

ACTUAL ONSETS IN THE ENFORCEMENT OF THE DELINQUENTS

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Abstract: The increasing interest of the authorities for the efficient rehabilitation of the delinquents is also reflected in the diversification of the alternatives to the punishment of imprisonment. According to most of the penal researchers, the punishment has several functions: penitence, intimidation and readapting. The basic characteristic of the punishment display four basic principles: legality, equality, individualization and the moralizing role of the punishment. Unlike the retributive justice which sees the crime as a violation of the state by breach of the rules and where the punishment is administered within a real competition between the offender, on the one hand, and the state, on the other hand, the restorative justice is a philosophy which includes a range of human feelings among which the need to cure, compassion, forgiveness and pity. It involves mediation, reconciliation and, when really necessary, sanctions. Regarding the systems of detention, there is consensus among the penitentiary experts as well a historic experience which shows that the system of progressive freedom seems the best treatment for the inmates, being consecrated by all the penitentiary legislations of the European states.

Keywords: penitentiary, inmate, rehabilitation, justice, crime

1. The definition and the classification of the punishments

The criminal law persons talked in different ways about the etymology of the word "punishment". So, in his work, Th. Mommsen said that the Romanians didn't have beside them any general term to define the contravention and not even the punishment, but for this latter one they adopted the name "poena" and they named later the contravention "crimen" and "delictum".

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As for the word “poena” it is said that the Romans borrowed it from the Greek language because, before prevailing the term poena in the Roman law, some punishments were expressed by the word “supplicium” and others by the word “damnum”. After Mummsen, both words meant compensation, repair¹.

According to this point of view, the idea of repairing and compensation was the one that created the word *punishment* which in its initial sense meant compensation, material indemnity because at the beginning, in the old societies was said that the “crime”, the “contravention” wasn’t a bad deed, then being no difference between good deeds and bad deeds. The “crime”, the “contravention” was a purely private problem that could lead to compensation such as the author of a “contravention” wasn’t considered an immoral person.

To the Romanians, the word punishment has a more recent origin. In Vasile Lupu’s *Pravila* from 1646, the concept of punishment is mentioned under the concept of “scolding”. So there are to be distinguished terrible scoldings, more terrible, bigger, even more terrible, easier ones, body scoldings, money scoldings². The word punishment was introduced after the XVII century in the Romanian language.

Tanoviceanu I. sustains that “punishment” is a Greek word that was brought into the country by phanariot influence from “Taverw” which means to learn. Because the Greek scholars didn’t understand the study without punishments there was adopted for punishment the word “learning”³.

Along the time the criminal law persons gave more definitions to the punishment:

- Vidal: “*The punishment is a bad thing that is applied in the name of the society and as the execution of judicial conviction, to the author of a delinquency because he is wrongful and socially responsible for this crime.*”
- Liszt considers that: “*The punishment is by the law in force, the bad thing that the judge mentions against the delinquent because of the delinquency to express the society’s disapproval against the deed and the offender.*”

The thesis in this field of the Romanian authors express themselves more opinions:

- Traian Pop considers that: “*the punishment is that juridical prejudice that is preestablished by law or other incorporating spring which the state with its competent organs with the purpose of a judgment, applies against the guilty*”

¹ Pop, Traian (1924), *Comparative Criminal Law*, vol. III, Cluj, typed by the Ardealul’ Graphics Institute, p. 8.

² Pop, Traian, op. cit. p. 10.

³ Tanoviceanu, I.; Dongoroz V. (1926), *Treaty of law and criminal procedure*, vol. III, Curierul Judiciar printing house, Bucharest, p. 16.

person for a delinquency as a sign of opprobrious and with the purpose of protecting the established juridical order¹."

- According with the Romanian Penal code, art. 52: *"the punishment is a measure of constraint and a way of re-education of the convicted."* The purpose of the punishment is to prevent new crimes, reason from which it distinguishes from any other juridical sanction.

The punishment isn't anything else but a way of rejecting violence, crime as to the action that causes bad things there follows another action of suppression of this created bad thing which is accomplished by what we name punishment. So, there is an indissoluble relation between punishment and crime, the punishment being the immediate way of fight against crime. As the Penal law creates in a clear way such a link between crime and punishment, it means that we are in the presence of some juridical compulsive regulations and therefore anytime there are made crimes there has to be applied the punishment that is established by the law. This way, the punishment being linked with the crime represent the main and compulsory way of disproof and protection against the crimes, criminality reason for which the "punishment" isn't considered only a simple "reaction" or a way of "control" afferent to the crime and criminality manifested by the society.

