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**THE ROLE OF PROGRESSIVE SYSTEM OF EXECUTION OF
THE CUSTODIAL SENTENCES IN ACHIEVING THE
PURPOSE OF CRIMINAL PUNISHMENT**

SUMMARY OF THE PhD THESIS

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CONCEPTUAL GUIDELINES OF RESEARCH

The actuality and importance of the research subject. The purpose of the criminal execution system is to guarantee the safety of society through rehabilitation and social reintegration of convicted persons, in regard to those that have been sentenced to custodial sentences. According to the Standard Minimum Rules for the Treatment of Prisoners – the purpose and justification of punishments and custodial measures is to protect society against crime. Such a purpose will not be achieved unless the period of imprisonment is for the purpose of obtaining, as far as possible, that the delinquent, once set free, is not only willing, but also able to live in compliance with the law and - the content of the thesis summary depends on its needs [4, Rule no. 58].

Achieving the purpose of criminal punishment is necessary both for the convicted person, who must return to society reeducated and resocialized in order to be able to continue his life without any involvement in criminal activities, as well as for the entire community where that person will return after serving his sentence in detention.

Thus, the correctional process applied to convicted persons must be oriented exclusively towards achieving the goals of the criminal punishment enshrined in Article 6 of the Criminal Code, but the success of this process depends on the form of organization of the correctional system, because the way in which the resocialization measures are carried out determines the efficiency of the entire criminal enforcement process.

According to Article 72 of the Criminal Code, the sentence can be served in three categories of penitentiaries (open, semi-closed and closed), and the type of penitentiary in which the person will serve the sentence is determined according to the gravity of the committed crime, which does not allow the individualization of the execution of the sentence in depending on the personality of the criminal and his attitude towards the crime committed. In other words, the individualization of the execution of the punishment is not decided by any actor involved in the criminal process, but by the criminal legislator who assumed the competence to individualize the execution of the punishment, not offering any discretionary right in this regard, for those who have thorough knowledge of the convicted individual's personality and whose knowledge would be more suitable in determining the conditions of execution of the prison sentence imposed by the court.

Description of the situation in the research topic and identification of research issues. In the matter of the execution of custodial criminal sentences, the concept of the progression of

the execution regime has been analyzed insufficiently detailed to formulate an inclusive conclusion on its role in achieving the purpose of the criminal sentences.

A remarkable contribution to the study of the efficiency of the criminal execution process in achieving the purpose of the criminal punishment according to the form of its organization, was made by the following authors: Burciu N., Carp S., Cepraga Ig., Cojocaru V., Drosu V. , Florea L., Florea V., Manea V., Moraru V., Osadcii C., Postu D., Racu A., Rusu O., Balan A., Chiş I., Ciuchi O., Durnescu I., Florian Gh., Mincă M., Oancea I., Stanisor E. Antonyan Yu., Avanesov G., Babayan S., Bazhanov O., Belyaev N., Bocharova O., Brilliantov A., Drozdov A., Evtushenko I., Gaikovich S., Gorban D., Kadaneva E., Kashuba Yu., Kurganov S., Malikov B., Malin P., Malinin V., Malinin V., Orlov V., Perkov I., Perkova T., Raskevich A Smirnov L., Vasiliev A., Zubarev S., Alexander J., Anderson Y., Austin J., Aziz T., Brennan I., Bury V., De Viggiani N., Finnerty J., Gröning L., Høidal A., Jiricka V., Kamerman J., Kane D., MacDonald M., McGinnis K., Murdoch J., Skakov A., Stepanenko V., Walsh T., Weilandt C., Wells D., Willia J. and others.

Several scientific research papers that describe the progressive system of execution of the criminal custodial sentences were conducted by researchers from the Russian Federation, who in detail analyzed the Russian correctional system, from the perspective of different criminal execution mechanisms regulated by the legislator over the past decades, in what measure the correctional instruments are progressive and respond to current requirements for resocialization of convicted persons.

However, the Russian doctrine is very conservative, and most of the analyzed instruments in the context of the progressive system are referred to those that were developed in the criminal enforcement law of the USSR, and the distribution and classification of convicted persons within penitentiary institutions has been approached exclusively according to the existence or lack of disciplinary violations, circumstances that serve as basic grounds for making decisions to transfer the convicted person in the progressive or regressive way.

The following web pages constitute an important information base: <http://anp.gov.md>; <https://hudoc.echr.coe.int>; <https://www.coe.int/en/web/cpt>.

For fast but not least, the research analyzed as study objects the relevant judicial practice of the ECtHR, especially related to the finding of violation of Article 3 of the ECtHR, the right of any person which was recently interpreted in the sense of the state's obligation to ensure an adequate system of resocialization of convicted persons.

Purpose of the research. The aim of this thesis is to deepen the knowledge of the concept of progressive system of execution of criminal custodial sentences and the role of this form of execution of the sentence in achieving the main purpose of the criminal sentence, as well as the

analysis of the main instruments of the progressive system which ensures relaxation or, by case, the restriction of the penitentiary regime, according to individual criteria, based on progress data.

In the context of achieving the stated purpose, the following objectives were established: 1) outline the concept and legal regulation of the progressive system of punishment; 2) the analysis of the principles that underlie the individualization of the execution of criminal custodial sentences; 3) identify the essential elements for the adequate planning of the execution of the sentence; 4) carrying out empirical research, in order to identify practical deficiencies in the application of the instruments for progressive modification of the execution regime; 5) the outline of the existing gaps in the national legislation, with particular concern to the mechanism for changing the penitentiary regime; 6) examination of the main instructions of the relaxation of the execution regime; 7) highlighting the measures for planning the execution of the sentence, to be applied by the penitentiary staff; 8) elucidation of the legal nature of the mechanism of classification and distribution of the convicted persons within the penitentiary institutions; 9) study the experiences of other states regarding the progressive modification of the manner and conditions of execution of the sentence; 10) development, based on the conclusions drawn, of scientific proposals and recommendations regarding the amendment of the current normative framework, in order to improve the capacity of the domestic correctional system to re-educate convicted persons.

Synthesis of the research methodology. Taking into account the complexity of the addressed problem, as well as to ensure the scientific character of the work, few series of research methods were applied in the research with the aim of obtaining scientifically substantiated results.

Thus, during the research, in order to achieve the outlined objectives, the following research methods were used: bibliographic, comparative, logical, prospective, content analysis, statistical and sociological methods.

The novelty and scientific originality. The present doctoral thesis is the first complex analysis carried out at the national level regarding the essential instruments for the progressive execution of the criminal custodial sentences within the domestic correctional system and offers scientific-practical solutions in solving the main generic problems of the current criminal execution system.

The scientific novelty of the research resides also in the reforming proposals formulated with a view to modernizing the current way of organizing the criminal correctional process, through the conceptual modification of the method and conditions of individualizing the execution of the sentence, providing necessary tools to the staff of penitentiary institutions in "shaping" the behavior of the convicted person. Likewise, the author formulated a series of methodological recommendations regarding the application of the current progressive instruments of punishment.

The elements of scientific novelty of the conducted research can be systematized in the following theses: 1) the main doctrinal opinions regarding the progressive system of execution of the sentence were analyzed; 2) the concept of the progressive system for the execution of the sentence was finalized; 3) based on the analysis of the works conducted on the subject of the thesis or indirectly related to it, the main elements of a correctional system based on the progression and/or regression of the manner and conditions of execution of the sentence were outlined; 4) the principles of the progressive system for the execution of criminal custodial sentences and their importance from the perspective of the purpose of the criminal sentence were studied and explained; 5) the main legal instruments of the progressive system of punishment were configured; 6) the concept of regressive and progressive transfer of the convicted person within the penitentiary regime was defined; 7) the national and international practice regarding the modification of the penitentiary regime during the execution of the sentence was analyzed; 8) the main mechanisms for evaluating the convicted person were analyzed in order to progressively plan the execution of the sentence; 9) the instruments for progressive planning of the execution of the sentence were addressed in detail; 10) the national and international practice regarding the classification and distribution of the convicted persons according to the principles of the progressive system was studied; 11) as a result of the generalization of the material that constitutes the object of study, the normative deficiencies of the autochthonous progressive system were outlined, which hinders the penitentiary staff from making the correctional process more efficient; 12) complex conclusions were drawn up regarding the efficiency of different types of penitentiaries in which different execution regimes are created (double differentiation); 13) proposals were made to amend the current regulatory framework.

The scientific novelty of the thesis resides in the propositions argued by *lex ferenda*, formulated by the author, as follows:

1. To complete art. 166 para. (1) of the Enforcement Code with four new principles;
2. In art. 216 of the Enforcement Code to be repealed para. (3);
3. To complete art. 219 of the Enforcement Code with paragraphs (4) – (6);
4. To complete the Enforcement Code with new articles - art. 242¹, 242², 242³, 251¹ and 251²;
5. Art. 246¹ of the Enforcement Code to be published in a new version;
6. In art. 91 of the Criminal Code, para. (1) to be exposed in a new redaction.

The theoretical significance of the work. Through this doctoral thesis, for the first time at the national level, a complex and multifaceted analysis of the concept of progressive system of punishment and the elements of this concept included in the national normative framework is

carried out.

