their anonymity.
- Disciplinary procedures shall be mechanisms of last resort. Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners. Only conduct likely to constitute a threat to good order, safety or security may be defined as a "disciplinary offence".

Representing the start of reforms in the matter, Law no. 275/2006 on the execution of sentences and measures ordered by judicial bodies during the criminal trial, in its Title I, reiterates the principles established by the Constitution of Romania and the European Convention on Human Rights (CEDO). Articles 1 to 5 state the principles of lawful detention of a person after conviction by a competent court; respect for the dignity of human beings; prohibition of subjecting convicted prisoners to torture, inhuman or degrading treatment or other ill-treatment; and prohibition of any forms of discrimination in the serving of sentences.

As a novelty in the field of sentence enforcement regulations, Law no. 275/2006 introduces the institution of the "judge delegated for the serving of custodial sentences", judge responsible for supervising and verifying the lawfulness of prison sentences and pre-trial custodial orders regulated by the previous Criminal Procedure Code.

Intended to regulate the enforcement of penal fines, supervision orders and other obligations imposed by courts on the grounds of the 1969 Criminal Code (in the case of supervised suspension of sentence serving provided for by Article 86^1 and subsequent), Titles II and III also include provisions on the responsibilities of the judge seconded to the criminal sentences enforcement unit of the enforcement court, but also on the work of the counsellors employed by the services for victim protection and social reinsertion of offenders. The effective organisation of the serving of custodial sentences is regulated under Title IV that, in 9 chapters, lays down

[1] Ioan Chiş, Alexandru Bogdan Chiş – *Executarea sancţiunilor penale,* Universul Juridic Publishing House, 2015, p.361.

rules on sentence serving regimes; detention conditions; rights and obligations of convicted prisoners; labour carried out by convicted prisoners; educational, therapy, psychological counselling, social assistance, school and training activities in which detained convicts participate during their term in prison; rewards that may be granted and sanctions for breaches of rules; conditional release; documents prepared by the prison administration.

Pursuing correlation with the provisions of Law no. 301/2004 on the Criminal Code (a bill that was adopted on 28.06.2004 and published in the Official Journal of Romania no. 575/2004 la 29.06.2004, but that never came into force), Law no. 275/2006 envisaged reconsidering the criminal policies, such as to abandon the repressive approach to punishments in favour to an educational one, based on the need for social reinsertion and education of convicted prisoners. This was the first instance (Cap. II, Articles 18-24) when four regimes for the serving of custodial sentences were identified, defined by a progressive or regressive system, as applicable, whereby convicts may be relocated to a different regime, depending on their behaviour during detention, thus: maximum security, closed, semi-open and open prison regimes. The differences between the prison regimes are defined by the detention conditions; limitation of inmates' freedom of movement; conditions of working; and participating in educational, cultural, therapy, psychological counselling and social assistance activities. A board for individualisation of sentences set up in each prison was tasked with determining the detention regimes and the judge seconded for supervision of custodial sentences was given the authority to change the regime at any time to a more or less severe one, as applicable, depending on the conduct of the convicted prisoner. The measures ordered by the judge may be appealed against with the court of jurisdiction in the area where the prison is located.

By transposing Rules **14-18 of Recommendation (2006) 2,** Chapter III of Title IV of Law no. 275/2006 regulates the detention conditions, namely reception, accommodation, clothing and nutrition, strictly defining the cases when, in order to prevent a real and present danger, detainees may be physically restrained. Thus, in compliance with the above-mentioned international standards and rules, Article 37 positively prohibits chaining of prison inmates, providing that this measure may only be taken in exceptional cases, when no other means is available for removing the risk, by prior approval of the prison director. Furthermore, the prison management is required to communicate immediately to the delegate judge any use and cessation of use of any means of constraint, detailing the facts that led to such use.

