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Causes of Violating Prisoner's Right to a Decent Life: Romania in the European Context

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Abstract

This paper presents a part of the results of a research project named "Prisoners' Rights. Romania in the European Context", conducted at the Institute of Sociology of the Romanian Academy, between November 2015 and September 2017. Given the novelty of our study for Romania, we have considered an exploratory data analysis as a feasible methodology, able to objectively highlight and model our findings. Based on the perception of the sociological inquiry respondents (N=557), the main causes of the violation of their right to a decent life in penitentiary were identified to be overcrowding, disinterest on the part of the state and old infrastructure of penitentiaries. From a statistical point of view, the Pearson's chi square test indicated significant or highly significant associations between most of the causes of the breaching the prisoners' right to decent living.

Keywords: Prisoner's rights; Decent life; Penitentiary; European standards; Penal policies

Introduction

After the Second World War, a strong-minded effort was made to establish a new legal order that would guarantee fundamental human rights and liberties. Likewise, taking into account the atrocities committed against prisoners during the Second World War, a considerable number of international legal instruments were created and adopted to protect and guarantee human rights and human dignity of those who are deprived of their liberty.Thus, the Universal Declaration of Human Rights (UDHR) recognized human dignity (Art.1) and cast off torture and cruel, inhuman or degrading treatment or punishment (Art.5). This ordinance was echoed in similar prohibitions in worldwide human rights agreements[1] [1-5]. For instance, in the Basic Principles for the Treatment of Prisoners (BPTP), it is stipulated that "all prisoners shall be treated with the respect due to their inherent dignity and value as human beings" (Princ.1). Similarly, in Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (BPP) it is specified that "all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person" (Princ.1).

This body of law and policy, the rights it embodies, as well as the elaborate model instruments setting out minimum standards and prohibitions applicable to prisoners and prison conditions, represent a fundamental international commitment towards recognising that prisoners should not be degraded, but treated with dignity and mercy.

Consequently, both European and Romanian penal legislation states the right of all prisoners to personal dignity and, respectively, to decent life in penitentiary. That is why, European Prison Rules (EPR), which are the most suggestive and comprehensive for EU states, stipulate that "all persons deprived of their liberty shall be treated with respect for their human rights" (Princ.1). As far as Romania is concerned, the supreme law of the country, namely the Constitution, adopted in 1991 and republished in 2003, provides a general frame for observing human rights and liberties and, implicitly, the prisoners' right to decent living. For example, it legislates that "the right to life, as well as the right to physical and mental integrity of a person, are guaranteed" (Art. 22, Pt. 1), also stipulating that "no one may be subjected to torture or to any kind of inhuman or degrading punishment or treatment" (Art. 22, Pt. 2).

In its turn, the Romanian Civil Code [6] ensures democratic practice of human rights in general and, consequently, of detainees, by mentioning that "any person has the right to respect for their dignity" (Art.72, pt.1). More specifically for the rights of prisoners, Law No. 254/2013 on the execution of custodial sentences and the measures ordered by judicial authorities in the course of criminal proceedings, makes reference to the fact that "privative of liberty punishments and measures are to be executed in conditions that ensure respect for human dignity" (Art. 4) and that "it is forbidden for any person executing a punishment or another privative of liberty measure to be subjected to torture, inhuman or degrading treatment, or any other kind of ill-treatment" (Art. 5, pt. 1).

However, the application in practice of specific instruments falls far short in many - perhaps most - states and, in spite of the development of this international body of law, prisoners remain a vulnerable population, and as such, are easy targets for continued human rights abuses [7-9]. Regarding the European detention system, one of the most relevant examples of poor implementation of legislation is overcrowding. As shown in the latest Annual Penal Statistics of the Council of Europe (SPACE), "on 1st September 2015, European prisons were at the top of their capacity, holding, on average, almost 92 inmates

[1]In Art.3 of the European Convention of Human Rights and subsequently in Art. 5 of the American Convention on Human Rights and Art. 3 of the African Charter on Human and Peoples' Rights; see Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms 4 November 1950 CETS 005; Organization of American States American Convention on Human Rights 22 November 1969 OAS Treaty Series No 36; Organization of African Unity (African Union) African Charter on Human and Peoples' Rights adopted 27 June 1981 and entered into force 21 October 1986 OAU Doc CAB/LEG/67/3 rev. 5.