Thus, the theoretical importance of the work settles in the fact that this research represents an extensive, well-systematized and documented study, offering theoretical and practical solutions for implementing the main mechanisms for applying the progressive system of punishment in the local context. Likewise, the thesis highlighted the systemic problems of the penitentiary administration system, as well as the solutions to overcome these problems. In this context, the solutions offered for these problems by other states in the region were analyzed such as: the Russian Federation, Romania, Germany, Macedonia, Finland, Croatia, Latvia, Portugal, Estonia, Czech Republic, Hungary and others.

Also, the practical importance of the work results from the *lex ferenda* proposals formulated as part of the research in order to improve the current domestic criminal execution system by streamlining the tools for evaluation, planning and distribution of the convicted persons and the progressive evolution due to the results obtained during the execution of the sentence.

The applicative value of the work. The results obtained in the analysis carried out, beyond the theoretical importance, also presents an applicative value from the perspective of usefulness in the educational activity of practitioners in the correctional field. Due to the fact that scientifically based arguments regarding the role of the progressive system in achieving the purpose of criminal punishment are presented in the research paper, the formulated conclusions can serve as guidelines for the modifications of the existing execution processes (internal rules), including by starting the extensive reform of the correctional system.

Likewise, the results obtained can contribute to the strengthening of those progressive tools, which have demonstrated their practical effectiveness over time. In particular, the applicative value of the work resides in the possibility of serving as empirical and theoretical support for university courses in the academic discipline of „*Criminal enforcement law*”, as well as in the initialisation and continuation of the professional training courses of civil servants with special status within the system of prison administration.

Also, the results of the research can be used to unify the national practice of implementation of the penal execution institutions responsible for changing the methods and conditions of execution of the sentence and the legal interpretation of the procedural rules for making the respective decisions and serve as a basis for strengthening the tools for the resocialization of the convicted persons.

The main scientific results consist of: 1) the definition and contouring of the concept of the progressive system will facilitate the activity of the penitentiary staff involved in the resocialization of convicted persons; the correct and staged application of the elements of the

progressive system will make the correctional activity more efficient and will contribute to the achievement of a greater degree of functionality of the criminal punishment; 2) the change of the conditions of execution of the sentence according to the risks, needs and progress of the convicted person will create a strong incentive for self-improvement of the convicted person; 3) for the domestic context, where most of the convicted persons are housed in cells with large capacities (so-called "barracks"), the most suitable solution which will essentially solve the problem of violence in the penitentiary environment and the application of an appropriate system for the classification of convicted persons and their distribution in homogenous groups that have similar needs and risks.

Implementation of the scientific results. The obtained scientific results were implemented in the process of improving the prison staff abilities in the initial and continuous training courses, and were also discussed in the national and international thematic conferences.

Also, in the activity of the National Administration of Penitentiaries, proposals were made to amend the departmental normative framework and the criminal enforcement legislation in order to strengthen the current quasi-progressive penalty system of the Republic of Moldova.

Approval of the research results. The results of the investigation regarding the legal aspects of the progressive system of execution of the custodial sentences were discussed in the multiple national and international scientific forums.

Also, basic findings of the study were published in national and international scientific journals such as: *Anale științifice ale Academiei „Ștefan cel Mare” a MAI*; *Revista Națională de Drept*; *Revista Institutului Național al Justiției*; *Legea și Viața*; *Международный пенитенциарный журнал*.

Thesis publications. 17 scientific publications were published on the topic of the doctoral thesis.

Thesis structure. The work is composed of: annotations; list of abbreviations; introduction, four chapters divided into fourteen paragraphs; general conclusions and recommendations; bibliography; Annexes; disclaimer and *curriculum vitae* of the author.

Key words: prisons, progressive system, execution of criminal punishment, individualization, classification, differentiation, means of correction, purpose of criminal punishment, CPT, detention regime, types of prisons, assessment of risks and needs, criminal subculture, separation criteria, regressive transfer, progressive transfer, sentence execution plan.

THESIS CONTENT

The thesis is composed of four chapters. At the end of each chapter, a synthesis of the obtained results was carried out.

The introduction is composed of the following elements: the actuality and importance of the research subject, description of the situation in the research topic and identification of research issues, purpose of the research, the novelty and scientific originality, the applicative value of the work, the main scientific results, implementation of the scientific results, approval of the research results. In the same way, within the respective compartment of the thesis, the research methods used in order to obtain scientifically substantiated results were detailed and the structure and summary of the doctoral thesis were specified.

Chapter 1 of the thesis - Analysis of the situation in the field of implementation of the progressive system of execution of custodial penal sentences - is composed of three paragraphs.

In Chapter 1, an analysis of the works conducted on the topic of the thesis or indirectly related to it was carried out, the main elements of a correctional system based on the progression and/or regression of the way and conditions of execution of the sentence were outlined.

As mentioned above, many scientific works aimed at the progressive system of execution of the penal sentence were developed by the researchers from the Russian Federation.

In this way, to be highlighted is the research carried out by the Russian author Tkachevsky Yu., entitled „*Прогрессивная система исполнения уголовных наказаний*” [39]. According to the author, the progressive system of execution of the sentence represents a mechanism regulated by law through which the progressive or regressive change of the execution of the sentence is carried out depending on the behavior of the convict and his attitude towards the established punishment. However, the author considers that the progressive system of execution of the sentence is only a part of the criminal execution process, which can ensure the achievement of the purpose of the criminal sentence only under the conditions of application combined with other mechanisms of the correctional process [39, p. 132-133].

In the context of the researched topic, is of interest the work of Belyaev N., titled „*Избранные труды*” [34], where the author carried out an extensive analysis of the principles of individualization and classification of convicted persons, which, in the author's opinion, are of particular importance for the planning of educational work in the penitentiary institutions [34, p. 555].

Special attention is given to the doctoral thesis developed by the author Skakov A., entitled „*Прогрессивная система исполнения лишения свободы и ее отражение в новом*

законодательстве Республики Казахстан” [37] where the author systematized the doctrinal determinations about the elements that form the progressive system and formulated a standard model of the criminal execution process based on the progressive evolution of the way of execution of the punishment.

Deserves special attention the doctoral thesis of Orlov V. entitled „*Применение и отбывание уголовного наказания*” [35], where the author highlights the two main purposes of the progressive sentencing system, as follows:

1) placing the convicted person in such conditions that would stimulate his desire for behavioral change;

2) the creation of such situations that would disinterest the convicted person in criminal activity and stimulate the development of prosocial behavior [35, p. 394].

A series of important researches were also carried out in the Republic of Moldova, among the more valuable works from the perspective of the doctoral thesis theme we can highlight the work of Carp S. „*Drept execuțional-penal. Ediției revăzută și adăugită*” [6], where the author carried out an extensive analysis of the issue regarding the legal status of convicted persons, their classification and distribution in penitentiary institutions, the detention regime and, in particular, the aspects related to the process of changing the conditions of detention during the execution of the sentence [6, p. 8]. Based on the legal analysis of the criminal enforcement legislation, the author comes to the conclusion that the normative acts that regulate the domestic correctional process provide that the execution of the sentence by the convicted persons is based on two important requirements of the regime: the diversification of detention conditions according to the type of penitentiary established by the court and changing the conditions of execution of the sentence.

The paper developed by Drosu V. and Burciu N. with the name of „*Detențiunea pe viață și liberarea condiționată înainte de termen în Republica Moldova*” [20] presents a special interest in the context of the studied topic. According to the authors, the allocation of a convicted person to a certain level of security (type of penitentiary, sector in a penitentiary, regime), must be based on the assessment of risk and needs [20, p. 60]. In this sense, the authors have formulated several conclusions and proposals for the purpose of improving and modernizing the criminal enforcement legislation of the Republic of Moldova in order to ensure a truly individualized planning of the applied punishment.

In the doctoral thesis „*Diferențierea și individualizarea executării pedepsei închisorii*” [31], elaborated by Osadcii C., a detailed assessment was conducted in regard to the individualization and differentiation of the prison sentence, which, in the author's opinion,

represents an continuous process, starting from the moment of establishing the punishment (determining its category and amount of time that has to be spent serving a sentence) and it's extending during the period of its expiation, including the analysis study of convicted persons, the analysis and the assessment of personal qualities, behavior in the penitentiary institution and attitude towards the conditions of detention [31, p. 52].

Also, the works of the following local authors are of interest for the current research topic: Carp S., Osadicii C., Rusu O. [7], Florea V., Florea L. [21], Manea V. [25], Moraru V., Cepraga Ig. [26] etc.

Not less important, from the point of view of the study subject is also the work of the Romanian author Oancea I., entitled „*Drept executional penal*” [28]. According to the author, one of the basic problems of criminal enforcement law is to know the categories or the groups of convicted persons, first with a view to distribution and, then, to the adaptation and individualization of the execution of the sentence. Thus, the author believes that the groups of convicted persons, in order to be recognized as accurate and to be able to be used for the distribution and individualization of the execution of the punishment, must correspond to certain scientific criteria [28, p. 52].