A novelty is Article 31 (4) of the Law prohibiting the transfer of underage individuals serving educational or custodial sentences to any prisons and, in the latter case, to adult prisons, for longer than 5 days, this provision being compliant with Rule **no. 11 of Rec. 2006 (2)** and set forth both for the purpose of preventing juveniles being placed in environments that may impair their social rehabilitation process and for ensuring continuity in the education of juveniles who participate in schooling or vocational qualification programmes.

Article 34 also introduces an element of novelty, by regulating the dress code of convicted prisoners [in compliance with Rule **20 1-3 of Rec. 2006 (2)** and the UN Prison Rules], thus eliminating the mandatory wearing of prison clothes and envisaging the provision of detention conditions approximating as close as possible the life of free individuals and transposing into the Law Principle no. 5

stated in the Preamble of Rec. (2006) 2. Thus, the Law provides that, during their imprisonment, the convicts are to wear civil clothes, irrespective of the detention regime and, in case they do not have personal clothes, such will be provided free of charge by the prison administration.

Moreover, by transposing Rules 24 and 29 of Rec. (2006) 2, the provisions of Chapter IV of Title IV recognise the rights of persons serving prison sentences to express their opinions and religious beliefs, to information, correspondence, telephone calls, to receive visits and goods, the right to health care, diplomatic assistance for foreign nationals, and the right to marriage. Articles 38-39 instate a system of guarantees for observance of these rights, by providing the right to complain to the delegated judge about any breach of rights and to appeal the latter's decisions with the court of jurisdiction of the place of detention. The same Articles also impose on the prison administrators the positive obligations of taking the required measures to ensure that these rights are exercised in full. The procedure for petitioning the delegated judge (Article 38 (3-4) involves the mandatory hearing of the convicted prisoner, but also the possibility to hear any person that may provide data and information required for determining the truth.

Article 46 (5) provides that, in case convicted prisoners lack the necessary money, the costs of petitioning national courts, international organisations whose jurisdiction is recognised in Romania, or legal advice and non-governmental organisations active in the field of human rights is to be covered by the prison administration. For the purpose of avoiding any interference of the prison administrators with the right to correspondence, Article 45 (4) lays down explicit and limitative situations when mail may be opened or withheld, with rules that are similar with those applicable for free individuals, namely, only when reasonable cause exists to suspect that an offence was committed and only based on a written and reasoned order issued by the delegated judge, the convict being notified in writing as soon as such measure was ordered.

Given that, according to the 1969 Criminal Code, labour is a main component of offenders' social rehabilitation, Chapter V of Title IV establishes a new regime for the work of convicted prisoners, such as to harmonise the legal provisions with Rules 26 1-15 of Recommendation (2006) 2. The general provisions on work carried out in detention facilities (Article 57) instate the principle that such work is remunerated, except for housekeeping work required in the prison and work carried out in case of calamities. The subsequent articles detail the working conditions, exclusively based on the agreement of the inmate, the duration of the working day, working regime, payment, distribution of income due to inmates, health and safety at work rules and forms of social assistance available in case of work capacity loss caused by work accident or professional illness occurring during imprisonment (Reg. 26.14). Another novelty ensuing from the above-mentioned Recommendation is the assimilation of educational, qualification, training or retraining activities with effectively carrying out work. Article 57 (10) provides that such work is to be remunerated. The regulations governing vocational training provide that such programmes are to be delivered based on curricula developed jointly by the administration of each prison together with the National Employment Agency or its territorial branches, with the programmes being adapted to the inmates' preferences and aptitudes. In order to facilitate social reinsertion of convicts, Article 66 (1) provides that the certificate of completion of a training programme should not mention

that the training programme was completed whilst in detention.

According to Rule 26 (8) of Rec. (2006) 2 – providing that though any financial profit generated for the penitentiary can be valuable for raising standards and improving the quality of training, yet the interests of the prisoners should not be subordinated to that purpose – Article 15 (6) of the Law provides that the income obtained by detained convicts from their work is to be used for improving the conditions of detention.