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per 100 places. In particular, 29% of the Prison Administrations were experiencing overcrowding" [10].

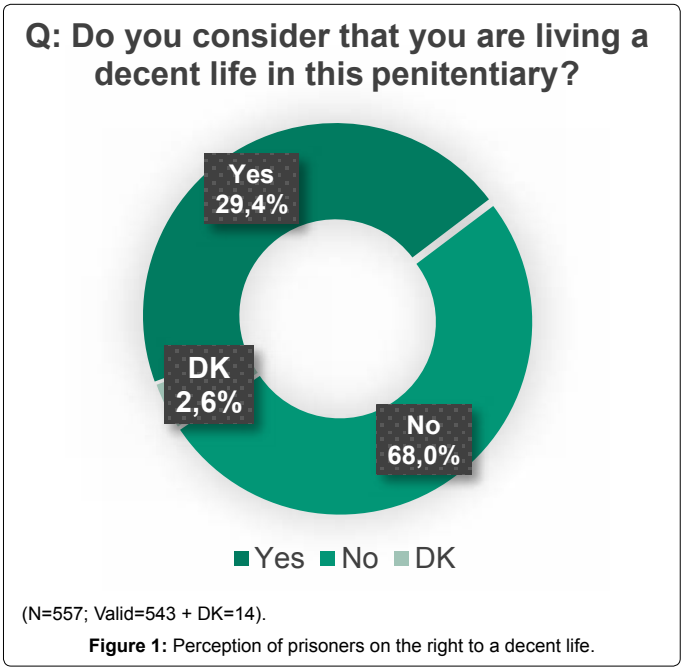
Unfortunately, Romania is not an exception. Pursuant to the official data of National Administration of Penitentiaries (NAP), at 29.03.2016, the occupancy index calculated to the minimum space required by the European and, implicitly, national standards (i.e., 4 m^2/ prisoner) was 149% [11].

In its jurisprudence, the European Court of Human Rights (ECHR) notes that the severe lack of space in detention rooms is an important factor to be considered when appreciating the degrading and inhumane character of the treatment of prisoners, an aspect that runs counter to their right to decent living (see Chiriac v. Romania, 02 September 2013, appl. no. 56837/13; Ghiur v. Romania, 16 November 2012, appl. no. 76944/12; Schein v. Romania, 26 September 2010, appl. no. 57682/10; Oprea v. Romania, 9 October 2009, appl. no. 54966/09[2]). As a consequence, concerning the detention conditions, which include the space allocated to each prisoner as well as other components of a decent life, the number of ECHR convictions against Romania has increased considerably in recent years, from 29 convictions in 2014, to 75 in 2015, and a staggering 313 in 2016 (NAP, 2016:16). As expected, in 2017 the ECHR ruled the application of the pilot procedure in issues related to detention conditions[3] (see Rezmiveș et al. vs. Romania [4]).

Perception of Prisoners on the Right to a Decent Life

According to both European (in particular, the European Prison Rules) and national [12] regulations and sociology of human rights, this study defines the decent life of prisoners as "the right to nutrition, public hygiene, healthcare and mental care" [13]; "opportunities for prisoners to keep themselves and their living area clean, to spend time out of their cells and to have access to privacy" [14]. The concepts defined above have been operationalized into dimensions and indicators specific for such objectives and research questions as: the frequency of infringement of this right in proportion to the other rights studied the contexts and causes for possible infringement of the prisoners' right to decent life and its consequences for the well-being of prisoners. Thus, the results presented below are based on the sociological survey carried out in 16 prisons out of the total of 35 existing at national level, excluding pre-trial detention centers, education centers and hospital penitentiaries. Detention institutions have been selected in such a way as to ensure that they are as balanced as possible with respect to the penalty enforcement profile and the region in which they are located. More specifically, prisoners from 9 closed prisons/high security prisons, 6 open/semi-open prisons and one mixed type prison were included into the group investigated. They were selected, with the help of internal professionals, from permanently convicted adult males who can read and write, trying to ensure, as much as possible, a balanced representation of all levels of education and age categories in the group of participants.

