„N I C O L A E T I T U L E S C U” U N I V E R S I T Y
F A C U L T Y O F L A W
D O C T O R A L S C H O O L

DOCTORAL THESIS

THE ROLE AND ACTIVITY OF THE SURVEILLANCE JUDGE IN THE DEPRIVATION OF FREEDOM

- SUMMARY -

Scientific coordinator

prof. univ. dr. IOAN CHIŞ

Phd. Candidate

GABRIELA – NICOLETA CHIHAIA

Bucharest

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PLAN OF THE STUDY

GENERAL ASPECTS REGARDING THE REALISED LEGAL RESEARCH

1. Subject of the research and its scientific importance

The present scientific study, called ***The role and activity of the surveillance judge in the deprivation of freedom*** brings in the foreground the surveillance and control exercised by a magistrate-judge on the method of execution of freedom privative punishments and educational measures.

Despite the major interest for the aspects which concern the execution of freedom privative punishments, especially the rights of detained persons, the problem of the legality control of their progress was researched quite little in our country and only in reduced size articles and studies. In this regard, the research hereby tries to identify all legal elements which circumstantiate the activity of the surveillance judge of the deprivation of freedom, highlighting his role as guarantor of legality of the activities conducted in places of detention.

The analysis of the surveillance judge of the deprivation of freedom institution could be realized only through an interdisciplinary approach of criminal executional nature and criminal procedural, as well as through a detailed synthesis of the jurisprudence, trying to combine theoretical notions with those of judicial practice.

We consider that the results of the present research are of interest in the academic plan, being the first study on this domain and one of the few in the matter of the criminal execution law, as well as in the jurisprudential plan, as it gathers the divergent opinions existing in the judicial practice, being a first step to the creation of a unitary jurisprudence at the level of the courts in our country, the cases regarding the claims and complaints of detained persons having a significant practical impact, by reference to the reduced degree of knowledge of the problematic and to their incidence in the criminal reality. The offered proposals and solutions are new and original and, not seldom, they change the current perspective on the legal provisions.

Therefore, the research tries to cover, without claiming to be exhaustive, the problem of the role and activity conducted by the surveillance judge of the deprivation of freedom, and to represent a step to open new doctrinaire and jurisprudential concerns. We aimed to present in this research the theoretical aspects, as they are underlined by the legislation in force, as well as jurisprudential aspects, in order to highlight the importance of this institution in criminal matter, mainly, and in criminal executional matter, particularly.

2. Key words: surveillance judge, deprivation of freedom, attributions, places of detention, freedom.

3. The purpose and objectives of the study

The present research has the purpose of analyzing the surveillance judge of the deprivation of freedom institution in the regulation offered by Law no. 254/2013 regarding the execution of freedom privative punishments and educational measures ordered by judicial bodies during the criminal trial, by reference to the secondary legislation, the Regulation for application of Law no. 254/2013 regarding the execution of freedom privative punishments and educational measures ordered by judicial bodies during the criminal trial(approved by the G.D. no. 157 of 10 march 2016)and the Regulation organizing the activity of the surveillance judge of the deprivation of freedom (approved by the Decision no. 89/2014of the Superior Council of Magistracy), as well as the principal one in criminal matter, the Criminal code and the Criminal procedure code.

The main *objectives of the research* were:

- Analysis of freedom deprivation, as detention state, by reference to the legal provisions in our country (Constitution, Criminal code, Criminal procedure code), as well as those in other countries, especially european (Italy, Spain, France, Germany etc.), but also international (the European Convention on Human Rights);

- Analysis of the phase of punishments and educational measures execution in Romania, by its reference to the criminal trial, their enforcement, presentation of some difficulties encountered in practice. In the same context, we tried to offer an overview of the penitentiary system in our country and the regimes of execution of freedom privative punishments and educational measures;

- Presentation from a historical point of view of the emergence of the magistrate institution which supervises the execution of freedom privative punishments, the steps made until now, its development, in order to correspond as well as possible to the practical necessities and to answer to the current requests in the matter;

- Analysis of the designation method, the role and legal nature of the activity conducted by the surveillance judge of the deprivation of freedom;

- Analysis of the proper activity of the surveillance judge of the deprivation of freedom– the jurisdictional-administrative attributions and those administrative, as they emerge from the legal provisions in force, highlighting the inconsistencies existing in the legislation and the difficulties encountered in the judicial practice;

- Also, among the aimed objectives was remarked the realization of a comparative analysis of the surveillance judge of the deprivation of freedom institution in different European states, starting from those which inspired its creation in our country, Spain and Italy, and arriving to some which regulate differently the surveillance judge of punishments execution, France and Germany. From this point of view, the study tries to highlight the similarities between European legislations, in order to offer a new alternative of regulation in the Romanian criminal execution law.
- Not least, the research tried to offer possible solutions for enhancing the regulation of the surveillance judge of the deprivation of freedom institution, by reference to the legal provisions of other European states.

4. Methodology of the research

By reference to the aimed purpose and objectives, the use of more research methods was necessary, among which is highly remarkable the documentary method and the logical method, as well as the comparative method, the systemic method and the historical-teleological analysis method.

The documentary analysis method was mainly used, aiming to gather already existing pieces of information from the specialty literature about the surveillance judge of the deprivation of freedom institution.

The logical method was used in order to interpret the legal provisions and to realize the corroboration of the theoretical aspects with those practical, the study containing an important part of analysis of the jurisprudence in matter, both of surveillance judges of the deprivation of freedom from different places of execution and of courts summoned to solve the cases in the matter of freedom privative punishments and educational measures execution.

The historical-teleological method was used in the realised analysis in order to highlight the changes done by the Romanian legislator through Law no. 254/2013, by reference to the previous laws which regulated the control of a magistrate regarding the legality of freedom privative punishments execution.

The comparative method implied the comparison of some identical or divergent elements encountered in the analyzed legislation, the same method being used for realising a comparison of the legal systems from different states, reporting about each one specific characteristics, as well as existing similarities.

The systemic method was used for correlating the surveillance judge of the deprivation of freedom institution with other institutions, like the judge delegated to the criminal

executions office, international law principles and legal provisions, absolutely necessary for researching and understanding the subject.

In the end of the research we used a *predictive analysis method* regarding the evolution of the surveillance judge of the deprivation of freedom institution, which concretized into a series of de lege ferenda proposals, in our opinion, aiming to enhance the current legal frame.

EXPOSURE OF THE STRUCTURE AND CONTENT OF THE STUDY

The present thesis contains **3 titles**, which themselves contain **chapters, sections and subsections**, for a better identification and reading of the analyzed problems, to which add **the final considerations and de lege ferenda proposals**.

The first title, **"Freedom, right to freedom, its limitations and guarantees", presents an analysis of the notion of "freedom"**, both from the philosophical and legal perspectives, as well as the notion of "right to freedom", as fundamental right stated in international regulations.

Freedom was differently analyzed by philosophers, in the theoretical debate of the freedom problems being proposed, in the history of philosophical thinking, more solutions. However, all of them pointed out that we cannot discuss about freedom in abstract sense, since absolute freedom does not exist, being relative, as while in a certain moment and in a certain place it can be understood per se, conferring rights to the person, in another place and in another moment it could appear as a constraint to the same person.

In its legal acception, freedom represents a social value promoted, developed and protected by the legal provisions, thus the personality of each person finds its affirmation in the liberties established and secured by the rule of law.

In the doctrine a difference between "rights" and "freedoms" is realised, being used with priority the notion of "rights" in order to designate the human rights in general and the phrase "public freedoms" in order to designate the rights of the citizen in general[1]. In doctrine, a distinction is made between freedom as an attribute of the human person, and freedom, as fundamental right of the citizen. The first one considers the possibility of movement (the narrow sense of the notion), while the second one regards a complex of rights established and guaranteed by the Constitution.

[1] Purdă Nicolae, *Protectionof human rights*, Publisher Lumina Lex, 2001, p. 21.