Although the punishment is a typical term for the Penal law, it is often enough used to designate extra penal sanctions (which are not correct²), such as:

- a) Civil repairing;
- b) Nullity of acts
- c) Incapacities and forfeiture of rights;
- d) Disciplinary measures and contraventions.

Generally, the philosophy of the penal law didn't refuse the right of the society and of the state to punish the one that making a delinquency trespassed the written penal laws, this right being denied by some scholars hardly in the XIX century. The researches concerning the foundation of the right of punishing gave birth to different ideas that along the time expressed them one by one depending on the society's evolution trying to find an answer to one of the most important problems of the penal law science.

¹ Pop, Traian, op. cit. p. 26.

² The punishment doesn't have to be confused with the civil repairing. This latter one has as purpose not the punishment of the guilty person but the repairing the loss caused to the victim. Moreover, the punishment is pronounced by a penal section of a court while the civil repairing can be granted even by a civil section.

This path that the penal law concept of punishing to the primitive form of punishment crossed and which was the revenge to the most advanced form of punishment applied by the institutions of the state that were based on the principles of validity, individuality, etc. and which represents the index of the notion, the character of the punishment or of the right of punishing from each epoch reflecting the physiognomy of the respective period of time: if the society, the state have the right to punish the delinquent, there appears the problem of establishing which is the philosophical – legal and moral foundation of this right.

2. The jobs, characteristics and the punishments' classification

According to the majority of the penal law persons the punishment has more functions such as penance, intimidation and readaptation. The penance function supposes that the delinquent has a “duty” towards the society and the punishment urges him to pay it. The intimidation function has two components: the delinquent’s intimidation, meaning that the punishment must give him the fear for another punishment preventing this way the relapse (personal or special prevention) and the intimidation of some other persons – the punishment given to a delinquent is a example for the others that are somehow tempted to commit at their turn a crime to reflect to what could happen to them if they choose such a behaviour (collective or general prevention). The rehabilitation function is a direct consequence of the law makers to “restore” the delinquent on the good way and to prepare his rehabilitation to the society life. This function dominates more and more the penitentiary reform that started even from the end of the XI century. Actually it means the regain of honesty of the delinquent.

As for the fundamental characteristics of the punishment, we have to take into account the existence of the four essential principles: legitimacy, parity the personalization and the moralizing role of the punishment.

The Latin dictum “*nulla poena sine lege*” is found in the majority of the legislations and is sustained both by the constitutions of all the democratic states and of some of the international programmatic documents such as the universal charter of the man’s rights. This principle of validity sustains that no punishment can be pronounced if it isn’t predicted by the penal law. Moreover, the penal law doesn’t establish the punishment in a rigid way but just a maximum of the punishment and to a apply a punishment under surveillance grants its individualization, the law maker leaving this way to the judge the power to appreciate and decide about the quantum and the type of punishment that will be applied.

The principle of the punishment’s parity supposes that “to the same deed the same punishment”, it means that two persons that committed similar deeds, in the same conditions, are subject to the same punishment but it doesn’t mean that they will be

convicted to the same one. Actually this kind of equal treatment is more theoretical than real because when it is about differentiation of punishments, the court has to take into account more factors, including the delinquent's personality (the social environment, antecedents, resources/subsistence possibilities, etc.), meaning to create conciliation between the principle of parity and the one of personalizing the punishment.

The personalization of the punishment supposes that only the guilty one is going to be punished and this should elude the persons that are not guilty. In reality a family will always suffer the repercussions of the punishment applied to one of its members:

- From a financial point of view, the lack of the wages of the convict during his detention has often major pecuniary repercussions over the family;
- From the moral point of view, the shame of the conviction is falling to the members of the convicted family.

The moralizing role of the punishment is to be found in the respect of the human dignity and has to be compatible with the moral concepts of the society that applies it.

As for the punishments' classification, from the multitude of existent qualifications, we consider as being good to take into account the three big categories: juridical (main punishment and accessories), legal and objective that counts on the nature of the pursued purpose of the punishment – freedom, rights, patrimony (punishments that are deprived of freedom and possible rights, restrictive of rights, pecuniary).

