THE INSTITUTION OF COMPLAINTS WITH AN ADMINISTRATIVE-JUDICIAL CHARACTER MADE BY THE PERSONS DEPRIVED OF THEIR LIBERTY TO PROTECT THEIR RIGHTS AND INTERESTS

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Abstract

This study is an analysis of how direct judicial control is exercised over the problems arising during the execution of sentences and custodial measures through a new institution, that of the the judge of surveillance of deprivation of liberty , and an analysis of the limits of his powers.The study also analyzes the legal dimension of administrative-judicial complaints by the persons deprived of their liberty to defend their rights and interests.

Deprivation of liberty is an event with major implications for both persons subject to such a measure and for their families or relatives. Whether it is a pre-arrested person, a person serving a custodial sentence or a juvenile in custody, the restriction of constitutional rights and the imposition of specific prohibitions can cause psychological suffering to people in this situation. The purpose of the punishment, of the custodial measure is not to cause physical or moral suffering or to humiliate the persons deprived of their liberty, but they are instituted for the purpose of recovery and re-socialization of these persons, as well as for the granting of constitutional rights within the limits of the temporary restrictions established in the court decision.

In order to ensure the unitary application of these fundamental principles, the Romanian legislator, through Law no.254 / 2013, paid due attention to this category of persons, the new law being in line with the legislative changes that were made, as well as the European recommendations on the treatment of detainees, of Human Rights or the laws of other states regarding of the execution of sentences ordered by the court. These European regulations, among other things, have made substantial improvements to the regulations on ensuring the normal functioning of the Romanian penitentiary regime, especially as regards the right of persons deprived of their liberty to information, to fill complaints.

The study is based on the conclusions drawn from the author's work as a clerk at the judge's office of deprivation of liberty.

Keywords: *Law no.254 / 2013, judge for the deprivation of liberty, administrative-judicial complaint, person.*

Introduction

Modern execution of custodial sentences means ensuring a balance between rights, rewards and disciplinary sanctions imposed on persons deprived of their liberty[1] as well as giving the opportunity to complain against the incidents that occur during the execution of the punishment.

If in the legislation on the execution of custodial sentences prior the change of the political regime of 1989, constituted by Law no.23/1969, the persons deprived of liberty only had the possibility of appealing to the court for settling complaints against the incidents during the execution of sentences, the rapid evolution of the Romanian society in the post-1990 period, the application and consolidation of the democratic principles, the prefigured accession to the European Union, the many international and European regulations in the domain and, last but not least, the case law of the European Court of Human Rights[2] has shown the

Romanian legislative anachronism in matters of execution of of custodial sentences and its incompatibility with the degree of European development and civilization, so that the reformulation of the rules for their adaptation to the evolution of fundamental human rights become a continuous process[3].

The new pre-accession legislation adopted in the European Union in 2006[4] on the execution of sentences and custodial measures has introduced a direct judicial control over the problems arising during the execution, through a new institution, the institution of the delegated judge with the execution of the custodial sentences, as an independent, impartial authority and guarantor of respect the legality at the place of detention. In the light of the new provisions, the

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[1] According to art.2 letter d of the Government Decision No. 157 / March, 10th 2016 for the approval of the Regulation implementing Law no.254 / 2013 on the execution of sentences and deprivation of liberty ordered by the court during the criminal trial , published in the Official Gazette of Romania, Part I, no. 271 of April 11th, 2016, persons deprived of their liberty are, as the case may be, detained persons, arrested at home, preventive arrest, interned, convicted.

[2] Explanatory memorandum to the bill on the execution of sentences, p.5, available on http://old.just.ro/LinkClick.aspx?fileticket=1xkO3Xk6Bm4%3D&tabid=93, consulted on 11.24.2017

[3] I. Chiș, A.B. Chiș, *The execution of penal sentences* , Universul Juridic Publishing House , Bucharest, 2015, p.361.

[4] The Law no. 275/2006 concerning the execution of penalties and measures disposed by the judicial entities during the penal procedures, published in The Official Gazette no. 627 of 20th of July 2006;

delegated judge with the execution of custodial sentences was granted broad prerogatives for the fair resolution of the petitions and complaints made by the convicted persons, being able to make spot checks in places of detention, hear any person, to make checks in the penitentiary records, etc.