Among other international authors, to be taken into account are the works of: Kamerman J. [23], Høidal A. [22], MacDonald M., Weilandt C. [24], Murdoch J., Jiricka V. [27] etc, which contributed to the development of the principles of classification and progressiveness in the execution of the criminal custodial sentences and demonstrated the need to adopt an effective classification system in order to ensure the resocialization of the convicted persons.

Thus, from the synthesis of the informational material which constitutes the object of the study, logically it can be concluded that, in the matter of the execution of custodial criminal sentences, the concept of the progression of the execution regime has not been subjected to a sufficiently in-depth study in Republic of Moldova, therefore a possibility to formulate a unified and inclusive conclusion on the purpose of criminal punishment was not yet achieved, however, the scientific research carried out by international authors made it possible to delve into the scientific study of the concept of a progressive system of execution of custodial penal sentences and the role of this form of organizing the correctional process in achieving the purpose of criminal punishment , enshrined in Article 6 of the Criminal Code.

In the same way, it is concluded that, in the national specialized literature, the concept of a progressive system of execution of the custodial criminal sentence is tangentially analyzed through the prism of separate components such as: differentiation, classification, evaluation and distribution of convicted persons. Consequently, there are reasons to believe that there is a lack of

generally acceptable visions of the current form of the domestic correctional system. Therefore, the main research problem is the conceptual determination of the progressive system in general and the analysis of the current regulations that contribute to the progressive execution of the applied punishment.

According to the opinion of the majority of authors that compared various methods of organization of the criminal correctional processes, the progressive system is to be considered as one of the most successful mechanisms for achieving the purpose of criminal punishment.

Chapter 2 of the thesis, entitled „**Conceptual determinations regarding the progressive system of execution of custodial penal sentences**”, is composed of 3 Paragraphs.

In this Chapter, the normative framework that determines the criteria and conditions for progressive modification of the way of execution of the criminal custodial sentences was analyzed and the conceptual determinations of the progressive system carried out by the researchers in the field were systematized.

The notion of „progressive system” is a conditional one, being related to that part of the criminal execution law that regulates the modification of the conditions of execution depending on the behavior of the convicted person both in a progressive order and by case, regressive order in the sense of tightening the detention regime [39, p. 4].

The ideological „father” of the progressive custodial penal system is considered the penitentiary law reformer Howard J. He was the one who proposed and justified for the first time the introduction of criteria for classifying convicted persons into groups, and the transition from one group to another depended on the convict's behavior during the execution of the sentence [38, p. 45].

In the legislation of the Republic of Moldova, as well as in the laws of other countries in the post-Soviet space, the notion of „progressive system” it is not commonly used, also, the notion of the progressive system is not found in the international recommendations aimed at the criminal correctional process, this being rather used for scientific purposes by criminal researchers when the question of studying the process of positively influencing the convicted person by encouraging the correctional efforts of the convict is raised, presenting as a reward the improved conditions of execution of the sentence, in particular by granting additional facilities. Therefore, the notion of the progressive system of execution of criminal custodial sentences is rather a theoretical one.

It is considered that the progressive system constitutes a form of dynamic organization of the execution of criminal custodial sentences where the emphasis is not only on the reintegration of convicted persons, but also on the assurance of safety in places of detention, so that the detention place does not negatively influence other convicted people and prison staff to be able to work in a

safe environment. This system itself represents a process which constitutes of organized correctional that work applying the principle of classification and differentiation of the convicted persons into distinct groups for planning and individualizing the execution of the criminal sentence, and the progress or regressions registered by the convicted persons are the decisive factors that determine the manner and conditions of the execution of the sentence.

In general, in the specialized literature in the field of current research study, by the progressive system of execution of the sentence, a criminal execution system is traditionally understood, based on the transfer of the convicted person that is on the right path of correction to a less restrictive regime of detention, which ensures adaptation for life in the free society after release from penitentiary institutions [42, p. 127].

The terms of the progressive transfer depend on the state's criminal policy. Within the criminal execution system of the Republic of Moldova, the progressive transfer is carried out after the expiration of a deadline provided for each type of penitentiary regime. Within such a progressive system, the convicted person's effort in carrying out resocialization activities is not taken into account in regard to the accomplishment of its transfer, therefore, the convicted person's motivation for adopting a positive behavior and the interest for participating activities foreseen in the behavioral change programs is low.

However, the form of organization of the criminal execution system in the Republic of Moldova can be considered as quasi-progressive, because in the domestic correctional system there are three different detention regimes, which differ by the amount of allowed benefits.

Thus, we have come to the conclusion that the problems resulting from the current practice of the regimes for the execution of the sentence relate to the following aspects: (1) in the existing conditions it is barely possible to apply the regular review of the way in which the convicted person serves the sentence; (2) employees who interact with convicted persons on a daily basis are the only ones who know their risks and needs, but do not have decision-making power to change the way the sentence is carried out; (3) there is limited flexibility to intervene promptly and manage the prison population [19, p. 26].

In the authors opinion, in order to ensure the efficiency and usefulness of the progressive system of execution of the criminal sentence, it is necessary to intervene legislatively by creating a proper progressive regime of execution of the sentence which, on one hand will ensure the practical application of the established criminal execution principles in the national legislation, and on the other hand, will create premises for achieving the purpose of criminal punishment and will contribute to the reduction of recidivism.

Likewise, in Chapter 2, the existing principles of criminal execution law were analyzed

from the perspective of their applicability within a progressive system of punishment.

The principles of the criminal enforcement legislation of the Republic of Moldova are regulated in Article 167 of the Execution Code. Thus, according to Paragraph (1) of this Article [12], the execution of criminal decisions is carried out based on the principles of legality, democracy, humanism, respect for human rights, freedoms and dignity, equality of convicted persons before the law, differentiation, individualization and planning of the execution of criminal punishments, the application of rational means of correcting convicted persons and stimulating law-abiding behavior.

However, not all of these principles are specific to the progressive system of execution of the custodial sentence as a form of organizing the correctional process, because most of them are generally valid for criminal enforcement law regardless of the form in which the correctional process is organized [13, p. 40].

The Committee of Ministers of the Council of Europe highlights six categories of principles applicable to persons sentenced to long-term custodial sentences, namely: 1) individualization of the execution of the sentence; 2) normality; 3) responsibility; 4) security and safety; 5) non-segregation and 6) progression [32, reg. 3-9].

In the present scientific paper, the principles of criminal execution law characteristic of the progressive system of execution of punishment were systematized, as follows: (1) individualization; (2) differentiation; (3) classification; (4) planning the execution of criminal sentences; (5) the rational application of the means of correction of convicts; (6) stimulating law-abiding behavior; (7) normality; (8) liability; (9) progressiveness.

The last three principles are specific for the criminal enforcement systems of the Western European states and are little to almost not regulated by the Enforcement Code of the Republic of Moldova.

The principle of normality is specific for the Norwegian correctional system and implies the following theses: (1) the punishment is only the restriction of freedom in the conditions in which no other restrictions have been imposed by the court. Therefore, the convicted person has the same rights as the rest of the population; (2) no person shall serve a sentence of imprisonment under more stringent conditions than is necessary as a safety measure for the community; (3) during detention, the life of the convicted person must be as close as possible to the „outside” life [3].

The principle of responsibility is specific for German law and it finds its expression in the vast majority of the educational instruments of the execution system of Germany. This principle assumes that the convicted person, as far as possible, must be put in a position to be able to organize

and solve its own personal matters and bear on its own responsibility for putting those matters into order and solve them [14, p. 44].

The principle of progressivity implies that a convicted person must gradually advance by promoting the educational program provided by the penitentiary system, from the initial stage of detention, in which the emphasis is to be put on the punishment and payment for the committed crime, to the subsequent stages of the punishment, in which priority is to be given to the final training activities before the release from prison [1, point 70]. Such a progressiveness motivates and stimulates the convicted person to adopt prosocial behavior and contributes to a more committed relationship between the staff who have the task of evaluating and the convicted person, which in its turn strengthens the dynamic security [2, point 79].

However, only the enumeration of the principles of criminal enforcement law does not offer effective solutions in applying them in a practical way, or, in the absence of clear interpretations and appropriate procedures, the implementation process itself is likely to become a high challenge for the prison staff. Thus, keeping in mind the essential purpose of the criminal punishment, it is considered of substantial importance to properly develop all the principles established by the local legislators and to create specific procedures for their implementation in all criminal execution processes.

Likewise, there is a general perception that the list of principles of criminal enforcement law has premises for improvement, therefore, is not be considered exhaustive, or, in order to intensify the correctional process and obtain more effective results in achieving the highest standards of correctional measures, it is also commonly considered to be necessary to complete the list of existing principles with the following: 1) classification, 2) normality, 3) responsibility and 4) progressivity. Accordingly, it is necessary to create appropriate corrective mechanisms for the compliant application of these principles.

Chapter 3 of the thesis, entitled „**Essential elements of the progressive system of execution of criminal custodial sentences**”, is composed of 4 Paragraphs.

In this section of the thesis, the national mechanisms for the regressive transfer of the convicted person in a lower regime in terms of severity were analyzed, from the point of view of their efficiency and opportunity to put them into practical use.