The giving of a punishment has to take into account two fundamental principles: to suppress the accessory punishments, meaning no punishment can be applied if it wasn't especially predicted, respectively the judge's freedom of choosing it – he can choose just one of the punishments that are provided by law for the delinquency that he was solicited for.

3. *The restorative justice*

The restorative justice is the name that was given to a movement that started to cover not only the penal law systems but entire societies. A part of its practitioners and supporters consider it to be a new paradigm or a new mentality. It is trying to convince the societies to ask themselves about crime, to look for answers and to find the most efficient methods to react against it: *"The restorative justice is an answer given to delinquency that offers opportunities to those who are the more affected by this – the victim, the delinquent, their families, and the community – to be directly involved in answering the bad thing that the delinquency created. The restorative justice is counting on values that accentuates the importance of offering possibilities to be more actively involved in the process of: offering support and assistance to the delinquency's victims; to make the delinquent feel responsible for the persons and the communities*

that they harmed; to restore the emotional and material losses of the victims (in the limit of the possibilities); to offer a wider range of dialogue opportunities and of problems solving between the victims and the delinquents, families and other persons; to offer better possibilities for the delinquents to evolve in a proper way in the future in the communitarian life; to strengthen the public safety by communitarian building.”¹

All the discussions concerning the restorative justice always start from comparing it with the actual penal justice systems and it is invariably used the classical example offered by Dr. Howard Zehr:

THE JUSTICE'S PARADIGMS	
RETRIBUTIVE JUSTICE	RESTAURATIVE JUSTICE
1. The crime attacks the state and its laws	1. The crime is a harm done to the people and to the relations between them
2. It emphasizes and concentrates on establishing the guilt such as the pain and suffering levels that are applied by punishment to be quantified	2. It tries the identification of the rights, needs and engagements of the delinquent and the victim
3. The justice act is taking place through a conflict between the prosecutor and lawyer, the victim and the delinquent being liable and often ignored	3. There is an accent on the problem's solving so as the created situation to be able to be corrected materially and emotionally, the victim and the delinquent having the main and active roles
4. The delinquent is excoriated only by punishment and the reaction is concentrated over a past behaviour	4. The delinquent is responsible proving empathy and helping personally to the repairing of the harm done, the reaction being concentrated over the consequences of the delinquent behaviour and in the perspective of the future behaviour
5. A strict and rational process that is addicted on rules and intentions that influence and coordinate the results in the deserved direction by the state: one of the parts loses and the other wins	5. It grants the free exposure of the emotions and feelings, it includes all the persons that were affected – directly or indirectly – by the delinquency, responsibilities are assumed, the needs are satisfied and there is encouraged the healing both of the victim, the delinquent and of the community as well as of the relations between those parties

In Howard Zehr's vision, the retributive justice – considered as being characteristic to all the actual penal systems – starts from a particular way of interpretation of the

¹ Umbreit, M. (1994), *Victim meets offender: The Impact of Restorative Justice and Meditation*, Criminal Justice Press, Monsey, New York.

delinquency: it is looked at as a violation of the state defined by not observing the laws and the feeling of guilt. The justice establishes the blaming and administers the sufferance in a competition between the delinquent and the state, a competition that is held on systemic¹ rules. The restorative justice watches the things in a different way. So, "the delinquency is something bad made to the people ant to the relations between them. It creates the obligation of making things right. The justice implies the victim, the delinquent and the community in looking for solutions to promote the solving, reconciliation and reassurance."²

The retributive justice is concentrated on laws' violation while the restorative justice is concentrated on the peoples' aggression and of the relations. The retributive justice looks for protecting the law by blame determining and administering the punishment while the restorative justice looks for the victims' protection by admitting they have been harmed and creating responsibilities for the ones that are responsible to make the things go right. The retributive justice implies the state and the delinquent in a formal process of pronouncement a sentence, while the restorative justice implies the victims, the delinquents and other members of the community in searching and finding solutions. Although along the years there were tried different representations and definitions of the Restorative Justice, the comparative analyze offered by Howard Zehr is used everywhere then when there is about the concept's presentation as it proves very clearly how "watching the old problems with new eyes helps us to understand differently and to get new answers. The restorative justice is a process by which all the parts implied in a delinquency gather to a common place to decide collectively the way the consequences of the crime have to be solved and the future³ implications.

