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ENSURING THE RIGHT TO INFORMATION WITH REGARD TO PERSONS SENTENCED TO IMPRISONMENT

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Abstract

In this article, the authors undertake a comprehensive analysis of the detainee's right to information, highlighting the international and national legal framework, the doctrinal correlations, and the directions for improving the mechanisms that guarantee this right. The study demonstrates that the detainee's right to information is a fundamental right, constitutionally guaranteed and further detailed through the penitentiary enforcement legislation of the Republic of Moldova. This right cannot be suppressed solely due to the deprivation of liberty but may only be limited in a proportional and justified manner. At the same time, the main issue regarding its effective realization lies in the deficient implementation of the existing regulations. The principal problems are related to the lack of access to legal information, the formalism of procedures, and disproportionate restrictions.

The conclusions emphasize that the free exercise of the right to information by each participant in social relations within the penitentiary enforcement sphere, primarily by convicted persons, represents a fundamental condition for the effectiveness of public oversight, as it provides the possibility to obtain the necessary information and to exert influence on state authorities. At the same time, it is important to take into account that persons held in places of detention have a limited scope of rights and freedoms, including with regard to informational rights, as this is necessary for ensuring the detention regime and for achieving the objectives of criminal punishment.

Keywords: right to information, detainees, imprisonment, penitentiary.

REALIZAREA DREPTULUI LA INFORMAȚIE ÎN PRIVINȚA PERSOANELOR CONDAMNATE LA PEDEAPSA CU ÎNCHISOARE

Abstract

În articol, autorii întreprind o analiză complexă a dreptului deținutului la informație, evidențiind cadrul normativ internațional și național, corelațiile doctrinare și direcțiile de perfecționare a mecanismelor de garantare a acestui drept. Studiul realizat a demonstrat că dreptul deținutului la informație este un drept fundamental, garantat constituțional și detaliat prin legislația execuțional-penală a Republicii Moldova. Acesta nu poate fi suprimat prin simplul fapt al privării de libertate, ci doar limitat în mod proporțional și justificat. Totodată, principala problemă privind realizarea sa efectivă rezidă în caracterul dificitar al implementării. Principalele probleme sunt legate de lipsa accesului la informație juridică, formalismul procedurilor și restricțiile disproportionate.

În concluzii se punctează că exercitarea liberă a dreptului la informație de către fiecare dintre participanții la raporturile sociale din sfera execuțional-penală, în primul rând de către persoanele condamnate, reprezintă o condiție de bază pentru eficiența controlului public, întrucât oferă posibilitatea obținerii informațiilor necesare și exercitării unei influențe asupra autorităților statului. Totodată, este important să se țină cont de faptul că persoanele aflate în locuri de detenție au un volum limitat de drepturi și libertăți, inclusiv în ceea ce privește drepturile informaționale, întrucât acest lucru este necesar pentru asigurarea regimului și realizarea scopurilor pedepsei penale.

Cuvinte-cheie: dreptul la informație, deținuți, pedeapsa cu închisoare, penitenciar.

Introduction. The right to information is recognized at the international level as a fundamental right, indispensable for the functioning of the rule of law and for the exercise of other human rights. In the case of persons deprived of liberty, this right acquires particular importance, as the lack of access to information amplifies the vulnerability inherent in detention.

When analyzing the right to information as an instrument for increasing the efficiency of public oversight, it must be taken into account that this right has a complex content and consists of numerous elements whose essence and position within the legal system have not been sufficiently studied.

The right to information has particular importance for persons held in places of detention. The effectiveness of the realization of this right determines, to a large extent, the success of protecting other rights and freedoms, as well as the effectiveness of public oversight over the penitentiary enforcement system.

To a significant extent, the outcome of the realization of the right under analysis depends on the quality of the regulatory framework in this field, as well as on its coherence, consistency, and completeness. In this context, the further analysis of the right to information should begin with a careful study of the legislation governing the social relations in question and of the degree to which this right is regulated under the conditions of places of detention.

At the same time, it is important to note that legal possibilities in the informational sphere differ depending on the person's belonging to one or another category of individuals held in places of detention. For this reason, this factor must be taken into account when analyzing the legislative framework.

Methods and materials applied. Within the scope of the present study, the following methods were applied: analysis, synthesis, comparison, and logical reasoning. The materials used consist of legislation and publications by researchers in the field.

