ABSTRACT

The idea of combating crime is generally linked to the institution of prison, but things haven't always been the same. Detention, although present in the past as well, was not usually a punishment, but an isolation of the wrong-doer awaiting the actual punishment. According to Michel Foucault, it was only towards the end of the eighteenth century that prison imposed itself as a *sui generis* punishment, alongside the major changes in the field of criminal law: the new criminal codes, the introduction of public sessions and the public administration of evidence, questioning the efficiency and the necessity of torture as an instrument of crime investigation and of a system of penalties which caused outrage, as it relied mainly on cruel corporal punishments etc. The process was a gradual one, and took place under the influence of enlightened personalities of the epoch such as Cesare Beccaria, whose work was a wake-up call and brought about the subsequent reforms in the field of criminal law.

We opted for the division proposed by Michel Foucault for our research, even though his timeline was criticized by researchers such as Pieter Spierenburg. The latter claims that prisons existed in Amsterdam and Hamburg a century before the period indicated by Foucault. As we shall see in this study, prison as a punishment was applied as an exception even before the seventeenth century; however the most important changes in the field of criminal law and criminal procedure took place between the end of the eighteenth century and the beginning of the nineteenth century, when prison replaced the death penalty and corporal punishments. As a consequence, we maintained the timeline suggested by Foucault.

The paper aims to analyse the evolution of the prison system through a multidisciplinary perspective, in order to understand the main characteristics of custodial punishments at present, as well as the role of prison as compared to other criminal punishments (penalties which concern the goods of the individual – fines), community service, security measures etc. We feel that the multidisciplinary approach is essential, given that a unilateral approach would not be able to give a complete and clear picture of the prison system.

Also, we seek to examine the efficiency of this punishment at present and identify possible effective alternatives to prison, which led to a decrease of relapse rates in the countries where they were implemented, as well as of the costs allocated to the criminal

system. The *lege ferenda* suggestions in this paper are based on numerous studies and opinions expressed by doctrine, foreign legal provisions, as well as national and international statistics, as the bibliography shows.

We will only marginally deal with the prison system in the communist epoch so as not to extend the research paper too much. Thus, we feel that detention during the communist era requires a complex and separate approach.

The scientific innovation of the paper resides in the fact that it is a complex, monographic study on the evolution of the prison system in our country, placed in the larger framework of the development of the European system of punishments, a subject insufficiently taken into consideration until present.

The ***first title*** analyses the evolution of prison throughout the centuries. Detention is referred to as early as Antiquity, but, as mentioned before, it was not a punishment in itself, but rather an isolation of the individual awaiting the application of the death penalty or corporal punishments, exile, public slave trade, public shaming etc.

The presence of prisons in the secular system was rather uncommon in the medieval epoch – public prisons are mentioned for instance by German laws and they functioned alongside private prisons.

If under the influence of cannon law and the Church, beggars and vagrants, perceived as "the poor of Christ" were tolerated and protected, as of the end of the twelfth century and especially after the implementation of the Inquisition's crime investigation system, the attitude of the Church and of the State changed radically, criminals being imprisoned alongside vagrants or those who lacked any type of income, and the idleness of those capable of work stopped being endorsed.

In the sixteenth and seventeenth centuries sanctions for reprehensible acts were usually administered in public, in order to demean and discourage offenders from committing similar offences - individual and general prevention. Whipping, the pillory, public executions etc. were part of a macabre spectacle, detention being understood mainly as isolation of offenders awaiting afflictive corporal punishments. Prisons at the time were characterized by inhumane conditions, many offenders losing their lives in the places where they were imprisoned.

Even though the eighteenth century is also characterized by bloody and inhuman executions, gradually, the effectiveness and legitimacy of the criminal sanctions of the time

started being questioned. England for instance began adopting alternative sanctions such as transportation to America, and afterwards Australia.

Transportation was considered an adequate alternative to detention – individuals with an antisocial behaviour could be removed from the community and cheap labour was provided in conquered territories.

The reform efforts of some leading figures in the era such as Cesare Beccaria, Jeremy Bentham or John Howard, reshaped the criminal justice system, which thereupon focused more and more not on revenge, but on detention as a punishment in itself and as a more effective and humane means of fighting crime and punishing offenders. As Beccaria emphasized, the certainty of the punishment and its duration are more effective than a punishment applied *uno ictu* – the capital punishment.

The history of criminal sanctions in our country broadly follows the European path. We chose to analyze the parallel evolution of punishments and prison in particular, in Europe over the centuries, and respectively in Romania, in order to highlight the characteristics of the Romanian prison.