The study of regressive transfer within the prison institution applied to the convicted person was and is still up to this time a research concern. However, opinions regarding the effectiveness and appropriateness of the regressive transfer of convicted persons to a regime with a lower degree of severity are divided, given the fact that different forms of organization of the criminal justice system approach the issue of regressive transfer in a different manner.

In essence, the regressive transfer of the convicted person to a regime with a lower severity is a form of sanctioning intended to ensure order and discipline in the penitentiary environment in the case of the most serious disciplinary violations and the most dangerous convicts.

Most of the disciplinary sanctions provided by the domestic criminal enforcement legislation assume the substantial modification of the manner and conditions of execution of the punishment, by regressive transfer either to a regime immediately lower in terms of severity, or placement for a relatively short period in more severe conditions, with the corresponding restriction of most of the benefits had under general conditions. Consequently, the conditions of the detention regime become worse only because of the result of committing disciplinary violations, which do not necessarily demonstrate the negligent attitude towards the initiated educational process.

Although, regressive sanctions are considered the harshest forms of sanctions, they are, at the same time, considered the most effective reaction measures regarding convicted persons who consistently exhibit inappropriate behavior and are influencing in a negative way other convicted persons on their path of correction. On the other hand, the regressive transfer of the convicted person over a long period of time is much likely to have an opposite effect, because the convicted person will be reconciled to the thought that the next possible progressive transfer may only occur after a rather long period of time, or the convicted person may become aware that other forms of harsher sanction than the ones already received does not exist, which may encourage the convicted person to not comply with the detention regime in the future [15, p. 195-196].

Analyzing the disciplinary practice of other member states of the Council of Europe, the author of the present research come to the conclusion that most of them, except for those that were formerly part of the Soviet Union, do not use disciplinary sanctions that presuppose the regressive modification of the manner and conditions of execution of the punishment, except the disciplinary sanction which implies the isolation of the convicted person from the general population of the prison institution, which is recommended to be applied only for a relatively short term, depending on the particularities of the punitive policies of a certain state.

The European Court of Human Rights has repeatedly stated that a special (severe) security regime can be imposed and maintained only on the basis of an individual risk assessment of each convict and cannot be applied for more than strictly necessary [8, §280]. Likewise, according to the Nelson Mandela Rules, imprisonment and other measures resulting from the isolation of persons from the outside world are aggravated by depriving such persons of the right to self-determination by depriving them of their liberty. As a result, the prison system, except in cases of justified isolation or application of isolation to maintain discipline, must not aggravate the specific

suffering in such a situation [4, reg. 3], and the restrictions applied to persons deprived of liberty must be minimally necessary and proportionate to the legitimate objective for which they were imposed [32, reg. 3].

In this way, it can be concluded that the current practice of applying disciplinary sanctions, which result in the regressive transfer of the convicted person under more restrictive conditions, is not based on the assessment of the convict's personality. Although, this regression is a legitimized one, it is not always proportional in relation to the general purpose and, to a large extent, damages the correctional process initiated regarding this convicted person. However, the disciplinary sanction applied to the convicted person must not automatically have a regressive effect of the enforcement regime, but only restrict for a relatively short period the exercise of rights that are not absolute and that are not indispensable for the detention of the person.

In the same way, it is appreciated that the type of disciplinary sanction to be applied to the convicted person must be directly proportional not only to the act committed by him, but also to the level of danger he presents or, better said, to the degree of influence what must be exercised regarding him, so that the disciplinary punishment has an educational effect, or, the disciplinary liability must be strictly individualized.

Also, in Chapter 3, the basic component of the progressive system of execution of the sentence was analyzed in detail, such as the progressive transfer of the convicted person to a higher regime in terms of the degree of severity, where the convicted person can be „rewarded” for his constant efforts in the process of resocialization, through progressive and in stage divided advancement, from high severe conditions to less severe conditions, including the granting of appropriate relaxation conditions in regard to granted freedoms, both inside and outside the detention area.

The progressive transfer represents an assembly of components aimed to allow the convicted person to adapt himself to what is considered to be a normal life, directly targeting the convicted person, making them responsible for the criminal execution of the sentence, being charged according to the behavior and attitude adopted during the detention period. The existence of the real possibility of improving their own conditions of detention and widening the range of activities, including the possibility of working outside the penitentiary institution, constitutes a strong motivation for the convicted persons, especially for those serving long to very long sentences.

The progressive modification (improvement) of detention conditions is a complicated process from the point of view of prison practices, because it involves a detailed analysis of the convict's personality, in order to determine his level of correction and, at the same time, acceptance

of the previously imposed detention regime. However, the legislator of the Republic of Moldova had preferred to simplify this process, establishing deadlines for being in the original regime, which, once expired, require the progressive transfer of the convicted person to the common detention regime (see Article 249 Paragraph (2), 250 Paragraph (2) and 250 Paragraph (2) Enforcement Code). Therefore, the progressive transfer of the convicted person into the common regime has become an automatic matter, which is carried out regardless of the resocialization efforts of the convicted person, and this formalism generates little to no motivation for the convicted persons to fully engage in the educational process [18, p. 31].

There are solid grounds to believe that a systematic transfer of the convicted person to a more relaxed regime does not provide motivational leverage in the correctional process. Or, in this case, it is not necessary for the convicted person to make any effort to benefit from the relaxation of the regime, as it is sufficient to only serve the term established by the law. Such progressive transfer procedure does not include elements designed to encourage the convicted persons to adopt appropriate behavior and execute the individual sentence execution plan.

Another problem that was considered to require increased attention in regard to the progressive transfer of the convicted person in the resocialization regime is the lack of well defined criteria for determining the necessity or opportunity of such a transfer. In our opinion, in the process of determining the period when the convicted person can be transferred to the resocialization regime within the limit of the term established by the law, the following criteria is to be taken into account:

- a) the danger that the convicted person represents;
- b) the conduct of the convicted person during the execution of the sentence;
- c) the attitude towards the committed crime;
- d) the participation rate in the activities provided in the individual sentence execution plan.

In the process of assessing the transfer criteria in the resocialization regime, the prison staff involved in the evaluation of the convicted person must use the tools and methods of psychological and social evaluation duly approved, as well as specific information available to the prison administration system or from other authorities in charge. If in the process of evaluation of the convicted person it is found that it is not appropriate for him to continuously be held in the common regime, the prison staff responsible for carrying out the evaluation should come up with the proposal to the prison commission to transfer the convicted person in the resocialization regime and the decision in this regard must be taken as soon as possible.

We believe that the discretion of the penitentiary commission must be reduced to a considerably lower level, so that in cases when the conditions for progressive transfer are met, this

commission cannot adopt another solution than to decide the actual transfer of the convicted person under milder conditions. In any case, when adopting the decision on the progressive transfer of the convicted person, the penitentiary commission must exercise their established powers in good faith, in the interest of the general purpose of the criminal punishment.

Also, in this Chapter, the importance and role of the right to move without an escort or accompaniment outside the penitentiary area, which is often seen as a plenary phase of the execution of the sentence was elucidated.

The progressive modification of the detention regimes offers the possibility for the prison staff to apply additional institutions of the progressive system, which differentiates the way of execution of the sentence and gives the convicted person greater freedom of movement both inside and outside the penitentiary area. Thus, one of these institutions is the institution of the right to move without an escort or accompaniment outside the penitentiary area, where the convicted person can leave the penitentiary unaccompanied to participate in work activities and/ or education programs.

From a historical perspective, the movement of convicted persons without an escort or accompaniment outside the penitentiary area, as a way of organizing their movement to/from the workplace, was initially determined only by the performance of an economic activity or other type of „production” in the interest of the penitentiary institutions. At the same time, its content was enriched by expanding the types of work performed and by including in it some forms of accommodation of convicts (inside or outside the prison area), which is why even in this narrow framework, its content exceeded beyond the original purpose for which it was instituted [40, p. 8].

Changing the working conditions by offering freedom of movement conditioned by the location of the workplace, in addition to the positive economic role due to the expansion of job offers, also plays an important role in the process of resocialization, due to the fact that the convicted person constantly interacts with the outside world and distances himself from the daily regime which is applicable to the general population of the prison institution. With the granting of the right to move without an escort or accompaniment outside the penitentiary area, the convicted person expands his possibilities to put into order and solve his issues due to the expansion of freedom of movement, and, in some cases, also due to the increased profit obtained as a result of performing work activities and also, as a result of the possibility of finding a better paid job. All these extensions have a positive role for both the convicted person and his family. Thus, granting the right to move unaccompanied must be encouraged, as it represents an extremely effective tool for resocialization and serves as a strong example for the general population of the prison institution.

In the attempt to prevent the risk of granting the right to move unaccompanied to persons who pose a danger to society, the domestic legislator established restrictions on the application of this right. Thus, the right to move without an escort or accompaniment outside the penitentiary cannot be applied to a convicted person: 1) that has committed a crime very much dangerous or particularly common among cases of recidivism, 2) that has committed a grave or exceptionally grave crime, 3) that has unexpired disciplinary sanctions, 4) that has committed an intentional crime, during the execution of the sentence, 5) that is sick with a contagious form of tuberculosis, 6) that has not followed the full treatment of sexually transmitted disease, alcoholism, drug addiction, narcomania, 7) that suffers from mental disorders, which do not exclude responsibility [12, Article 216 Paragraph (3)].