Discussions and results obtained. The process of establishing the right to information is clearly reflected in a number of essential documents, including:

1. *The Universal Declaration of Human Rights* (1948) [1]. Article 19 proclaimed that every person has the right to seek, receive, and impart information and ideas through any media and regardless of state frontiers;

2. *The Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) [2]. Article 10 confirmed the right of every person to freely receive and impart information and ideas without interference by public authorities and regardless of state frontiers;

3. *The International Covenant on Civil and Political Rights* (1966) [3]. Article 19 continued the process of international recognition of the right to information, establishing that every person has the right to seek, receive, and impart information and ideas of any kind, regardless of state frontiers, orally, in writing, in print, in the form of art, or through any other media of their choice.

Article 34 of the Constitution of the Republic of Moldova provides for the right to information, establishing that access to information of public interest may not be restricted [4]. The constitutional provision does not establish exceptions related to a person's status, which means that persons deprived of liberty are also holders of this right.

At the same time, article 54 of the Constitution allows the restriction of the exercise of certain rights and freedoms, but only under the conditions provided by law and with respect for the principles of proportionality and necessity in a democratic society [4]. Therefore, deprivation of liberty cannot justify the complete suppression of the right to information, but only certain reasonable limitations strictly determined by the requirements of the penitentiary regime and by the need to ensure order and security.

This constitutional provision constitutes the foundation of the informational legal status of persons held in places of detention.

Specialized literature pays increased attention to the rights of persons deprived of liberty, emphasizing that detention does not eliminate their status as subjects of law. Thus, V. Dongoroz notes that "a custodial sentence cannot have the effect of suppressing fundamental rights that are not incompatible with the state of detention" [5, p. 52].

Some authors emphasize that "the right to information has an instrumental function, as it facilitates the exercise of other fundamental rights, such as the right to defense, the right to petition, or access to justice" [6, p. 186]. In the case of detainees, access to information regarding their rights and obligations, the detention regime, and administrative or judicial procedures is indispensable for the protection of human dignity.

In turn, A. Boroi emphasizes that "the right to information represents a guarantee of the legality of the execution of the sentence, as it allows the detainee to become aware of and challenge possible abuses by the penitentiary administration" [7, p. 41]. Romanian authors also underline the role of information in the process of the social reintegration of the convicted person, considering it an educational and preventive instrument.

In Western doctrine, the detainee's right to information is analyzed in close connection with the European standards of human rights. In this regard, it is emphasized that "access to information constitutes an essential component of the observance of Article 10 of the European Convention on Human Rights, even within the penitentiary environment" [8, p. 214].

It is also noted that "the limitations imposed on detainees must be interpreted restrictively, and any interference with the right to information must be justified by imperative security considerations" [9, p. 97]. From this perspective, informing detainees is viewed as an element of good penitentiary governance and of the prevention of inhuman or degrading treatment.

The most extensive body of legislative regulation concerning the right to information, which details the fundamental norms and requirements mentioned above, has been adopted with regard to persons sentenced to imprisonment. This situation is explained by the fact that this category of citizens is subject to the most significant restrictions on informational rights and freedoms. The overwhelming majority of the norms that define the informational legal status of this category of persons are found in the penitentiary enforcement legislation of the Republic of Moldova.

Thus, the Execution Code of the Republic of Moldova provides that convicted persons benefit from all the rights, freedoms, and obligations of the citizens of the Republic of Moldova, with the exceptions and restrictions established by law [11, Art. 186 para. (1)].

Specifically, the penitentiary enforcement legislation guarantees:

- the right to be informed by the institution or authority responsible for the execu-

tion of the sentence, in a language that he or she understands, about his or her rights and obligations, the manner and conditions for the execution of the sentence, as well as about any modification of the manner and conditions for the execution of the sentence (Art. 169 para. (1) letter a) of the Execution Code of the Republic of Moldova);

– the right to submit petitions (requests, complaints, proposals, notifications) to the administration of the institution or authority responsible for the execution of the sentence or to hierarchically superior bodies, the court of law, the prosecutor's office, central and local public administration authorities, public associations, other institutions and organizations, including international ones (Art. 169 para. (1) letter c) of Execution Code of the Republic of Moldova).

Detainees exercise their right to information, including access to legal provisions and documents regarding the execution of custodial sentences or preventive detention, under the conditions stipulated by Art. 208 and 209 of the Execution Code.