The last part of the first title examines the evolution of prison in the current era, since the mid-twentieth century to present. The contemporary period is characterized by a growing prison population and an increased number of detention facilities, which raised questions regarding the effectiveness of the penalty on individual prevention (prison doesn't influence relapse rates to a significant degree) or general prevention (crime rate has not lowered). Over 10.75 million people were in some form of detention in May 2011[1].

As a result, we shall analyse the effectiveness of this punishment and to what extent it is possible to replace it by other measures in the ***second title***. We will also examine whether the death penalty contributes to a safer society and lowers crime rates, and consider the arguments for adopting or rejecting such an extreme penalty.

Hence, we will initially examine the effects of prison during detention, as well as the long-term effects, that extend after the release from the institution (the stigma, the difficulty of finding a job and so on).

[1] According to the International Center for Prison Studies, *World Prison Population List (2011)*, detention being taken into consideration *lato sensu,* including: preventive arrest, prison as a punishment, "administrative detention" etc. Source: International Centre for Prison Studies, *World Prison Population List* (2011), http://www.prisonstudies.org/images/news_events/wppl9.pdf, accessed on 15 august 2011.

Prison not only restricts the physical freedom of the individual, but also deeply affects the inmate's life, on all levels, through the schedule and strict rules, restricting leisure activities, visits etc.

While imprisonment is generally perceived as the most effective tool for correcting erring behaviour, in reality, it often encourages aggressive and self-destructive behaviour. We will therefore examine, to what extent these tendencies interfere with the purpose of prison – re-entry, especially if the individual is given a life sentence and has no chance of returning to the community and lead a normal life.

At the opposite spectrum of those in favour of the death penalty, lies the abolitionist trend, which rejects the institution of prison and, *a fortiori,* the death penalty

According to abolitionists, prison should only be applied in extreme cases, due to: the high costs of the prison system that have an impact on the community; the inhuman and degrading nature of the sanction and the fact that crime rates are often unaffected by increased prison rates.

International regulations also favour alternative sanctions, such as the United Nations Standard Minimum Rules for Non-custodial Measures – the "Tokyo Rules", adopted by the General Assembly through the Resolution. 45-110 of 1990 or Recommendation R (92) 16 regarding the European rules on community sanctions and measures, adopted by the Council of Europe.

According to the current Romanian Criminal Code, the only actual punishment of a non-custodial nature is fine. Although they are not punishments in themselves, probation – with or without supervision, could also be considered alternatives to incarceration. The current Criminal Code also includes the penalty service at the workplace, but it is no longer being applied. It is also possible to apply security measures - criminal sanctions whose purpose is to eliminate a state of danger and to prevent an individual from committing new offences, but their role and that of punishments don't overlap, as we shall see later.

We also feel the need to bring attention to the changes which will affect the criminal sanctioning system in Romania, based on the Western model, such as community service, day-fines and electronic monitoring.

The ***third title*** focuses on issues related to the proper functioning of the prison system and the means of improving the performance of this system.

The title covers the main prison systems and prison regimes, the rights and

obligations of prisoners, as well and the means of implementation of these rights, in order to prevent the serious abuses committed in the past, but which often take place at present as well, even in countries which are considered democracies.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishments (CPT) plays a major role in preventing abuses committed against prisoners. The CPT acts as a non-judicial, preventive tool for the protection of individuals deprived of their liberty, against torture and other forms of ill-treatment, alongside the legal activity of the European Court of Human Rights. The CPT visits various countries, usually every 4 years, or *ad hoc* if necessary, and reports the findings as well as its recommendations to national authorities. The CPT delegations have the right to move freely within detention facilities, to interview prisoners privately and to communicate freely with anyone who might provide information.

The countries in question are to respond to the Committee's observations and recommendations, its goal being to create a permanent dialogue rather than condemning states. Reports are not compulsory though and if the states in question do not take into account the recommendations, the CPT can only make its findings public as well as the fact that the State refuses to abide by international provisions in the field. Despite the limited competence of the CPT, states have generally been open to cooperation with this body, whose activity is expected to be extended in the future.

Although the situation of prisoners has improved over time, the real problem is the excessive use of imprisonment, which should only be applied for the most serious infringements of values protected by criminal law.

Despite the fact that statistics show that crime rates have not significantly dwindled by increasing the number of prisons, alternative sanctions being more effective for certain categories of offences and offenders, penal reforms take place at a slow pace, mainly due to the public opinion's scepticism concerning any changes in the field of criminal law, perceived as too lenient as compared to the seriousness of the crime. However, as it was often stressed, in order for re-entry to become a reality, the local community needs to be involved in such activities, society being not only a partner of the prison system, but also a beneficiary of the reintegration efforts.

KEYWORDS

Prison system, alternative sanctions, houses of correction, inmates' rights, restorative justice.

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