Although the imposed restrictions can be considered objective, our opinion is that their generalization is not justified, because such provisions fail to offer sufficient leverage to the prison staff to analyze each case individually, and the categories of convicted persons included in the list of restrictions are not given at least the „legitimate hope” for granting this right. The lack of „hope” has a considerable dissuasive effect on the categories of convicted persons and reduces the chance of achieving the purpose of the criminal sentence [16, p. 26].

In this sense, we are willing to consider that it is of high importance to revise the 6 eligibility conditions of the convicted person to benefit from this right and, in particular, the list of the 7 far too rigid restrictions, the imposition of which does not have embedded the principles of rationality. The authors of the research paper believe that the discretionary right of the penitentiary administration to grant the right to move without an escort or accompaniment outside the penitentiary must be conditioned only on the execution of a minimum fraction of the established punishment and on the results of the evaluation carried out by the qualified staff. The methods used by the evaluation staff must be based on scientifically proven methods and standards. The staff involved in the evaluation process must be periodically involved in training activities and continuously improve their knowledge in the domain of expertise, and the penitentiary administration system must offer the possibility of this improvement, in order to provide the accurate results.

Even if the right to move without an escort or accompaniment is often considered as the last phase of execution of the criminal sentence, once this right is granted the educational process must not be completed and the application of the educational programs must continue. Obviously, the offer of the programs will be adapted to the new conditions of execution of the sentence, with priority being given to the training programs for convicts' freedom. Also, considering that in most of the cases the time of the convicted person is dedicated to the paid and unpaid work in which

this category of people is involved, the employees in the educational subdivisions must be flexible and apply the resocialization programs to such an extent that they do not disproportionately burden the convict's daily schedule.

Chapter 4 of the thesis, entitled „**Evaluation, planning and distribution of convicts within the progressive system of execution of criminal custodial sentences**”, is composed of 4 Paragraphs.

In this Chapter, the particularities of the evaluation tools available to the qualified staff involved in the evaluation process of the convicted persons were analyzed, as well as the types of results that these tools provide. Also, as part of the research, the categories of risks and needs of the convicts were analyzed - essential circumstances for the proper execution of the sentence.

The initial stage of execution of the sentence is probably the most important and, at the same time, the most complicated stage of the criminal correctional process. At this stage, the process of evaluation and initial planning of the execution of the sentence takes place, which aims to identify the risk factors and individual needs of the convicted person, identification that allows for the progressive planning of the execution of the sentence, through the lens of the general purpose, that of resocializing the convicted person. Although the evaluation stage and the planning stage are in a close and interdependent relationship, it is still necessary to separate these two initial processes of the execution of the sentence because the results provided by each stage have different tools and tactics, even if they are guided by a common purpose.

According to the European Prison Rules, upon placement in detention, convicted persons will be assessed to determine whether they pose a risk to the safety of other convicts, prison staff, visitors or even themselves [32, reg. 16, c) and 52]. This requirement stems from the need to appropriately plan the manner and conditions of execution of the sentence, as well as the appropriate classification of convicts for the initial stage of the criminal execution phase, thus ensuring the application of the most suitable safety measures, in relation to the real danger that presents the detained person.

The initial determination of the level of security and the degree of vulnerability of the person placed in detention is extremely important because it can prevent the occurrence of security incidents, both for the prison environment and for this person individually. Thus, initial assessment is extremely necessary not only for progressive correctional systems, but for any correctional system, especially one where convicts are housed in large capacity dormitories and are in unsupervised relationships much of his free time.

The individual assessment of the convicted persons has as its primary purpose the establishment of individual resocialization programs and the progressive planning of the execution

of the sentence, a process that must be repeated during the entire duration of the sentence, in order to adjust and update the data obtained during the assessment. Even though the subsequent stages of the assessment may be less complex than the initial one, it is important to identify all the factors that prevent the convict's resocialization or make this process difficult [17, p. 300].

There is a wide variety of risk assessment tools available in different jurisdictions for their practical use. However, they require very different skill levels. More traditional risk assessment forms generally consist of no more than 10-12 items and are based on factual elements that can be extracted from court records or personal files and require minimal interpretation by staff trained in their use [5].

However, we must keep in mind that no assessment can provide accurate results. In all cases there will be errors in the evaluation conclusions, which largely depend on both the quantity of data provided/collected and its quality. However, this probable margin of error should not discourage us from using the results of this assessment, because even with this margin, the assessment provides a sufficiently accurate picture to determine the volume and quantity of interventions that need to be planned.

According to the internal normative acts of the National Administration of Penitentiaries [29, point 4 of Annex no. 1], identification of needs and risks is carried out through multidisciplinary assessment, on three levels: educational, psychological and social. Thus, the risks posed by convicted persons are classified as follows:

a) *risk for the safety of the community and the proper functioning of the penitentiary*: risk of escape, risk of dangerousness (eg: the risk for safety of other convicts, the employees of the penitentiary institution and/or other persons with whom the convict may come into contact during the execution of the custodial sentence of freedom etc.);

b) *the risk of recidivism*: the risk of committing new crimes;

c) *risk regarding the safety and individual functioning*: risk of victimization, risk of self-harm, risk of suicide, risk of relapse into addictive behaviors [29, point 5 of Annex no. 1].

Also, in Chapter 4, the current domestic punishment planning mechanism was analyzed in detail, from the perspective of its correspondence with the progressive system of punishment execution. International practice in the matter of sentence planning was also analyzed, in order to identify and formulate some proposals for improving the current sentence planning process. Likewise, a sociological survey was conducted among the prison staff involved in the sentence planning process, in order to identify the practical problems that persist in the current regulations and operational procedures of the prison administration system.

The detention of convicted persons must be organized in such a way as to ensure the

achievement of the purpose of the criminal punishment to the extent that this punishment was applied by the court, and to achieve this purpose, the correctional process must be organized in a planned manner in accordance with needs and risks identified in the individual assessment process. Likewise, the place of execution of the sentence must be safe, because any type of detention causes major suffering to the convicted person, and if these sufferings are amplified by the dangerous environment, the correctional process will have little to no chance to achieve the intended effect.

According to Recommendation Rec (2003)23, the sentence plan must be used to provide a systematic approach, especially in regard to the progressive evolution of the convicted person within the prison system under increasingly less restrictive conditions, until the final stage, which would ideally be spent in an open environment, preferably within the community, as well as to ensure conditions and supervision measures that favor a law-abiding life and adaptation to the community after release conditional [33, point 10].

According to Burciu N., the best tool to adapt the execution of the sentence to the personal characteristics and degree of dangerousness of the prisoner is the sentence execution plan [20, p. 59]. Professor Ciuchi O. believes that through the planning activity, the so-called management of the execution of the punishment is achieved, which is a continuous process of evaluation, planning and re-evaluation of the punishment. Thus, the author believes that the planning of the execution of the sentence emphasizes the opportunities for intervention within the resocialization programs, depending on the individual needs of the convicts and provides benchmarks for the post-release intervention [11, p. 229].

The basis of a criminal policy aimed at the reintegration of prisoners into society is the individual sentence execution plan, within which the risks and needs of the prisoner must be evaluated in terms of medical care, daily activities, work, physical exercises, professional training and contacts of the prisoner with the family and the outside world. This basic principle of penological science was recognized and affirmed in the statements from the highest political authorities in Europe and the entire world [9, point 10 of the concurring opinion of judges Pinto Dâde Albuquerque and Turković].

It is evident that any long-term activity requires extensive and thorough planning, in order to consolidate efforts to achieve the expected result. In the case of criminal punishments, the ultimate expected result is the resocialization of the convicted person. For this purpose, various tools for individual planning of the execution of the sentence are used by the prison staff, being oriented to organize the execution of the sentence as efficiently as possible and to respond to individual needs throughout the detention period.

The implementation within the domestic practice of the individual planning of the

execution of the sentence was achieved gradually, with the adoption, in 2006, by the Government of the Republic of Moldova of the new Statute of the execution of the sentence by convicts.

For the first time, with the support of the NORLAM mission, in 2007, within Penitentiary no. 4 – Cricova and Penitentiary 9 – Pruncul, the Individual Program was piloted regarding the planning the execution of the convicts criminal sentence. According to the regulations at that time, the individual program regarding planning the execution of the convicts criminal sentence was to be developed for each convicted person, regardless of the term of execution of the sentence, the crime committed or other particularities [30, point 1 of the Annex].

In 2018, the individual sentence planning process was conceptually changed through the implementation of the Individual resocialization plan, based on which the individual sentence execution program is drawn up. According to the notion regulated in the Order of the director of the Department of Penitentiary Institutions no. 34/2018, the individual resocialization plan of the convicted persons represents a set of activities and/or programs, established by a multidisciplinary team, according to the needs and risks identified in the evaluation process and which are mandatory for every convicted adult [29, point 2 sub point 6) from Annex no. 1].