The extensive reform of the criminal law and the criminal proceedings have generated a change of optics in criminal law enforcement as a result of the constant practice of the European Court of Human Rights in relation to the lawfulness of the execution of custodial sentences while respecting human dignity and prohibiting discrimination in the execution of sentences[5].

Law no.254 of July 19, 2013, on the execution of sentences and detention measures ordered by the court during the criminal trial, which entered into force on February 1st, 2014, with the Law no.286/2009 on the Criminal Code, as subsequently amended and supplemented, and Law no. 135/2010 on the Criminal Procedure Code, expressed firmly the option of the Romanian legislator to continue exercising the same direct control of how people minor or major, are deprived, according to the law, of their freedom, regardless of the place of detention: prisons, centers of detention and pre- trial arrest, pre-trial detention centers, educational centers, detention centers for minors.

In the exercise of its judicial powers, the judge of surveillance of deprivation of liberty, as the institution of the delegate judge has been renamed[6], handles complaints of detained persons, persons under pre-trial arrest or interned people[7].

The main **judicial administrative duties** of the judge of surveillance of imprisonment provided for in art. 9, paragraph. (2) of Law 254/2013, as follows[8]:

a) handles complaints of prisoners against any breach of the their rights provided by this law;
b) handles complaints regarding the establishment and changing of regimes for enforcement and educational measures involving deprivation of liberty;
c) resolve complaints from prisoners regarding disciplinary sanctions.

In order to strengthen the role and establish the legal nature of the activity of the judge of deprivation of liberty, the Superior Council of Magistracy has issued a regulation for the approval of the organization of the activity of the judge of surveillance of deprivation of liberty (Decision No. 89/2014) entered into force on February, 1st,2014, which includes the same duties provided by the Law No.254/2013, art.9 paragraph 2.

The judicial administrative duties are terminated by an administrative-jurisdictional act called *closing*. Against the conclusion, the convicted person and/or the prison administration can make an appeal to the court in whose jurisdiction is located the prison.

The law on the execution of sentences and custodial measures does not provide a meaning for the term of *"complaint"* but by analogy with the provisions art.289 paragraph 1 of Criminal Procedure Code, which defines the complaint as being *a notification made by the individual (...) relating to an injury caused to him, taking into account the wording and the content of the complaint*, we can conclude that the complaint made by the detainees *is an administrative-judicial legal instrument by means of which a detained person unhappy with the taking of measures by the administration of the place of detention against him regarding the establishment or modification of the regime for enforcement, the disciplinary sanctions and exercise of their rights provided by this law, reports these aspects or circumstances to the judge of surveillance of deprivation of liberty requesting, as appropriate, to cancel the Commission decision on the establishment and change of enforcement and educational measures involving deprivation of liberty and the Commission decision on the application of disciplinary sanctions through which such measures were ordered or restoring the exercise of violated or suspended rights*.

1. The legal nature.

The complaint of prisoners against incidents occurred during the execution of sentences and custodial measures is an specific institution of penal executional law, with administrative-jurisdictional nature, as it was conferred by Superior Council of Magistracy No.89/01/23/2014 for the approval of the organization of the activity of the judge of surveillance of deprivation of liberty (art.9 and 13 paragraph 3).

The complaint, the referral is in the same time a request addressed to the judge to analyze the factual situation that the petitioner puts forward in the complaint, requesting him to cancel all actions undertaken against him by the administration of of prison or to restore the violated right.

In agreeming with art.9, paragraph 3 of Law no.254/2013 on the execution of sentences and custodial measures ordered by the court during the

[5] Explanatory memorandum to the bill on the execution of sentences p.1, available on: http://old.just.ro/LinkClick.aspx?fileticket=1xkO3Xk6Bm4%3D&tabid=93

[6] Law 254/2013 chose to change the name of the institution of the delegated judge in the instituition of judge of surveillance of deprivation of liberty because he considered that as a better expression of the legal nature of the activity of the judge performing his activity in the penitentiary and at the same time removes the confusions generated by the name by "delegated judge", which would mean a delegation within the meaning of article 57 of Law no.303 / 2004, as amended, on the status of magistrates

