

**”NICOLAE TITULESCU” UNIVERSITY BUCUHAREST
FACULTY OF LAW
DOCTORAL SCHOOL**

**Summary
THESIS
THE PROTECTION OF FAMILY LIFE OF THE PERSON
DEPRIVED OF LIBERTY**

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The existence of perpetrators is a reality that does not need to be demonstrated, just as the existence of detention units is the way to exclude disruptive elements from society.

The purpose of imprisoning the convicts is to punish them for the crime that they committed, but also to correct their negative impulses, in order to release into society a transformed person who is able to respect the rules of conduct so necessary in a society.

The human, as an entity, lives and evolves in groups, larger or smaller, connected to each other by blood ties or sentimental ties. The identification of an individual is achieved both through their own activities, their own feelings, but also through the family environment from which they come. The family environment represents the development framework of the individual, being the one that impresses first of all on the person the knowledge about life, society and rules of conduct.

Not infrequently, in the situation of inappropriate behavior, the person's relationship to his own family makes him feel the burden of guilt, shame, helplessness. Relationships within a group (family) are in most cases based on feelings of love and understanding, and in the situation where one of the family members has a behavior as a result of which he is locked in a prison, the family balance is broken and the consequences are being negative in both directions.

These consequences can lead to negative effects in the behavior of the future detainee, which will manifest itself in acts of repression, in aggressive behavior, which can only lead to the aggravation of his situation in the detention unit.

So it is necessary to identify different measures to sanction the person who had a criminal behavior in order to successfully resocialize and maintain the family balance, so necessary for the development of the individual and his family members.

Thus, **the object** of this paper is the analysis of the rights of the detainee in relation to family relationships, the effects of the detainee's lack of family life, comparison of the content of these rights with those regulated in other states, and analysis of the notion of family, to find those methods that can lead to the maintenance of the detainee's family ties, which are essential for both him and his family.

The innovation of the analysis carried out during the work is given by the fact that so far no legislative solutions have been found at the level of legislative regulations in order to personalized the sentences applied to convicts, punishments that can follow the effects produced in the convict's family and life, through whom all the functions of the punishment can be achieved, so that at the end of the execution of the punishment, a completely "healed" individual is obtained.

Regarding *the structure of this paper*, we appreciated that it is necessary to divide into two large segments, in order to properly highlight all the aspects that can lead to the desired results.

The first part, consisting of two chapters, aims to present the general considerations regarding the person deprived of liberty and his family as well as the legal and international provisions regarding the right of the detainee to keep in touch with his family.

Chapter I aims to present the general considerations regarding the person deprived of liberty and his family, this chapter being composed of 7 subchapters.

In *the first subchapter* we considered important to mention the moment of the notion of rights of convicted persons as well as their evolution from the moment of appearance until now, with emphasis on those rights that allow the detainee to keep in touch with the family.

At the same time, in *the second subchapter* we presented the constitutional provisions that regulate the family and the principles that protect family life, in order to find the anchors necessary for our scientific approach.

Subchapter 3 deals with the similarities and differences between Canadian and European provisions, in the desire to improve the existing measures in European legislation.

Next, in *subchapter 4*, we appreciated that a comparison between the rights of the person deprived of liberty aimed at maintaining the connection with the family, provided in the legislation of some European states, allows us to discover the ideas that can lead to our goal.

In the activity of identifying effective measures to protect the family life of the detainee and his successful resocialization, we considered it necessary to analyze the activity carried out by specialists who come into direct contact with detainees and who carry out their activity in this area, resocialization the person deprived of liberty and his connection with the family.

Because among the specialists who carry out daily activity of behavioral recovery of detainees, there are also representatives of religious institutions and given the strong influence of religions on society and its members, we considered that is necessary to present the influence of the Church and bodies involved in protection of the family on the life of the person deprived of liberty, in an independent chapter.

Therefore, in *the 5th subchapter* we analyzed the activity carried out by priests/representatives of the cult units within the penitentiary units, as well as the legislative regulations that allow the penetration of the representatives of different religions in the detention units for providing moral support and trying to correct behaviors of the detainees.

In the same way, in *the 6th subchapter* we analyzed the activity of the social worker, the psychologist, the educator, the probation counselor regarding the detainee and the attributions of these specialists in maintaining the connection of the incarcerated person with his family.