According to Art. 208 of the Execution Code of the Republic of Moldova, the convicted person is ensured access to information disseminated through mass media.

The prison administration has the obligation to take all necessary measures to ensure the application of legal provisions regarding the free access to information for convicted persons.

The penitentiary ensures the reception of radio and television broadcasts. Within the limits of the detention regimes provided for in the Execution Code of the Republic of Moldova and in the Statute on the Execution of Sentences by Convicted Persons, the convicted person may use a radio set, television, personal cassette player, or any other devices authorized by the prison administration, provided that the payment for the consumed electrical energy is made.

The convicted person is allowed to purchase, through the trade network, literature, subscribe to and receive newspapers and magazines, without limitation as to their number, at the expense of their own funds or those of other persons.

The convicted person is prohibited from subscribing to, receiving, purchasing, possessing, or distributing publications that promote war, ethnic, national, racial, or religious intolerance, the cult of violence and cruelty, as well as publications of a pornographic nature. The convicted person is prohibited from accessing the Internet network [10, Art. 208].

Article 209 of the Execution Code of the Republic of Moldova provides for ensuring access to legal provisions and documents regarding the execution of custodial sentences. Thus, the provisions of the Criminal Code concerning the execution of the sentence, the provisions of the Execution Code, the Statute on the Execution of Sentences by Convicted Persons, the provisions of the Law on Access to Information of Public Interest, the provisions of orders issued on the basis of the Execution Code, and the provisions of the penitentiary's internal regulations, as well as any amendments thereto, are brought to the attention of convicted persons or are made available to them, in Romanian or in a language they understand, immediately after their admission to the penitentiary.

The texts of the legal provisions specified above are made available to convicted persons in penitentiaries, in accessible places. In the case of convicted persons who have communication impairments, the respective information is communicated to them through methods that allow them to understand it.

It should be noted that the convicted person is not deprived of the possibility of becoming familiar with the documents contained in the personal file. In this regard, Art. 201 para. (3) of the Execution Code of the Republic of Moldova provides that the person

sentenced to imprisonment and his or her defense counsel have access, in the presence of a person specifically designated by the prison director, to the personal file.

According to point 48 of the Statute on the Execution of Sentences by Convicted Persons, detainees must be informed about the existence of acts (documents) officially received by the penitentiary that introduce changes to their legal situation. These documents are:

- Referral documents to the court, summonses, or indictments;
- Documents constituting the grounds for detention;
- Documents that modify the grounds for detention [11, point 38].

Upon receiving documents that modify the legal status of the detainee, the special records department must inform the detainee of these changes, record the modification in the personal file and in the other documents, and communicate the change to the relevant services of the penitentiary in order to ensure the lawful application of the detention regime (point 49 of the Statute).

Informing detainees about the content of procedural acts issued by the court or by the criminal investigation body constitutes an obligation of the penitentiary administration (point 50 of the Statute).

According to Art. 213 para. (1) of the Execution Code of the Republic of Moldova, the convicted person has the right to short-term and long-term visits, which are granted in the manner and under the conditions established by the Execution Code and the Statute on the Execution of Sentences by Convicted Persons.

In this context, the possibility of exchanging information with relatives, friends, defense counsels, and state authorities contributes to achieving two objectives:

- The rehabilitation of the convicted person and the prevention of the commission of new offenses;
- Ensuring adequate legal protection for this category of persons, in accordance with the norms and requirements of a civilized society.

Without going into the details of each issue, it should be noted that the objectively necessary physical isolation of convicted persons must not lead to an absolute blockade of their social connections, as this could generate only negative consequences and may hinder the subsequent process of resocialization.

However, it is also important to note that persons sentenced to imprisonment have the right to transmit information only in the form of providing it (that is, they may transmit information to a specific person), but not in the form of dissemination (that is, to an unlimited circle of persons). This conclusion results from the content of the above-mentioned provisions of the Execution Code.

In our opinion, this restriction is necessary and does not violate the balance in the analyzed field, as it corresponds to the regime established in places of detention, associated with the objectively necessary isolation of convicted persons and with the prevention of the negative influence that certain groups of detainees may exert on society and on other citizens, including by preventing the preparation, planning, and commission of new offenses.

The exercise of the prerogative of access to information is also associated with a series of specific particularities determined by the need to ensure appropriate conditions of isolation in places of detention.