Recently, Article 3 of the ECHR was interpreted by the European Court of Human Rights in the sense of the positive obligation to promote the resocialization of convicts, in particular by proposing to each of them an individualized the individual execution plan. Under these conditions, it will be considered that a state has fulfilled its obligations arising from Article 3 when the state ensured conditions of detention and mechanisms, measures or treatments that allow the resocialization of the life sentenced convict, even if he has not made sufficient progress towards his resocialization for it to be possible to conclude that the danger that the convicted person represents for society has decreased so much that he can plead for his release from detention [10, § 111].

These findings of the Court are of particular significance in penitentiary law, once Article 3 ECHR has been interpreted in the sense of the positive obligation to create conditions and mechanisms to promote the convicts' resocialization. Thus, the individual sentence execution plan can be considered by genuine means a guarantee of respect of the convicted person's rights by creating the conditions for staged progression in the sense of their gradual resocialization during the execution of the sentence.

Likewise, in this Chapter, the main tools for classifying and assigning convicts within a progressive system of punishment execution were analyzed. Thus, doctrinal opinions were studied regarding the efficiency of the classification process, as well as the ways of classifying convicts in criminal enforcement law. Also, the additional criteria for the classification of convicts applied by

the prison staff were examined, in addition to those expressly regulated by the Enforcement Code, and a sociological survey was carried out among the prison staff, to identify the shortcomings of the national act of classifying convicted persons.

The role of classification is often underestimated in the cellular system of execution of punishment where the assignment of convicts is not a matter of principle, because detention is provided in individual cells, whereas in common systems of execution of punishment, the classification of convicts is one of the most important activities of the staff penitentiary, because the entire penitentiary security depends on the correctness of the classification and distribution of convicted persons inside the penitentiary.

In the specialized literature, several opinions were formulated regarding the concept of the classification of convicts, and different authors approached this concept according to several factors such as: the type of classification; the subject performing the classification; the purpose of the classification or the classification criteria.

However, most authors share the opinion that in the classification process it is necessary to evaluate the personality of the convict taking into account the possible social danger he presents [41, p. 230].

The study of the personality characteristics of a criminal began at the end of the last century. Let's note the works of scientists such as Lombroso C., Tarkovskaya P., Gernet M. and others. For example, Bekhterev Yu. emphasized that the study of personality should precede the influence of the penitentiary on the convict and penetrate all the bonds of correction, ensuring the solution of the following tasks:

- correct classification within the same correctional institution;
- establishing an appropriate regime for each category of convict;
- reasonable organization of work processes;
- timely organization of school and extracurricular activities;
- correct evaluation of the results of prison influence;
- improving the pedagogical qualifications of penitentiary institutions [36].

The Nelson Mandela Rules give a special role to the process of classifying convicts, considering it to be an indispensable element of a criminal execution system where convicts benefit from at least the minimum treatment necessary to respect human dignity. Therefore, according to Rule 93, the purpose of the classification must be:

- (a) the separation from others convicted persons who, by reason of their criminal records or characters, are likely to exercise a bad influence;
- (b) dividing prisoners into classes in order to facilitate their treatment with a view to their

social rehabilitation [4, reg. 93].

Additionally, according to Rule no. 17.2 of the European Prison Rules, one of the basic purposes of classification is the need to provide suitable regimes for all convicts [32]. An appropriate classification may allow the division of convicts according to the level of security, according to the individual risk and needs of each prisoner in such a way that severe security measures are not applied without any reasonable necessity.

Therefore, when classifying the convicts, the prison staff will be guided by the principle of necessity and proportionality so that no unreasonable allocation and inappropriate to the individual risks of the convict is allowed.

The domestic system of housing convicts in large-capacity rooms (so-called „barracks”) makes the effort to positively influence the convict and get him to revise his antisocial behavior considerably more difficult. Under these conditions, the most appropriate solution to develop a positive relationship between prison staff and convicted persons is to approach an appropriate system of classifying convicts and assigning them to homogeneous groups that have similar needs and risks. At the same time, secure premises must be reserved for convicts who present the greatest danger to the safety of detention and destabilize the order within the penitentiary institution, the detention of newly arrived persons in these premises is counterproductive, as long as they do not pose a real risk, and those with eminent risk of danger cannot be accommodated in secure spaces because they are occupied with people detained under the initial regime.

In the native architectural conditions, an effective classification system can be the solution to the logistical constraints related to the insufficiency of secure spaces, therefore the application of progressive classification tools is necessary not only to ensure the security of convicted persons, but also to ensure their effective resocialization.

Starting from the purposes of criminal punishment and taking into account the advantages offered by the progressive system of sentence execution in achieving these purposes, there are solid premises to believe that the current criteria for the classification and distribution of convicts should be revised in order to create preconditions for the separation of convicts according to the conduct shown during the execution of the sentence, not only by the gravity of the criminal committed act. However, criteria such as age, gender, procedural status etc., must necessarily be preserved considering their objective nature.

Thus, it is also considered necessary to take into account the following classification criteria when establishing the manner and conditions of execution of the sentence: (a) the danger presented by the convicted person; (b) conduct during the execution of previous criminal sentences, as well as the period of detention until the establishment of the regime; (c) the identified needs with taking

into account the time of release from detention; (d) the convict's availability to participate in socially useful activities; (e) the attitude towards the crime committed; (f) age; (g) state of health.

Later, however, when the enforcement regime is changed to a progressive regime, it is to be considered that the following classification criteria must be taken into account (their cumulative meeting is recommended): (a) constant manifestation of positive conduct; (b) fulfilling the measures provided for in the individual sentence execution plan, except for the cases when the non-fulfillment is due to conditions not attributable to the convict; (c) compliance with the punishment execution regime; (d) lack of danger of maintaining the applied regime.

At the same time, for the regressive transfer of the convicted person, we propose the following alternative criteria: (a) danger to himself and/or to those that surround him; (b) non-compliance with the regime of execution of the sentence; (c) refusal to fulfill the individual plan for the execution of the sentence; (d) the preparation, attempt or commission of the crime during the execution of the sentence; (e) constant display of negative behavior.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The scientific results obtained from the elaboration of this study consist in:: 1) defining and outlining the concept and legal regulation of the progressive system of punishment execution; 2) identifying the essential elements of the progressive system of punishment execution and analyzing their role in making the correctional process more efficient; 3) identification of theoretical and practical deficiencies in the application of the instruments for progressive modification of the execution regime; 4) the substantiation of the thesis that, for the local context, the most suitable solution that can essentially solve the problem of violence in the penitentiary environment is the application of an appropriate system for the classification of convicts; 5) elucidation of the legal nature of the mechanism for evaluation, planning, classification and distribution of convicts within the penitentiary institution; 6) studying the experiences of other states regarding the progressive modification of the manner and conditions of execution of the sentence; 7) the development of proposals to modify the current normative framework, in order to improve the capacity of the domestic correctional system to re-educate convicted persons.

As a result of the research activities carried out in the process of writing the doctoral thesis, which were based on the analysis of the works and research carried out regarding the concept of the progressive system of execution of the punishment or its separate elements, on the analysis of the national criminal execution normative framework, such as and that of other CoE member states such as: Germany, Romania, Latvia, Finland, Czech Republic, Hungary, Croatia etc., we reached the following **general conclusions**:

1. The synthesis of the materials published on the theme of the thesis attests to a lack of a unified vision regarding the concept of the progressive system of execution of the criminal custodial sentences and its component elements. However, from the perspective of the majority of authors, it is concluded that the progressive system of execution of the sentence is considered as one of the most successful mechanisms for achieving the purpose of criminal punishment, because it aims at the conceptual change of the behavior of each convict and his attitude towards the values protected by the law.

2. As a result of the research carried out, the following definition was drawn up: „*The progressive system of execution of the criminal custodial sentences represents a form of organization of the criminal correctional process, which implies the modification, if necessary, of the manner and conditions of the execution of the penalty, depending on the convict's progress or regression in his self-education*”.

3. Arising from the problems resulting from the current practice of determining the

punishment according to the gravity of the committed act and the rigidity of the mechanisms for changing the punishment execution regime, the following systemic deficiencies are outlined: (1) in the existing conditions, it is impossible to apply the revision regularity of the way in which the convicted person executes the sentence; (2) employees who interact with convicts on a daily basis are the only ones who know their risks and needs, but do not have decision-making power to change the way the sentence is carried out; (3) there is limited flexibility to intervene promptly and manage the prison population.

4. The research of the national criminal executive normative framework shows that the form of organization of the correctional system in the Republic of Moldova can be considered as quasi-progressive, because transfers from one regime to another *de jure* can be made based on the success achieved during detention, but *de facto* transfer takes place once the deadline set by the Enforcement Code is reached.

5. According to the current provisions of the Enforcement Code, the regressive transfer is a consequence of the disciplinary offense committed by the convicted person, without any evaluation of his personality being carried out in this regard. Although said regression is a legitimate one and is applied in most of the CIS states, it is not always proportionate to the general purpose pursued and, to a large extent, damages the correctional process initiated in relation to the convicted person.

6. The current mechanism of progressive transfer of the convict to common regime or resocialization has become an automatic matter, which is carried out regardless of the convict's resocialization efforts. This formalism has no way of motivating convicts to fully engage in the educational process.