At the end of Chapter I, in *Subchapter 7*, we analyzed the treatment applied to persons deprived of liberty regarding the connection with the outside world according to sex, age, social category, penitentiary regimes, and penalties applied, highlighting the differences in certain categories.

Chapter II is entitled "Systematic analysis of the penitentiary system and its impact on the life of the person deprived of liberty and his family" and consists of 7 subchapters.

The first subchapter highlights the notions of family, marriage and kinship, by presenting the close ties that are born between individuals, as well as the types of families and their functions.

Related to the object of the research was the need to perform an analysis on the consequences of the lack of parents in the lives of children, activity that made the subject of *subchapter 2*.

At the same time, in *the 3rd subchapter*, the effects of incarceration on family life were highlighted, by presenting the impact on children's development as well as the relationship of family members with society, with emphasis on its image in the public sphere.

Subchapter 4 was dedicated to the presentation of the rights of detainees in Romanian penitentiaries, according to the legislation in force, namely those rights aimed to maintaining ties with the family.

The analysis of the family life of the person deprived of liberty could not be carried out without entering the penitentiary environment and identifying the categories of detainees according to education, confession, criminal record and maintaining the connection with the family, activity presented during *subchapter 5*, in order to identify the effects between the detainee's behavior and his connection with the family.

Subchapter 6 was dedicated to the interpretation and highlighting of the role of the family in the resocialization of persons deprived of liberty, an activity necessary in order to formulate concrete proposals to improve the legislative framework and the situation of convicts.

In the final part of the second chapter, in *the 7th subchapter* we analyzed the National Strategy for the social reintegration of persons deprived of liberty, 2020 - 2024, which, through its objectives, highlights the need for community involvement in the activity of resocialization also indicating the need to maintain the connection of the detainee / former convict with his family.

The second part of the paper, which in turn consists of two chapters, chapters III and IV, contains the results obtained by applying questionnaires, in order to identify the opinion of the subjects under analysis, both detainees and students, an opinion that represents the foundation of the formulated proposals.

Chapter III concerns the results of the application of the questionnaires to the persons deprived of liberty as well as to the students from the Faculty of Law of the “Nicolae Titulescu” University and their interpretation.

This chapter represents the foundation of the proposals that aimed to change the methods of sanctioning detainees as well as the methods of resocialization.

The analysis was carried out in *two subchapters*, the first was the opinion of the free members of the society, and the second subchapter aiming at the opinion of the detainees.

Following the analysis carried out in Chapter III, we presented the proposals to reduce the social and psycho-emotional impact of incarceration on the family life of the detainee, presentation made in **Chapter IV**.

The proposals targeted both the person in the process of criminal proceedings and the person deprived of liberty.

Following the scientific approach, we identified **methods to help maintain the links between the detainee and his family**, which would achieve a true resocialization of the person deprived of liberty.

In establishing the measures, we took into account *the three phases of the criminal process, namely the criminal investigation, the trial and the execution of the sentence*.

Throughout this paper we have highlighted the need to maintain a close relationship between people who have deviated from the rules of social coexistence, violating criminal rules, and their families, arguing that the real change can only come when it concerns both the person who committed a criminal act as well as the environment from which it comes.

We wanted to present the proposals which, in our opinion, lead both to the prevention of new crimes and to the avoidance of “contamination” of the offender with the penitentiary environment, without considering that the list is exhaustive.

The identified measures provide primarily the active involvement of public institutions, volunteers and specialists in various fields in order to successfully identify problems and solve them.

We thus appreciate that, once the criminal action is initiated, it is opportune to start researching the aspects regarding the life and family environment of the investigated person.

By carrying out in parallel both the criminal investigation activity and the investigation activity of the defendant's family environment, the entire picture of the commission of the crime can be revealed in an extended manner.

In order to carry out these activities, it is necessary to create institutions that aim to form the "**family file**" of the person who is being investigated criminally.

In order to carry out the activity of checking and identifying the defendant's family and life situation, which will be called "**family investigation**", we consider that it is necessary to involve several bodies that have responsibilities in the proper functioning of society.

The moment of starting the family investigation must be the moment of initiating the criminal action by the prosecutor, who by the ordinance of initiating the criminal action will also order the beginning of the family investigation of the defendant.