Analyzing the Romanian constitutional doctrine, in parallel with the criminal procedural doctrine, it is to be observed that the individual freedom is differently regarded and analyzed by the authors. Thus, the constitutional doctrinaires define the individual freedom as the right of the person to behave and move freely, to not be held in slavery or in any form of servitude, to not be retained, arrested or detained in other cases and forms provided by the Constitution and laws[2], while the criminal law doctrinaires regard the freedom in a more extensive way, including beside the physical freedom, mental freedom, inviolability of the home, freedom to communicate and sexual freedom, as an important attribute of the human personality, consisting of the possibility that each member of the society must have to act according to his wishes and interests, without being subject to physical or mental constraints[3].

By „right to freedom", *the European Court of Human Rights* understands the right to physical freedom of the person, respectively his or her possibility to move, to travel in a free way. In the practice of the European Court of Human Rights it has been stated that art. 5 surely does not regard the simple restrictions of the circulation freedom and neither the limitations of the circulation freedom which are implied by those precise legal situations, as the one of the army members[4].

In ***chapter II of the first title***, are analyzed ***the limitations and guarantees of freedom deprivation,*** as they are provided by the international regulations – *the Universal Declaration of Human Rights, International Pact on civil and political rights, European Convention on Human Rights, in the Constitution of Romania, and of other states (U.S.A., Finland, Germany, Belgium, Italy, Spain), as well as in the criminal procedural provisions from our country and from other states (Italy, Moldova, Germany, France, Spain, U.S.A.).*

The purpose of guaranteeing the right to freedom consists of ensuring that nobody is deprived of his freedom in an arbitrary manner, the two notions – safety and freedom – forming a whole for the protection of the individual freedoms[5].As it is not an absolute right, the right to freedom shall be realized in the coordinates imposed by the rule of law and in the case of a deviant attitude, the public authorities are entitled to take measures which seriously affect the individual freedom: perquisition, retention, preventive arrest and the application of

[2] Muraru Ioan, Tănăsescu Elena Simina, *Constitutional law and political institutions, 13rd edition,* Publisher C.H. Beck, Bucharest, 2008, p. 166.
[3] Boroi Alexandru, Gorunescu Mirela, Popescu Mihai, *Criminal law dictionary*, Publisher All Beck, Bucharest, 2004, p. 250.
[4] Case of Engel and othersv.The Netherlands, cited by Jan De Meyer in Louis-Edmond Pettiti, Emmanuel Decaux, Pierre-Henri Imbert and collectively, *European Convention on Human Rights, Commentary article by article*, Publisher Economica, Paris,1999,p.190.
[5] Ciobanu-Dordea Aurel, Mazilu Gabriela, Selegean Mihai, *Fundamental rights and freedoms in the E.C.H.R. jurisprudence*,Publisher All Beck, Bucharest, 2005, p. 101.

some punishments[6], as well as the house arrest, the last preventive measure introduced in the romanian criminal procedural legislation.

In doctrine, it has been shown that freedom deprivation represents the institutional form, having an exclusively criminal character, acknowledged at constitutional level and regulated in detail at procedural level, in which intervenes the restriction of the individual freedom exercise, as fundamental freedom[7].

In the end of this first title are presented notions about ***the freedom privative punishments and educational measures, as criminal sanctions which limit the right to freedom***, regulated in the romanian legislation, as well as those of other european states (Netherlands, Belgium, Finland, France, Portugal, Spain, Sweden, Italy), these representing one of the most important forms of freedom deprivation, as sanctions applicable after the course of a criminal trial and the establishment of the offense existence and of its committing, with the form of guilt requested by the legal provisions, by the culprit.

The freedom privative punishments raise a series of problems in their execution, as for those who execute them, the prison environment reveals two types of necessities: adaptation to the norms and values specific to this life frame and further evolution of the personality[8]. Thus, if initially the convict gets to consider that the punishment is adequate to the deed, quite fast he shall change his perception and shall consider it as being too punitive, extrapolating his own situation to the examples of others, especially of those publicized and in state of freedom. So, from the initial behavior (at incarceration and in the immediately following period, of adaptation) – passive, obedient, of penance – the convict attains, after familiarizing with the prison environment, an active behavior in which the selfishness, the personal interest and the self-preservation prevail, predominating a mixed feeling of contempt towards the penitentiary authorities and particularly towards the judicial and of self-victimization (he considers himself the victim of a system which did not understand him and did not give him any chance)[9].

Regarding the juvenile offenders, the waiver of punishments and the execution of privative measures in specialized institutions, it has been shown in the doctrine[10], offer the premises for obtaining optimum results in their educational and social reintegration activity.

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[6] Sima Constantin, Țuculeanu Alexandru, Ciuncan Dorin, *The preventive arrest,* Publisher Lumina Lex, Bucharest, 2002, p. 162.
[7] Zarafiu Andrei, *The preventive arrest*, Publisher C.H. Beck, Bucharest, 2010, p. 58.
[8] Barbu Silviu Gabriel, Șerban Alexandru, *Criminal execution law, 2nd edition*, PublisherC.H. Beck, Bucharest, 2008, p. 31.
[9] Barbu Silviu Gabriel, Șerban Alexandru, *cit.op.*, p. 31.
[10] Păun Costică în Pascu Ilie, Dobrinoiu Vasile, Dima Traian, Hotcă Mihai Adrian, Păun Costică, Chiș Ioan, Gorunescu Mirela, Dobrinoiu Maxim, *The New Criminal code commented, vol. I. General part, IInd edition,* Publisher Universul juridic, Bucharest, 2014, p. 660.

The existence of some specialized institutions allows for framing the center with personnel suitably trained for working with minors, organizing some educational and training programs adequate to their age, avoiding the contact with the adult offenders during the execution. The rule consists of the application of freedom non-privative educational measures in the case of minors, while the freedom privative measures represent the exception, being destined for minor offenders who commit serious or multiple offenses.

Title II of the thesis, called **"Execution of freedom privative punishments and educational measures in Romania"**, starts, in ***chapter I,*** with a series of ***general considerations regarding the enforcement of criminal sentences***, as the last phase of the romanian criminal trial. In the same chapter is presented *the court of execution* and *the judge delegated with the execution*.

The purpose of the criminal trial, holding those who committed offenses criminally liable so that no person who violated the legal provisions is left unpunished, is not reached unless the criminal demarche is finalized with the sanction of the guilty one, by applying a punishment or an educational measure. In doctrine has been shown that in order to finalize the criminal procedural activity, the enforcement of criminal sentences is necessary, because only by doing so the criminal trial is shaped as a complex of activities through which is translated in fact the purpose of the criminal law[11].

In the majority opinion, it has been shown that part of the criminal trial is not the whole phase of criminal sanctions execution, but only the enforcement of the criminal sentences, activity which is not identical with the one of effective execution. It has been rightly affirmed in the doctrine that the proper execution does not belong to criminal law, but to criminal execution law.

The court, through the judge delegated with the execution, is the only one able to enforce the judicial decisions and to solve all the incidents occurred on this occasion, but to reach this desideratum it collaborates with other institutions of the state: police bodies, prosecutor etc. It is not necessary that the holder of the criminal action shall request the enforcement of the decision, as the court of execution is bound, by the virtue of the officially principle, to proceed with enforcing it. It is thereby highlighted the positive, immediate and applicable to all cases effect of res judicata of the criminal sentence, which thus create an executory efficiency unimpeded by any obstacle of it[12].

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[11] Ion Neagu, Mircea Damaschin, *Criminal procedure treaty. Special part*, Publisher Universul Juridic, Bucharest, 2015, p. 582.

[12] Nicolae Volonciu, Raluca Moroșanu, *Commented criminal procedure code. Art. 415-464. Enforcement of criminal sentences,* Ed. Hamangiu, București, 2007, p. 3.

According to art. 554 of the Criminal procedure code, which has the marginal name „the judge delegated with the execution", the court of execution delegates one or more of its judges to realise the enforcement.

The mentioned provision completes itself with those from Law no. 253/2013 regarding the execution of freedom non-privative punishments, educational measures and other measures ordered by the judicial bodies during the criminal trial[13], which in art. 14 par. 1 provides that the court of execution delegates annually one or more of its judges to coordinate the activities regarding the enforcement of judicial decisions.