[7] Explanatory memorandum to the bill on the execution of sentences, p.3, available on: http://old.just.ro/LinkClick.aspx?fileticket=1xkO3Xk6Bm4%3D&tabid=93

[8] The Government Decision No.157/2016

criminal trial, the main administrative-judicial duties of the judge of surveillance of deprivation of liberty (solving the complaints regarding the establishment and changing of regimes for enforcement and educational measures involving deprivation of liberty; solving the complaints from prisoners regarding disciplinary sanctions, solving the complaints of prisoners on exercise of the rights provided by this law) is exercised within the special procedures prescribed by law and are terminated by an administrative-jurisdictional act called *closing*. The closing, as an administrative act with jurisdictional nature[9], is a unilateral, binding and enforceable legal act issued by an administrative body under the state power through wich the provisions of the law or a normative act subordinated to the law are implemented.

As a referral, the complaint made by the prisoners against incidents occurred during the execution of sentences and the *prior complaint* shall not be confused, the last one being a specific institution of the criminal procedural law, meaning a condition of punishment and procedure[10]. Also, we shall not confused the complaint of prisoners with *the denunciation* which, accordind of Criminal Procedure Code, art.290, represent reporting a person or group of persons to public authorities about the commission of a criminal offence.

The denunciation, just like the complain, is a voluntary referral, which can be done by any aggrieved person without any legal obligation to do so[11].

2. The meaning of the complaint term.

From the analysis of the definition of *the complaint* we can distinguish several meanings but also characters:

1. The complaint is an ***act***, meaning:

a) **a document**, a material support, drawn up from unhappy person which informs the judge of surveillance about certain incidents or the actions undertaken against him by the administration of the detention place, requesting to reconsider the factual situation and to handing down a decision ordering the cancellation of those measures (eg. sanctions) or replacing the applied measure with a easier one, to order the change of the enforcement regime in a less severe one, or to order the restoration of the violated or suspended rights.

b) **a legal instrument**, a procedural means by which the person deprived of fredom unhappy of applied measure requires the judge of surveillance ofdeprivation of liberty to exercise judicial control of how the prison administration applies the measures and legal provisions.

c) **a notification act** to the judge of surveillance of deprivation of liberty on the issues complained about, leading to the initiation of an administrative-judicial procedure- registering the complaints in the records with an administrative-judicial character of the Bureau of the judge, forming the file, hearing of the petitioner, of the other convicted person or working in prison system, requesting information, documents or points of view from the administration of the detention, making the spot checks, requesting a rogatory hearing committee for detainees in other places of detention, as appropriate. If the issues shown at the hearing can be the subject of a complaint with administrativ- judicial nature, the request for a audience represent a notification act[12].

2. The characters of the complaint

From the analysis of the meanings of the term, as well as from the content of art.9 and art. 47 of the Decision No.89/2014 of the Superior Council of Magistracy for the approval of the organization of the activity of the judge of surveillance of deprivation of liberty, it follows that the complaint has a dual character, namely

a) ***administrative character,*** because it refers to a unilateral, binding and executory act issued by an administrative body under the state power is a unilateral, binding and enforceable legal act issued by an administrative body under the state power through wich the provisions of the law or a normative act subordinated to the law are implemented[13], in this case issues concerning the execution punishments phase, distinct of the criminal trial, the law regarding the execution of penalties being the framework law of this phase.

b) ***judicial character,*** because the referral is addressed to an authorized body, which carries out a judicial activity (judge of surveillance of deprivation of liberty) who has the obligation, in the exercise of the duties provided by law, to resolve the dispute, in this case the the petitioner's complaint.

After the managing of evidence[14], the judge of surveillance of deprivation of liberty shall prepare a reasoned conclusion that resolves the complaint. The closing represents the rendered outcome, the defense of the parties, according to the procedure provided by the law, with the aim of ensuring equal treatment of the parties before the body with administrative-judicial powers.

