

COMPENSATORY RESOURCE AN ECONOMIC FACTOR

COSMIN SERGIU CREMENE *

ABSTRACT:. *The basis of this article is the analysis of data on the dynamics of employment in the most overcrowded seven penitentiaries in Romania and the effects of the Law on the execution of punishments and of deprivation of liberty measures, as well as the existence of centers or groups of reflection.*

KEY WORDS: *Prisons, Law 169/2017; Compensation; reflection centers;*

JEL CLASSIFICATION: *K14, K19, K42*

1. COMMUNIST HISTORY OF THE PRISONS

Prison can be defined as an institution meant to make individuals sentenced to serve their sentences through precise actions: their distribution in space, the establishment, around them, of a carefully designed surveillance apparatus, of keeping the detainees in permanent visibility, etc. The punitive power of the society has managed to attribute, thanks to the prison, a special space in which it manifests itself, a space that becomes the punishment itself. For Michel Foucault, prison is more than a punitive space - it is a reproductive structure of society itself.

The arrival of Nicolae Ceausescu at the head of the state brought a series of changes in the detention regime of the detainees. Against a backdrop of sympathy from the West, given by his opposition to the invasion of Czechoslovakia by the USSR in August 1968, a year later (23/1969) a gentler law for the execution of punishments was approved, colonies of forced labor were abolished, some of the old employees loyal to Stalinism were removed, more people with higher education were employed, those with medium or no education being excluded from the management of prisons.

* *Research Assistant, Ph.D., University of Petroșani, Romania, c.sergiu@yahoo.com*

Ceaușescu's regime did not invest in prisons at all, and even abolished many of them. The 45 penitentiaries, 25 outpatient units (sanitariums, mental illness hospitals, sub-officer schools) and 5 juvenile re-education centers up to 1977 were considered too many for a socialist regime that permanently asserted superiority over the one criminal capitalist. As a result of the decision not to exceed the number of 15,000 detainees annually, the decision to abolish over 70% of the penitentiaries (Decree no. 225/1977) was taken, leaving only 16 prisons in operation. This decision would have turned Nicolae Ceausescu into one of the most radical penal reformers in the world, if it had been accompanied by a liberalization of the penal code and the development of alternative systems for detention.

Numerous memorial works appeared about the regime of communist prisons both before 1989 (Ion Rațiu, *România de astăzi. Comunism sau independență*, Londra, 1975; Ghiță Ionescu, *Comunismul în România*, Londra/New York, 1980; Vlad Georgescu, *Istoria românilor. De la origini până în zilele noastre*, New York, 1982), especially immediately after this date (Constantin Noica, *Rugați-vă pentru fratele Alexandru*, Bucharest, 1990; Remus Radina, *Testamentul din morgă*, Bucharest, 1990; Gheorghe Mazilu, *În ghearele Securității*, Bucharest, 1990; Nicolae Mărgineanu, *Amfiteatre și închisori*, Cluj-Napoca, 1991; Teodor Mihadaș, *Pe muntele Ebal*, Cluj-Napoca, 1990; Doru Novacovici, *În România după gratii*, Bucharest, 1990; and the Archives of Totalitarianism, the journal of National Institute for the Study of Totalitarianism, regularly published a series of documents presented in detail the situation of prisons.

The refusal of the General Directorate of Penitentiaries to publish after 1989 the documents in their own archives made the reconstruction of the functioning mechanisms of the communist penitentiaries to be fragmented. We know that through the decree no. 6 of January 1950 were arrested „active cadres of bourgeois-landlord parties, old security structures, clairvoyants, relatives of the country's traitors, spies and enemy elements who fled the country, former exploiters (landowners, bankers, industrialists, traders)” (Ion Bălan, 2000), thus the most well-known politicians were sent to prison (Iuliu Maniu, Ion Mihalache, Constantin Brătianu, Gheorghe Brătianu, Pantelimon Halippa, Constantin Argetoianu, Constantin Titel Petrescu, Maria Antonescu, Ion Nistor etc.).

Only in 1952 they were arrested 12,000 people, including 2,000 lawyers, 400 doctors, 500 officers, 600 retailers, 200 journalists, 500 engineers, 850 teachers, 50 landowners, 800 priests, 3,500 officials.

Less than 40% of detention units are less than 40 years old, 26% are at least 100 years old, 30% were built over 160 years ago, and the prisons in Gherla and Aiud they were built in 1540 and 1786 respectively. Some penitentiaries were not designed as units for the execution of punishments, being former barracks used for organizing yards, former military barracks or buildings for preventive arrest.