The judge delegated with the execution has attributions especially in the execution of freedom non-privative punishments and educational measures and less in the execution of freedom privative punishments and educational measures. In the situation of the last of these, the judge delegated with the execution conducts his activity in the phase of their enforcement, by issuing the warrant of punishments execution and ensuring the enforcement of it and of the freedom privative educational measures, during the execution his activity being limited to seizing the court of execution in case that, on the occasion of enforcing the sentence or during the execution, a query or obstruction occurs.

Chapter II of title II presents the necessary conditions for enforcing the freedom privative punishments and educational measures and the effective mode of realising it, identifying a series of inconsistencies in the legal provisions, especially in those regarding the enforcement of freedom privative educational measures.

Chapter III of title II contains the analysis of the principles which govern the execution of freedom privative punishments and educational measures, as they are regulated by the Law no. 254/2013 regarding the execution of freedom privative punishments and educational measures, respectively: *principle of legality, principle of humanism, principle of prohibition of discrimination and principle of exercise of rights by the freedom deprived persons*.

With reference to the principle of humanism, a series of convictions against Romania by the European Court of Human Rights are presented, regarding the violation of art. 3 of the European Convention on Human Rights, as well as measures ordered by the National Administration of Penitentiaries for enhancing the conditions of detention.

Although the *European Conventions on Human Rights* does not contain any special provision referring to the persons executing freedom privative punishments, through its

[13] Law no. 253/2013 regarding the execution of non-privative punishments, educational measures and other measures ordered by the judicial bodies during the criminal trial was published in the Official Monitor no. 513 of 14 august 2013.

jurisprudence, the European Court of Human Rights established that the state must ensure to such person conditions compatible with the respect of human dignity, so that the execution of the punishment shall not cause a level of suffering which exceeds the level inherent in detention. The Court stated that, although the intention of humiliating or degrading the applicants did not exist, the absence of such purpose cannot exclude de plano the establishment of violation of art. 3 of the European Convention on Human Rights, thus appreciating that the respective conditions of detention, which the applicants had to endure for many years, subjected them to some hardships of which intensity exceeds the unavoidable level of suffering inherent in detention, amounting to a degrading treatment, thereby violating the provisions of art. 3 of the Convention. Also, the Court reminded that art. 3 demands the states to ensure that every prisoner is imprisoned in conditions compatible with the respect of human dignity and that, considering the conditions from prison, the health and the confort of the person are ensured accordingly[14].

The National Administration of Penitentiaries tried to solve the problem of th existent overcrowding in the places of detention, thus aiming to ensure decent conditions for the imprisoned persons,the short term measures ordered in the 2012 – 2014 period regarding in principal the maximization of the accommodation capacity.

Chapters IV and V of title II contain the analysis of the individualization of the execution methods, as well as ***the analysis of freedom privative punishments:*** *life imprisonment and imprisonment,* ***and of the freedom privative educational measures:*** *internment into an educational center and internment into a detention center.* Also, their execution is presented, respectively **the place of execution:** *penitentiaries, educational centers and detention centers,* **and the regimes of execution:** *maximum security regime, closed regime, semi-open regime and open regime, in the case of punishments, and closed regime and open regime in the case of the educational measure of internment into a detention center.*

Title III of the thesis, the most ample, called **"The surveillance judge of the deprivation of freedom – guarantor of respecting the legality in the execution of freedom privative punishments and educational measures"**, starts in ***chapter I*** with a ***short historic of the institution in our country.***

Romania, as other countries from Eastern Europe, adopted the institution of the judge who supervises the legality of punishments execution only after 1990, by Law no. 275/2006, although the penitentiary system has a rich history on the romanian lands.

[14]Case Eugen Gabriel Radu v. Romania, ruling of 13 october 2009, in Radu Chiriță (coord.),*Arrest and detention in ECHR jurisprudence*, Publisher Hamangiu, Bucharest, 2012, p. 175.

The first law that regulates in detail the execution of punishments was the law of the prisons, adopted on the 1st of February 1874, by King Carol I, in which the method of punishment execution was regulated, being implemented the auburnian regime of detention (the mixt regime, in which prisoners were kept at common during the day and separately during the night), simultaneously providing the establishment of prisons for minors, for the first time being mentioned the obligation of moral education of these.

Year 1929 brought the adoption in Romania of the Law for the organization of penitentiaries and prevention institutions, at that moment one of the most advanced laws in the matter on the international stage.

After year 1944, because of the political regime, the whole regulation of punishments execution suffered changes, an important role being taken by the political detention, which existed until year 1964. In that period was adopted the Decision of the Council of Ministers no. 1554/1952 which was regulating the execution of punishment by doing some useful activities, the prisoners being used for building some structures, as: the Danube – Black Sea Channel, the irrigation systems from Dobrogea etc.

However, none of these legal regulations provided in their content provisions referring to realising a control of the punishment execution method, conditions of detention, everything being established discretionarily, the observance of the rights remaining up to the management of the place of detention and under the control of the political factor.

Law no. 23/1969 regarding the punishments execution[15], entered into force at 1st of January 1970, was adopted in our country in order to „confer a legal expression to the economic and social reality from our country"[16], being the first proper law which regulated the execution of punishments in Romania.

The provisions of this law, together with those of the Criminal code of 1969, developed a romanian conception regarding the resocialization of the prisoners, based on their participation to productive activities, in conditions similar to those of the economy, on the completion of studies and the literacy of those who do not know how to write and read, on the qualification in a craft. However, until the revolution of 1989, the romanian penitentiary system was confronted with serious limits imposed by the official socialist ideology, as: the request that all prisoners shall be rendered to the society as useful people, the obligatoriness that the resocialization programs shall contain a significant percent of political themes.[17]

[15]Law no. 23 of 18 november 1969 was adopted by the Grand National Assembly, published in the Official Monitor no. 132 of 18 november 1969, entered into force at 1st of january 1970

[16] Aurelian Popa, *Law regarding the execution of punishments*, inRomanian Law Magazine, no. 1/1970, p. 52.

[17] Aura Preda, *Criminal execution law*,PublisherFoundation Romania of tomorrow, Bucharest, 2014, p. 46-47.

From the analysis of the provisions of Law no. 23/1969 results that the execution of freedom privative punishments was left in the competence of executive authorities, the judge being summoned to intervene only in reference to the incidents ocurred in the course of the execution of a freedom privative sanction, as his activity was regulated by the Criminal procedure code, therefore only related to eventual impediments to the execution, like the situation of the adjournment of the punishment execution, which could be ordered by the court of execution in the cases expressly and exhaustively provided by the law.

However, the Law. No 23/1969 did not regulate in no way a mechanism of independent, impartial and effective control, against the acts issued and the measures ordered by the administration of the places of detention regarding the method of execution of the freedom privative punishments and measures.

So, in the period when Romania was negociating the adherence to the European Union, and one of the criteria that had to be met by our country was regarding the offering of a modern frame adequate for the execution of freedom privative punishments, was the G.E.O. no. 56/2003 regarding some rights of the persons executing freedom privative punishments[18], which was regulating, for the first time in the romanian legislation, the control of the court on the legality and thoroughness of the acts and measured ordered by the administration of the place of detention.

However, in order to realise a whole compliance with the development stage of the society, it was considered that there is a need not only for a change of the old criminal legal institutions, but for others new, thus beginning the elaboration of a new criminal legislation.

A first step in this regard was realised in year 2004, when the Law no. 301/2004 regarding the Criminal code was adopted[19]. In correlation with this code, for the regulation of punishments execution, the Law no. 294/2004 regarding the execution of punishments and measures ordered by judicial bodies during the criminal trial[20], which was abrogating and replacing Law no. 23/1969 regarding the execution of punishments, which did not correspond anymore to the criminal legal necessities and did not respond to the requests of the New criminal code. Both the Law no. 301/2004 regarding the Criminal code and the Law no. 294/2004 regarding the execution of punishments and measures ordered by judicial bodies during the criminal trial had never entered into force.

[18]G.E.O. no. 56 of 25 june 2003 regarding some rights of the persons executing freedom privative punishments, published in the Official Monitor no. 457 of 27 june 2003.
[19] Law no. 301/2004 regarding the Criminal code, published in the Official Monitor of Romania no. 575 of 29 june 2004.
[20] Law no. 294/2004 regarding the execution of punishments and measures ordered by judicial bodies during the criminal trial, published in the Official Monitor of Romania no. 591 of 1st of july 2004.