In the event of unlawfulness or groundlessness, the conclusion may be canceled or reformed only by the

[9] http://legeaz.net/dictionar-juridic/act-administrativ

[10] I. Neagu, M. Damaschin, *Criminal Procedure Treaty. The special part*, Universul Juridic Publishing House, Bucharest, 2015, p.55

[11] *idem*, p.57

[12] Decision No.89/2014 of the Superior Council of Magistracy for the approval of the organization of the activity of the judge of surveillance of the deprivation of liberty, art.47

[13] http://legeaz.net/dictionar-juridic/act-administrativ

[14] *ibidem*, art.26

competent court, otherwise it becomes executory by the mere fact of giving up to appeal[15]. The executory effect of closing oblige the parties, both detainees or the administration of the place of detention to obey the legal provision.

3. The conditions of the complaint.

3.1. Form condition.

3.1.1. Written form.

The persons deprived of their liberty must fill a written complaint to the judge of surveillance of deprivation of liberty to be able to be registered by the clerk and solved by the judge, even if they have been made orally before the judge, at the audience held at the place of detention or in the refusal of nourishment procedure. If the reported matters have not been recorded in writing, the judge of surveillance will record the statement in writing, the request for the audience or the statement given in the refusal of nourishment procedure constitute referrals, followed by the procedure for the subject of the referral[16]. The complaints are forwarded to the Bureau of the judge of surveillance by the prison authorities through the secretariat, or handed by detainees personally to the judge, on the detention section, during the audiences program.

3.1.2. Person identification data.

In order for the complaint to be considered a legal means of referral[17] it must include: the identification data of the petitioner (first and last name, parents' names, personal numeric code[18], eventually).

3.1.3. The subject of the case.

Represent the description of the factual situation which caused the person's discontent, as well as its request (eg.of establishing and changing of regimes for enforcement, of restoration the exercise of violated or suspended rights, of canceling disciplinary sanctions).

In the complaint, the complainant may indicate the evidence he or she is supporting in support of, for example, the name of the witnesses that he requests to be heard by the judge in support of innocence or attach supporting documents.

3.2. The substantive conditions of the complaint.

3.2.1.The complaint is made personally or by the legal representative.

According to art.51, regarding the right to petition, citizens have the right to to address public authorities through petitions formulated only on behalf of the signatories. The exercise of the right of petition is exempt from the tax. Public authorities have the obligation to respond to petitions within the terms and conditions established by law.

The right of a person deprived of freedom to lodge a complaint against incidents duringduring the execution of punishment is an absolute, personal, indivisible and non-transferable right, and may be exercised in his own name only by such persons or by a lawyer who has to prove its quality by empowering the lawyer and the document attesting the quality of lawyer[19].

Although Law no.254/ 2013 or the Regulations for the approval of the organization of the activity of the judge of surveillance of deprivation of liberty, as well as the implementation of Law no.254/2013 (The Government Decision No.157/2016, art.128, assurance of the right to legal assistance, art.129, the right to petition) does not expressly mention the above alternative, it should be regarded as a possibility in connection with the provisions of Article 62 paragraph 2 of Law no. 254/2013 regarding the assurance of the exercise of the right to legal assistance stipulating that convicted persons may consult with lawyers elected by them in any matter of law deduced from administrative or judicial proceedings, which means that even in the case of incidents during the execution of punishment, the lawyer may file such a complaint on behalf of the client he represents.

And the minors interned in detention centres enjoy the same legal treatment, since both the law on the execution of custodial sentences and the implementing regulation does not distinguish between the right of the major person and the underage individual to lodge a complaint against the incidents occurred during the execution of the sentence and custodial measures or the manner in which the judge of surveillance has been notified.

Similarly, even if the unhappy person quit the case, the express manifestation of the will of the person can be ascertained directly by the judge of surveillance before whom he gives the renunciation declaration or by a document drawn up by the legal representative adressed by postal services, to the judge of surveillance in the conditions shown.

Although the waiving of the complaint is an express manifestation of will and, although the hearing of the person by the judge of surveillance seems to be useless, we consider that it is necessary because we have to consider the hypothesis in which another person, without the petitioner's knowledge or with his knowledge taking advantage of the fact that the latter is non-schooling person, formulates this request for renunciation which he submits to the judge of surveillance through the postal services or through the

[15] http://legea.net/dictionar-juridic/act jurisdictional

[16] *ibidem*, art.47

[17] I.Neagu, M. Damaschin, *op.cit.*, p.55

[18] the simple indication of first name and name is not sufficient as it may cause confusion with another person with the same first name or name or with several first name

[19] The Government Decision nr.157/2016 for the approval of the Regulation implementing Law no.254 / 2013 on the execution of sentences and deprivation of liberty ordered by the court during the criminal trial, art.128 al.1, *Ensuring the exercise of the right to legal aid*

administration of the place of detention, the complaint becoming devoid of effects.