The creation of such conditions requires the administration of penitentiary institutions to exercise comprehensive control over any contacts of the convicted person, which is possible only if all means of communication that are insufficiently controllable,

especially laptops, tablets, and phones with access to the Internet network, are prohibited and confiscated.

On the other hand, offering convicted persons the possibility to regularly receive information about the most important events taking place in the country may have significant educational value and allows them to avoid losing connection with social life.

It should be noted that the detention regime in penitentiary institutions does not prevent convicted persons from carrying out creative activities, writing literary works, practicing visual arts, or engaging in other forms of expression. On the contrary, such activity is encouraged by the administration, as it represents a manifestation of the positive qualities and traits of the convicted person's personality.

The above considerations imply that this category of persons may create information that can potentially have social and material value, constituting an object of civil circulation. For this reason, the law must provide mechanisms and procedures through which convicted persons may exercise their right regarding the use of information.

Despite the arguments presented, adequate legal regulation of these processes is in fact lacking, the mentioned issue receiving insufficient attention in legal literature, while systematized scientific research on this topic is almost nonexistent.

The exercise by persons sentenced to imprisonment of the right to information and the related positive legal possibilities presents particularities determined by the legal status of this category of persons. The development of concrete possibilities that allow the convicted person to exercise the right to information and its related prerogatives contains significant potential for their correction and re-education, a potential that cannot be fully utilized without improving the legal framework of the analyzed field and without an appropriate organizational policy on the part of penitentiary administrations.

Thus, based on the above, the following characteristics of the right to information can be highlighted:

1. The analyzed right must be characterized as a complex right, composed of a set of prerogatives;
2. It has major political importance and represents one of the foundations of the democratic rule-of-law state;
3. It is derived from freedom of expression but currently has the status of a fundamental right;
4. It is a right recognized at the international level, enshrined in numerous international normative acts concerning human rights.

One of the main problems identified in the specialized doctrine consists in the discrepancy between the normative recognition of the right to information and its effective implementation in the penitentiary environment. Although the penitentiary enforcement legislation expressly enshrines this right, the practical mechanisms of implementation often remain merely formal.

Some authors address the issue from the perspective of the inefficiency of institutional mechanisms, indicating that „in the absence of independent information structures, the detainee remains exclusively dependent on the penitentiary administration, which creates a structural imbalance” [12, p. 91]. Others emphasize that incomplete or distorted information undermines the corrective purpose of punishment, since “resocialization presupposes awareness of legal rights and responsibilities” [13, p. 148].

Effective access to information implies not only passive information but also the possibility to consult relevant legislation, case law, and doctrine. In practice, penitentiary libraries are insufficiently equipped, and access to updated legal information is sporadic.

In this regard, it is emphasized that, in many penitentiary systems in Eastern Europe, the information provided to detainees is limited to the minimal communication of internal rules, without a clear explanation of their content and legal consequences. Thus, Boroi A. points out that “the rights of detainees are often proclaimed in abstract terms, without being accompanied by real instruments for their exercise” [7, p. 44]. It is also noted that access to information becomes illusory when the person does not have the real capacity to understand and make use of the information received [6, p. 189].

A major obstacle is the limited access to updated legislation and case law. According to a study published by Penal Reform International, the lack of legal information in detention directly affects the detainee’s ability to challenge the legality of measures concerning him or her [14].

Reports by international NGOs, such as Amnesty International, highlight that detainees are not always effectively informed about complaint procedures [15]. This lack of information affects the effective nature of the right to an effective remedy guaranteed by Article 13 of the European Convention on Human Rights.

In this regard, the European Court of Human Rights has consistently held that the lack of access to relevant legal information may constitute an indirect violation of Articles 6 and 13 of the European Convention on Human Rights (case of Golder v. the United Kingdom, 1975) [16].

Furthermore, the reports of the European Committee for the Prevention of Torture (CPT) indicate that the information provided to detainees is often incomplete and formal. In the CPT Report regarding the Republic of Moldova (2020), it is stated that detainees are not always informed in a clear and accessible manner about their rights [17, para. 34].

Another critical aspect is the tendency of the penitentiary administration to justify restrictions regarding information by invoking general security reasons. Although security represents a legitimate aim, it cannot constitute a general and automatic argument. In this respect, the restriction of the fundamental rights of detainees must be interpreted restrictively and subjected to rigorous proportionality control.