The restorative justice represents a philosophy that encounters a wide range of human feelings including the need of healing, compassion, forgiveness and pity. In implies mediation, reconciliation and when there is really the case, the punishment. Moreover, this concept represents a recognition of the fact that we all are interconnected and that all that we do whether it is something good or bad, it has a surprising impact to all those that are around us. It offers the possibility of a process in which all the affected persons by the delinquent behaviour – victims, delinquents, their families, and the community as a whole – are all integrative, active parts of the process by means of which there is tried the solving of the problems that caused the crime and of the consequences appeared after their commission⁴.

In opposition with the retributive justice that considers the delinquency as a state's violation by not observing the laws and the guilt is established and also the

¹ Zehr, H. (1990), *changes Lenses: A New Focus for Crime and Justice*, Herald press.

² i.e.

³ i.e.

⁴ Wright, M. (1999), *Restoring respect for justice*, Waterside Press.

punishment is given and it is administered inside a competition between delinquent on a side and the state on the other. On the account of the concept of restorative justice, the delinquent and the victim are encouraged towards a direct implication in solving the conflict by dialogue and negotiation, in the presence of the family of the delinquent, of the victim's family and of some other persons that can offer active support to this process of reconciliation. This is one of the main characteristics of the "new" concept: the possibility given to the victim and the delinquent to meet and discuss while watching each other eye to eye.

In the traditional system of penal law the victim is used in the best side of the case as a witness of the state – of the prosecutor – in the try of establishing the delinquent's guilt and of asking his or hers conviction and the delinquent that is represented by the lawyer that talks in his place fights to prove his "innocence" and not to assume the responsibility for the committed deed. All this gives the impression of something artificial, moreover the final of the process when almost undoubtedly the delinquents announce the judge that they feel sorry for their deed and let the court to decide for it. Bothe the delinquent and the victim leave the judgment hall with a strong feeling of dissatisfaction: the delinquent almost invariably because he yet sustains he is not guilty and considers that the punishment is too hard, and the victim because no one asked her which are her real feelings, the real problems that she confronts with. Nor the victim neither the delinquent takes part to the process in which actually their lives are the main subject.

By using the term of restorative justice, even the action of punishing gets a moral burden, the whole process and the subsequent activities that took place with the victims and with the convicted persons having as purpose the solving of some things such as: accountability, respect reconciliation, reintegration, repairing, to avoid labeling, etc. As it may be noticed there are followed the same objectives that we find in the traditional systems of the penal law from all around the world, with the difference that the imposed mentality by the restorative justice grants for the realization of these actions.

So, we may notice a whole series of different practices depending on the country and on the legislative regulations that there are on; all the programs, more or less experimental – in the field of restorative justice count on the mediation delinquent – victim. Although they are named conferences, meetings or sessions, although it is named mediation or reconciliation, whether they are or not imposed to the delinquents, even though they end with an understanding or a contract between the two parties, the actions that are taken to support the restorative justice concept are characterized by a face to face meeting between the delinquent and his victim. This meeting takes place in the presence and coordination of a mediator, to it being allowed to participate with the acceptance of the two parties their families or other persons that can offer moral support to the victim and the delinquent. More than this,

depending on the nature and complexity of the case, the mediator may invite to this meeting representatives of the different local institutions that have as objective to protect the public order, the social assistance, public health, education and schools, the communitarian growth, etc.

4. The treatment of the prisoner inside the modern, progressive penitentiary systems

Among the different regimes that were suggested and applied along the time, we have to distinguish besides the regime of common detention and the Pennsylvanian cellular system that oppose one to each other, mixed regimes such as the auburnian regimes, the progressive regimes and finally the open ones named trust regimes¹. The contemporary penitentiary science knows the following types of penitentiary systems:

- The system of the common prison;
- The cellular system with two possibilities:
 - Solitary;
 - Of separation.
- The auburnian system;
- The progressive system with two possibilities: English and Irish;
- The reforming system.

A. The regime of the common detention

Inside this regime, the most simple and economical, the prisoners (with the mention of separation of the women and men and of the minors and the adults) they live together at day and at night. They sleep in common bedrooms, have their meals together and also work together in the penitentiary's workshops.

