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PENAL POLICIES IN BULGARIA AND POLAND

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Abstract

The contemporary european studies underline the necessity of adoption of an european model, in order to assure the compliance with the fundamental rights and liberties of people deprived of liberty. But the visions of the model favour one of the two opposite tendencies, which are invariable present in theoretical debates and penal politics: on one hand, the use of the deprive of liberty as a mean to avoid the repetition of an offense and on the other hand, the compliance with the fundamental rights of people deprived of liberty. The article proposes the analysis from a theoretical perspective the European penal politics' impact on the penal politics from Bulgaria and Poland, member states of the European Union. Within this context, it is important to mention the fact that the selection of the two states is underlay on the hypothesis according to which the theoretical and empirical knowledge of the European penal politics' impact on the national penal politics is not developed from the sociological perspective.

Keywords: European model, criminal politics, prisoners' rights.

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INTRODUCTION

Although the European penal model promoted during the last decade is favorable to one of the two opposite orientations- the use of deprivation of liberty as a way to avoid the repetition of an offense respectively, the compliance of the prisoners' rights- what is more important is not to exclude one of the two perspectives, but to correlate them so that they can guarantee the public safety, the achievement of the objectives of deprivation of liberty, the compliance of the prisoners' rights, of the conditions of re socialization and social reinstatement. This desideratum is based on the fact that "surveys made in a certain number of countries, members of the European Union, have highlighted that, at an empirical level, the level at which the convicted person can successfully reinstate in society and on the labor market after executing the sentence is perceived as the indicator with the biggest importance in evaluating the benefits of the penal sanction, while the repetition of an offense is seen as the main risk" (Yordanova et *all*., 2011, p. 6). Within the given context, at the European Union level is tried the optimization of the penal systems and the raising of the efficacy in executing the penal sanctions in proportion with the society the modernization and the humanization of the detention institutions. Starting from the hypothesis according to which in the East Europe the number of the studies from the domain is diminished, some data don't reflect the reality or are contradictory, we will analyze on, from the theoretical perspective, the situation of the penitentiary system from Bulgaria and the penitentiary system from Poland. We mention the fact that we are going to focus on two indicators (sanctions, overcrowding and education), as far as the available data permit an evaluation.

LITERATURE REVIEW

Bulgaria

The juridical framework which regularizes the good functioning of the penitentiary system from Bulgaria is defined by the primary and secondary legislation: The Criminal Code, The Criminal Procedure Code, The Law Concerning The Execution of The Penal Sanctions and The Freedom's Privation Punishments, The Rules for the Application of The Law Concerning The Execution of The Penal Sanctions and The Freedom's Privation Punishments and other instruments from the secondary legislation, emitted for the application of The Law Concerning The Execution of The Penal Sanctions and The Freedom's Privation Punishments. The international regulations approved by Bulgaria include The Universal Declaration of the Human Rights, The Convention for the Protection of the Human Rights and the Fundamental Liberties, The Convention concerning the Forced and Compulsory Labor, The Convention of the United Nations against Torture or other Cruelties, Brutal or Degrading Treatments or Punish-

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ments, The Minimal Standard Rules of the United Nations concerning the Prisoners' Treatment, The European Prisons' Rules, contained in the attachments of the Cabinet Council's Recommendations for the Member States of the European Council and so on.