In order to evaluate the prisoners' perception regarding the right to a decent life, we asked them the following question: "Do you consider that you are living a decent life in this penitentiary?", with dichotomic variants of response (1=yes or 0=no). According to the results, 68% of the participants declare that their right to decent living in the penitentiary is not respected, while 29% of them state the opposite (Figure 1). The perception of the respondents is supported by the observations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Romanian Ombudsman. More specifically, in 2015, the CPT sent to the Romanian Government a report on its visit of 2014 to pre-trial and preventive arrest detention centers, penitentiaries and psychiatric hospitals. Regarding penitentiaries, the CPT delegation highlighted the breaching of some basic rights of prisoners, such as the right to a decent life. In this respect, overcrowding was described as one of the biggest problems of the national penitentiary system: "at the time of the June 2014 visit, the prison population was 32,428 inmates (for 19,427 places), compared to 26,971 (for 16,898 places) during the visit in 2010" [15]. Also in 2015, the Romanian Ombudsman presented to the Romanian Parliament the Special Report regarding Detention Conditions in Penitentiaries and Pre-trial Detention and Preventive Arrest Centers, in which it was most strongly pointed out that there were multiple inadvertencies in the penal system that impede the respect of the right to a decent life. For example, as in the CPT Report, it is noted that "one of the problems the penitentiary system today is confronted with is overcrowding, its consequences being also reflected in the other activities and, implicitly, on detention conditions" [16]. As expected, the Ombudsman delegation points out that "the shortage of accommodation places in prisons generates a violation of the right of persons deprived of their liberty to dignity, so that maintaining them under physically precarious imprisonment conditions constitutes a violation of human rights" (2015, p: 57).



(N=557; Valid=543 + DK=14).

Figure 1: Perception of prisoners on the right to a decent life.

[2]See the complete cases "Oprea and Others v. Romania", European Court of Human Rights, Strasbourg, 18 June 2015. Available at: http://www.legal-land.ro/wp-content/uploads/2015/06/CASE-OF-OPREA-AND-OTHERS-v.-ROMANIA.pdf (accesed 18 April 2017).

[3]A few months after that, Law no. 169/2017 was adopted to amend and supplement Law no. 254/2013 on the execution of sentences and detention measures ordered by the judicial bodies during the penal process. It introduces Article 551, entitled "Compensation in case of inappropriate accommodation conditions", which states that "it is considered inappropriate to accommodate a person in any Romanian detention centre that fails to meet the requirements of European standards" (pt. 2). Issued by the Parliament of Romania and published in the Official Gazette of Romania (No. 571) of 18 July 2017.

[4]See the other complaints in the same case (Laviniu Moșmonea v. Romania, 6 June 2013, appl. no. 39516/13; Marius Mavroian v. Romania, 24 July 2013, appl. no. 48231/13; Iosif Gazsi v. Romania, 15 October 2013, appl. no. 68191/13). European Court of Human Rights, Strasbourg, 25 April 2017. Available at: http://www.humanrightseurope.org/2017/04/romania-courtgives-six-month-deadline-on-detention-conditions-which-breach-european human-rights-law/ (accesed 25 July 2017).

In addition to the analysis of these two institutions, violation of prisoners' rights and, implicitly, of the right to a decent life was also proven by the claiming atmosphere of 2016, expressed through the high number of complaints submitted by Romanian prisoners to European and national legal bodies, as well as through the protest actions they participated in. The main trigger for these complaints being the detention conditions, especially overcrowding, "these protests in mid-2016 resulted in 50 incidents recorded in 15 penitentiaries in Romania" [17]. We mention that 5 of these prisons were included in our study, which started about one month after the cessation of protest actions.