The first romanian legislative measure which concentrated into a unique frame the imperatives and rules of the execution of freedom privative measures and punishments was Law no. 275/2006 regarding the execution of punishments and measures ordered by judicial bodies during the criminal trial[21], which abrogated the provisions of Law no. 23/1969 and of other previous normative acts, updated the criminal execution legislation of Romania in accordance with the provisions in matter within the european norms.

One of the most important guarantees of the principle of legality of the execution of freedom privative punishments consisted of the consecration of the *judge delegated with the execution of freedom privative punishments* institution, who, according to art. 6 para. 3 of the law, had the role of supervising and controlling the ensurance of legality in the execution of these punishments and of exercising the other attributions established by the law.

Chapter II of title III presents the regulation of the surveillance judge of the deprivation of freedom institution within the current law regarding the execution of freedom privative punishments and measures ordered by judicial bodies during the criminal trial, Law no. 254/2013[22], starting from *his designation*, and continuing with the presentation of *his statute, of the legal nature of his activity and of the acts that he issues*. The chapter ends with the presentation of *the registrar delegated* to the office of the surveillance judge.

The institution of the surveillance judge of the deprivation of freedom is regulated in title II of Law no. 254/2013, called ”the surveillance judge of the deprivation of freedom”, establishing that he doncuts his activity in penitentiaries, retention and preventive arrest centers, preventive arrest centers, educational and detention centers and whose main role consists of supervising and controlling the legality of the execution of freedom privative punishments, educational measures and preventive measures.

It is to be observed in the first place that the legislator answered to the criticisms realised by the doctrine regarding the name of this judge, replacing the phrase of ”judge delegated for the execution of punishments” with the one of ”surveillance judge of the deprivation of freedom”, which defines, also in my opinion, better his role and attributions.

The method of designation of the surveillance judge of the deprivation of freedom is presented, being established the obligatoriness of designation in the same conditions of one or more deputies, as well as of a registrar who shall help him in conducting his activity, the role of the surveillance judge of the deprivation of freedom and his main attributions, qualified by

[21]Law no. 275 of 4 july 2006 regarding the execution of punishments and measures ordered by judicial bodies during the criminal trial, published in the Official Monitor no. 627 of 20 july 2006.
[22] Law no. 254 of 19 july 2013 regarding the execution of freedom privative punishments and measures ordered by judicial bodies during the criminal trial, published in the Official Monitor no. 514 of 14 august 2013.

the legislator as administrative attributions and administrative-jurisdictional, in order to eliminate the divergent opinions expressed in the doctrine based on the Law no. 275/2006.

From the summary examination of the attributions of the surveillance judge of the deprivation of freedom it is to be remarked the clear intention of the legislator to ensure an immediate and efficient control, by a person who meets all conditions of independence and impartiality highlighted by the jurisprudence of the European Court of Human Rights, regarding the observance of legal provisions in the matter of execution of the freedom privative punishments and educational measures. According to the law, the surveillance judge of the deprivation of freedom pronounces himself through a decision, as a procedural act which contains his solution, after the deliberation, respectively after verifying and evaluating the evidences of the case, on the substance of the claim/complaint, decisions which are executory both for the freedom deprived person and for the administration of the place of detention (penitentiary, educational center, detention center, retention and preventive arrest center).

For the first time in our legislation, the Law regarding the execution of freedom privative punishments and measures is followed by a Regulation organizing the activity of the surveillance judge of the deprivation of freedom, adopted by the Superior Council of Magistracy[23].

Chapter III of title III contains the presentation of some ***aspects of comparative law regarding the surveillance judge of the execution of punishments,*** as this institution is regulated in *Italy (Giudici di sorveglianza), Spain*(*El juez de vigilancia penitenciaria*), *Germany*(*Richter Überwachung Freiheitsberaubung*), *France*(*Le juge de l`application des peines, J.A.P.*).

The most ample chapter of the whole thesis is ***chapter IV of title III, which contains the detailed analysis of the activity of the surveillance judge of the deprivation of freedom.***

The administrative-jurisdictional attributions consist of solutioning the complaints formulated by the freedom deprived persons held in detention regarding the violation of the rights conferred to them by the law regarding the execution of freedom privative punishments and measures, regarding *the establishment and change of regimes of execution* of the freedom privative punishments and educational measures, as well as regarding *the application by the disciplinary commissions of the disciplinary sanctions,* as a result of incriminating them for

[23]Decision of the Superior Council of the Magistracy no. 89/2014for the approval of the Regulation organizing the activity of the surveillance judge of the deprivation of freedom, published in the Official Monitor no. 77 of 31 january 2014.

committing disciplinary deviations or of violating the rights by the administrations of the places of detention.

All the other attributions of the surveillance judge of the deprivation of freedom belong to the category of administrative attributions, which do not imply a ”judgement” from his part, but regard the grant of *audiences to the freedom deprived persons, the participation as president to the meetings of the commissions regarding the parole,* to the *procedure of change of the internment* into the detention center or in the educational center with the educational measure of daily assist, to the procedure of granting liberation from the educational or detention center or to the *procedure for continuing the execution of freedom privative educational measures in penitentiary.* Also, the category of administrative attributions contains *the realisation of controls at the places of detention* and *the grant of the notice for gathering biological samples* for testing the convicted person.

In this chapter are analyzed all attributions of the surveillance judge of the deprivation of freedom, starting from the current legal provisions, but also by reference to the previous provisions, of the Law no. 275/2006, as well as to the solutions pronounced in the jurisprudence, both by the surveillance judges of the deprivation of freedom and the courts, courts in which circumscription is the place of detention, in the resolution of the contestations formulated against the decisions pronounced by the surveillance judge of the deprivation of freedom.

Section II presents *the first category of attributions of the surveillance judge, those administrative-jurisdictional*. To eliminate the differences observed in the activity of the delegated judges, in order to realise a unitary practice in the activity of the surveillance judges of the deprivation of freedom, the Regulation organizing the activity of the surveillance judge of the deprivation of freedom provided the procedure which must be followed regarding the registration of complaints formulated by the freedom deprived persons held in detention, as well as all registers which are kept at the level of his office and the rubrication of each one.

In the resolution of complaints having an administrative-jurisdictional character, the surveillance judge of the deprivation of freedom is bound to hear the prisoner when the reasons cited by him regard the exercise of the rights regulated by the Law no. 254/2013 or the application of a disciplinary sanction, but nothing impedes him to proceed to hear him in the other situations, respectively in the resolution of complaints against decisions regarding the regime of execution of the freedom privative punishment, although, in practice, it was observed that these happen quite rarely.

In order to eliminate any vagueness occurred in the practice of some delegated judges under Law no. 275/2006, the Regulation organizing the activity of the surveillance judge of

the deprivation of freedom provides in art. 19, that the hearing of the detained person takes place in the office of the surveillance judge of the deprivation of freedom or in another special place from the precincts of the place of detention, which however must respect the conditions of confidentiality from the representatives of the administration of the detention place, as a rule in the presence of the registrar, ensuring the security of the judge and the registar.

In practice, a series of problems raised referring to the executory character of the decision of the Commission for the establishment, individualization and change of the regime of execution, especially in the situation that the change of the regime of execution was ordered, into a harder regime as severity degree, as a result of committing an offense or a serious deviation by the convicted person, situation in which he was disciplinarily sanctioned, but he formulated complaint against the respective decision of the commission of discipline.

In the majority opinion it has been stated that the decision of the Commission which orders the change of the regime of execution into a more severe one, according to art. 40 para. 6 of Law no. 254/2013, is not executory, as the legislator expressly provided the situations in which the decisions of the Commission are executory, for example, in art. 39 para. 4 of the Law being expressly provided that the complaint formulated against the decision establishing the regime of execution of the punishment does not suspend the execution, per a contrario, in the other situations the complaint has a suspensive character.

A special situation with implications in the establishment or change of the regime of execution consists of the inclusion of a convicted person in the category of those who present a degree of risk.