The body that will carry out the family investigation will have, at national level, the status of general directorate that will function within the Ministry of Justice, similar to the National Probation Directorate, under the title of the **National Directorate of Assistance and Supervision of Family and Persons who committed Crimes**, and at local level it will function next to the county councils, respectively the local councils where a service with these competencies will be set up, but under the direct coordination of the national directorate.

The new institution will consist of specialists in the field of social assistance, psychologists, probation counselors, educators and priests who through activities specific to the field of activity can identify existing problems in the defendant's family, living environment and concepts of the defendant and his family.

The indicated specialists will draw up, according to their own competencies, reports containing the reality of the defendant's family situation and his personal situation.

Following the analysis of the aspects identified on any of the levels pursued by the indicated specialists, measures will be proposed, which will form **the family file** that the court should take into account when judging the case.

In the **criminal investigation phase**, if the prosecutor orders *the waiver of the criminal investigation*, he will also order the measures proposed by the commission in the family file, and will send to the judge of the preliminary chamber the orders and the family file.

So if the preliminary chamber judge confirms the ordinance of waiving the criminal investigation, he will also rule on the measures ordered by the prosecutor regarding the family file.

At the same time, in case the solution pronounced by the prosecutor in resolving the case is *the closing of the case*, the prosecutor will notify the judge of the preliminary chamber, within the competent court to judge the case on the merits,

requesting either the taking of measures or some of the measures proposed by the commission or the rejection of the measures mentioned by the commission when, following the analysis of the family file, the prosecutor considers that it is not necessary to take these measures, remaining in the task of the judge of the preliminary chamber to rule on the notified ones.

In case the prosecutor issues an *indictment* ordering the sending to court, he, together with sending the criminal file, will also send the family file, remaining for the court to rule on the case considering both files.

In **the preliminary chamber phase**, the judge of the preliminary chamber will be invested both in the situation of ordering the closed of the case and in the situation of ordering the waiver of the criminal investigation, with the settlement of the family file of the person against whom the waiver or dismissal was ordered.

In case of admission of the proposals, the period in which the obligations and the ordered measures will be fulfilled will be established and this cannot be less than 1 year and 6 months.

We consider that if the case has been closed, a measure that does not need to be confirmed by the preliminary chamber judge, the person against whom the file was closed will lose his status as defendant, so that before the preliminary chamber judge he will have had a new quality of **assisted person**.

The new quality of the person against whom the file was closed offers the possibility to the institutions involved to order measures and to establish obligations in his task in order to prevent the commission of crimes.

The content of the measures proposed by the commission will target the activity to be carried out by the defendant / assisted person and / or his family as well as the institutions that will be involved in fulfilling and supervising the realization by the defendant / assisted person of the obligations.

Cu titlul de exemplificare vom menționa ca obligații care pot fi propuse de către comisie, următoarele:

As an example, we will mention as obligations that can be proposed by the commission, the following:

- Carrying out professional qualification courses or school preparation courses according to the educational program provided by the Ministry of National Education, respectively according to the abilities of the defendant / assisted person and / or his family identified by the commission;
- Participation in psychological and / or psychiatric counseling sessions, and possibly medical hospitalization in case of detecting diseases that may affect the discernment of the defendant / assisted person;
- Involvement of the defendant / assisted person in the life of his / her family through constant participation in family activities and in the education of minors;

- Inclusion of the defendant / assisted person in the existing lists at the level of the National Agency for Employment, existing at the level of each county and of the municipality of Bucharest;
- - Involvement of the defendant / assisted person in unpaid work activities for the benefit of the community to raise awareness of the importance of increasing social awareness and the constant need for help;
- - In particular cases where the defendant / assisted person and / or family members have been identified with alcohol addictions or prohibited substances, forcing them to follow a detoxification or detoxification treatment.

In **the trial phase**, the activity of the court will be carried out according to the rules of criminal procedure governing the trial phase, with the particularity that, in addition to the solutions concerning the criminal and civil side of the case, the court will also rule on the measures and obligations proposed by the commission after the finish of family investigation.

The peculiarity of this phase of the criminal trial, as opposed to the preliminary chamber phase, is that the court will be able *to resolve the criminal side of the case given the proposals mentioned in the family file*, in the sense of applying a sentence to be executed in the form of obligations and of the measures mentioned in the family file.