In any case, the situation in Romania is, as expected, similar to that in other European countries. For example, a recent study carried out in Portugal shows that:

Though the statutes lay out guidelines and minimum requirements concerning all that is necessary for the conditions of detention to meet the basic standards of human dignity, in fact, prisons suffer from poor hygiene and health conditions, as well as being overcrowded. The facilities are dilapidated and uncared for. Many of the windows were missing one or more panes of glass. The mattresses were generally thin, worn and dirty [18].

In France, most of the penitentiaries are also old and overcrowded. In addition, they do not offer satisfactory detention conditions, particularly in terms of hygiene, privacy, ventilation and natural illumination. Consequently, in 2013 the French state was condemned by the ECHR for the inhuman and degrading treatment of a prisoner in an overcrowded penitentiary [19]. Moreover, a study carried out by the European Prison Observatory (EPO) in eight countries[5] signals that concerning prisoners' right to a decent life, the European standards are generally not respected. "Almost everywhere cells and spaces for common activities do not meet privacy, hygiene and health requirements. In recent years, many countries have been condemned by the ECHR for inhuman and degrading treatment because of the conditions of detention" [7].

Interestingly, there are no significant socio-demographic differences between the two groups of prisoners. For example, the average age of the respondents who consider they have a decent life in the penitentiary (39%) is slightly higher than the average age of those who declare they do not have a decent life in the penitentiary (37%). Similarly, with regard to socio-occupational status, civil status, parental status, and residence prior to imprisonment, the differences observed are fairly small. However, the level of education is lower in prisoners who declare they have a decent life in the penitentiary (Table 1).

In conjunction with the previous question, we asked the respondents to rate how the administration of the prison in which they serve the sentence respects their right to decent living. For that purpose, we used a scale from 1 to 10, where 1 represents the lowest and 10 the highest value. As expected, nearly a quarter of the prisoners (23%) allocated the minimum mark (1) to the penitentiary administration for respecting the right to a decent life. A significant percentage of participants also gave low marks: 14% (5 points), 10% (2 points); 9% (3 points) and 7%, (4 points). The number of prisoners who allocated marks between 6 and 10 is lower: 9% (7 points), 8% (8), 7% (10), 5% (6) and 2% (9). Therefore, for the extent to which the right to decent life is respected, 66% of the respondents' allocated marks from 1 to 5 to the penitentiary administration, and 33% allocated marks between 6 and 10. Interestingly enough, for the first part of the scale, the majority of the prisoners' answers corresponds to marks 1 and 5, and for the second part of the scale, it corresponds to marks 7 and 8 (Table 2). The average score allocated by the participants is 4.46, with the standard deviation of 2.895. The respondents' opinion may be explained by the fact that there is a possibility that the penitentiary administration may have assumed the obligation to respect the prisoners' right to decent living rather as a long-term objective [14,20,21]. There may also be the issue of some rights being violated in cases when they would conflict with fundamental institutional requirements, such as security.

Socio-demographic indicators	Answer=1		Answer=0	
	N	%	N	%
Age	(N= 163)		(N= 378)	
≤ 30 years	46	28,2	121	32,0
31-40 years	51	31,3	118	31,2
41-50 years	40	24,5	102	27,0
≥ 51 years	26	16,0	37	9,8
Level of education	(N= 164)		(N= 377)	
≤ Elementary school	49	29,9	155	41,1
Secondary education (vocational school + high school)	81	49,4	180	47,7
Higher education (bachelor's degree + master's degree)	34	20,7	42	11,1
Socio-occupational status	(N= 162)		(N= 378)	
Unemployed	19	11,7	44	11,6
Day labourer	12	7,4	33	8,7
Employed with labour card	50	30,9	97	25,7
Employed without labour card	15	9,3	60	15,9
Self-employed	18	11,1	59	15,6
Own business	36	22,2	65	17,2
Other	12	7,5	20	5,3
Marital status	(N= 164)		(N= 377)	
Single	41	25,0	68	18,0
Married	56	34,1	117	31,0
In cohabitation	51	31,1	161	42,7
Divorced	12	7,3	25	6,6
Widower	4	2,4	6	1,6
Parental status	(N= 164)		(N= 379)	
Yes	96	58,5	232	61,2
No	68	41,5	147	38,8
Registered residence	(N= 163)		(N= 379)	
Urban area	111	68,1	268	70,7
Rural area	52	31,9	111	29,3

Table 1: Socio-demographic profile of prisoners who consider that they have/ do not have a decent life in the penitentiary.