7. The current system of classifying prisoners is deficient, and the basic criteria for separation of convicts remains the gravity of the committed crime, thus there are no regulated tools for separating them from highly dangerous convicts or those who promote the criminal subculture among convicts, a fact that essentially complicates the tasks and amplifies the efforts required to be made by the prison staff in order to re-educate the convicted persons that are on the path of correction.

8. According to the results of the research carried out, it is concluded that the individual sentence execution plan can be considered the main educational tool in the correctional process, which must be updated and revised according to the successes or failures recorded in the behavior and attitude of the convict during the time spent in detention.

9. The current system of housing convicted persons in large-capacity cells makes the effort to positively influence convicts and get them to revise their anti-social behavior considerably

more difficult. Thus, the most suitable solution for the domestic context is considered to be the application of a true progressive system, where prisoners are separated based on the results of the assessment of individual needs and risks.

The current scientific problem that was solved in the framework of the research consists of the following: 1) the development of a conceptual framework of the progressive system of punishment execution, which will make the activity of the authorities more efficient in establishing the progressive system at the national level; 2) the systematization of the arsenal of correctional tools of the progressive system, which can be applied individually or jointly to increase the efficiency of the resocialization process of the convicted persons; 3) the identification of deficiencies of the domestic correctional process and the formulation of appropriate legislative proposals to solve them.

As a result of the systematization of the theoretical-practical problems identified in the research process of the doctoral thesis topic, the following **proposals** for amending the national normative framework are put forward:

1. Completion of Article 166 Paragraph (1) of the Enforcement Code with the following principles: 1) classification, 2) normality, 3) responsibility and 4) progressiveness.

2. In Article 216 of the Enforcement Code, to be repealed Paragraph (3).

3. To complete Article 219 of the Enforcement Code with Paragraphs (4) – (6) with the following content:

„(4) The individualization of the execution of the sentence constitutes the application of a differentiated treatment to the convict throughout the execution of the sentence, carried out through a flexible system of classification of the convicts based on their assessment in order to identify the needs and risks in order to apply the most appropriate intervention measures and ensure security.

(5) The individualization of the execution of each convict's sentence takes place through the differentiated application of the regime of execution of the sentence, appropriate intervention and security measures, socially useful activities, training, psychosocial and other occupational activities, which must correspond to the needs his individuals in order to resocialize him.

(6) All intervention measures established following the evaluation of the convicted person are recorded in the individual execution plan, which is discussed together with the convicted person.”

4. To complete the Enforcement Code with art. 242¹ with the following contents:

„**Article 242¹.** Evaluation of the convicted

(1) The evaluation of the convict is a process based on the results of the detailed investigation of the personality, the personal situation, the previous behavior, the reasons and circumstances of the committed crime, the personal and situational factors that can determine dangerous actions for the safety of the penitentiary institution and/or for society, as well as the individual factors that prevent the crime commitment.

(2) In the evaluation process, the qualified staff will be guided by scientifically based results and standards. The abilities of the qualified staff involved in the evaluation process must be improved systematically, and the penitentiary administration system must create premises for

these improvements to take place.

(3) The initial evaluation of the convicted person is carried out by the Sentence Evaluation and Planning Structure and is considered to be complete with the drawing of the individual sentence execution plan.

(4) The assessment of the degree of dangerousness of the convict takes into account any risks related to violence, as well as any risk of escape and/or recidivism.

(5) The procedure for evaluating convicts is established by the Government.”

5. To complete the Enforcement Code with Article 242² with the following contents:

„**Art. 242².** Individual sentence execution plan

(1) The individual sentence execution plan is drawn up with the aim of developing the convict's responsibility towards himself and the community, respect for social norms and changing criminal behavior.

(2) The individual sentence execution plan will include the intervention measures resulting from the evaluation of the convicted person and are mandatory.

(3) The convicted person is informed, against signature, about the measures contained in the individual sentence execution plan and is encouraged to carry out the individual plan.

(4) The method of drawing up and updating, within the terms provided for in this Code, the individual sentence execution plan, as well as other procedures related to the process of its implementation, are established by the order of the Director of the National Administration of Penitentiaries.”

6. To complete the Enforcement Code with art. 242³ with the following content:

„**Art. 242³.** Management of punishment

(1) The penitentiary institution is responsible for ensuring the conditions for the implementation of the individual sentence execution plan of the convict and aims to fulfill the planned intervention measures.

(2) The individual sentence execution plan is adjusted, depending on the convict's progress or regression during the execution of the sentence, so as to offer the possibility of moving from a restrictive regime to a less restrictive regime of sentence execution.

(3) The adjustment of the individual plan for the execution of the individual sentence execution plan is carried out:

a) as a rule, annually;

b) at any given time during the execution of the sentence based on the resolution of the management of the competent penitentiary institution, when essential changes are necessary in the process of execution of the sentence (in particular, the change of the regime of execution of the sentence, the undertaking of the necessary measures for the preparation of the release from detention).”

7. Cancellation of disciplinary sanctions "transfer of the convict from the resocialization regime or, in the case of the sentenced to life imprisonment, from the facilitated regime to the common detention regime" (Article 246 Paragraph (1) Letter f) of the Execution Code) and "transfer of the convict in the previous regime" (Article 246 Paragraph (1) Letter g) of the Execution Code)."

8. Article 246¹ of the Enforcement Code to be set forth in the following wording:

„**Article 246¹.** Individualization of disciplinary liability

When applying disciplinary measures, the following circumstances are taken into account which determines the nature of responsibility of the convicted person that committed the disciplinary violation:

- a) the combination of circumstances that influenced the commitment of the disciplinary violation;
- b) the nature of the danger and the consequences of the committed violation;
- c) the attitude of the convict towards the imputed acts and the cooperation with the prison staff during the disciplinary procedure;
- d) previously applied disciplinary measures and the reason for their application."

9. Article 247 to be completed with Paragraph (12) with the following content:

„(12) If it is found that during the execution of the disciplinary measure the purpose of the disciplinary liability was reached, the management of the penitentiary institution may conditionally suspend the execution of the disciplinary measure for a period of no more than 90 days.

10. To complete the Enforcement Code with Article 251¹ with the following content:

„Article **251**¹. Transfer in progressive regime

(1) The transfer of the convicted person in a progressive regime may take place as a result of the adjustment of the individual sentence execution plan, if the convicted person:

- a) presents good behavior in a constant way;
- b) entirely fulfilled, up to the time of the adjustment of the individual punishment execution plan, the foreseen measures or did not fulfill individual sentence execution plan for reasons that are not related to him;
- c) complies with the conditions of the execution regime in which he is placed;
- d) it does not constitute a danger to be maintained in the existing regime or to be placed in a regressive regime.

(2) The regime of execution of the sentence can be progressively changed after the execution of at least 1/5 of the sentence. This regulation applies accordingly to all progressive sentencing regimes that follow. In the case of a regressive change in the punishment execution regime, the term calculated according to the provisions of this Paragraph, is to be reset.

(3) If in the evaluation process of the convict it is concluded that his continued retention in the common regime is not appropriate, the prison staff that carried out the evaluation should propose to the prison commission the transfer of the convict to the resocialization regime.”

11. To complete the Enforcement Code with Article 251² with the following contents:

„**Article 251**². Transfer under regressive regime

(1) The transfer of the convict under the regressive regime can be carried out at any time during the execution of the sentence, if the convict meets at least one of the following conditions:

- a) poses a danger to himself and/or those around him;
- b) does not comply with the conditions of the execution regime in which he is placed;
- c) refuses to fulfill the individual sentence execution plan;
- d) committed or planned a crime during the execution of the sentence;
- e) constantly exhibits negative behavior."

(2) The retroactive transfer decision is communicated to the convicted person against signature without any delay and can be challenged in accordance with Article 473¹ of the Criminal Procedure Code. The appeal filed does not suspend the execution of the decision.”

12. Article 91 Paragraph (1) of the Criminal Code to be set forth in the following wording:

„(1) A person sentenced to prison or life imprisonment may be granted early conditional release if:

- a) serves the sentence in a resocialization/facilitated regime;
- b) fully repaired the damages caused by the crime for which it was convicted, except when it is proven that there was no possibility to fully repaired the damages;
- c) served the minimum fraction of the sentence, according to the provisions of this Article;
- d) it is proven that its correction is possible without the full execution of the sentence.

The person may be exempted, fully or partially, from serving the sentence, including the complementary sentence

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ADNOTARE

Crudu Alexandr. Rolul sistemului progresiv de executare a pedepselor privative de libertate în realizarea scopului pedepsei penale. Teză de doctor în drept. Chișinău, 2023.

Structura tezei: introducere, patru capitole, concluzii și recomandări, bibliografie din 194 de titluri, 157 de pagini de text de bază, 7 anexe. Rezultatele obținute sunt publicate în 17 lucrări științifice.

Cuvinte cheie: sistem progresiv, plan individual de executare a pedepsei, transfer progresiv, modificarea condițiilor de detenție, individualizare.

Scopul lucrării constă în studierea sistemului progresiv de executare a pedepselor penale privative de libertate, în special a instrumentelor juridice ale unui sistem progresiv, în vederea aprecierii rolului acestui tip de organizare a procesului corecțional în realizarea scopului pedepsei penale, precum și înaintarea unor recomandări de îmbunătățire a cadrului normativ național.