Although Law no. 254/2013 does not expressly provide the procedure of resolution of the complaint against the decision of the Commission regarding the inclusion or the maintenance of a prisoner in the category of the persons who present risk for the safety of the penitentiary, we consider that it is identical with the one provided by art. 40, for the change of the regime of execution, as to this legal provision makes reference the Regulation for the application of Law no. 254/2013 when it confers to the prisoner the possibility to formulate complaint against the decision of the Commission.

From the analysis of the judicial practice regarding the violation of the rights of freedom deprived persons it is to be observed that a nonunitary jurisprudence exists referring to the solutions ordered by the surveillance judge of the deprivation of freedom or by the court, in case they admit such complaints/contestations.

Some surveillance judges/courts limit to the establishment of a violation of the right claimed by the freedom deprived person, without distinctly ordering the bound of the administration of the penitentiary to remedy it.

Other courts, establishing the violation of a right of a freedom deprived person, ordered the elimination of the situation which caused this violation, by bounding the administration of the penitentiary to take certain measures.

Most of the complaints formulated by the freedom deprived persons regard the conditions of detention, aspect which does not surprise, considering that it is unanimously recognized that the romanian penitentiary system suffers of overpopulation. However, the solutions pronounced by both the surveillance judges of the deprivation of freedom and the judges in the resolution of the contestations denote that a unitary practice of solving this type of complaint does not exist.

In the judicial practice it was raised the problem of interpreting and applying the provisions of art. 1 para. 3 lett. B) of the Minimum bounding norms regarding the conditions of accommodation of the freedom deprived persons provided in the Order of the Minister of Justice no. 433/2010, respectively, if it is to give precedence to the practice of the European Court of Human Rights in the matter of the conditions of detention or if the internal norms provided by this order must be applied[24]. The majority opinion expressed by the judges is in the sense that the practice of the European Court of Human Rights must be considered, the text of art. 1 para. 3 lett. B) of the Minimum bounding norms regarding the conditions of accommodation of the freedom deprived persons being interpreted by reference to the decision pronounced in case Oprea and others v. Romania, in which it is stated that the space necessary to the freedom deprived persons is of $4m^3$and not of $6m^3$, as in the E.C.H.R. provisions the differentiation between the regimes of punishments execution does not exist, like in our legislation. Therefore, under the constitutional provisions, prevails the application of international norms. The minority opinion is in the sense that the internal regulation regarding the space necessary to the freedom deprived persons exists, this being provided in the mentioned legal text, so the international regulations in matter are not applicable.

The third category of complaints that the surveillance judge of the deprivation of freedom solves consists of the complaints against the decisions of the disciplinary Commission, through which disciplinary sanctions were applied to the convicted persons for the committed deviations.

Although the legal provisions use in this matter the denomination of ”convicted person”, as being the one that the disciplinary procedure is applied to, the term is improper and does not cover the whole sphere of the persons who can be disciplinarily sanctioned, this being reduced only to the persons who are in detention as a result of the pronouncement of a

[24]Court of Appeal Bucharest, Minute of the quarterly meeting of nonunitary practice of 23.06.2015 in the matter of freedom privative punishments and measures execution, p. 3.

criminal sentence of definitive conviction. Any person held in detention, whether in preventive arrest of in the execution of a freedom privative punishment, can commit disciplinary deviations becoming subject of the disciplinary procedure, so we consider that the correct term which should have been used by the legislator was the one of ”prisoner” or ”person held in detention”.

Any violation of the rules established both by the Law no. 254/2013 and the Regulation for its application, as well as the internal order regulation of the place of detention causes to the sanctioning of the prisoner. Law no. 254/2013 expressly provides, both the obligations of the convicted persons (in art. 81) and the interdictions that they have in the period of detention (in art. 82). The procedure for the application of the disciplinary sanctions is regulated in detail by the legal provisions, precisely for not causing arbitrariness, considering its finality, the prohibition of some rights of the freedom deprived persons held in detention and even their isolation, sanctions with powerful impact on the prisoners. For each disciplinary deviation can be applied only one disciplinary sanction, the Regulation for the application of Law no. 254/2013 providing the fact that no detained person can be disciplinarily sanctioned twice for the same deed (art. 220 para. 1), according to the principle non bis in idem, which applies to this matter as well.

In contrast to the other complaints analyzed in the previous sections, in case of this one it is expressly provided in the provisions of art. 104 para. 2 of Law no. 254/2013, the suspensive character of the formulated complaint. We consider that this provision is one favorable to the prisoner, as it is possible that after exercising the legal remedies against the decision of the disciplinary commission, the deviation that he was incriminated for to not be confirmed, thus the disciplinary sanction is annulled, so, in the case that the law did not provide the suspension of the enforcement, there was the possibility that until the completion of the whole procedure, the person held in detention could execute the applied sanction, so its annulment would have remained without effect.

Also as a guarantee for the equitable course of the procedure, it is expressly provided that the prisoner is mandatorily heard, at the place of detention, by the surveillance judge of the deprivation of freedom and the fact that he may proceed to the hearing of any other convicted person or any other person that conducts activities in the penitentiary system, in order to establish all circumstances in which the disciplinary deviation that the prisoner is incriminated for was committed.

In the judicial practice was raised the problem that if in front of the court the prisoner, whether he is claimant or respondent, could request the administration of new evidence by reference to those of the disciplinary procedure, existing in the file of the surveillance judge

of the deprivation of freedom. Although the provisions of Law no. 254/2013 do not make any reference to this aspect, considering the importance of the object of the cause, the application of a disciplinary sanction to the prisoner, sanction which not only deprives him for a determined period of certain rights, as the right to receive and buy goods, the right to visit, but has influence in the further analysis of his behavior in the period of detention, in the sense that he is not taken to work or to certain educational or social activities, but especially to the analysis of cumulative meeting of the conditions for parole, we consider that the possibility of proposing and administering evidence directly in front of the court must be recognized to the prisoner.

Section III presents the second category of attributions of the surveillance judge, those administrative, respectively: grant of audiences to the freedom deprived persons, food refusal procedure, participation as president to the meetings of the parole commission, of the one regarding the change of the internment into a detention center or educational center measure with the daily assist measure, granting liberation from the educational or detention center or continuation of the execution of the freedom privative educational measure in penitentiary, granting notice for gathering biological samples, with the purpose of testing the convicted person, in the case that clues exist that he or she consumed stupefying substances, alcohol or toxic substances or had ingested without medical prescription medication likely to cause behavioral disorders, effectuation of controls at the detention places, other attributions (grant of notice regarding the opening and retention of correspondence, hearing of a detained person at the request of the court, resolution of the transfer claims in order to continue the execution of the punishment in other country).

The last section, IV, contains a series of considerations regarding the constitutionality of the activity of the surveillance judge of the deprivation of freedom.

Law no. 254/2013 regarding the execution of punishments and measures ordered by judicial bodies during the criminal trial, like the other legal regulations, was subject to the constitutionality control exercised by the Constitutional Court of Romania, as the supremacy of the Constitution, the direct application of its provisions and the constitutionalising of the law imposed improvements in all domains of the law, and especially in the one of the criminal law, confronted with the necessity of respecting the rights of freedom deprived persons.

From the analysis of the decisions regarding the unconstitutionality of some provisions of Law no. 254/2013, it is to be observed that the optics of the Constitutional Court regarding the special character of the punishments execution phase are kept, in which are not fully applicable the guarantees that the culprit benefits of in the course of the criminal trial. However, the court of judicial control itself recognizes a series of procedural rights to the

freedom deprived persons, as the right to be represented by a lawyer, to formulate contestation in front of a court, appreciating that the constitutional rights are not violated by the regulations of the procedures in front of the surveillance judge of the deprivation of freedom.

Although not very extensive, the jurisprudence of the Constitutional Court confirms the special regulation of the execution of freedom depriving punishments and measures, determined, on one hand by the importance of it in the ensemble of our society, in reaching the desideratum for which they were established and are applied by the courts the freedom privative sanctions, and, on the other hand, by the necessity of respecting the legal provisions, including those of the fundamental law of the state in the period in which the persons are held in detention.

The thesis ends with a series of final considerations and de lege ferenda proposals.