Also, it may reflect the fact that the financial and human resources assigned to penitentiaries for guaranteeing this right of prisoners are not sufficient [16,19,22].

Causes of the Violation of the Right to Decent Living of Prisoners in Romania

In the present study, the respondents who did not give the highest marks to the prison administration for the way in which the right to a decent life (N 502) is respected were asked to rank the possible causes of its violation (e.g., old infrastructure of penitentiary, too much bureaucracy, low number of prison staff, etc.).

According to the results, overcrowding was identified by 93% of the participants as the main cause of the breaching of the right to decent living in the penitentiary. The respondents' opinion was well founded,

[5]The study was conducted in the following EU member states: France, Great Britain, Greece, Italy, Latvia, Poland, Portugal and Spain. At the time the study began Great Britain was still a member of the European Union.

given the fact that, a few months before the beginning of our research, the occupancy index was above the legal capacity in all the 16 prisons included in the study. According to NAP data - The Report Regarding Prison Accommodation Capacity and Dwellers, on 29.03.2016. On-line: http://anp.gov.ro/informatii/dinamica-efectivelor-2/. Accessed on 15.08. 2017 (Table 3).

Even though, according to NAP data, in 2017 the situation seemed to have gotten better, Romanian prisons are still overcrowded, with a recorded occupancy index for the reference year of 136% (in September). Quite unsurprisingly, the statistical data submitted by World Prison Brief (WPB) show that, in 2017, the occupancy index of Romanian penitentiaries is much higher than the occupancy index of penitentiaries in other European countries, like Germany (87%), Slovakia (94%), Czech Republic (106%) or Portugal (107%).

The national context is all the more worrying as, in 2016, "the total number of prisoners decreased by 879 persons and, at the same time, 679 new places of accommodation were created through investment and repair work" [11], but still no major progress has been made so far towards complying with ECHR and CPT norms regarding the space necessary for each prisoner. An explanation that can also be valid for Romania is that, in general, overcrowding of penitentiaries "is correlated with the rate of pretrial detainees, the size of the GDP per capita, the degree of inequality, democracy, the extent of perceived corruption, state fragility as well as violence" [23]. Of course, we must also keep in mind the fact that researchers have found that, while a policy of reductionism based on the principle of imprisonment as a last measure continues to be established at the European level, its implementation is still quite low in the member states [24-27]. In other words, "today's addiction to imprisonment is also contributing to chronic overcrowding; making prisons dangerous, inhumane places for inmates and staff" [28].

Please give marks from 1 to 10 for how the right to decent life is respected in this penitentiary		N	%
Valid	1	128	23,5
	2	56	10,3
	3	54	9,9
	4	41	7,5
	5	81	14,9
	6	32	5,9
	7	53	9,7
	8	46	8,4
	9	11	2,0
	10	43	7,9
	Total	545	100,0
Missing	DK	12	
Total		557	

(N=557; Valid=545 + DK=12)

Table 2: Perception of prisoners on the way in which the right to decent life is respected.

Penitentiaries	Occupancy index (%)	No. of prisoners
Aiud	126,64	500-1000
Baia Mare	152,23	< 500
Colibași	151,73	500-1000
Craiova	207,91	> 1000
Galați	154,42	500-1000
Găești	113,94	< 500
Gherla	159,26	500-1000
Iași	206,15	> 1000
Mărgineni	176,68	500-1000
Miercurea Ciuc	177,38	< 500
Ploiești	182,94	< 500
Rahova	121,92	> 1000
Târgu Jiu	217,39	500
Timișoara	143,50	500-1000
Tulcea	170,18	500-1000
Turnu Severin	143,39	< 500

Table 3: Occupancy index of the penitentiaries included in the study.