3.2.2. *The complaint must be signed by the petitioner or by the legal representative.* Another essential, substantive complaint is that of acquiring its content by the petitioner or by the legal representative by attributing the signature.

Lack of signature is a cause of nullity, but the latter may be covered by signing the complaint by the petitioner in front of judge of surveillanceas as result of the appropriation of its content, by the statement given for this purpose or taken through the rogatory commission.

Regarding the nullity of the complaint, the judge of surveillance will pronounce a closing which finds that the complaint is devoid effects.

3.2.3. The deadline until the complaint can be filed.

The term is the timeframe in which the person concerned has to do or produce something or, on the contrary, he is not allowed to do or to produce something. By its nature, the term until the complaint against the incidents occurred during the execution can be filed is a *legal* one, as established by the law no. 254/2013, but also a *preremptory*[20] one (imperiative, crucial, conclusive) in the course of which certain acts must be carried out. The non-fulfillment of the act before time expired leads to the cancellation of the exercise of the respective right resulting in the rejection of the complaint as delayed.

On this line, the deadline for filling by the inmates the complaint against of administrative decision, as the one of the committee for establishing or modifying the regime of enforcement (art.40 paragraph11 of Law no.254/2013) or enforcement of a disciplinary sanction (art.104 paragraph 1 of Law no.254/2013) is within three days of delivery thereof and ten days regarding the respecting of the rights of the convicted persons (art.56 paragraph 2 of Law no.254/2013).

The lack of a definite date in the complaint is not a cause of nullity. At the time to receiving of the complaint, the clerk shall assign a definite date, unless is no other definite date set by the judge of surveillance or if there is no mention made by theprison administration.

The clear date set out in this way will constitute the benchmark for the complaint being assessed as lawful or as late.

A situation often encountered in practice is the forwarding of these complaints to an incompetent body, than to the judge of surveillance who pronounced the conclusion, as the competent institution to deal with the complaints of persons deprived of their liberty (for example the court or to another oversight judge from a different penitenciary).

Thus, if an act that had to be done within a certain period was communicated, transmitted, by ignorance or by a manifest error of the sender, before the expiration of the term, to a judicial body that is not competent, it is considered to have been filed in term, even if the act reaches the competent judicial body after the expiry of the fixed term[21].

3.2.4. The complaint must be related to the incidents that occur during the execution of sentences and custodial measures.

The execution of sentences and custodial measures ordered by the court on modern principles places at the core of its principles and objectives the person deprived of liberty, as a holder of a separate legal status consisting of all subjective rights, legitimate interests and correlative obligations, as well as all legal means through to whom the position of these persons is defended in the execution of the punishment (the deprivation of liberty)[22], because the recognition and respect of human rights and freedoms is the very essence of a democratic society.

Ensuring the safe environment one at the place of detention, supervising and verifying the lawfulness in execution of punishment and the custodial measures are subject to the judicial control exercised by the institution of the judge of the surveillance of imprisonment. Although the latter does not exercise any powers other than those with which it has been legally and constitutionally invested, the judicial control is not an absolute one, the jurisdiction of the supervisor is limited to the certain situations provided by the law, such as rewards, selection, employment, educational programs, etc.

The main judicial administrative duties of the judge of surveillance of imprisonment provided by Law No.254/2013, as follows:

a) solve the inmates complaints regarding the establishment and changing of regimes for enforcement and educational measures involving deprivation of liberty,
b) solve the inmates complaints on exercise of the rights provided by this law;
c) solve the inmates complaints regarding disciplinary sanctions.

