

**„NICOLAE TITULESCU” UNIVERSITY
THE FACULTY OF LAW
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Summary

PhD Thesis

**Theoretical legal and organizational aspects regarding medical assistance
during the execution of criminal law sanctions**

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Human rights are natural rights acquired by every person at birth, regardless of racial, ethnic, religious, gender, language, political opinion or any other requirements. They are based on fundamental values such as life and human dignity, integrity, equality, freedom, etc. Implicitly, the right to life and physical and mental integrity, is completed with the right to health care, a right transposed in the Romanian Constitution by the provisions of art. 34.

Even if the company identifies solutions, so that each deed provided by the criminal law corresponds to a sanction, a corroboration is required with the rest of the fundamental principles of criminal law that focus on the needs of the person who committed the criminal act.

Healthcare must be a guaranteed right of all people, regardless of their status. Ensuring quality medical care in accordance with the physical and mental needs of an individual is, in fact, protecting society from possible states of danger that a sick person can generate. The applicability of this form of organization must be found, especially, in the case of persons who have committed a crime and for whom the state has ordered, in various forms, the execution of criminal sanctions.

Central subject of the thesis entitled „ *Theoretical legal and organizational medical care during the execution of criminal sanctions* ” , aims to analyze, in terms of legislation, an area less known and evaluated by the literature in Romania . This is a topic of major interest, both in terms of the situation of cases pending in national and international courts, and the subjective level conferred by the media.

At the same time, the research paper has, as a secondary objective, both the provision of statistics on the organizational structure of the medical field in the custodial system, and the conclusions established following the application of investigative tools. They were used by questioning a group of detainees and another staff member, in order to identify measures to ensure the efficient functioning of the medical system which has the task of ensuring the right to health care for persons deprived of their liberty.

Scientific research mainly addresses national legislation, the legal provisions of which overlap with issues related to the way in which healthcare is provided in the case of the application of criminal law sanctions. At the same time, it undertakes an analysis of international recommendations on the treatment of detainees and evaluates aspects of comparative law.

Based on "*the principle of humanism*", which implies that regulate criminal must consider the interests of fundamental human rights and the penalty must have a human character, the main purpose of the thesis and is to provide a scientific research complex in execution of criminal sanctions, aiming to identify their effects on how to provide health care.

In this context, the exercise of the right to health care, during the execution of sanctions and non-custodial measures, was analyzed in terms of legislative implications and ways of medical intervention.

The paper is structured in two parts:

- *Part I* - Legal and organizational instruments in the application of medical matters established in the application of sanctions and non-custodial measures
- *Part II* - Legal and organizational instruments in the application of medical matters instituted in the application of custodial measures

Part I addresses the issue of medical issues established in the application of sanctions and non-custodial measures and is structured in sections and chapters as follows:

- **Section I** - *General notions on sanctions and non-custodial measures* - makes a brief history of the emergence and evolution of non-custodial measures, addressing the scope of European recommendations in this area. It also addresses the legislative framework with reference to the modalities of medical intervention during the execution of sanctions and non-custodial measures. In this context, the medical regulations stipulated in *Law no. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by legal bodies during criminal proceedings* are analyzed in stages , with reference to supervising the execution of other

obligations regarding control, treatment or medical care measures. Among other things, a presentation is made of the activity of the judge delegated with the execution, regarding the application of the obligation regarding the submission to the measures of control, treatment and medical care and of the activity of the probation counselor. At the same time, the legal regime of the performance of unpaid work for the benefit of the community and the status of the convicted person in the process of unpaid work are analyzed. During the research, vulnerabilities were identified in the application of these obligations and inconsistencies between the organic law and the special law in the field of health and safety at work; requiring, in this section, the submission of a proposal *for a ferenda law* to clarify the exercise of medical procedures in the field of legislation on the execution of sentences, educational measures and other non-custodial measures ordered by the judiciary during criminal proceedings .

- **Section II - *Implementation of medical safety measures*** . This section follows the evolution of medical safety measures, identifying the regulatory framework of the safety measure regarding the obligation to medical treatment provided in art.109 C. pen. and the conditions of medical hospitalization according to art.110 C. pen. Also, there is a presentation of the organization and operation of psychiatric hospitals and safety measures under the coordination of the Ministry of Health. Being identified legislative gaps in the regulation of the supervision of the person subject to the obligation of medical hospitalization, a section *ferenda* proposal is formulated in this section to clarify the manner of application of special medical safety measures for convicted persons based on the provisions of art. 109 and art. 110 Penal Code.

- **Section III - *Postponement of the execution of imprisonment or life imprisonment for medical reasons*** , identifies the legislative framework and the procedural procedure performed in the forensic commissions.

Part II presents the main aspects related to the organization of health care in the penitentiary system. Thus, the sections relating to this title highlight the following aspects:

- **Section IV of - *Opinions regarding the state of detention***. Starting from the definition of the notion of imprisonment, this section analyzes the standards and provisions that regulate the rights of persons deprived of liberty to health

care. Thus, the normative acts issued before 2006 and the national legislative context regarding the provision of medical care in the penitentiary system, starting with 2006 and until the current year 2020, are subject to analysis.