The communist regime did not invest in the penal institutions, but, moreover, it abolished in 1977 almost 75% of them. The modernization plans proposed after 1990 were doomed to failure, both because of the faulty way of allocating funds and of organized, systematic thefts. The press reported that in the years 1992-1996 increased more accommodation in villas employees of establishments than punishment.

2. LAW 169/2017

Based on the provisions of Law no. 169/2017 for amending and supplementing Law no. 254/2013 regarding the execution of the punishments and of the deprivation of liberty measures ordered by the judicial bodies during the penal trial, between October 19 and December 17, 2017, were released on time, after deducting the days executed under inappropriate conditions, 883 persons, of which 529 were released on the first day.

Also, the competent courts have allowed the conditional release for 2297 persons out of the total of 3349 convicts who have acquired the conditional release, after the compensatory benefits have been granted (National Administration of Penitentiaries, Press release of October 20, 2017 on the Numerical Situation - Application of provisions Law.169 / 2017 and Press release of December 18, 2017 regarding the updated numerical situation - Application of provisions Law 169 / 2017).

Even if, by extending the compensatory measure from 6 to 20 days considered executed, the level of occupancy of the penitentiaries would not exceed the maximum capacity of the detention units, we should not neglect the fact that a three-fold increase in the duration of the compensatory measures presents a high risk of challenging it by society. Basically, the duration of the punishments would be reduced, in this case, by 66% for the people who executed the punishment under improper conditions, regardless of the seriousness of the crime. An alternative we identify is the application of compensatory measures commensurate with the seriousness of the crime and the nature of the regime of execution of the punishment.

In order to identify the impact generated by the application of the compensatory measures, we refer to the evolution of the overcrowding level in the penitentiaries that, on August 29, 2017, recorded the highest values of the employment index. (*at 4m²*) :

The results regarding the dynamics of the employment index *at 4m²* in the seven penitentiaries are not surprising, the high values identified in the case of the penitentiaries of Târgu-Mureș, Brăila, respectively Satu Mare being determined by the low number of the total number of persons deprived of their liberty. In contrast, the high value of the employment index dynamics for Constanța prison - Poarta Albă explains it not only as a result of the decrease in the number of persons deprived of liberty from 1494 (29 August) to 1297 (12 December), but also by extending the accommodation capacity *to 4m²*, from 612 to 884 de places.

In other words, the compensatory measures, together with the management of the penitentiary - through the creation of new places of accommodation -, have led to a considerable decrease of the occupancy level *to 4m²*: between August 29 - December 12, at the Constanta-Poarta Albă penitentiary, the balance "inputs-outputs" registered a reduction by 197 (13.18%) of the number of persons deprived of liberty, simultaneously with the supplementation with 272 (44.44) % of the accommodation capacity *at 4m²*(Tabel 1).

Tabel 1. Employment dynamics in the seven most populous penitentiaries in the country (August 29 - December 12, 2017)

Penitentiary	Persons deprived of liberty - August 29, 2017	Employment rate at 4m ² - 29 August 2017 (%)	Released persons (Law 169/2017) - October 19, 2017	People discussed in the first commission for conditional release (Law 169/2017) - October 19, 2017	Employment index at 4m ² (Law 169/2017) - 12 December 2017	Dynamics of the Employment Index at 4m ² (%)
Constanța - Poarta Albă	1494	244,12	55	200	146,72	- 97,4
Târgu-Mureș	420	218,75	5	50	171,88	- 46,87
Brăila	545	212,06	4	40	167,70	- 44,36
București - Jilava	1363	201,03	37	192	186,58	- 14,45
Botoșani	1024	189,98	14	154	168,83	- 21,15
Codlea	557	183,22	4	110	167,76	- 15,46
Satu Mare	430	182,98	3	21	143,83	39,15
Average	833	204,59	17	109	164,75	- 39,82

According to a statement dated January 14, 2019, the National Administration of Penitentiaries, in the context of recent approaches in the public space of the effects determined by the implementation of Law no. 169/2017 for amending and supplementing Law no. 254/2013 regarding the execution of the punishments and the deprivation measures ordered by the judicial bodies during the penal trial, brings to the public opinion the following details (Table 2).