[20] I. Neagu, M. Damaschin, *op.citată*, p.709.
[21] M. Udroiu, Criminal procedure, The General part, The new criminal procedure code, p.646, Ed.CH Beck, București, 2014
[22] University of European Studies of Moldova, Vasile Ceban, Course Notes of Penal Executional Law (cycle I), p.12, Chișinău,2013,disponibil pe http://www.usem.md/uploads/files/Note_de_curs_drept_ciclul_1/060_-_Penal executional law.pdf

4. Exception of inadmissibility in the procedure for dealing with complaints and complaints made by persons deprived of their liberty against measures ordered by the administration of the place of detention. Situations of inadmissibility.

4.1. The powers of the judge of surveillance of deprivation of liberty .

Measures concerning the exercise of rights, the application of disciplinary sanctions as a result of disciplinary misconduct, with the consequence of changing the enforcement regime, are incidents arising during the execution of punishment, strictley defined by law, which fall within the functional competence of the judge for the supervision of the deprivation of freedom and which it can order by concluding. The judge of surveillance will be able to dispose one of the following solutions[23]:

a) allows the complaint;
b) rejects the complaint if it is unfounded, late or inadmissible and / or devoid of purpose;
c) notes the withdrawal of the complaint.

Consequently, in order to decide the solutions in points (a) and (b), the judge of surveillance will first examine the complaint as to the admissibility conditions because, if the issues raised goes beyond the framework of he's legal competence, the analyzing of the complaint's reasons becomes useless.

4.2. Situation of inadmissibility.

The imprisonment brings with it a restriction of the fundamental rights and freedoms of the individual. The penitentiary environment, institutionalized life does not mean prohibiting the exercise of all fundamental human rights but limits them, while imposing a series of rights and obligations specific to the place of detention. No one is allowed to restrict these rights. The restriction of rights can only be done by law or by the Constitution of Romania.

This leads the prisoners to amplify the instinct to protect the rights granted, using (even abusively) the legal means and institutionals provided by law. This is so, in the desire not to be directly controlled by rebellion over the rules and regulations considered to be excessively rigorous and which, in their opinion, violates their rights, most of the time by the desire to "overcome the system" and obtain substantive material compensation or at the instigation of other persons, the persons deprived of their liberty forward complaint to the judge of surveillance against any incidents considered by them as the cause of the injustice suffered or against the behavior of the prison staff who, many times, accuse them of "abusive behavior".According to functional competence, the judge of surveillance can't turn himself into a ”legal provision launcher” for any situation, such that some of the complaints will be rejected as inadmissible ones. Of the many situations that go beyond the jurisdiction of the judge of surveillance, most of the cases of inadmissibility encountered in practice concern:

a) **the deduction from punishment of a period executed under preventive arrest** - according to Law 254/2013, the competence of the judge of surveillance does not include the resolution of such a complaint, the deduction of a period executed in preventive custody constituting an incident in the execution of the punishment, the exclusive competence of the court in whose jurisdiction is located the prison.
b) the recognition of earned days during detention by inmates as a result of graduating from school courses, qualification courses, granting rewards, school credits - according to art. 56 para. 2 of the Law no. 254/2013 on the execution of sentences and custodial measures ordered by the court during the criminal trial, against any breach of rights, the convicted person may lodge a complaint to the judge of surveillance within 10 days of becoming aware of the breach.

The rights of persons deprived of their liberty are those provided by art. 58-80 of Law 254/2013, so the complaints concerning the granting of the rewards do not fall within the category of the rights provided by the law of execution for whose non observance the detainees can address the supervising judge. The way of granting the rewards of the persons deprived of their liberty is providing by the Decision no.443/ 24.05.2016 of the General Director of the National Administration of Penitentiaries approving the working procedure for granting the rewards[24].

c) the recognition of the earned days during detention by the inmates that demonstrated a good behaviour and from their work in penitentiaries of another states. In application of Article 17 of European Council Framework Decision 2008/909 / JHA of November, 27th, 2008 on the application of the principle of mutual recognition to judgments in criminal matters, imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union and art.144 par.(1) of the Law no. 302/2004, republished, as subsequently amended and supplemented, establishes that after the transfer of the person convicted by the foreign judicial authorities, in order to continue the punishment execution in Romania, the period of punishment deemed to be executed by the sentencing state on the basis of performed work and good conduct, granted as a benefit in favor of the convicted person, by the foreign judicial authority, must not be deducted from the punishment executed in