Obiectivele cercetării: studierea doctrinei naționale și celei străine cu privire la sistemul progresiv de executare a pedepselor penale privative de libertate; analiza legislației naționale în partea ce ține de instrumentele de diferențiere a executării pedepsei; analiza principiilor sistemului progresiv; cercetarea științifică a formelor de individualizare a executării pedepselor penale privative de libertate; studierea principalelor mecanisme și instrumente ale sistemului corecțional prin care se asigură evoluția progresivă a condamnaților în perioada de executare a pedepsei; realizarea unui studiu de drept execuțional penal comparat al legislației altor state; identificarea soluțiilor pentru problemele practice cu care se confruntă personalul instituțiilor penitenciare; examinarea condițiilor de evaluare, planificare și repartizare a condamnatului în cadrul unui sistem progresiv; formularea concluziilor de ordin științifico-practic și înaintarea propunerilor de *lege ferenda*, rezultate din conținutul cercetării efectuate.

Noutatea și originalitatea științifică. Studiul reprezintă prima analiză complexă realizată la nivel național cu privire la instrumentele de executare progresivă a pedepsei penale privative de libertate în cadrul sistemului corecțional autohton. Cercetarea evidențiază necesitatea modernizării legislației execuțional penale pentru a asigura realizarea eficientă a scopului pedepsei penale prin modificarea conceptuală a modului și condițiilor de individualizare a executării pedepsei, oferind instrumente necesare funcționarilor implicați în resocializarea condamnatului.

Problema științifică soluționată constă în elaborarea unui cadru conceptual ce va permite îmbogățirea doctrinei execuțional penal autohtone în materia executării progresive a pedepselor penale privative de libertate; îmbunătățirea activității corecționale a personalului penitenciar și oferirea unor propuneri de *lege ferenda*, în vederea eficientizării procesului de resocializare a condamnaților.

Semnificația teoretică. Având în vedere complexitatea cercetării efectuate, în lucrare se oferă soluții teoretice și practice în implementarea principalelor mecanisme de punere în aplicare a sistemului progresiv de executare a pedepsei în contextul autohton. La fel, în teză au fost evidențiate problemele fundamentale ale autorității naționale care asigură punerea în executare a pedepselor penale privative de libertate, precum și soluțiile pentru depășirea acestor probleme.

Valoarea aplicativă a lucrării rezidă în oferirea unor generalizări ale materialului doctrinar cercetat și formularea recomandărilor practice pentru personalul sistemului administrației penitenciare în eficientizarea procesului corecțional.

Implementarea rezultatelor științifice. Rezultatele obținute în cadrul cercetării pot fi utilizate atât pentru instruirea studenților instituțiilor de învățământ, precum și pentru pregătirea profesională inițială și de perfecționare continuă a personalului instituțiilor penitenciare. La fel, concluziile studiului pot fi utilizate în activitatea practică a funcționarilor publici cu statut special din cadrul sistemului administrației penitenciare în cadrul activității corecționale cotidiene.

АННОТАЦИЯ

Крудю Александр. Роль прогрессивной системы исполнения наказаний лишенным свободы в достижении цели уголовного наказания. Докторская диссертация. Кишинев, 2023.

Структура диссертации: введение, четыре главы, выводы и рекомендации, библиография из 194 источников, основной текст 157 страниц, 7 приложений. Результаты опубликованы в 17 научных статьях.

Ключевые слова: прогрессивная система, индивидуальный план исполнения наказаний, прогрессивный перевод, изменение условий содержания, индивидуализация.

Цель работы состоит в изучении прогрессивной системы исполнения наказаний в виде лишения свободы, в особенности ее правовых инструментов, чтобы оценить роль данного вида организации исправительного процесса в достижении цели уголовного наказания, а также представление рекомендаций по совершенствованию нормативной базы.

Задачи работы: изучение отечественной и зарубежной доктрины о прогрессивной системе исполнения наказаний; анализ национального законодательства в части, касающейся инструментов дифференциации исполнения наказания; изучение принципов прогрессивной системы; научное исследование форм индивидуализации исполнения уголовных наказаний; изучение основных механизмов и инструментов уголовно-исполнительной системы, обеспечивающих прогрессивную эволюцию осужденных в процессе исполнения наказания; проведение сравнительного исследования уголовно-исполнительного права с законодательством других государств; идентификация решений практических проблем, с которыми сталкиваются работники пенитенциарной системы; изучение условий оценки, планирования и распределения осужденных в рамках прогрессивной системы; формулирование научно-практических выводов и представления предложений по изменению закона, вытекающих из содержания проведенного анализа.

Научное новшество и оригинальность. Исследование представляет собой первый проведенный на национальном уровне комплексный анализ инструментов прогрессивной уголовно-исполнительной системы. В диссертации подчеркивается необходимость модернизации законодательства для обеспечения эффективного достижения цели уголовного наказания путем концептуального изменения способа и условий индивидуализации исполнения наказания и предоставления необходимых инструментов сотрудника, осуществляющим ресоциализацию осужденных.

Решённая научная задача: заключается в разработке концептуальной основы, которая позволит обогатить отечественную доктрину в вопросе прогрессивной уголовно-исполнительной системы; совершенствование исправительной деятельности работников пенитенциарных учреждений и внесение предложений по изменению закона, с целью совершенствования процесса ресоциализации.

Теоретическая значимость. Учитывая сложность проведенного исследования, в диссертации предоставляются теоретические и практические решения по реализации основных механизмов прогрессивной системы исполнения наказаний. Так же в диссертации выделены фундаментальные проблемы национального органа, обеспечивающего исполнение наказаний в виде лишения свободы и пути их решения.

Практическое значение исследования заключается в обобщении научного материала и формулировании практических рекомендаций для сотрудников системы пенитенциарной администрации по повышению эффективности исправительного процесса.

Внедрение научных результатов. Результаты, полученные в ходе исследования, могут быть использованы как для обучения студентов юридических вузов, так и для начальной подготовки и переподготовки кадров пенитенциарных учреждений. Так же выводы исследования могут быть использованы в практической деятельности сотрудников в рамках повседневной исправительной деятельности.

ANNOTATION

Crudu Alexandr. The role of the progressive system of execution of custodial sentences in achieving the purpose of criminal punishment. PhD thesis in law. Chisinau, 2023.

Thesis structure: introduction, 4 chapters, general conclusions and recommendations, bibliography of 194 titles, 157 pages of basic text, 7 appendices. The results are published in 17 scientific papers.

Key words: progressive system, individual sentence execution plan, progressive transfer, modification of detention conditions, individualization.

The aim of the scientific research consists of the study of the progressive system of execution of the custodial sentences, in particular the legal instruments of a progressive system, in order to appreciate the role of this type of organization of the correctional process in achieving the purpose of the criminal sentence, as well as to submit recommendations for the improvement of the national legislative framework.

The objectives of the scientific research: to study the national and foreign doctrine regarding the progressive system of execution of custodial penalties; the analysis of the national legislation in the part related to the instruments for differentiating the execution of the sentence; analysis of the principles of the progressive system; the scientific research of the forms of individualization of the execution of custodial sentences; to study the main mechanisms and tools of the correctional system that ensure the progressive evolution of convicts during the execution of the sentence; carrying out a study of comparative criminal enforcement law of the legislation of other states; identifying solutions for the practical problems faced by the prison staff; examination of the assessment conditions, planning and distribution of the convicted persons within a progressive system; drawing of scientific-practical conclusions and the submission of legislative proposals, resulting from the content of the research carried out.

Scientific novelty and originality. The study represents the first complex analysis carried out at the national level regarding the instruments for the progressive execution of custodial sentences within the domestic correctional system. The research highlights the need to modernize criminal enforcement legislation to ensure the effective achievement of the purpose of criminal punishment by conceptually changing the way and conditions of individualizing the execution of the punishment, providing necessary tools to the officials involved in the resocialization of the convicted persons.

The important scientific problem to be solved consists of the elaboration of a conceptual framework that will allow the enrichment of the domestic criminal execution doctrine in the matter of the progressive execution of custodial penal sentences; improving the correctional activity of the prison staff and submission of legislative proposals, in order to make the process of resocialization of convicts more efficient.

Theoretical significance. Considering the complexity of the research carried out, the research paper offers theoretical and practical solutions in regard to the implementation of the main mechanisms for the progressive system of execution in the local context. In the same way, the thesis highlighted the fundamental problems of the national authorities that ensure the execution of custodial penalties, as well as the solutions to overcome these problems.

The applicative value of the scientific work resides in providing some generalizations of the researched doctrinal material and formulating practical recommendations for the penitentiary administration system in order to improve the efficiency of the correctional process.

Implementation of scientific results. The results obtained in the research study can be used both for the training of students in educational institutions, as well as for the initial professional training and continuous improvement of the prison staff. In the same way, the conclusions of the study can be used in the practical activity of civil servants with special status within the penitentiary administration system in their daily correctional activity.

CRUDU ALEXANDR

**THE ROLE OF PROGRESSIVE SYSTEM OF EXECUTION OF
THE CUSTODIAL SENTENCES IN ACHIEVING THE
PURPOSE OF CRIMINAL PUNISHMENT**

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