Second to overcrowding, respondents identify with relatively similar frequency the following causes of violation of the right to a decent life: disinterest on the part of the state (77%), old infrastructure of the penitentiary (69%) and insufficient money allocated to the penitentiary (68%). We mention that Pearson's chi square test indicates highly significant statistical associations between the three causes (chi square ≤ 0.362; p=0.000). As we can see, their common element is of an economic nature. Consequently, the prisoners' perception can be explained by the decrease in the total budget of the NAP and implicitly by the debt accumulated by it during the 2008-2013 global economic crisis. According to the NAP, "debts of about 18 million RON were recorded in 2008" [29]. In addition, the total budget of the NAP has steadily decreased over the reference period. Two years after the start of the economic crisis, the budget of the Penitentiary Administration, added to the subsidies from the state budget, amounted to no more than 751,050 thousand RON, 6% less than in 2009 [30]. Our explanation is also based on the fact that researchers have also found in other European countries similar correlations between the economic crisis, the low budget and the lack of investments in the penitentiary infrastructure. For example, another study conducted by the EPO shows that:

In Poland, in the years 2008-2012 expenditures on prisons fell to 175 million Euros (…) the budget reduction mainly affected investments in improving the living conditions of inmates. Some of the investments were delayed or even cancelled. There has been a lack of finances even for the most urgent repair expenses and significant reductions on post-penitentiary assistance [31].

Furthermore, "in Latvia, as a result of austerity measures taken by the Government, at the end of 2008, one prison was closed down and others were merged under central administration" [31].

Returning to our study, it is understandable that in the context of budgetary restraints, respondents indicate, for example, that the penitentiary infrastructure in which they execute the punishment is old and therefore it violates their right to decent living. The prisoners' lack of education is a cause of the breaching of the right to decent life according to 67% of the participants. This result is not surprising, given that, in general, a high proportion of people who come in contact with penal justice systems have been excluded from "equitable quality education" and life opportunities-factors playing a signifiant role in their pathways to breaking the law [32]. In Romania, too, the low level of education of prisoners poses a severe problem, given the fact that the percentage of those who participate in educational programs and educational activities is insignificant relative to the total number of prisoners (28.334 in 2015 and 27.455 in 2016, respectively). Of all these, 2.459 prisoners participated in the schooling program in the school year 2015-2016, 473 less than in the 2014-2015 school year [11]. Furthermore, the participation of Romanian prisoners in educational programs and activities (e.g., health education, civic education, general education, etc.) decreased from 314.748 in 2015 to 196.838 in 2016 [11]. Limited involvement in schooling programs organized in penitentiaries

seems to be a problem in several European countries. For example, "in France, in 2011, only 25% of all prisoners followed educational programs. Of those, 63% have undertaken basic education and literacy programs; 12.2% undertook classes of a secondary school level and 1.4% took university courses" [19]. In Scotland, "the prison service revealed in 2010 that 81 per cent of prisoners lacked functional literacy and 71 per cent lacked functional numeracy" [32,33]. Moreover, in Finland, "although the role of education related to young adults living in prison is emphasised in policies, the total percentage of prisoners in education has stabilised at around 10% for the last ten years".

The typical explanations for the low education rates in prisons are related to various learning disabilities, problems with drugs and mental health, which call for work in small groups, specialised teachers and, consequently, extra cost of arranging education compared to schooling outside prisons [34]. Naturally, the low levels of education can also be attributed to the lack of motivation and to prior negative experiences in mainstream education [35].

Finally, the fact that respondents point to the lack of education of prisoners in relation to the violation of the right to a decent life can also be regarded as a background issue of penitentiaries. As the UN Special Rapporteur on the right to education has stated, the penal systems do not succeed in identifying prisoners with special educational needs, and - where it is provided at all-education is usually not individualised or at an age/ability-appropriate level [33]. In the case of Romania, another explanation for the low level of education of prisoners can be found in the insufficient number of prison staff responsible for specific activities. According to the latest SPACE report, in 2015 only 3.9% of all employees were integrated into the educational sector [10].