Tabel 2. Number of releases from units subordinated to the National Prison Administration, between 2014-2018, in relation to the complex dynamics of custodial units

Type of release / year of release	2014	2015	2016	2017	2018
Conditional release	11.392	10.920	9.216	10.554	8.859
Timely release	967	890	968	1787	1692
Total:	12.359	11.810	10.184	12.341	10.551
Return to the penitentiary between 2014 and 2018	3.598	2.660	1.779	1.366	448

We mention that the release is ordered, immediately, at the expiration of the duration of the prison sentence, on the date of the definitive stay of the decision ordering the conditional release, as well as on any other date decided by the competent judicial bodies, in the situations provided by law, the administration of the detention facility fulfilling the obligations provided by the legal regulations in the matter.

At the same time, regarding the application of the complementary institution of the conditional release, we specify that this implies the cumulative fulfillment of some strictly and limiting conditions stipulated by the law, the admission of the conditional release implying the formation of the court's conviction regarding the conviction of the convicted person of a complex of social values necessary for the subsistence in society, under conditions of legality.

From the total of 14,402 persons who benefited from the provisions of Law no. 169/2017, a number of 11,851 were released following the admission of the request for conditional release by the competent courts, and the rest of 2,551 were released at the completion of the term of execution of the sentence.

Also, out of all the persons released, beneficiaries of the provisions of Law no. 169/2017, a number of 724 returned to the penitentiary, representing a percentage of 5.02% of the total beneficiaries of the compensatory appeal.

We mention that not all the persons who returned to the penitentiary, after the moment of their release, committed criminal acts during the post-detention period, some of them having other criminal cases, in different stages of instrumentation, even before release" (web site <http://anp.gov.ro/wp-content/uploads/2019/01/Comunicat-de-pres%C4%83-ANP-14-ianuarie-2019.pdf>)

3. CONCLUSION OF REFLECTION

On May 2, 2019, two weeks after he was dismissed as Minister of Justice, Tudorel Toader explained, in a Facebook post, why he did not promote two emergency ordinances in penal matters that the PSD leader was waiting for. Liviu Dragnea. Among other things, the former minister makes the following statement: "The shape of the two projects Emergency Ordinances was received at the Ministry of Justice, elaborated being in other centers of reflection!"

On May 7, 2019, three weeks after he was retired from the post of Prosecutor General, Augustin Lazar interviewed by the journal 22 in which, among other things, stated: „Starting in 2013, it was made a group of reflection and planning how to readjust the judiciary and legislation is more permissive. Some jurists were invited to take part in a reflection group in which the texts of conflict of interest and abuse of office were adjusted first. It started with this because here the judicial authority had shown a formidable performance. And then a think tank was created to readjust the legislation“.

As Augustin Lazăr places the formation of this "reflection group" somewhere in 2013, it is worth looking a little retrospectively:

- December 10, 2013, the Legal Committee of the Chamber of Deputies meets in secret session and adopts an amnesty and pardon law, as well as major changes in the criminal law, meant to ease the fate of white-collar offenders. That day was called "Black Tuesday" and the bills were brought by the

deputy Florin Iordache, who at that time was not even a member of the Legal Commission.

- January 18, 2017, During the Government meeting, two draft emergency ordinances, regarding pardons and amendments to the criminal law, land on the agenda, having the same ambitions as the 2013 projects. The projects are brought by the same Florin Iordache, now Minister of Justice. President Iohannis takes part in the meeting accidentally and manages delaying the Emergency ordinance projects.
- January 21, 2017, at night. At the proposal of the same Florin Iordache, the Government adopts the emergency ordinance no. 13, which sparked the largest post-revolutionary protests and had to be repealed four days later. Florin Iordache resigns as minister.
- October 2017, The Joint Special Commission of the Chamber of Deputies and the Senate is set up to systematize, unify and ensure legal stability in the field of justice. Chairman of the commission is named - who else? - Florin Iordache. Five important normative acts are modified, by emergency, by this commission - the three laws of Justice, the Criminal Code and the Criminal Procedure Code – in a way that shocked the whole civilized world, except Liviu Dragnea and his extended camaraderie. The way the Commission works, Iordache has always been the same. The opposition, the magistrates' associations, The Supreme Court of Magistracy, The High Court or the Ministry of Justice were invited to submit amendments, to make proposals, to discuss weeks in a row, because in the end, on the exact last day allocated to the debates, the PSD-ALDE-UDMR coalition to come up with their own amendments in the envelope, to vote on them and to reject the others. The crucial question remains: where did the envelope come from? It is not accidental to suppose that the sender was just the center or "reflection group" invoked by both Tudorel Toader and Augustin Lazar. Spring 2019. Tudorel Toader receives from the "centers of reflection" the emergency ordinance projects urgently requested by Liviu Dragnea. He refuses to accept them and is dismissed.