- **Section V** is intended for the analysis of the system of organization of health care in penitentiaries, being presented aspects related to: the health network of the National Administration of Penitentiaries, the current conditions of organization of health care in penitentiaries, staff standards for providing health care. At the same time, case studies are presented regarding the different interpretation of the legislation by the structures of the National Administration of Penitentiaries.

- **Section VI a** - In this section are examined comparative aspects regarding the provision of medical assistance in the Romanian penitentiary system to the public health network, being addressed mainly the legal provisions that interfere between the two systems.

- **Section VII** - *Organizational instruments on the provision of healthcare in European prisons* - presents organizational aspects of the health care system for persons detained in: Scotland, Malta, Belgium, Latvia, Lithuania, the Netherlands, Sweden, Slovakia, the United Kingdom, Switzerland, Germany and Norway .

- **Section VIII a** - *Relevant aspects of judicial practice regarding the provision of medical care to detainees* . In this section, the decisions of the judges supervising the deprivation of liberty for the execution of custodial sentences or the decisions of the courts regarding the observance of the right to medical assistance were analyzed .

- **Section IX** - *European Union control instruments in the field of conditions of detention and the protection of persons deprived of their liberty*. In terms of regulations on European Prison Rules, this section sets out the European Union's control methods and in particular the role of *the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, which aims to respect the right to health care for detainees.

Section X - *Measures for the integration of the specific features of the way of providing medical assistance to persons deprived of their liberty* .

Services medical provides medical care to persons detained / arrested / convicted, should be a very important sector for the country as people concerned originates mostly from disadvantaged backgrounds, whose care is most or neglected.

Compared to the period of detention, health risks may be exacerbated by inadequate conditions, such as overcrowding, lack of fresh air and natural light, inadequate hygienic-sanitary conditions or personal hygiene materials. At the same time, it can be highlighted the situation in which deprivation of liberty provides access to health services for persons who, prior to the measure of deprivation of liberty, did not have health insurance, and their access to health care in the public health network was reduced.

Thus, regardless of the form of administration and provision of medical services, medical care for persons in custody must be addressed in the light of the provisions of the United Nations Minimum Rules for the Treatment of Prisoners and the Recommendations of the Committee of Ministers of the Member States on Prison Rules. European R (2006) 2, which are based on the principle of equity in access to quality health care.

Considering that, regardless of the ministry responsible for respecting the right to health of persons deprived of their liberty, the state must ensure both the necessary human and material resources and the professional independence of medical staff for a successful medical system at the level of detention units. actions are required to ensure:

- ↻ adequate financing of medical activities;
- ↻ development of medical infrastructure;
- ↻ ensuring the necessary human resources and material base;
- ↻ development of disease prevention programs, hygienic-sanitary education;
- ↻ increasing the state's responsibility for managing serious mental health problems presented by detainees.

Considering the need to ensure healthcare similar health network public this exposure, submit proposal of a new law integration particularities modality medical assistance for persoanel is imprisoned in health legislation national, proposal concluded scientific paper.

Scientific research has materialized through several research methods starting from the method of documentary analysis used by the study and collection of information, from national and international legislation, and from the literature. For the research we used both primary sources (treaties, conventions, reports) and secondary research sources, in the form of articles and specialized papers.

Also, the procedures used by:

- a) Logical method - by rational interpretation of legal provisions;
- b) The historical method - the evolutionary research of the sanctions of criminal law and of the right to medical assistance;
- c) Comparative method - by establishing similarities and differences between different legal aspects;
- d) Quantitative research method - put into practice by the questionnaire technique.

The conclusions of the scientific research set out the reasons for the malfunctions identified, during the research, in the way of providing medical assistance for persons sentenced to non-custodial measures, medical security measures or custodial sentences.

The dysfunctions identified during the research, in the way of providing medical assistance for persons sentenced to non-custodial measures, medical security measures or custodial sentences, also result from the lack of adaptation or correlation of national health regulations to the specifics of this system of measures established by state, against persons who commit criminal acts. In addition, in the case of patients in the penitentiary system, the situation of legislative interpretations regarding the use of funds allocated by the health insurance company, as well as the major shortage of medical staff employed in the penitentiary system due to the lack of attractiveness of these positions. The consequences of not providing medical care or inadequate care can also lead to irreversible damage to health, or in more serious cases, by not providing the necessary medicines even to the loss of life, which can always attract the responsibility of the state.

The result of the research highlights the need to create, for the medical assistance provided to the persons under the effect of the execution of non-custodial measures,

respectively of those deprived of liberty, of a unique, distinct legislative framework, compared to the national sanitary legislation .

In this context, we consider that thesis ,, *Theoretical legal and organizational medical care during the execution of criminal sanctions* " is the first scientific research that addresses all medical issues that interfere with the application of criminal sanctions, thus attracting the interest of both academically as well as practically .