Considering the imposed requests of the European Union through the professional institutions and the legislative documents, theoretically speaking, it is considered that "the progressive introduction of the transnational standards and the affiliation of Bulgaria to European and international organizations had a favorable impact in creating a modern juridical framework, based on democratic and humanistic principles of the execution of the freedom's privation sanctions and the implication of the state in the problems of the detention system" (Yordanova, *op. cit*., p. 8). Therefore, in the professional literature it is assigned that the first democratic changes from Bulgaria took place during 1990-2000, when the process of "de-ideologization, demilitarization and humanization of the treatment from prisons, the reformatory education's reformation and the training of the staff from prisons" (*Idem*, p. 8). This process has continued with the integration of Bulgaria in the European Council in 1992 and soon after, with the admission to the European Union, in 2007. However, the reality of the Bulgarian detention system highlights the fact that "harmonization of the legislation with the *community acquis* had a gradual evolution but the reforms of the penitentiary system were practically unfinished during the process of the admission to the European Union. The unsolved problems accumulated when they were invariably excluded from the priorities of the majority in power and with small exceptions, from the attention and the concern of the public" (*Ibidem*). More exactly, in the last decade, the penitentiary system has been in the center of the public debates as, it has been intensively evaluated both before and after the admission of Bulgaria to the European Union. In this context, the evaluations of the European Committee and the efforts of the state to adapt to the European and international standards creates some moral panic feelings. Bulgaria "was hit by the cruel reality- the lack of vision and strategy, necessary for the transformation of a system that has hardly changed since the fall of communism, in 1989" (Gounev, 2013, p. 206). In consequence of the changes hardly significant in the present, in Bulgaria, the main form of penal sanction is detention. According to Gounev, "the data of the National Institute of Statistics for 2004-2009 show that overall, this tendency has persisted even after the introduction of the penal sanction of probation in 2004, in spite of the exponential growth of the enforcement during the last years. (*Despite the general tendency, some penitentiaries are exceptions. Being interviewed in 2009, the director of the Plovdiv prison declared that the number of people deprived of liberty diminished with the introduction of the probation", p. 10)* (....) The detention institutions have a total capacity of 8.740 places, estimated on 4 square meters per person, the overcrowding being a significant problem (...). At the same time, the application of other non-deprivation measures of liberty, like the fines, has a

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descending trend" (*Idem*, 10). Beside the deprivation of liberty, two more penal sanctions are preponderant being used: life imprisonment and life imprisonment, without the possibility of probation, the latter being introduced after the abolish of the capital punishment or the death penalty, in 1998. Bulgaria is among the few European countries that readjusted the life imprisonment punishment, without the possibility of probation. Although is defined as a temporary and extraordinary action, imposed in a few situations, this sanction is criticized by professional researchers and experts, being considered against the aims of the execution of the penal sanctions. Therefore, this sanction is not regulated in the Criminal Code in force. At the same time, regarding the sanctions, including the privation of liberty punishments, has been followed a model rather different from the one present in the other European states. For example, in 2006, in the process of admission to the European Union came into force a new Criminal Procedure Code. At that moment, from political and legislative reasons was created a group of *lobbyists* who stipulated in the new Criminal Procedure Code a chain of amendments in favor of convicted people. Therefore, the number of freedom's privation punishments and their average duration was reduced. "The number of culprits and defendants from prisons has decreased with approximately two thirds during the last twenty years. The decreasing tendency has become especially visible since the beginning of 2007, on the 1st of January 2010 the two categories representing 9% of the total population in prison. At the same time, the number of people in the preventive detention centers suddenly raised *Investigations in 28 detention centers have been realized. The majority of these are not in accordance with the international and European standards", p.16* (with 1.083 culprits on the 31st of December 2009, from 723 culprits on the 31st of December 2008" (*Idem*, p. 16). This brings to the fore the problem of preventive commitment centers' overpopulation, together with the problem of poor material detention conditions" (*Ibidem*). Nevertheless, the data provided by the Ministry of Justice and the National Institute of Statistics pinpoints the fact that "an agent that rather inverted the situation and which explains the progressive raising of the average duration of the freedom's privation sanctions (from 10,4 months in 2009 to 11,1 months in 2011), was the pressure of mass-media and from the European Committee which asked for harsher sanctions regarding the organized crime and corruption" (Gounev, *op. cit*., 209). Beside these types of sanctions, we consider that a relevant indicator regarding the impact of European penal politics on the Bulgarian penitentiary system is the increasing of the instruction level of people deprived of liberty. The equal access to education, formation and qualification is regulated through The Law Concerning the Execution of The Penal Sanctions and The Freedom's Privation Punishments. But, The Rules for the Application of The Law Concerning the Execution of The Penal Sanctions and The Freedom's Privation Punishments sets measures to the right of people deprived of liberty to participate to alphabetization courses, basic

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education, vocational and social formation, establishing at the same time the terms and procedures through which the implication in such activities can reduce the sentence. People under 16 years old are obliged to follow the educational programs from the detention institutions. In this context, the specialists from the Center for the Study of Democracy specifies the fact that the standards European Prison Rules (Rule 28) regarding the access to education, formation and qualification are chiefly adopted. Even so, it considers that "more attention should be given to the disposition of Rule 28.2, through which the prisoners with alphabetization needs, mathematical preparation, basic and vocational education represent a priority. This has an extraordinary importance, taking account of the fact that the percent of the illiterate prisoners in jails from Bulgaria is approximately 30% and of those with a lack of any vocational formation is approximately 35%" (*Idem*, 32). Although at a theoretical level the new Code of the Criminal Procedure matches the European standards from the domain as "are enforced simplified procedures in case of less difficult causes, the charge of the criminal system is diminished and is stipulated the judicial surveillance of some investigative or coercive measures that can infringe the fundamental human rights" (Marinova, 2006, p. 65), in fact, it is difficult to find out a comprehensive or strategic way of thinking regarding the Bulgarian criminal system, the more so as the official data are not sufficient. Also, from the sociological perspective, the tendencies observed in the growth of the freedom's privation punishments or more severe sanctions reflect the political pressures, rather than the careful organization of the penitentiary system and the execution to a great extent of the European standards.