As it has been shown in the doctrine, in the phase of the punishments execution, the role of the surveillance judge of the deprivation of freedom highlights the relation between the judiciary power and the administration of punishments execution, between the enforcement of a definitive decision and the proceeding to the effective enforcement of the content of the warrant of execution[25].

By examining the attributions of the surveillance judge it is to be observed the intention of the legislator to ensure an immediate and efficient control, by a person who meets all conditions of independence and impartiality highlighted by the jurisprudence of t he European Court of Human Rights, regarding the observance of legal provisions in the matter of the execution of freedom privative punishments and educational measures.

Although the surveillance judge of the deprivation of freedom institution is not clearly definitive and regulated by the law, the existence of a person specialized in supervising and controlling the legality of the execution of freedom privative punishments and measures is imperiously necessary.

Without a rich history, as it exists in other european states, the institution of the judge specialized in supervising and controlling the execution of the freedom depriving punishments and measures earned in our legislation a well deserved place, in the present being inconceivable that the legality of the execution of freedom privative punishments and educational measures shall not be under his direct verification. His role firmly consolidates and expresses the position of the romanian legislator for an efficient control of the method in

[25] Ioan Chiș, Alexandru Bogdan Chiș, *Execution of criminal sanctions*, PublisherLegal Universe, Bucharest, 2015, p. 313.

which minor or adult persons deprived of freedom execute the freedom privative sanctions, in accordance with the legal provisions, in order to respect the rights in the period of detention.

For the first time in our legislation, the Law regarding the execution of freedom privative punishments and measures is followed by a Regulation organizing the activity of the surveillance judge of the deprivation of freedom, adopted by the Superior Council of Magistracy[26], through which it was realised the regulation in detail of the role and activity conducted by the surveillance judge of the deprivation of freedom.

The activity of the surveillance judge of the deprivation of freedom is regulated in detail by the Law no. 254/2013 and the Regulation organizing the activity of the surveillance judge of the deprivation of freedom, both delimiting the administrative-jurisdictional attributions of him from those administrative, expressly providing that the surveillance judge of the deprivation of freedom has only the attributions established by these two normative acts.

Although both the new legislation and especially the Regulation organizing the activity of the surveillance judge of the deprivation of freedom tried to cover the deficiencies observed in the judicial practice in the activity of the judges delegated for the execution of punishments (regulated by the previous law of punishments execution, Law no. 275/2006), in present it is to be noticed that there are aspects which are not concretely regulated or, although regulated, present incongruities, which determined a nonunitary jurisprudence and a difficulty in applying some of the legal provisions, both by the surveillance judges of the deprivation of freedom and the courts.

The de lege ferenda proposals which we understood to sustain regard, on one hand, the method of designation of the surveillance judge of the deprivation of freedom, the clear definition of his statute of magistrate-judge, and on the other hand the activity conducted by this judge. Also, we aimed that, through the formulated proposals, to contribute to the elimination of some existing inconsistencies regarding both the improper use of some terms and the settlement competences of the claims regarding the execution of punishments, at the level of the law of freedom privative punishments and educational measures execution and at the level of the Criminal procedure code.

So, exemplarily, we consider that in art. 8 para. 3 of Law no. 254/2013, should be provided, as a premise condition, that the concerned judge should have activated for at least on year in the function of deputy of the surveillance judge of the deprivation of freedom,

[26]Decision of the Superior Council of the Magistracy no. 89/2014for the approval of the Regulation organizing the activity of the surveillance judge of the deprivation of freedom, published in the Official Monitor no. 77 of 31 january 2014..

should have conducted the activity within the criminal section of the court or in panels with mixed specialization, civil-criminal, or should have participated in the last two years to one of the professional training courses organized by the National Institute of Magistracy in the criminal execution law specialization. Also, the designation of the surveillance judge of the deprivation of freedom should be realized by the section for judges within the Superior Council of Magistracy, through a decision, as a result of an interview, for a 3-year period, with the possibility of a one time reinvestment, regardless of the place of detention (penitentiary, retention and preventive arrest center, educational center or detention center) in which the surveillance judge had activated.

We consider that in the provisions referring to the complaints against the decisions of the disciplinary Commissions or against those regarding the restriction/violation of some rights, it should be made a reference to the detained person and not to the convicted person, as the prisoners which are not yet definitively convicted but are in penitentiary under preventive arrest can be disciplinarily sanctioned or can formulate complaints alleging the violation of some rights.

We also consider that for a thorough resolution of the complaints of the prisoners, it is imposed the mention in Law no. 254/2013 of the fact that its provisions add to those of the Criminal procedure code, which do not contravene to the special procedure regulated by this normative act.

In the end, we presented a vision of regulation of the surveillance judge of the deprivation of freedom institution, different from the one realized by the current legislation, in accordance with the provisions present in the legislations of other european states, that we consider to match better the purpose and role of this judge.

Thus, analyzing the activity conducted by judges in the phase of punishments execution in other european states, it is to be observed that in the respective countries, the surveillance judges of the freedom privative punishments execution conduct a judiciary activity, not an administrative-jurisdictional one, as it is the one regulated by the Law no. 254/2013 in our country, through the activity conducted by these being aimed that aspects regarding, for example, the protection of the rights of freedom deprived persons shall not be subject to an administrative control, but to a judicial one.

We consider, de lege ferenda, that at the level of the courts should be established a special section, regarding the execution of freedom privative punishments and educational measures, in the case of higher courts, or some panels specialized in this sense, at the courts with a reduced scheme of personnel. The judges that would be part of these sections/panels would be appointed similarly with the method in which are designated in present the

surveillance judges of the deprivation of freedom. As competences, the judges of execution would solve directly, in unique panel, the liberation before term of the convicts, the complaints of the prisoners against the decisions of the administration of the penitentiary regarding the rights or decisions of the commission for the establishment, individualization and change of the regime of execution of the freedom privative punishments, as judges of chair, with full jurisdiction in the matter of execution. Thus, these judges would not have administrative attributions anymore, in the sense of those in the present (the chairing of the parole commission), but would solve, as first court, all the complaints regarding the execution of some punishments or educational measures.

Considering the double degree of jurisdiction, held inclusively by the jurisprudence of the European Court of Human Rights, it can be provided that the decisions pronounced by these judges shall be attacked, with contestation, at the higher court, the Tribunal in which district is the place of detention, where it would also exist such a specialized subsection within the criminal section, regarding the execution of punishments.

Also, we consider that these judges/specialized panels could take the attributions that are accomplished in the present by the judges delegated to the offices of punishments execution, regarding the issuing of warrants of execution, the enforcement of freedom privative and non-privative educational measures, the supervision and control of the execution of punishments and of the other methods of freedom non-privative sanctioning (waiver of punishment application, postponing the punishment application, suspension under surveillance of the punishment execution, parole), in close relation with the Probation Service.

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30. Prison Act of 16 March 1976 (Federal Law Gazette Part I p. 581, 2088), as last amended by Article 7 of the Act of 25.04.2013 (Federal Law Gazette I p. 935), https://www.gesetze-im-internet.de/englisch_stvollzg/englisch_stvollzg.html

III. JURISPRUDENCE

III.1. Romanian jurisprudence

1. Curtea de Apel București, Minuta întâlnirii de practică judiciară din data de 23.06.2015 în materia executării pedepselor și a măsurilor preventive privative de libertate.

2. Curtea de Apel Constanța, Extras minută întâlnirea trimestrială a judecătorilor de supraveghere a privării de libertate din 19.03.2015.

3. Curtea de Apel Craiova, Minuta întâlnirii trimestriale din data de 12.12.2014 pentru discutarea problemelor ridicate de judecătorii de supraveghere a privării de libertate de la penitenciarele din raza Curții.

4. Curtea de Apel Craiova, Minuta întâlnirii trimestriale din data de 03.04.2015 pentru discutarea problemelor ridicate de judecătorii de supraveghere a privării de libertate de la penitenciarele din raza Curții.