That we call them "centers of reflection" or "group of reflection" matters less, it is important that both former dignitaries, Toader and Lazar, say the same thing: there is somewhere (no one knows where) a conclave (formed by one who does not know) that opaque and clandestinely adjusts penal and judicial legislation, always for the benefit of the offenders and never for the victims. The product of the work of the conclave is then delivered to the political decision-makers (Parliament or Government) who, in an emergency regime, give it an appearance of legitimacy, by a vote given in ignorance.

Can we say that the changes made to the five so important laws are the fruit of the political will of the Parliament, the only legislative authority of the country? Nothing of the kind. Here, the only legislative authority was the conclave of reflection. Parliament was just the parrot that voted as its criminals dictated.

We find that certain data belonging to the National Prison Administration are no longer visible on their website.

One of the questions asked by President Klaus Werner Iohannis in his debate for the Presidential Elections was about the existence of "dark reflection centers" who acted in the sense of modifying or imposing legislative changes in the field of justice in Romania. This motivating the fact that I quote "I had no knowledge and rightly I did not even hear about it". In my opinion, these "centers" have existed and exist in the "mass manipulation" which happened in the protests that took place in the Country.

Three main factors contributed to the disillusionment with the prison system: the growing recognition that the totalitarian-socialist organization is counter-productive; the even sharper recognition of the fact that, instead of leading to what was thought of as greater social justice, it actually leads to a new order of rank, more arbitrary and harder to circumvent than any other, as well as the awareness that, instead of the greater liberalization of the detention regime, it leads to the emergence of a new despotism.

Currently civilization seems foreign to the concerns of all administrative forums, if by this word we mean the idea of social, economic and cultural transformation of an assembly that can be called a penitentiary institution. On the one hand, because these institutions are not the main characters or even the most enlightened places of public life. On the other hand, because the most important social actor involved - the state - has an increasingly weaker role in society and is playing more and more poorly.

Suffering from a profound sense of inferiority and powerlessness, taking refuge in the past, sometimes viewed as a paradise lost, in myth or utopia, dominated by false representations of oneself and the role it plays in changing attitudes, the state creates an inhibited institution psychically, devoid of the individual and collective motivations indispensable to his civilization.

REFERENCES:

- [1]. **Avram, L.** (2019), *Conclavul de reflecție. Cine ne-a modificat, de fapt, legile Justiției și legislația penală?*, web site https://adevarul.ro/news/politica/conclavul-reflectie-ne-a-modificat-faptlegile-justitiei-legislatia-penalan_1_5cdc2f58445219c57eaab875/index.html
- [2]. **Bălan I.**,(2000), *Regimul concentraționar din România. 1945-1964*, Fundația Academia Civică, Bucharest
- [3]. **Bruno Ș.**, (2006), *MEDIUL PENITENCIAR ROMÂNESC CULTURĂ ȘI CIVILIZAȚIA CARCERALĂ*, Institutul European,
- [4]. **Vladimir A. C.**, (2018), „*Dinamica suprapopulării și a condițiilor de detenție în penitenciarele din România în perioada 1990-2017*”, *Revista românească de sociologie*, seria nouă, anul XXIX, nr. 3-4, pp. 303-340, Bucharest;
- [5]. Comunicat de presă, Exemplar unic, Nr. 57055/20.10.2017, web site <http://anp.gov.ro/wp-content/uploads/2017/04/Comunicat-de-pres%C4%83-Situatie-169-20.10.2017.pdf>

- [6]. Universul Juridic, (2019), *UPDATE: Tudorel Toader, precizări despre ordonanța de urgență privind contestația în anulare*, web site <https://www.universuljuridic.ro/legea-169-2017-recurs-compensatoriu-eliberarea-din-penitenciare-pentru-conditii-necorespunzatoare/>
- [7]. Comunicat de presă, Exemplar unic, Nr. 21652/14.01.2019, web site <http://anp.gov.ro/wp-content/uploads/2019/01/Comunicat-de-pres%C4%83-ANP-14-ianuarie-2019.pdf>