This detention regime presents numerous advantages but also inconveniences. It has the advantage that it is less expensive: the prisons where the detention is common are the most cheap to build. It is also very easy and makes it function in the plan of the great collectivities that are free and finally it allows the work's organization in similar conditions to those of the industrial life.

¹ Huguenev, Louis, Donnedieu de Vabres, H., Ancel., Marc (1950), *Les Grands Systèmes pénitentiaires actuels*, Paris Librairie du Recueil Sirey, p. 430 – 438.

Its problems in exchange are even more and bad. Morally talking it first corrupts than ameliorates, the promiscuity that it holds doesn't help too much to the individual's rehabilitation: it exposes him to improper influences and instead of reeducating him it takes the risk of changing him morally and psychically. Despite the psychological counseling and a bigger number of the surveillance personnel, this way of vitiation can't be avoided because the communication between the convicted that live together is eminent. So, there can be created real associations of delinquents inside the prison with the purpose of organizing mutinies and escapes or even to prepare "strikes" for the outside world after they are released.

Moreover, for the convicted that repent for their mistake and wish sincerely to rehabilitate, the common life together with the "bad" ones is just embarrassing if not even unbearable; it stops them from meditating/reflecting about the deeds they committed and the way of rehabilitation.

And finally the solidarity between the convicted that is an inevitable result of the life in common, exposes the good ones – the ones that want to have a clean life after their liberation and to forget about their criminal behaviour – the blackmail of the "old detention colleagues" if they refuse to join the future strikes that they prepared during the detention or as a result of this.

This system dominated more years in many European countries, including our country. So, I. Tanoviceanu said in 1926¹: "Although the common imprisonment is much criticized, this is anyway the usual regime, with little exceptions of our country".

This regime of common detention has to be totally destroyed. There isn't impossible to reduce the problems if we apply it to a lower number of convicted that are selected and given to the surveillance of a qualified staff. The experience that was made in some countries proves that it may have good results without exposing the convicted to some psychic and mental problems that risk creating a complete cellular detention the reason of choosing the common imprisonment is because of its fewer expenses. The common imprisonment, economically talking, is the less expensive.

It isn't surprising to show that our existent penitentiary system at the beginning of the third millennium yet have the characteristics of the common prisons since 100 years ago, and one of the reasons is the economical one, the lack of the financial funds. Actually, this way of execution of the common private freedom punishment was and is characteristic to all the states from the Eastern Europe.

B. The cellular detention regime – the Pennsylvania regime

¹ Tanoviceanu I., Dongoroz, V. (1926), *The treaty of the law and penal law*, vol. III, Curierul Judiciar Expenditure, Bucharest, p. 342.

This regime is opposed to the common one and consists of a total isolation of the convicted (in the cellular prison) at night and at day. The prisoner is kept in a cell where he works, eats and sleeps and when he is taken out of the cell to walk in the yard, he must wear a hood not to be recognized by the ones that he meets.

The cellular system has two forms:

1. The absolute cellular system;
2. The separation cellular system.

The absolute cellular system or solitary supposes the total isolation of the convicted. He can't communicate with anyone, not even with the guardian, he has his walk in an isolated yard, the divine training or service being listened by each of the convicted separately, the convicted can't see or meet with each other.

The separation cellular system consists of separation of the convicted but they communicate with the prison's personnel, with the priest, with the ones that assure their theoretical or practical preparing, they can't hear, know or see.

This kind of detention was applied for the first times in the ecclesiastic prisons. The church, institution that look for the condemned "rehabilitation" by penitence and believed in the moralizing virtues of the solitary imprisonment, with the spiritual help of a priest, regular visits of the brotherhoods named "penitent", work and lecture imposed the detention in monastic cells, following a regime of which basis it established to Aix la Chapelle in the year 817 before they were mentioned in the Beziers council from year 1246.

As it follows, inspired by the church, the regime was put into practice in many laic prisons; in the XVI century in Holland (the Amsterdam prison), at the end of the century XVII in Italy (the Saint Michel prison from Rome) and in the XVIII century in the correction house built in 1759 in Milano de Maria Tereza and the prison founded to Grand in 1775 by the viscount Vilain the XIV.