5. Curtea de Apel Ploiești, Minuta privind discuțiile purtate la reuniunea trimestrială organizată în conformitate cu art. 53 alin. 1 din H.C.S.M. nr. 89/23.01.2014, privind probleme de drept controversate și de practică neunitară, sesizate de judecătorii de supraveghere a privării de libertate din cadrul Penitenciarelor Mărgineni, Ploiști, Găești și Târgșor în trimestrul II 2014.

6. Curtea de Apel Târgu Mureș, Minuta întâlnirii trimestriale a judecătorilor de supraveghere a privării de libertate din circumscripția Curții din data de 19.06.2015.

7. Decizia Curții Constituționale nr. 222 din 02 aprilie 2015 referitoare la admiterea excepției de neconstituționalitate a dispozițiilor art. 69 alin. 1 lit. b) și ale art. 110 alin. 1 lit. b) din Legea nr. 254/2013 privind executarea pedepselor și a măsurilor privative de libertate dispuse de organele judiciare în cursul procesului penal, publicată în Monitorul Oficial al României nr. 380 din 02 iunie 2015.

8. Decizia I.C.C.J. nr. 18 din 15 septembrie 2014 pentru dezlegarea de principiu a unei chestiuni de drept publicată în Monitorul Oficial nr. 775 din 24 octombrie 2014.

9. Decizia nr. 60 din 15 mai 1994 privind excepţia de neconstituţionalitate a dispoziţiilor art. 149 alin. 3 din Codul de procedură penală, definitivă prin Decizia nr. 20 din 15 februarie 1995, ambele publicate în Monitorul Oficial nr. 57 din 28 martie 1995.

10. Decizia penală nr. 142/10.07.2013 a Curţii de Apel Timișoara, secția penală, nepublicată.

11. Încheierea nr. 1013 din data de 15.09.2015 a judecătorului de supraveghere a privării de libertate la Penitenciarul Rahova (dosar nr. 1113/2015), nepublicată.

12. Încheierea nr. 1031 din data de 18.09.2015 a judecătorului de supraveghere a privării de libertate la Penitenciarul Rahova (dosar 1137/2015), nepublicată.

13. Încheierea nr. 1085 din data de 03.10.2014 (dosar nr. 1043/2014) a judecătorului de supraveghere a privării de libertate la Penitenciarul Galați, nepublicată.

14. Încheierea nr. 1089 din data de 03.10.2014 a judecătorului de supraveghere a privării de libertate din cadrul Penitenciarului Galați, în dosarul nr. 1047/2014, nepublicată

15. Încheierea nr. 1096 din data de 06.10.2014, pronunţată de judecătorul de supraveghere a privării de libertate la Penitenciarul Galați, în dosarul nr. 1002/2014, menținută prin sentința penală nr. 2685 din 15.12.2014 a Judecătoriei Galați (dosar nr. 20909/233/2014), nepublicate.

16. Încheierea nr. 1151 din data de 20.10.2014 , pronunţată de judecătorul de supraveghere a privării de libertate la Penitenciarul Galați, în dosarul nr. 1112/2014, nepublicată.

17. Încheierea nr. 1157 din data de 13.10.2015 a judecătorului de supraveghere a privării de libertate la Penitenciarul Rahova (dosar nr. 1356/2015), nepublicată.

18. Încheierea nr. 1204 din data de 11.11.2014 a judecătorului de supraveghere a privării de libertate la Penitenciarul Galați (dosar nr. 1172/2014), nepublicată.

19. Încheierea nr. 1209 din data de 12.11.2014 a judecătorului de supraveghere a privării de libertate din cadrul Penitenciarului Galați, în dosarul nr. 1169/2014, nepublicată.

20. Încheierea nr. 216 din data de 20.03.2015 (dosar nr. 212/2015) a judecătorului de supraveghere a privării de libertate la Penitenciarul Galați, nepublicată.

21. Încheierea nr. 389/05.11.2015 a judecătorului de supraveghere a privării de libertate la Penitenciarul Ploieşti (dosar nr. 375/2015), nepublicată.

22. Încheierea nr. 39 din 07.04.2016 a judecătorului de supraveghere a privării de libertate la Penitenciarul pentru femei Târgșor (dosar nr. 41/2016), nepublicată.

23. Încheierea nr. 460 din data de 10.11.2015 a judecătorului de supraveghere a privării de libertate la Penitenciarul Miercurea Ciuc (dosar nr. 460/2015), nepublicată,

24. Încheierea nr. 494 din data de 28.05.2015 (dosar nr. 486/2015) a judecătorului de supraveghere a privării de libertate la Penitenciarul Galați, nepublicată.

25. Încheierea nr. 78 din data de 18.02.2016, a judecătorului de supraveghere a privării de libertate la Penitenciarului Ploieşti (58/2016), nepublicată,

26. Încheierea nr. 8 din 08.01.2016 a judecătorului de supraveghere a privării de libertate la Penitenciarul Ploiești, nepublicată.

27. Încheierea nr. 844 din data de 11.09.2015 (dosar nr. 841/2015) a judecătorului de supraveghere a privării de libertate la Penitenciarul Galați, nepublicată.

28. Încheierea nr. 956 din data de 07.09.2015, a judecătorului de supraveghere a privării de libertate la Penitenciarului Rahova (dosar nr. 950/2015), nepublicată;

29. Încheierea nr. 959 din data de 07.09.2015, a judecătorului de supraveghere a privării de libertate la Penitenciarului Rahova (dosar nr. 1033/2015), nepublicată.

30. Încheierea nr. 966 din data de 08.09.2015, a judecătorului de supraveghere a privării de libertate la Penitenciarului Rahova (dosar nr. 1046/2015), nepublicată.

31. Încheierea nr. 428/25.06.2015 a judecătorului de supraveghere a privării de libertate la Penitenciarul Bucureşti Jilava (dosar nr. 173/2015), nepublicată.

32. Încheierea nr. 758/16.10.2015 a judecătorului de supraveghere a privării de libertate la Penitenciarul Bucureşti Jilava (dosar nr. 599/2015), nepublicată.

33. Întâlnirea de practică neunitară a judecătorilor din cadrul Curții de Apel București, din noiembrie 2015.