Regarding the distribution of earnings, the percentage due to the prisoner was increased to 40% compared to the previous regulation (Law no. 23/1969), of which 75% can be used by the prisoner during his/her imprisonment and 25% is deposited in a savings account on his/her name and is to be handed over to them on release, including any interest due. Article 60 (2) transposes Rule 105.5 and provides that, in the case of a sentenced prisoner who was also ordered to pay some form of reparations that were not covered before his/her reception in the prison, 50% of the 40% share of earnings due to him/her for the work done during detention will be used for providing reparations to the damaged party.

In the light of the principle of lawfulness of sentence execution, Chapter VII of Title IV provides for a new system of rewarding convicted prisoners that demonstrate good behaviour and diligence in work or educational activities. Such rewards include assignment of responsibilities in educational programmes, lifting of previous sanctions, extra rights to visits and packages, awards or leave from prison for maximum 5 to 10 days, as applicable. At the same time, in compliance with Rules 56-60 of Rec. 2006/2, the punishable disciplinary offences were explicitly listed, with the specific determination that any such punishment cannot limit the prisoners' right to defence, petitioning, correspondence, health care, food, light and daily outside walk. Also, collective and corporal punishments or the use of instruments of restraint or of any from of degrading or humiliating treatments are explicitly prohibited as punishments for disciplinary offences. Article 74 provides guarantees against arbitrary punishments: the convicted prisoner is entitled to challenge the punishment decided by the disciplinary board by petitioning the delegated judge. Such petition procedure must include the hearing of the convicted prisoner and the decision of the judge may be appealed against with the court of justice of jurisdiction in the area of the prison.

Title V of Law 275/2006 transposes the Rules laid down in Part VII of Rec. 2006/2 (on untried prisoners) and includes rules on the enforcement of custodial remand orders differentiated by trial stages: in preventive detention and arrest centres subordinated to the Ministry of Administration and Internal Affairs, in the case of custodial orders issued during the criminal investigation, or in preventive arrest centres or in special sections of prisons – both subordinated to the National Prison Administration. These articles also state that the above-mentioned provisions on detention conditions, rights and obligations of convicted prisoners, work, educational and cultural activities, therapy, psychological counselling, social assistance, rewards (except for prison leave and disciplinary punishments) also apply to untried prisoners.

The coming into force on February 1st 2014 of Law no. 286/2009 on the Criminal Code and of Law no. 135/2010 on the Criminal Procedure Code caused material changes in the matter of prison sentence enforcement and required the improvement of the legal framework established by Law no. 275/2006 which, being focused on

execution of prison sentences, did not correspond to the circumstances created the introduction of the new criminal law or criminal trial institutions.

Law no. 254/2013 regarding the execution of sentences and custodial measures ordered by the court during the criminal trial appended the substantive and procedural law rules comprised in the two new Codes, detailing the manner of implementing such for achieving the judicial purposes of social rehabilitation of convicted adults or underage individuals, preventing reoffending, ensuring good conduct of the criminal trial by preventing the suspect from absconding from the criminal investigation or trial.

Similarly to Law no. 275/2006, Title I reiterates the principles of lawful imprisonment – respect for human dignity, prohibition of torture, inhumane or degrading treatments or other ill-treatments, prohibition of discrimination in the serving of prison sentences – enshrined both in the Constitution and in the New Criminal Procedure Code, with the new regulation (Article 7) additionally stating – in compliance with ECoHR and Rule 2 of Rec. 2006/2 – that inmates shall exercise all the civil and political rights except those taken away from them in compliance with the law by the decision sentencing them, as well as those rights that cannot be exercised or are limited inherently by the status of being imprisoned or for reasons related to the safety of the prison facilities.