Under the influence of the English John Howard (1726-1790) – the sheriff of the Bedford committee (that sacrificed his life and work to the penitentiary life and who was a real partisan of the individual separation of the convicted) – the cellular detention will find its most perfect realization in the model prison that was built in Philadelphia in Pennsylvania state at the end of he XVII century from where there comes the name of Pennsylvanian or Philadelphian system¹.

Comparing with the regime of the common detention, the cellular regime, if doesn't always favors as its promoters hoped, the meditation that leads to regret and by this

¹ Sherman, Michael, Hawkins, Gordon J. (1983), *Imprisonment in America: Choosing the Future*, University of Chicago Press, p. 32-33.

to the condemned reeducation has at least the enormous advantage to avoid promiscuity and corruption. Moreover, to apply this regime represent an aggravation of the affective character of the detention, at least for the worse convicted that don't stand that easily the solitude and under this name is more intimidating for the recidivist delinquents. At least, with this regime there is possible the establishment of the harshness of the punishment depending on the behaviour of each convict, promoting the individualization of the privative freedom punishment on the execution plan.

On the other hand, this cellular regime is very expensive, supposing special arrangements and also has a great deficiency in making the rentable, interesting work's organization difficult, a work that the convicted may perform after his liberation.

The cells are inappropriate for making an industrial work without thinking about the necessary spending for its functioning and the control of the works executed into the cell. But before all these, the cell detention seem to be harmful for the physical health (it favors especially the tuberculosis) and very depressing morally talking: except some powerful personalities that could have a profit from a rigorous isolation, for the majority, this regime leads to mental disorders more or less bad, going even to madness or suicidal.

In spite of its problems, the Pennsylvanian regime was in great search beginning with the second half of the XIX century especially in Belgium and France. In Belgium, the journalist Edouard Ducpetiaux¹, who after he was sentenced to a year of prison in 1828, becomes after a revolution the general director of the prisons on the idea that the separate imprisonment corresponds to the triple purpose of the punishment (repression, detention and rehabilitation), parting the detention in night and day cells. He builds more cellular prisons among which the one from Louvain in 1860 and after his death in 1868 a law that was emitted in 1870 adopts the cellular imprisonment for all the prison punishments. The finding of the bad effects of the cellular regime over the physical and moral status of the convicted will bring between 1918 and 1938 the taming and sweetening of this regime and even its abandon after 1945 for the long time privative freedom punishments.

On the other side, France, who also supported the complete isolation system, replaces numerous cellular prisons², until a circular of the Internal Minster, the duke Persigny³, emitted on 17 April 1853, not only refuses the building of new cellular prisons but also orders the demolishing of the already existent cells and substitutes

¹ Aristotel says that: "to live alone you have to be a god or a brute".

² http://fr.wikipedia.org/wiki/%C3%89douard_Ducp%a9tiaux.

³ In the year 1853 there were in France 4.485 cells in 49 departmental prisons.

the individual detention regime with the one of common detention, with a separation on “quarters”. For applying this circular being given the multitude of types of imprisoned persons, there had to be created in each prison 25 different quarters.

In reality nothing was created. After the war from 1870 as a result of the criminality's recrudescence (over 25 000 recidivists were among the insurgents of the Common), an investigate commission over the penitentiary reform was established in a law from 24 of March 1872. The reports asked after this investigation by Paul Gabriel Othenin de Cléron, Hounssonville count and Felix Voisin¹ lead to the laws vote from 5 June 1875 with a limited character because it referred only to the departmental prisons that imposed the cellular regime to these prisons where there were imprisoned only the ones that had short penitence's² and the preventive condemned. Actually, the application of the cellular regime prescribed by law in 1875 had financial problems, reason for which it was never entirely realized: in 1939, from 75 prisons in service there were only 50 cellular prisons. Even more, even in the cellular prisons, because of the overpopulation, the practice of the cellular detention wasn't possible, the authorities being obliged to close more convicted in the same cell.

We have also to underline the fact that in the last century, exactly the countries in which this regime took birth (the United States and Belgium) protested against the cellular regime.

C. The auburian regime

It was this way named because it was registered for the first time in 1816, in the prison from Auburn, New York state; the auburian regime is a combination between the two precedent regimes. It supposes the night isolation – as well as the cellular regime – but also the common life during the day as well as work, meals physical exercises and the free time and not in the last time the regime of the common detention. The commander isolated physically at night in a cell, on the daytime he is morally isolated because he lives and works with the others but is forced to keep silence, this rule being actually one of the regime's characteristics.