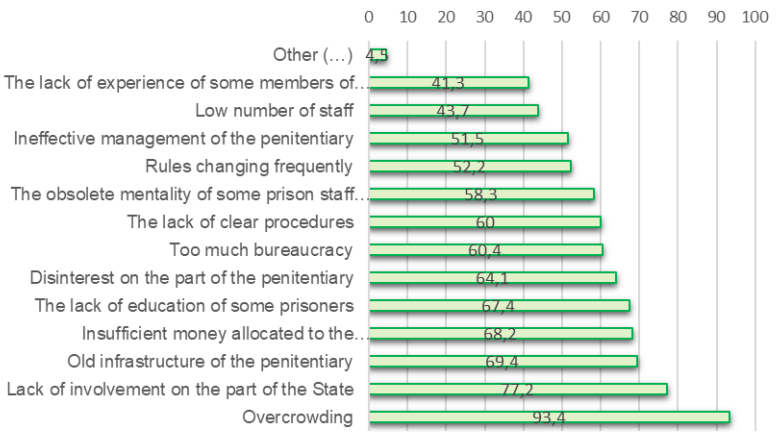
Other causes of the breaching of the right to a decent life are reported by the participants in the following percentages: disinterest on the part of the penitentiary (64%), too much bureaucracy (60%), lack of clear procedures (60%), obsolete mentality of prison staff (58%), frequently changing rules (52%) and ineffective prison management (51%). Interestingly, there are significant or highly significant statistical associations between these (Pearson's chi square ≤ 0.313; $p \leq 0.005$). We note that the convergent elements of these causes are the prisons and the prison staff. With respect to prisons, the respondents' opinion can be explained by the weak political and legislative context, which influences both the structure and the content of the detention system as well as the way it functions. In other words, although the right of prisoners to decent living is regulated, in the penitentiary it is heavily limited or breached, the considerable number of courthouse convictions against the state being a proof of that (see jurisprudence and doctrine of the ECHR). Paradoxically, different regulations for the respect of the right to decent living are adopted (e.g., regarding accommodation, food, health, etc.) which, if inadequately implemented, can lead to more violations of these very right.

As regards the connection that prisoners make between prison staff and the breaching of their right to a decent life, in this case, too, an explanation can also be given in terms of penal policy characteristics. More precisely, as long as punishment through deprivation of liberty is used predominantly, overcrowding, as well as insufficient human and material resources, become inevitable. Naturally, they disrupt both the activity of prison managers and of the rest of the staff. As Coyle mentions:

When prisons are overcrowded and under-resourced management may well be restricted to providing the basic necessities of life for those who are under their care. Simply ensuring that prisoners have sufficient food and clean water, have a bed to sleep on and access to fresh air may become a full time task in some prison administrations (2009, p: 21).

At the same time, respondents may have come to correlate the violation of their right to a decent life with prison managers and other staff members as a result of the absence of an ethical framework for working with vulnerable persons [34,36,37]. In other words, prisons appear to be more punishing and painful where the staff are indifferent, punitive or negligent in their use of authority [14,38,39].

Of all the causes of the breaching of the prisoners' right to decent living, the smallest percentages have been found for the low number of prison staff (43%) and the prison staff's lack of experience (41%) (Pearson's chi square=0.257; p=0.000). The problem of the low number of prison staff corresponds to the real situation as in 2016, in the Penitentiary Administration sectors, the occupancy was between a minimum of 56% (other sectors of activity) and a maximum of 88% (the legal sector of activity). The total enployment percentages for all sectors of activity were 80%. Moreover, in the reference year, the number of employees in the penitentiary system decreased to 12.143 compared to 2015, when it was 12.657 [11] (Figure 2).



(N=487; Valid=487 + MC=70; NN=38 and DK=32).

Figure 2: Prisoners' perception on the causes of the violation of the right to a decent life.