The institution of the judge delegated for the execution of custodial sentences is now redesigned and redefined under the title "judge for supervision of deprival of liberty" in Title II, Articles 8 - 9 of Law no. 254/2013, such judge being assigned to supervising and verifying the lawfulness in the execution of sentences. By the listing of all such judge's responsibilities, a number of practical difficulties were removed that existed in the implementation of the previous rules on sentence execution (mainly separation of administrative duties from administrative-jurisdictional ones). The law-maker's decision to strengthen the institution of the supervision judge was based on the need to effectively control the execution of prison sentences, with the new regulations introduced in Article 9 on the designation of stand-ins, seconded court clerks and the imperative obligation imposed on the detention facility management to provide the amenities required for these activities, as well as any necessary information or documents, establishing such judges' functional independence. The resolutions of the delegated judge – now enforceable – and the written orders issued in compliance with the prison law under the procedure applicable in cases where inmates refuse food are mandatory for the prison director or the head of the pre-trial detention and arrest centre.

In addition, the above-mentioned provisions state that, in carrying out his/her judicial duties, the judge for supervision of deprival of liberty may hear any person, request information or documents from the detention facility management, carry out on site checks, and has access to the personal file of the prisoner, records and any other documents required for discharging his/her duties.

A separate chapter is dedicated to regulations on safety in prisons. Articles 15-21 impose both safety measures and provide for the assessment of individuals (in compliance with Rule 52 of Rec. 2006/2) on admission to the detention facility, in order to determine the risk they may pose to the community, in case of breakout, and to the safety of the other inmates, prison facility staff, visitors or to themselves. In the light of the same recommendations, clear, imperative and explicit rules are laid down on the use of restraint instruments and

antiterrorist and specialised control applicable to all persons and luggage they carry, but also to any vehicles that gain access to the prison. The prisoners' body search is explicitly regulated, with clear distinction between body search, external body examination and internal body examination, with a special focus on the intrusive character of this measure, Article 19 (5) providing that examination can only be carried out by medical staff, as also provided by Rule 54.6 of Rec. 2006/2.

In compliance with Rule 69 1-3 of Rec. 2006/2, Article 21 of the Law provides that only the prison guarding staff and that carrying out escort missions outside the prison facilities, in the cases and under the terms provided by law, are permitted to carry fire arms. The carrying and use of fire arms or other non-lethal weapons in the detention facilities is prohibited, except in critical incidents explicitly defined in the Rules of Implementation approved by the Minister of Justice.

Article 23 provides for the possibility to protect inmates who intend to injure themselves or commit suicide, injure another person, destroy goods or cause serious disorder, in that the possibility is provided for such prisoners to be accommodated individually, in a specially designated and fitted room. During the accommodation in such a protection room, the prisoner at risk of harming him/herself or committing suicide is to be monitored by medical staff, receive psychological counselling and be kept under permanent video surveillance, but ensuring that human dignity is respected at all times. When using restraint instruments or weapons and when temporarily accommodating the prisoner in the protection room and keeping him/her under video surveillance, it is mandatory that the judge for supervision of deprival of liberty be notified in writing accordingly.

Intended to regulate the prison sentence serving regimes, Chapter III of Law no. 254 reiterates the four prison regimes provided for by Law no.275/2006, namely maximum security, closed, semi-open and open, the novelty being the possibility to instate a certain regime on a provisional basis (Article 33) for a short period of time, after the completion of quarantine, and only if the prison regime was not determined during the quarantine. The effective sentence serving regime is decided by a board, based on criteria explicitly stipulated in the Rules for Implementation, namely: the duration of the sentence; risk levels of the convict; age and health status; good or bad conduct of the convict, including in previous detention terms; identified needs and abilities of the convict required for his/her inclusion in educational programmes; convict's needs for psychological and social assistance; and his/her willingness to work and participate in educational, cultural, therapeutic, psychological counselling and social assistance, moral-religious, schooling and vocational training activities and programmes.