Thus, the court following the investigation of both the criminal side and the family case, in which the commission within the National Directorate of Assistance and Supervision of Family and Persons who committed Crimes proposes measures and obligations, will be able to pronounce a solution of condemnation to the execution of a new type of punishment, but with the imposition of certain measures and obligations that achieve the proposed purpose.

Thus, a new type of punishment called "**social remodeling**" is required, which will be executed in freedom.

The period in which the defendant will execute the sentence of social remodeling has the legal nature of a probation period, and if during the granted period the defendant does not fulfill his obligations, he will be sentenced to imprisonment, the limits of punishment being those established by law for the crime of who was sent to trial, increased by a quarter.

The family of the convict will have a significant contribution in the execution of the sentence established by the court having concrete obligations that he will have to fulfill; at the same time, a family member, established at the discretion of the court, by reference to the evidentiary material, will become *directly responsible* for the violation of the measures and obligations by the convict.

The new punishment of social remodeling will *be executed within the family, together with it, under the strict supervision of the institutions established by the court*, represented by the probation counselors, N.G.O and volunteers.

The family member who will be appointed responsible for ensuring that the defendant complies with the established obligations must give his consent in this regard.

The action of the family member not to supervise the fulfillment of the measures and obligations by the convict will attract his criminal liability, in case it proves that he acted for the purpose of non-fulfillment by the defendant of the obligations ordered by the court, thus being necessary to complete the special part of the Criminal Code with the crime of "*Violation of liability under the penalty of social remodeling*".

The person who commit the crime of "Violation of liability under the penalty of social remodeling" will be punished by applying the penalty of imprisonment from 6 months to 3 years or a fine.

Regarding **the execution phase of the sentence**, first of all it should be mentioned that the initiative of this approach must start from the penitentiary environment, where the specialist, after analyzing the detainee and establishing the Individualized Plan for Evaluation and Educational and Therapeutic Intervention, will contact the family of the incarcerated person.

At the level of administrative-territorial units, positions should be set up for psychologists who, together with social workers, priests and police bodies, should make efforts to support the families of those incarcerated in order to achieve their evolution.

Given that detainees receive special attention in prisons, both psychologically as educationally and morally, being aware of their mistakes and drawing attention to the fact that they have misbehaved, their resocialization can not bear fruit if the environments from which they come do not respect the law and public order.

Therefore, the success of the detainee's socialization also depends on the education of the family.

In those situations where the contact between the penitentiary specialists and the detainee's family is made through the detainee or through direct contact as a result of the detainee's visit, the commission from the detainee's family home must be contacted in order to establish the detainee's family profile and possible intervention with the purpose of it education.

Subsequently, measures can be established to involve the family in the detainee's resocialization program, by establishing joint activities between the detainee and his family, respectively the participation together inside the penitentiary, the family and the detainee, in cultural, sports or religious activities in order to help help him improve his behavior.

On the other hand, the activity of identifying the existing needs at the level of the detainee's family must be performed by the commission within the National Directorate of Assistance and Supervision of the Family and of the Persons who committed Crimes.

Following the analysis to which the detainee's family is subjected, the specialists from the commission will draw up a report in which the established aspects and the necessary measures for their remediation will be mentioned.

The measures may consist of educational activities, vocational training, job-finding activities, or the need to be included in therapeutic activities of a psychological or psychiatric nature.

In conclusion, the need for the evolution of the family in parallel with the evolution of the detainee lies in the desire to reintegrate into society a person who served his sentence and recovered, but also in the same desire to raise the quality of life of the former convict, his family and society as a whole. Keeping good faith in the souls of those involved in prison life requires drastic changes to achieve remarkable results.

The results of the scientific approach provided the idea that maintaining family ties, its constant involvement in the life of the detainee, the involvement of the community and certain specialized institutions lead to human remodeling, regaining the lost individual and maintaining social balance.

Legislative changes are needed to create the legal framework that allows the involvement of the indicated factors in the resocialization activity in order to achieve a high degree of social responsibility.

Therefore, we appreciate that the doctoral thesis "Protection of family life of the person deprived of liberty" is a first attempt to effectively recover people who have behaved in violation of the law, but also to maintain family unity, as a basic element of society.