34. Sentința penală nr. 1046 din 07.05.2015 a Judecătoriei Sectorului 4 București (dosar nr. 3876/4/2015), nepublicată.

35. Sentința penală nr. 1141 din 22.07.2015 a Judecătoriei Galați (dosar nr. 12781/233/2015), nepublicată.

36. Sentința penală nr. 1154 din 26.06.2015 a Judecătoriei Brașov (dosar nr. 10526/197/2015), nepublicată.

37. Sentința penală nr. 1155 din 26.05.2015 a Judecătoriei Brașov (dosar nr.9538/197/2015), nepublicată.

38. Sentința penală nr. 1248 din 18.06.2014 a Judecătoriei Miercurea Ciuc (dosar nr. 997/258/2014), nepublicată.

39. Sentința penală nr. 1345/14.04.2014 a Judecătoriei Brăila, secția penală, nepublicată.

40. Sentința penală nr. 1360 din 10.09.2015 a Judecătoriei Galați (dosar nr. 15366/233/2015), nepublicată.

41. Sentința penală nr. 1367 din 10.09.2015 a Judecătoriei Galaţi (dosar penal nr. 16150/233/2015), nepublicată.

42. Sentința penală nr. 1407 din 09.06.2016 a Judecătoriei Ploieşti (dosar nr. 9978/281/2016), nepublicată.

43. Sentința penală nr. 1728 din 26.10.2015 a Judecătoriei Galați (dosar nr. 12953/233/2015), nepublicată.

44. Sentința penală nr. 1877 din 16.11.2015 a Judecătoriei Galați (dosar nr.19253/233/2015), nepublicată

45. Sentința penală nr. 1880 din 16.11.2015 a Judecătoriei Galați (dosar nr.20056/233/2015), nepublicată.

46. Sentința penală nr. 193 din 06.11.2014 a Judecătoriei Târgu Bujor, nepublicată.

47. Sentința penală nr. 247 din 01.02.2014 a Judecătoriei Brașov, nepublicată.

48. Sentinţa penală nr. 2484/27.11.2014 a Judecătoriei Bacău, secția penală, nepublicată.

49. Sentința penală nr. 2663 din 12.12.2014 a Judecătoriei Galați (dosar nr.22184/233/2014), nepublicată.

50. Sentința penală nr. 2666 din 12.12.2014 a Judecătoriei Galați, dosar nr. 21131/233/2014), nepublicată.

51. Sentința penală nr. 2685 din 15.12.2014 a Judecătoriei Galați (dosar nr. 20909/233/2014), nepublicată.

52. Sentința penală nr. 2717 din 17.12.2014 a Judecătoriei Galați (dosar nr. 23533/233/2014), nepublicată.

53. Sentința penală nr. 301 din 18.02.1016 a Judecătoriei Brașov (dosar nr.27712/197/2015), nepublicată.

54. Sentința penală nr. 32 din 10.01.2015 a Judecătoriei Galați (dosar nr. 16657/233/2014), nepublicată.

55. Sentința penală nr. 333/09.05.2014 a Tribunalului Brăila, secția penală, nepublicată.

56. Sentința penală nr. 346/23.05.2014 a Tribunalului Brăila, secția penală, nepublicată.

57. Sentința penală nr. 366 din 31.03.2015 a Judecătoriei Miercurea Ciuc (dosar nr. 136/258/2015), nepublicată.

58. Sentința penală nr. 407 din 14.04.2014 a Judecătoriei Onești, nepublicată.

59. Sentința penală nr. 442 din 27.03.2015 a Judecătoriei Galați (dosar nr. 3571/233/2015), nepublicată.

60. Sentința penală nr. 4421 din 22.12.2014 a Judecătoriei Sectorului 4 București (dosar nr. 35028/4/2014), nepublicată.

61. Sentința penală nr. 451 din 28.04.2014 a Judecătoriei Onești, nepublicată.

62. Sentința penală nr. 516 din 17.03.2016 a Judecătoriei Brașov (dosar nr. 2044/197/2016), nepublicată.

63. Sentința penală nr. 679 din 10.03.2016 a Judecătoriei Sectorului 4 București (dosar nr. 3916/4/2016), nepublicată.

64. Sentința penală nr. 767 din 22.03.2016 a Judecătoriei Sectorului 4 București (dosar nr. 2383/4/2016), nepublicată.

65. Sentința penală nr. 803 din 24.03.2016 a Judecătoriei Sectorului 4 București (dosar nr. 3919/4/2016), nepublicată.

66. Sentința penală nr. 804 din 24.03.2016 a Judecătoriei Sectorului 4 București (dosar nr. 4122/4/2016), nepublicată.

67. Sentința penală nr. 809 din 27.10.2014 a Judecătoriei Onești, nepublicată,

68. Sentința penală nr. 826 din 09.04.2015 a Judecătoriei Botoșani, nepublicată.

69. Sentința penală nr. 844 din 03.06.2015 a Judecătoriei Galați, secția penală, definitivă prin neapelare la data de 16.06.2015, nepublicată.

70. Sentința penală nr. 848 din 03.06.2015 a Judecătoriei Galați (dosar nr. 6683/233/2015), nepublicată.

71. Sentința penală nr. 938 din 26.04.2016 a Judecătoriei Sectorului 5 București (dosar nr. 3975/302/2016), nepublicată.

72. Sentința penală nr. 939 din 26.04.2016 a Judecătoriei Sectorului 5 București (dosar nr. 4287/302/2016), nepublicată

73. Sentința penală nr. 940 din 26.04.2016 a Judecătoriei Sectorului 5 București (dosar nr. 4288/302/2016), nepublicată.

74. Sentința penală nr. 944 din 26.04.2016 a Judecătoriei Sectorului 5 București (dosar nr. 4709/302/2016), nepublicată.

75. Sentinţa penală nr. 1725 din 14.07.2015 a Judecătoriei Sectorului 4 Bucureşti (dosar nr. 24637/4/2015), nepublicată.

76. Sentinţa penală nr. 3065 din 17.12.2015 a Judecătoriei Sectorului 4 Bucureşti (dosar nr. 38526/4/2015), nepublicată

77. Sentința penală nr. 945 din 26.04.2016 a Judecătoriei Sectorului 5 București (dosar nr. 4710/302/2016), nepublicată.

78. Tribunalul București, secția I-a penală, sentința penală nr. 100/12.02.2013, definitivă prin decizia penală nr. 247/17.10.2013 a Curții de Apel București, secția I penală, nepublicată.

79. Tribunalul Constanța, secția penală, sentința penală nr. 227 din 22.06.2015, nedefinitivă, nepublicată.

III.2. Foreign jurisprudence

1. CEDO, hotărârea Calmanovici contra României, hotărârea din 01 iulie 2008 (Cererea nr. 42250/02),www.csm1909.ro/csm/linkuri/22_01_2009__20301_ro.doc.

2. CEDO, hotărârea *Contrada contra Italiei (1998),*

3. CEDO, hotărârea din 04 decembrie 1979, Cauza Schiesser contra Elveţiei, www.csm1909.ro/csm/linkuri/25_04_2013_55589_ro.doc

4. CEDO, hotărârea din 06.11.1980, Cauza Guazzardi contra Italiei.

5. CEDO, hotărârea din 13 decembrie 1978, Cauza X contra Germaniei, http://hudoc.echr.coe.int.

6. CEDO, hotărârea din 16 octombrie 2001, Cauza O,Hara contra Marii Britanii, http://hudoc.echr.coe.int/fre?i=001-59721#{%22itemid%22:[%22001-59721%22]}

7. CEDO, hotărârea din 20 ianuarie 2008, Cauza Saadi contra Marii Britanii, www.echr.coe.int/Documents/COUREDH-2012-Guide_on_article_5_eng.pdf

8. CEDO, hotărârea din 22 octombrie 1997, Cauza Erdagoz contra Turcia, www.echr.coe.int/Documents/COUREDH-2012-Guide_on_article_5_eng.pdf

9. CEDO, hotărârea din 25.11.2003, Cauza Vasileva contra Danemarcei, paragraf 36, ww.echr.coe.int/Documents/COUREDH-2012-Guide_on_article_5_eng.pdf

10. CEDO, hotărârea din 25.11.2003, Cauza Vasileva contra Danemarcei, paragraf 38, www.echr.coe.int/Documents/COUREDH-2012-Guide_on_article_5_eng.pdf, CEDO, hotărârea din 24.03.2005, Cauza Epple contra Germaniei, paragraf 37, www.echr.coe.int/Documents/COUREDH-2012-Guide_on_article_5_eng.pdf

11. CEDO, hotărârea din 30 august 1990, Cauza Fox, Campbell şi Hartley contra Marii Britanii, www.echr.coe.int/Documents/COUREDH-2012-Guide_on_article_5_eng.pdf

12. CEDO, hotărârea Eugen Gabriel Radu contra României, hotărârea din 13 octombrie 2009.

13. CEDO, hotărârea Goh contra României, hotărârea din 21 iunie 2011 (Cererea nr. 9.643/03).

14. CEDO, hotărâreaKemmache contra Franţei (1991).

15. CEDO, hotărârea Marian Chiriță contra României, hotărârea din 21 octombrie 2014 (Application no. 9443/10), http://www.juridice.ro/wp-content/uploads/2014/10/CASE-OF-MARIAN-CHIRITA-v.-ROMANIA.pdf.

16. CEDO, hotărârea *Nikolova contra Bulgariei (2004).*

17. CEDO, hotărârea *Pantano contra Italiei (2003).*

18. CEDO, hotărârea Pantea contra României din 3 iunie 2003, publicată în Monitorul oficial nr. 1150 din 6 decembrie 2004.

19. CEDO, hotărârea Petra împotriva României, Hotărârea nr. 1 din 23 septembrie 1998, publicată în Monitorul Oficial 637 din 27 decembrie 1999.

20. CEDO, hotărârea Silvestru Cotlet împotriva României, Hotărârea din 3 iunie 2003, publicată în Monitorul Oficial nr. 422 din 19 mai 2005.

21. CEDO, hotărârea Stogmuller contra Austriei (1969).

22. CEDO, hotărârea Letellier contra Franței (1991).

23. CEDO, hotărâreaVasilescu contra României din 22 mai 1998, publicată în Monitorul oficial nr. 637 din 27 decembrie 1999.