Conclusions. The free exercise of the right to information by each participant in social relations within the penitentiary enforcement sphere, primarily by convicted persons, represents a basic condition for the effectiveness of public oversight, as it provides the possibility of obtaining the necessary information and exercising influence over state authorities.

At the same time, it is important to take into account that persons placed in places of detention have a limited scope of rights and freedoms, including informational rights, as this is necessary to ensure the detention regime and the achievement of the purposes of criminal punishment, within the limits that do not contradict Article 34 of the Constitution of the Republic of Moldova.

At the same time, the scope of rights and freedoms of each individual person depends directly on the type of penitentiary institution and on the legal status of the person in detention, respectively persons sentenced to imprisonment, suspects, accused persons, persons placed under administrative arrest, etc.

The detainee’s right to information represents an essential guarantee of human dignity, of the legality of the execution of the sentence, and of social reintegration. The analysis carried out confirms that the main difficulties are not normative in nature, but rather institutional and practical.

The problems related to the implementation of the right to information and to public oversight over the penitentiary enforcement system are varied and concern a wide

spectrum of social relations. Considering the diversity of existing problems, deficiencies, and possible solutions – many of which have a particular character and concern distinct aspects of the right to information – it is necessary to highlight the main directions for the development of the analyzed right, as well as of public oversight as a whole:

- Improving the level of information provided to all categories of persons in places of detention, including ensuring their access to information regarding their rights and freedoms, the procedure and conditions for the execution of the sentence, and the penitentiary regime, as well as strengthening the legal liability of officials who violate these obligations;

- Aligning national practice with the standards developed by the European Court of Human Rights and international bodies;

- Training penitentiary staff regarding the respect for the right to information.

Bibliographical references

1. Declarația Universală nr. 12 din 10.12.1948 a Drepturilor Omului // https://www.legis.md/cautare/getResults?doc_id=115540&lang=ro (vizitat 03.03.2026).
2. Convenția nr. 342 din 04.11.1950 pentru apărarea drepturilor omului și a libertăților fundamentale // https://www.legis.md/cautare/getResults?doc_id=115582&lang=ro (vizitat 03.03.2026).
3. Pactul internațional nr. 31 din 16.12.1966 cu privire la drepturile civile și politice. // https://www.legis.md/cautare/getResults?doc_id=115567&lang=ro (vizitat 03.03.2026).
4. Constituția Republicii Moldova nr. 1 din 29.07.1994 // https://www.legis.md/cautare/getResults?doc_id=145723&lang=ro# (vizitat 03.03.2026).
5. Dongoroz V., Explicații teoretice ale Codului penal român, vol. I, București, 1970, 684 p.
6. Muraru I., Tănăsescu E.S. Drept constituțional și instituții politice, vol. I, București, 2015, 640 p.
7. Boroi A., Drept penal. Partea generală, București, 2019, 584 p.
8. Costa J.P. La Convention européenne des droits de l'homme, Paris, 2010, 228 p.
9. Van Zyl Smit D. Taking Life Imprisonment Seriously, Oxford, 2002, 312 p.
10. Codul de executare al Republicii Moldova, // https://www.legis.md/cautare/getResults?doc_id=149721&lang=ro# (vizitat 04.03.2026).
11. Statutul executării pedepsei de către condamnați, aprobat prin Hotărârea Guvernului Republicii Moldova nr. 583 din 26.05.2006 // https://www.legis.md/cautare/getResults?doc_id=110142&lang=ro (vizitat 04.03.2026).
12. Селиверстов В.И. Права осужденных, Москва, 2012, 272 p.
13. Стручков Н.А. Уголовно-исполнительное право, Москва, 2005, 464 p.
14. Penal Reform International. Access to information in prisons // <https://www.penal-reform.org> (vizitat 04.03.2026).
15. Amnesty International. Prisoners' rights and access to justice // <https://www.amnesty.org> (vizitat 04.03.2026).
16. Golder versus Regatul Unit al Marii Britanii și Irlandei de Nord – Interceptarea corespondenței. Încălcarea dreptului la asistență juridică // <https://legeaz.net/hotara-ri-cedo/golder-contra-regatul-unit-hac> (vizitat 05.03.2026).
17. Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 January to 7 February 2020 // <https://ombudsman.md/en/post-document/report-to-the-government-of-the-republic-of-moldova-on-the-visit-to-the-republic-of-moldova-carried-out-by-the-european-committee-for-the-prevention-of-torture-and-inhuman-or-3/> (vizitat 05.03.2026).