In terms of dealing with any petition filed by a convicted prisoner or the prison management against a resolution of the supervision judge, a new procedure is established under the jurisdiction of the local court where the prison is located. The convicted prisoner only appears in court if and when summoned by the judges (in such case, he/she is also heard) and legal advice is not mandatory. When a prosecutor and a representative of the prison administration participate in the court session, they make claims and submissions.

Also, as an exceptional measure, it is provided that prisoners may be included in an imprisonment regime more or less severe than that associated with the duration of the prison term, taking into account the nature of

the crime and the manner it was committed, the convicted prisoner's personality and behaviour until de determination of the prison regime.

Another novelty is the provision for a social rehabilitation programme adapted to each prisoner, accompanying the imprisonment regime and being a manner of individualising the regime of prison sentences (Articles 41 and 42). This means that each individual prisoner should participate in educational, cultural, therapy, counselling and social assistance, schooling, vocational training and work activities depending on his/her prison term, conduct, personality, risk, age, health, identified needs and capacity for social reinsertion.

Chapter IV of Law no. 254/2013 represents a real progress in approximating Rules nos. **14-18 of Rec. (2006) 2,** by detailing the basic requirements applicable for admission to the prison; quarantine and observation period; rules for transportation of prisoners; imprisonment of convicted persons from special categories; release, transfer, accommodation, clothing and food; refusal of food; and documents to be drawn up by the prison administrators in the case of deceased prisoners. According to the above-mentioned rules, Article 43 contains a new provision on the minimal measures required on admission to the prison, namely: detailed body search; making a list of personal belongings; general clinical examination with findings entered in the medical record; fingerprinting that are kept in hard copy on the personal record of the prisoner and stored in electronic format in the national fingerprint match database; photographing for records; and interviewing to ascertain the immediate needs of the convicted person. The law text pays special attention to persons who do not speak or understand Romanian or to persons with disabilities.

Regarding the transfer of convicted prisoners, Article 45 (8) reiterates the previous provision that prohibited the transfer to prisons for more than 10 days of juveniles serving a sentence of internment in an educational or detention centre.

Another novelty are the regulations on the nutrition of convicted prisoners (Article 50), requiring the administration of the detention facility to provide adequate conditions for the cooking, distribution and serving of food, in compliance with the food hygiene regulations, depending on the age, health status, kind of work done, and in observance of the religious beliefs declared by the prisoner in a sworn statement.

The rights and obligations of convicted prisoners, stipulated in Chapter V, to a large extent take over the provisions of the previous Law no. 275/2006, but clarify the matter of legal advice, which should be provided on any legal issue, the room and facilities necessary to consult a lawyer being provided, in observance of confidentiality but under visual monitoring. Furthermore, the provisions on medical care and examination carry forward most of the previous regulations, the new aspects covering convicted prisoners with serious mental disorders, who are to be placed in special psychiatry wards [Article 73 (7)]. These provisions were introduced based on Rules 47 and 12 of Rec. 2006/2, but also following the visit reports of the European Committee for Prevention of Torture, which found that a significant number of prisoners show signs of mental conditions.

The matter of work by convicted prisoners – detailed in Chapter VI – did not undergo substantial changes compared to the previous Act. The new provisions include the possibility for prisoners to carry out voluntary or community work, thus making better use of the prisoners' interest for working, taking into account that work is one of the most important social rehabilitation factors. The distribution of the money earned by convicted prisoners for

their work is the same as in the previous regulation, with only the share that can be used by the prisoner during imprisonments being changed from 75% to 90%. Also, based on the transposition of Rule no. 105.5, Article 60 (2) of Law no. 275/2006 was maintained, which provides that, when the convicted prisoner was also ordered to provide reparations that were not covered before his/her reception in the prison, 50% of the 40% share of earnings due to him/her for the work done during detention is used for providing reparations to the damaged party.