[23] Law No.254/2013, art.39 paragraph.6, art.40 paragraph 13, art.56 paragraph 6, art.104 paragraph.7
[24] Published in Official Gazzette of Romania, Part I, No.427/June, 27th, 2016

Romania[25].

d) the inappropriate behavior of surveillance staff. The conduct of a criminal investigation is not within the competence of the judge of surveillance of imprisonment, so he can not order the commencement of a criminal prosecution. The unhappy person may directly notify the criminal investigation bodies.

e) changing of regimes for enforcement and educational measures involving deprivation of liberty on petitioner demand. According to art.40 of the Law no.254 / 2013, the change of the execution regime is made only upon the fulfillment of the term of analysis of the legal situation established by the commission for individualization of the execution regimes. This legal provision amended the old provisions contained in the Law no. 275/2006 and the Law no. 83/2010 to amending Law no. 275/2006 which allowing the change, at the request of the detainee, of the regimes for enforcement and the educational measures involving deprivation of liberty, leaving the judge the assessment in the case of complaints regarding the establishment and change of those. The amendment was also necessary because the judge of surveillance of imprisonement were also assaulted by the requests made before the deadline set by the commission. On the other hand, it will not be possible to be accepted the requests to change the execution regime from a lower one to a higher one, regardless of the reason for this request, since the system of execution of custodial sentences in Romania is progressive and regressive, such a change of regime being possible only in the case of committing a disciplinary misconduct and the commission for the individualization of the regimes takes such a measure.

f) the transfer decisions in another penitentiary - the transfer of the persons deprived of their liberty to another penitentiary is made by the decision of the General Director of the National Administration of Penitentiaries, according to art.45 of Law no. 254/2013 and art.108 of the Government Decision no.157/March, 10th, 2016 to implementing the Law no. 254/2013, an institution with legal personality hierarchically located above all penitentiaries and whose measures can not be controlled by the prison judges in penitentiaries. The choice of the place of execution of the custodial sentences does not represent a right of the persons deprived of their liberty, as it is not foreseen among the rights granted by Law no. 254/2013. In this respect, in the reasoning of the *Serce vs. Romania* case (Application No. 35049/08), the European Court ofHuman Rights, at paragraph 51, states that the European Convention on Human Rights does not grant prisoners the right to choose the place of detention, that separation and the distance from their family are an inevitable consequence of their detention following the exercise by the Romanian state of its prerogatives in the field of criminal sanctions[26] .

g) the general provisions on work carried out in detention facilities or on educational and cultural activities, training courses or retraining. Although the marginal name of art.78 of the Law no.254 / 2013 is the Right to Work, it is clear from the wording of the law that the work carried out on detention places is only a vocation, not a right, since the work done by the persons deprived of liberty has a special legal nature, being not part of the category of rights provided by law in their favor at art.56-80 of Law 254. Selection criteria for work is regulated by Decision No. 500165 / September, 25th, 2017of the General Director of the National Administration of Penitentiaries[27]**.**

As regards the inclusion of persons deprived of their liberty in the activities recommended by the Personal Educational and Therapy Evaluation and Intervention Plan, this is done taking into account the identified needs, the regime of enforcement of the custodial sentence and the moment of the sentence serving route.

h) **deleting some information from the individual file of prisoners.** Law no.254/2013 does not provide for the person deprived of liberty to lodge a complaint against other acts issued as a result of pre-existing situations of addmission to prison (such as re-offending, belonging to organized crime groups, general or international pursuit, etc.). These statements are contained in the individual file accompanying the criminal record of the person deprived of their liberty at the Detainees Record Service[28].

i) **the distribution of detainees to detention rooms or the transfer to other detention rooms.** Art.48 of the Law no.254 / 2013 and art.111 of the Government Decision no.167 / 2016 regarding the minimum binding rules on conditions for accommodation of sentenced persons, as well as Article 2 of the Order of the Minister of Justice no.2772/C/October, 17th, 2017 entitled *The Minimum , binding rules regarding the conditions for accomodation persons deprived of their*

[25] See widely the Decision No.15/2015 of the High Court of Cassation and Justice on the examination of the appeal filed by the Timişoara Court of Appeal in file no.6.638 /101/2014, requesting a preliminary ruling on the principle dismissal of a matter of law in criminal matters,*published in Official Gazzette, First Part, no.455/June, 24th, 2015*.

