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File no. 27918/4/2016

ROMANIA
ILFOV COURT – CRIMINAL SECTION
Public Ministry – Prosecutors' Office attached to the High Court of Cassation and Justice
The National Anticorruption Direction was represented by the prosecutor Gina Bulat.

There is pending the settlement of the criminal case with the object - appeal against the licence supervision formulated by the petitioner-applicant **Adamescu Grigore Dan** against the criminal decision no. 2847/23.11.2016 pronounced by the Legal Court of 4th Sector Bucharest.
According to the art. 369 paragraph 1 Criminal Procedure Code, the judgment session being recorded by technical audio means.
At the roll call for the hearing session the chosen defender of the petitioner-applicant **Adamescu Grigore Dan** – lawyer Catalin Breazu answered, who submits the lawyer's power of attorney series B no. 3254784/2016 at folio 26 of the file, the petitioner-applicant Adamescu Grigore Dan being absent.
The calling procedure is legally fulfilled.
The case was presented by the session court clerk who informs that Jilava Penitentiary submitted a communication showing that the petitioner-convict cannot appear before the court, because he is hospitalized for the post-operatory recovery, after which:

At the court question with respect to granting a new term of judgment because of the impossibility of the petitioner's presence, the chosen lawyer of the petitioner-applicant, having the floor, considers that the calling procedure is legally fulfilled, because the petitioner was called, and the penitentiary made the proof of the impossibility of his presence, in accordance with the legal provisions.

He requests to be granted the floor in the debates, showing that, in the file on the merits, the petitioner personally submitted a signed request asking for the case judgment in absentia.
He asserts that, from the file documents, it arises exactly that the petitioner-convict is hospitalized, and it is a fact known also by the National Anticorruption Direction.

At the court question with respect to granting a new term of judgment because of the impossibility of the petitioner's presence, the representative of the Public Ministry, having the floor, shows he agree to grant the floor in the debates, taking into account both the assertions of the petitioner's chosen defender and the fact that the impossibility of being present shall be also maintained at a potential new hearing.

Taking into account such a circumstance, the Court acknowledges the case in judgment.
At the court question, the chosen defender of the petitioner-applicant requests the approval of the evidence with documents and he submits in the public sessions proving documents, consisting of the intermediary medical report of 06.12.2016, certifying the diseases and the updated health condition of the petitioner, as well as an extract of the portal related to the licence supervision from the case in which the petitioner was condemned.

The representative of the Public Ministry, having the floor, shows he does not oppose to the administration of the evidence with documents, according to art. 100 Criminal Procedure Code.

The Court, deliberating, approves the requested evidence with the documents, appreciating it as being useful and conclusive for settling the case.
As there is no other previous request to formulate, exception to invoke or evidence to administer, the Court grants the floor in the appeal debate.

The chosen defender of the petitioner-applicant Adamescu Grigore Dan, having the floor, according to art. 425 paragraph 7 point 2 letter a Criminal Procedure Code, requests the admittance of the appeal, the cancellation of the appealed decision and, rejudging according to art. 587 paragraph 1 in relation with art 59 and art. 60 paragraph 2 and 1 from VCP, the admittance of the request of licence supervision of the convict Adamescu Dan Grigore and its liberation.
He appreciates that the Legal Court of 4th Sector Bucharest rejected the request of licence supervision, with an unsubstantiated reason that cannot be applied to the petitioner-convict because, although acknowledging in the content of the motivation the obvious very degraded health condition of the petitioner and that he could not participate in lucrative works because of his precarious health, appreciated that there is no sufficient evidence of his correction, because the convict should have participated in more educational programmes.
He informs that the petitioner fulfilled the fraction of punishment provided by the law and, from the characterization submitted at the case file by the penitentiary, it arose that he had participated at a number of about 10 educative courses, mentioning he had been absent from the rest of them out of justified reasons, respectively medical examinations, court hearings, hospitalizations, etc.
He asserts that, at this hearing, he submitted a last medical intermediary report suggesting he had undergone of about 16 or 17 diseases, among which 3-4 started during the detention, respectively September 2016-October 2016.

He appreciates that these diseases are caused by the detention conditions, taking into account both the previous medical history, as well as the age of 68 years of the petitioner, the case file containing medical reports before the imprisonment and after that.

He asserts that, the medical report submitted to the file mentions a mediocre health condition, a difficult mobilization caused by the multiple falls of the petitioner, important leg edemas, coloring teguments, dyspnea at small efforts caused by the cardiac diseases corroborated with a severe diabetes and it is shown inclusively that the patient suffers of a severe muscular decrease of the muscular mass at the level of the lower and upper limbs.
He requests the court to take into account that the petitioner participated in the educative programmes of the penitentiary, although he is physically destroyed from all the point of view.

He asserts that he does not understand the court motivation with respect to the participation of the petitioner-convict in programmes, taking into account that he was hospitalized and the case file contains a document showing exactly the period of time of his hospitalization in the Penitentiary Hospital and when he was hospitalized under guard outside the penitentiary system, because he is still hospitalized under guard.

With this respect, he requests the court to take into account that it is impossible for the petitioner to participate in the courses, although he wishes it, because this condition is useful to his licence supervision.