Because of the fact it supposes the common living during the day, this mix regime is less harmful than the cellular one as well from the physical point of view and also morally; as it asks the convict to observe the discipline of an organized group, it doesn't give away the habit of living in society, it readapts him in a mere way socially

¹ http://fr.wikipedia.org/wiki/F%C3%A9lix_voisin.

² Othenin de Cleron, Paul – Gabriel, comte d'Hausonville (1875), *Les établissements pénitentiaires en France et aux colonies*.

talking and also grants a better and more rational organization of the work than the Pennsylvanian system.

Actually, this regime has as defect the fact that it doesn't stop the communications between the convicted and because of this it doesn't protect them against the contamination danger in spite of the silence law. Another defect of this kind of imprisonment that led to its rejection in 1840 by the Room of Pairs, and of the governmental project that asked its adoption, is the fact that the law of silence imposes a constraint that includes the risk of compromising the health or the mental coherence as it is against the human's natural need to express his impressions to the ones that are around him. This rule represented also a way of harshening the discipline in the situation in which its failure led punishments as the convicted detention in a cell or a discipline hall with reduced alimentary ratios for soup and bread. To apply the auburian regime was possible only with some drastically, inhuman measures such as body punishments; in the Auburn's workshops, the silence could be kept only by the power of whip but not even like this the communication couldn't be stopped entirely because they used the signs language. These punishments, instead of reeducating the convict, replaced him in an antagonistic position in comparison with the personnel of the prison.

So, the auburian system as a way of imprisonment imposed inhuman ways so that it was concluded that not even this system in his typical severe form was not agreed but it could be applied on a short period of time, in a progressive system. The rule of silence tends to disappear in the countries that use this kind of regime, it being imposed just during some other phase of some other mix regime, the progressive one.

D. The progressive or Irish regime

Comparing with the auburian and Pennsylvanian systems, the progressive system includes a "treatment" program. The freedom deprivation isn't a purpose itself, made with more or less rigor it is used as "a means of progressive rehabilitation, as a gradual preparing and on steps to the coming back to the free life". By successive steps, watching the reintegration progress, the convict passes from day and night cellular detention to complete freedom.

This system doesn't have to be matched with the progressive one that was practiced beginning with 1828 in the French sea mines and in witch few thought that they can see the origins of the progressive system. The French system was represented by the convicted partition to life work in more different classes with the possibility if changing the class; the ones from the first class could be proposed for punishment switching. This was in reality a pure disciplinary system (depending on the class, the

work was more or less embarrassing), that didn't have any educative value, because the way of living of the convicted was the same no matter the class.

The Irish regime is totally different by the French one because of the fact that the convicted are passing through many steps, in which the applied regime differs, going from the cellular detention to freedom, passing through intermediary steps.

This kind of system that experimented for the first time in 1840 on the convicted from the English island Norfolk by the captain Alexander Maconochie¹, was previously applied successfully in Ireland by the major Wlter Krofton², from where its name of 'Irish' system. Beginning with the end of the XIX century, this system was adopted by numerous countries from Europe (Denmark, Finland, Norway, Greece, Italy, and Hungary).

In its primary shape, the system was formed of different successive favors having as purpose the stimulation of the convict to regain his freedom as quickly as possible. In its modern form, the progressive system has as purpose the avoidance of passing from the complete isolation or from the communitarian life in a closed environment to a free life; it supposes more steps and the crossing from one to the other is made in the conditions in which there are sufficient controls and guarantees to sustain them as concerning the social rehabilitation of the convict. It also has to be mentioned that the reward idea wasn't abandoned completely, the relegation to a previous step being considered a disciplinary punishment. Anyway, the fundamental purpose of this detention system is to note the social adapting progresses of the convict and implicitly his gradual coming back to freedom.

The progressive system has two forms:

1. English progressive system;
2. Irish progressive system or Crowton.

1. The English progressive system has three periods:

- a) Severe day and night isolation for a period of time, that can be expressed in months or years, that can be raised or lowered depending on the convicted behaviour;
- b) Cellular separation during the night and the common work during the day on a determined period also expressed in months or years, a period that can be raised or shortened;

¹ [http://en.wikipedia.org/wiki/Alexander_Maconochie_\(penal_reformer\)](http://en.wikipedia.org/wiki/Alexander_Maconochie_(penal_reformer)).