Poland

After the fall of communism in 1989, the first democratic Parliament was elected in Poland and in 1997 the new Constitution, the new Criminal Code and the new Criminal Procedure Code came into force. In 1991, Poland became a member state of the European Council, two years later it ratified the European Court of the Human Rights, in 1994 ratified the European Convention for the Prevention of Torture and in 2004 adhered to the European Union. In this legislative context, reforms of the criminal system were initiated, through new amendments introduced in the Law regarding the Penitentiary System, the Criminal Code, the Criminal Procedure Code and the Code of Execution of Penalties, the Justice Minister's Regulations regarding the Preventive Detention and the Execution of the Penalty and through the ratification of many international regulations like the Universal Declaration of Human Rights, the Convention for Protecting Human Rights and Fundamental Freedoms, the Convention of the United Nations against Torture or other Cruelties, Inhuman or Degrading Treatments or Punishments, The European Convention for Preventing The Inhuman or Degrading Treatments or Punishments, The European Prisons' Rules, contained in the appendices of the

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Minister's Committee's recommendations for the European Council's member states, the United Nations' Standard Minimum Rules regarding Prisoners' Treatment and so on.

Through the national legislation's configuration at European and international standards, Poland proposed itself "the abrogation of the regulations regarding the increase of penalty for hardened offenders, the introduction of compulsory moratoriums for the application of death penalties, the reintroduction of life imprisonment and the right given to prisoners to participate in the prisons administration decision-making process" (Szymanowski *apud.* Stańdo-Kawecka, 2014, p. 219). Therefore, the aggregate of the sanctions stipulated in the new criminal codes has successfully achieved the state of being defined through super national standards according to which a rational criminal system implies the restriction of the freedom's privation measures and the use of some noncustodial punishments. "In article 58 (1) of the Constitutional Court, the imprisonment principle was formulated as a last solution. According to this regulation, in terms of the law which provides for discretionary use of power in choosing the type of punishment, the court can impose imprisonment without suspension only if another criminal punishment or measure cannot realize the aim of the punishment act" (Wróbel *apud.* Stańdo-Kawecka, 2014, p. 219). In this context, the elimination of the overcrowding from penitentiaries became the main objective of reforms from the criminal system, being influenced by Constitutional Court's and European Court of Human Rights' needs. "In 2008, the Constitutional Court gave a decision regarding the non-constitutionalization of Article 248 (1) from the Criminal Procedure Code, that used to permit the prisoners' accommodation in smaller cells than the one regulated for undefined periods of time and didn't stipulate a minimum allowable surface" (Stańdo-Kawecka, 2014, p. 232). Due to the chronic overcrowding, the Constitutional Court postponed the decision to come into force as, the lack of space would not permit the execution of punishments for many of the prisoners. But, in 2009 the European Court of Human rights was emphasizing the fact that overcrowding from penitentiaries and Polish centers for preventive arrest indicate a structural problem. In the same year, for the Constitutional Court's decision to be implemented, the Parliament adopted new amendments at the Execution of Punishments Code through which it introduced a set of rules regarding the prisoners' temporary placement in cells with the minimum necessary size. "According to these purviews, a prisoner has the right to make a complaint against the penitentiary administration's decision of placing him in a cell with a smaller area than the one provided in the regulations in force" (*Ibidem*). At the same time, changes in the civil courts' practices, in specific cases regarding the overcrowding from penitentiaries. Therefore, a coherent step, according to which the prisoners from overcrowded cells can start a civil action regarding the compensations associated with the infringement of per-