Educational, psychological and social assistance activities, school education, higher education and vocational training of convicted prisoners are all detailed in chapter VII that includes specific rules on the conditions for the provision of such activities, but also distinct rules on the status of disabled convicts. Rules are set forth for the carrying out of a multidisciplinary educational, psychological and social assessment of each convicted prisoner at the time of their admittance into the prison. This assessment informs the development of a personal educational and therapy evaluation and intervention plan, including the activities recommended in relation to the prison regime and sentence serving route.

Chapter VIII presents a new approach to parole (conditional release), emphasizing its optional character. Besides the requirements set forth in the previous regulation, when considering a parole, the board takes into account the prison regime to which the convicted prisoner was allocated and his/her reparation of any civil liabilities ordered in the sentence, except where the prisoner demonstrates that he/she had absolutely no means of meeting such obligations.

The enforcement of educational prison sentences applied to juveniles is regulated in Title V and is required by the reform of the system of criminal punishments introduced by the New Criminal and Criminal Procedure Codes.

The execution of prison sentences is to be carried out in special juvenile rehabilitation facilities or in educational and detention centres set up by the reorganisation of minors and youth prisons and re-education centres.

In the case of underage interned in detention centres, two types of sentence serving regimes are provided: open and closed. The decision is the responsibility of a board in which a probation counsellor, and a representative of the General Department for Social Assistance and Child Protection of the County Council or the Local Council, as applicable, may participate. After the convicted juvenile has served a quarter of the sentence, the board is tasked with reviewing the conduct of the candidate and his/her efforts towards social reintegration.

With a view to the social rehabilitation of the underage, the law provides that, 3 months before the end of the term, the persons serving educational sentences under open regime may be accommodated in specially designated facilities, where they will carry out self-managing tasks under the direct supervision of designated personnel form the centre.

In the case of internment in an educational centre, unlike in a detention facility, the execution regime is the same for all inmates, and the individualisation of the regime – in terms of deciding educational, psychological and social assistance provided to each convicted person – is the responsibility of a purposely established Educational Board. The board membership includes the centre director, centre deputy director for education and psycho-social support, the case educator, primary teacher or form teacher, a psychologist, a social worker, and the head of the supervision, records and allocation of rights for interned

persons. Also, a number of guest members may be invited: a probation officer and a representative of the General Department for Social Assistance and Child Protection of the County Council or the Local Council. A board with a similar membership is set up in each detention centre and is responsible for determining, individualising and changing the internment regime.

Irrespective of the type or custodial educational sentence being served, the regime applicable to convicted minors is aimed at providing them with assistance, protection, education and development of their vocational skills, with a view to their social rehabilitation, so that the provisions governing their rights and obligations during internment (Articles 161-170) focus on social reinsertion, psycho-social support, school education and vocational training activities and programmes. Moreover, the regulations on disciplinary offences take into account the specific obligations and interdictions applicable to convicted juveniles, namely to attend school up to completing compulsory education and to participate in vocational training programmes and in other activities provided by the centre, for the benefit of social reintegration. To an equal extent, the adopted reward system includes specific regulations for minors, with a new rule providing for: 24 hours leave of absence in the town where the centre is located; weekend leave to the town of domicile; family leave during school holydays for up to 15 days, but not more than 45 days per year; participation in camps or field trips organised by the centre alone or in partnership with other organisations.

The development of the regulations on the enforcement of custodial educational sentences was based on a number of international instruments[2], namely United Nations Convention on the Rights of the Child, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, United Nations Standard Minimum Rules for Non-custodial Measures (Tokio Rules), United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Recommendation 87 (20) of the Committee of Ministers on social reactions to juvenile delinquency.

Starting from the international and European regulations in the matter of human rights and, in particular, the rights of children – to which Romania is a party – the criminal justice reform does not end with the adoption of specific provisions on the serving of sentences.

Bearing in mind that "the current regulations do not make full and systematic reference to cooperation and complementarily aspects in the provision of support to persons serving custodial sentences by the prison staff, probation officers or representatives of other public agencies, associations and organisations involved in the provision of post-imprisonment support", the National Strategy for the social reintegration of persons deprived of liberty 2015-2019[3] identified the need for the criminal justice policies to develop a framework for the cooperation and synergy between public agencies, associations and organisations involved in then provision of post-imprisonment assistance, alongside with defining clear responsibilities of the social stakeholders.