² <http://www.britanica.com/EBchecked/topic/143755/Sir-WalterCrofton>.

- c) The on parole liberation of the convict, that means to let the convict free but under the control and surveillance of the authorities. The on parole freedom or temporary is the most precious element of the progressive system.
2. The Irish progressive system has four periods: the periods are similar and only between the second and the third period is mentioned the time for imprisonment in intermediary establishments (institutes). The period for the intermediary establishment is “the bridge on which the convict passes from the prison environment to the freedom¹ one.

E. The reforming system

This system is of American origin and its author was considered Z.R. Brockway that applied it first in 1876 in the Elmira reformatory (New York State). After the location where the reformatory's residence was, the system is named Elmira. Brockway, the system's initiator became the director of this prison named significantly “Reformatory of Elmira”. This system was afterwards adopted by other American states: Ohio, Massachusetts, Pennsylvania, Minnesota, Illinois, Indiana and Wisconsin. According to Couché's² affirmations, the reforming system consists of using the prison's punishments by reforming the convict through moral, intellectual and physical education.

The Elmira reformatory had 1580 cells and the convicts' parting was made depending on two criteria: age and penal crimes. At night, the convicts were isolated in cells and during the daytime were trained in professional, physical and intellectual activities. The ways of rehabilitation of the convicted persons were the work, professional training, intense intellectual preparing, moral education and physical education. Daily, the convicts made a few hours of physical exercises, some other hours were for the manual labor. The instructive – educational activity was about both the elementary learning and the gymnasium and superior one. There were held conferences on social and political problems, classes of political economy, physics, chemistry, mechanics, and the reforming system being a progressive one, improved and adapted to the purpose to reform the convicted through the punishment.

The importance of the penitentiary systems is more of historical origin because they show the evolution of the privative freedom punishment and of its way of execution. In our conditions there aren't necessary any more the rigid environments of the different penitentiary systems but the methods of individualization that are not linked with the typical fix forms.

¹ Pop, Traian, op. cit. p. 187

² Couché, P. (1905), *Traité de science et de législation pénitentiaires*, Paris, p. 315 – 318.

The creation of the penitentiary system in a country is made by law or by other normative regulations and is determined by many factors that they have to take into account. One of the most important factors is the legislator's conception concerning the purpose of the penitentiary politics concerning the privative freedom punishment execution. In the state in which there is a great accent on the social reeducation, on the convicted rehabilitation, there is elaborated an adequate penitentiary system for this purpose, underlying the elements and the sides of a favorable system for rehabilitation and resocialization of the convicts¹.

A second factor is represented by the system of the judgment instances which is formed of judges, courts, courts of appeal, etc. These courts have a certain territorial competence.

Another factor is considered the existence of many different types of convicted persons, depending on the nature of the crimes done, by the type of punishments that are applied, by the characteristics of the condemned ones (men, women, minors, recidivists, etc.).

To the different categories of convicted persons should correspond different categories of penitentiaries. This is the reason why there is an affirmative tendency in the penitentiary science to suggest the diversification of the penitentiaries specialization and to create special penitentiaries, for the convicted with a certain profile, characteristic, depending on the nature of the crimes committed, the period of the punishment to be followed, sex, age etc. As it follows, there may be special penitentiaries for women, minors or penitentiaries for recidivists.

There is an understanding between the penitentiaries' subject's experts and a historical experience that proves that from the number of different kinds of penitentiaries examined, comparing the advantages and the inconveniences that it implies, from the Pennsylvanian system to the auburian one and from these to the progressive system that combines the Pennsylvanian system with the auburian one but in successive steps during the execution of the punishment, the progressive or progressive freedom system seem to be the most favorable treatment for the convicted persons, being adopted in all the penitentiary legislations from Europe.

Through this one there is to be seen also the types of the penitentiaries for the punishment's execution, the legislator taking as forming criterion of the system the different categories of convicted (condemned for long periods to prison, condemned to prison for a short period of time, minors, women, etc.).

¹ Oancea, I. (1996), *Executorial penal law*, All expenditure, Bucharest, p. 56.

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