Pearson's chi square test indicates that the only causes of the violation of the right to a decent life that do not record significant statistical associations are: overcrowding and insufficient money allocated to the penitentiary (chi square=0.068; p=0.135) and, respectively, overcrowding and rules changing frequently (chi square=0.078; p=0.086).

Conclusions and Recommendations for Penal Policies

Under international and European legal instruments that recognize and guarantee human rights, the Romanian state must develop its positive legal obligations to ensure that the prisoners' right to a decent life is a reality and not merely a desideratum. Starting from the results obtained in our study, we highlight the fact that, in the first place, legislative measures are needed to reduce the overcrowding specific to penitentiaries. In that respect, Romania must implement the fundamental principles stipulated by the Council of Europe (1999) in Rec. 99 (22), which we can synthesise as follows:

a) Deprivation of liberty should be used as a last resort sanction and only for the most serious crimes.

b) Extension of the prison capacity does not generally provide the best solution to the problem of overcrowding and should rather be an exceptional measure.

c) There should be a greater number of community sanctions, possibly graded in terms of relative severity and prosecutors and judges should be prompted to use them as widely as feasible.

d) Member states should consider the possibility of decriminalising certain offences or reclassifying them in order not to attract penalties entailing the deprivation of liberty.

e) The factors contributing to prison overcrowding and prison population inflation should be carefully analyzed so as to devise an adequate and coherent strategy. The main elements that need to be considered when doing so are: types of offence which carry long prison sentences, existing sentencing practices and priorities in crime control and, no less importantly, public attitudes and concerns regarding this issue.

In order to serve its purpose, namely to protect society and rehabilitate those in custody, the Penitentiary Administration must have sufficient human and economic resources. Along these lines, as the results of the current study have shown, it is necessary to increase the budget allocated to the NAP and to review the provisions on its organization, functioning and attributions[6]. In reassessing the budget allocated to the Penitentiary Administration, it is necessary to take into account European and National Courts convictions regarding detention conditions, which, as already mentioned, are specific for the prisoners' right to decent living. More precisely, the NAP budget should allow:

a) Taking over buildings from the public domain of the state in order to replace buildings that are in an advanced stage of wear and tear, buildings that do not provide decent conditions for meeting physiological needs in rooms and building bodies that do not allow proper room ventilation, lighting and heating.

b) Setting up new places of detention by using the budget allocated by the state and by accessing European funds.

c) Increasing the level of employment of human resources, especially in essential sectors such as the medical one and that of education and vocational training.

The authorities responsible for prison management have an obligation to ensure that staff members are fully aware of the total prohibition of torture and inhuman or degrading treatment or punishment, expressed in case-law as having a close connection with the concept of human dignity-a basic principle for the instruments that govern human rights in our modern society. More specifically, the Romanian penal sistem must assume the fact that:

It is necessary to protect those who, in whatever circumstances, are deprived of their liberty; it is necessary as an ethical context for all of those whose task on behalf of society is to deprive people of their liberty; and it is important as a reminder for everyone who lives in a democratic society of what it is that provides the foundation of democracy and freedom [40].

In this respect, it is necessary to develop an ethical framework specific for European penal policy starting from the premise that both the managers and the rest of the prison staff work with human beings who, beyond their inherent dignity, are vulnerable due to the limitation of some rights and freedoms. Therefore, it is necessary:

a) To select, hire and train specialists with a clear vision and determination to maintain the highest standards in the difficult work of prison management.

b) To select, train, supervise and support appropriately all employees who are in direct contact with prisoners (medical doctors, educators, social workers, security agents, etc.).

c) To implement legal instruments by virtue of which prisoners have the right to complain to bodies and institutions in the field when they consider that their right to a decent life is violated in prison.

[6]Included in Government Decision no.1849/2004, art.1, par. (2): "The financing of the National Administration of Penitentiaries and of the subordinated units shall be provided from own revenues and from subsidies granted from the state budget, according to the law". Available at: http://legislatie.just.ro/Public/DetaliiDocument/56689 (accessed 17 September 2017).

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