The three objectives laid down in the National Implementation Plan, as a tool for the implementation of the Strategy cover:

- institutional capacity and institutional development in the field of social reintegration of inmates and persons who served custodial sentences, by the training of

[2] Recitals of Draft Law no. 254/2013.

[3] G.D. no. 389/2015, published in the Official Journal no. 389 of 27 May 2015.

the staff involved, development of the institutional infrastructure, improving the regulatory framework and promoting amendments to the laws;

– developing educational programs, psychological support and social assistance in detention, by providing education, psychological and social support to persons deprived of liberty, and raising public awareness on the issue of social reintegration of the inmates;

– facilitating post-prison assistance at systemic level, by ensuring continuity of intervention for people who executed custodial sentences, developing partnerships with public institutions, associations and non-governmental organisations and local communities, in order to facilitate the social reintegration of persons who executed custodial sentences; developing inter-institutional procedures concerning the responsibilities of the stakeholders in the social reintegration of persons who served custodial sentences; aking over cases and providing post-prison support.

3. Conclusions

The numerous recommendations issued by the Council of Europe in the matter of execution of sentences underline the need for the Member States to take legal and administrative measures aimed at maintaining the necessary balance between the need to protect public order, on the one hand, and the crucial requirement to consider the social reinsertion needs of offenders, on then other hand.

In the light of these recommendations, it is my opinion that the social reintegration of persons deprived of liberty is a complex process that starts at the time the conviction sentence becomes final and continues, from the admission of the convict at the detention facility until the term in prison is served or deemed to have been served, but also subsequently, through the various types of support provided by the society to the former convict.

Thus, within these time milestones, the role of the prison system is not only to provide the guarding, escorting, supervision and enforcement of detention regime, but also to prepare the prisoners for post-imprisonment life, the prison administrators being required to permanently evaluate the educational, psychological and social support needs of the inmates, to individualise and plan their sentence serving route, by organising and delivering school education, vocational training, educational, psychological and social assistance programmes so that, at the end of the prison term, to accomplish the educational function of the prison term or custodial educational measure.

Designed as a tool for improving the European Prison Rules of 1987, Recommendation (2006) 2 is a true code of requirements regulating all the aspects related to the management of detention facilities, with a special focus on observance of fundamental rights and all other rights that have not been explicitly taken away by the sentencing decision or that are obviously incompatible with the status of imprisonment. The rules included in the above-mentioned Recommendation are not intended to lay down an exemplary system of operations, but rather codify a minimal standard the provision of which should be of real concern in any modern and progressive judicial systems.

The approximation into the national laws (by the successive adoption of Laws nos. 275/2006 and 254/2013) of the system of rules established by Recommendation (2006) 2 does not mark the end of the prison system reform. Improving the prison system efficiency requires the continued promotion of criminal justice policies aimed at improving the legal-regulatory framework,

the development of cooperation and synergy between public agencies, associations and non-governmental organisations involved in the provision of post-imprisonment support, at adapting and improving the prison staff training system and at intensifying international cooperation with the prison systems of the other Member States.

This paper draws attention to the need to continue the process of correlating the national to European laws, to maintain the efforts in this direction, for the purpose of raising the quality of national laws on the serving of prison sentences, with the ultimate outcome of improving the protection of convicted prisoners' rights.

References

- Ioan Chiș, Alexandru Bogdan Chiș – *Executarea sancțiunilor penale*, Universul Juridic Publishing House, 2015;
- Recitals of Draft Law no. 254/2013;
- National Strategy for the social reintegration of persons deprived of liberty 2015-2019, *G.D. no. 389/2015*, published in the Official Journal no. 389 of 27 May 2015.