[26] See widely The Judgment of the European Court of Human Rights of June, 30th, 2015, *Serce vs. Romania* case, https://www.csm1909.ro/csm/linkuri/22_04_2016__80250_ro.doc

[27] Published in Official Gazzette, Part I, No.904 bis/November, 17th, 2017

[28] the Order of the Minister of Justice no.432/C/on february 2nd, 2010, art.9 letter g, published in Official Gazzette of Romania, Part I, nr.157 bis on March, 11th, 2010

liberty[29], stipulate that the National Administration of Penitentiaries takes all necessary measures for the progressive increase of the number of individual accommodation rooms.

The persons deprived of liberty are accommodated individually or in common. The accommodation of the persons deprived of their liberty in the detention rooms or the transfer to other rooms is done according to the criteria established by the Internal Order of Penitentiaries.

According to art.81 letter g of the Law no. 254/2013, the convicted persons have the obligation to respect the assignment on the detention chambers, noncompliance to this obligation constitutes a very serious disciplinary offense.

j) **the remainder of the punishment to be executed as a result of the application of Law no. 169/2017.** According to art.55 paragraph 1 of the Law no.169/2017 of the compensatory appeal[30], the calculation of the punishment actually executed is considered, irrespective of the punishment execution regime, as a compensatory measure, and the execution of the punishment under inappropriate conditions, for each period of 30 days executed in improper conditions, even if they are not consecutive, 6 days of the punishment shall be additionally executed**.**

It follows that, the Detainees Record Service, to the calculation of the remainder of custodial sentence, applies an algorithm based on the duration of the sentence, the period of execution in improper conditions, so that some persons deprived of liberty acquired the benefit, the vocation to request release before the deadline, and others will benefit earlier from the conditional release. Since the conditional release is not a right of the persons deprived of their liberty, the complaints lodged to the judge of surveillance to recalculate the period executed under inappropriate conditions have been rejected as inadmissible. They can only be the subject of a challenge to execution before court.

k) the complaints against the inappropriate conditions of the detention rooms in the courts or of the vehicles for the transport of detainees. Although the right to the execution of the punishment under proper conditions is an absolute right, the transport to and from the courts, as well as temporary accommodation in the rooms specially arranged in these institutions, has been often a good opportunity to complain against conditions considered by the persons deprived of their liberty being as inadequate (inadequate ventilation, overcrowding, lack of privacy, transport in a special type vehicles with no seat belts, etc.). Although the time spent in transport vehicles to the courts and actually in court is relatively short, for several hours, these people have never proved thatthey have suffered any health damage from that cause. On the other hand, both specially designated detention rooms in court and special transport vehicles are built according to certain standards, technical specifications, these destinations, they can not be modified in order to provide increased comfort to the passengers during transport or during stay in court, which is why these complaints were rejected as inadmissible.

Conclusions

The execution of the of sentences and the measures ordered by judicial bodies on modern, humanistic principles allows people in this situation to defend their rights and interests against any form of abuse. The right to petition is a constitutional right that can not be restricted by any law, so that individuals deprived of their liberty can submit complaints to the judge of surveillance of deprivation of liberty as an independent and impartial authority legally and constitutionally invested.

The complaint is the legal means by which these persons manifest their dissatisfaction, by virtue of their right to petition, and in order to be register in the records, they must meet the substantive and formal conditions outlined in this study. It also has to fulfill another (unwritten) condition, namely the exercise of the right in good faith, according to its purpose, that of the defense of rights and interests, and not in bad faith, for feelings of revolt against regulations or to the administration of the place of detention. Unfortunately, such situations are a reality, and individuals deprived of liberty making such complaints openly declare that, as long as the administration of the place of detention will take measures deemed unjustified, they will also make various complaints to the judge of the surveillance of deprivation of liberty against the administration

In order to prevent and limit such situations, we hope for a change of the criminal law enforcement which will include among of disciplinary offence and the abuse of rights consisting in exercising the right to petition in bad faith.

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[29] the Order of the Minister of Justice no.2772/C/October, 17th, 2017, published in Official Gazzette of Romania, Part I, no.822/October, 18th, 2017.

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