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sonal rights, stipulated in the Civil Code, came into force. It must be mentioned the fact that the minimum regulated area for each person in prison is still an area of 3 square meters and is one of the smallest areas in Europe. The Constitutional Court legislated the formal prerequisite of anticipated probation in 2009. "According to new regulations, the probation is still possible after a half, two third or three-quarter of the punishment, depending on the prisoner's police record, but, the minimum imprisonment period that has to be atoned (six months or one year for hardener offenders), was eliminated" (*Ibidem*). Stańdo-Kawecka mentions that the use of anticipated probation is rather loose, as a result of the significant existing differences in the instances' approaches from penitentiaries. For example, in some cases, the prisoners tried to transfer to a penitentiary situated in the district of another instance, of another penitentiary, where they considered there were softer probation conditions. Trying to avoid situations like this, in 2011 new modifications were brought to the Criminal Procedure Code. As a result, the legal base for the prisoners' transfer became more restrictive and the prisoners lost the right of executing the sentence in the prison close to their habitation. But, the new amendments break the European standards, especially Rule 17.1 of the European Prison Rules and "can linger the prisoners' preparation for their release and social reintegration, representing a very controversial way to solve the territorial diversity problem of the instances involved in judging probation" (Stańdo-Kawecka *apud.* Stańdo-Kawecka, 2014, p. 232). Another compulsory measure required by legislators to eliminate overcrowding is the introduction of the electronic monitoring, as an alternative to freedom's privation sanctions for the maximum period of one year, in 2012, mentions Stańdo-Kawecka. "According to the Monitoring Office from the Central Administration of the Penitentiary System, on the 31st of December 2012, 4.782 prisoners were under electronic supervision. Due to the lack of empirical researches it is hard to estimate if the electronic monitoring is an effective tool and efficient in terms of costs within the criminal polish contemporary politics" (Stańdo-Kawecka *apud.* Stańdo-Kawecka, 2014, p. 233). As a result, the number of people deprived of liberty has not exceeded the designed capacity of the imprisonment polish system, according to the minimum area of three square meters. "In January 2013, the population density indicator of the prisoners on 100 positions was 99.4%" (Central Administration of the Prison Service *apud.* Stańdo-Kawecka, 2014, p. 233). According to the Constitutional Court, the criminal polish legislation permits interpretations and exceptions as, in its wording, is restrictive, unclear and vague. For example, the arbitrary placement of the prisoners at an undetermined period in cells with the size under the compulsory dimensions of three square meters (among the smallest standards in Europe), which leads to overcrowding and inhuman treatments. Finally, it has to be mentioned the fact that towards the respect of some rights of people deprived of liberty, the Polish Parliament stipulated a new amendment in the Execution of Penal-

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ties Code, according to constitutional regulations. More exactly, in Article 4 (2) of the Constitutional Court, it is stated that "a prisoner, just like any other convicted people, is entitled to have his constitutional rights recognized, less if they were canceled by a law emitted by the Parliament or by a valid sentence of an instance. As a result, the regulation of the problems regarding the constitutional rights of prisoners through the use of commands by the Justice Minister or by other Ministers" (Hołda and Postulski *apud.* Stańdo-Kawecka, 2014, p. 219). From a general perspective, as a result of the evaluations from the last years, the Constitutional Court and the European Court of Human Rights criticize the prisoners' rehab conditions and draw the attention on the infringement of some fundamental rights. The new reforms didn't obtain the expected results and, therefore, efficient and lasting steps, to be based on simple but important changes of attitudes and current practices, are necessary.

CONCLUSIONS

The analysis of criminal politics emphasizes the fact that the developments from the domain have been directly proportional with the measure in which the reformers took into consideration the respect for human rights, as they are established in the national and super national legislation. From this perspective, we notice that the most advanced period of Bulgarian and Polish penal politics was the one from the first years after the changing of communism. Therefore, the evolution regarding the sanctions, including freedom's privation, took place in the real context of criminality. Considering the existing data, we can say that even nowadays the nature of the politic system fundamentally determines the penal politics' characteristics, by way of proof being the fact that the reaction at criminality became a politic problem in Bulgaria and Poland. The most significant example consists of two characteristics which are almost unchanged: on one hand, the preponderant use of freedom's privation, on the other hand, the insufficiency of non-privative sanctions or of alternative ones. Starting from the given context, we consider it is important that both states take into consideration the fact that the social prevention of criminality is a complex task for the entire society, for the purpose of improving the quality of life while creating safe conditions for the whole population and for reducing criminality. The new penal politics' changes have to create the most favorable framework for the proliferation of the restorative justice and the increasing of criminality control, through respect for human rights and of the European Union's standards, as it is natural in a democratic society, in a constitutional state.

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