He asserts that the file on the merits includes a statement made by the convict describing the severe torture he had lived these months of detention. With this respect, he informs that, for about 2 months and a half, the petitioner has been hospitalized in a unit where he underwent an operation and remained for a period in the intensive therapy department. He asserts that the petitioner considers as a day of detention in the penitentiary for an invalid person is the equivalent of one month for a normal man, and it is a reward for him to be able to reach in time the toilet, because he cannot stand up without help.

Moreover, he asserts that, in order to participate in the courses, the petitioner should have crossed the entire penitentiary until the center in which the course take place and he could not do it.
He asserts that the court on the merit speaks about an interruption of the punishment, but the petitioner did not formulated a request of interruption of the punishment execution, but he motivated before the court why he could not do more than he did.

He asserts that the law allows a criminal dangerous from social point of view, who participated in all the educational courses and worked to deduct from his punishment, but this is a discrimination against the petitioner-convict, because it would be necessary to appreciate his good faith, that he did what he could, he fulfilled the fraction of punishment in October and lived days of torture.

He requests the court to take into account that the petitioner-convict is permanently guarded by two guards and he does not have some facilities he could have had in the penitentiary, because he has no access to the phone, he received only the visit of his sister and has the right to 4 visits a month, given that the convict hospitalized in a hospital outside the penitentiary and this is the equivalent of a closed, maximum security regime.

Likewise, he requests the submission to the file of the formulated written conclusions, showing that he made strict reference including to what the court on the merits motivated, this court who, paradoxically, does not deny the precarious condition of the convict's health.

With this respect, he requests the court to take into account that, at folio 7 from the motivation of the court on the merits, it is mentioned that "although his health precarious condition, he is not prevented to participate in the activities organized in the penitentiary that do not involve an effort that could affect his health condition".
Thus, the chosen defender shows that the petitioner-convict cannot participate in these courses, because he is not in the penitentiary and, moreover, he cannot stand up alone from the bed not even to reach the toilet.

Moreover, he asserts that the petitioner is in a serious state and it is not possible to communicate with him, because he is in a delirium state because the tranquilizers administered to him following to the pains and operations undergone.
He asserts that the petitioner-convict was transferred with a SMURD crew at the beginning of September in unconsciousness, from Jilava to the Emergency Hospital Floreasca, with infections on the entire body, caused both by the hits and the falls undergone.
He informs that the medical report shows that the petitioner has had, since September 2016, inguinal-scrotal access with recent sepsis, for this reason being hospitalized at Floreasca Hospital for 10 days, because he had ingurgitated his tongue and he was saved by a cell mate who was accidentally in the room at that moment.

The chosen lawyer asserts he does not understand what improvement the court expects for this convict until February 2017, because this latter could attend at least two courses that are much below his intellectual formation.
He appreciate that this period shall be a period of torture and suffering, physical and psychical torture for him.

He considers that petitioner-convict can be under licence supervision, taking into account that he met the conditions required by the law, he has no criminal record, he executed the fraction of punishment, he was in semi-open regime and he fulfilled the obligations established by decision, he has no civil obligation to fulfill, he paid integrally all the court expenditure, including from the associated files, making the proof of this expenditure during the file judged on the merits. Moreover, he informs that the petitioner is 68 years old, he is invalid, in impossibility of participating in works or courses and has never received disciplinary sanctions.

Moreover, the chosen lawyer requests the court to take into account that, from the characterization of the penitentiary arises that he constantly maintained the connection with the supporting environment during the execution of the punishment, he has the capacity of assessing the consequences of his acts, he tries to avoid the conflictive situations, being oriented to situations that could assure his silence, which shows that he understood the purpose of the punishment.

For all these reasons, the chosen lawyer appreciates that there are real possibilities of the convict's reinsertion in the society.

He asserts that the petitioner-convict is treated with double severity to any other defendant and it is reevaluated from psychical point of view every two or three days in order to acknowledge that he can be transferred back to the penitentiary, but nobody assumes this responsibility, because he almost died in the penitentiary.
He shows that he submitted to the file the decision of licence supervision of a condemned person by the same decision through which the defendant Adamescu Grigore Dan was condemned, the person in question being a former magistrate with the age 65 years, condemned at 4 years and 6 months of prisons. He asserts that, in such a case, by meeting these criteria and fulfilling the fraction of punishment, it was decided the liberation, although the act of the magistrate who received bribery is more serious than the one of the person who offered it, including by the classification given to the offence.

For the failure of the principle of the treatment equality, the chosen lawyer requests the licence supervision of the petitioner-convict.
He submits written conclusions to the file.
The representative of the Public Ministry, having the floor, requests the rejection of the appeal and the conservation of the decision pronounced by the court on the merits.

He asserts that the fulfillment of the executed fraction from the applied punishment does not fulfill the requirements that could attract the privilege of the licence supervision at that moment.
With respect to the person of the convict, he requests the court to take into account the minute no. 43 which suggests that the Commission does not express his agreement with respect to the licence supervision, because he had not a particular, truly commendable behaviour, but he had a normal, predictable behaviour that any person deprived of freedom should have, so much

the more a person with the convict's education, because the behaviour is analyzed for each person condemned considered individually.

With respect to the invoked equality of treatment, the representative of the Public Ministry requests the court to take into account that the licence supervision is analyzed by the court with respect to each person individually considered, being obviously different persons and, therefore, we cannot speak in the procedure of the licence supervision of treatment equality passing over the fraction of punishment, taking into account the aspects strictly related to the convict.
He asserts that the personal positive references invoked before the court, respectively the lack of the criminal record should represent reasons for which he should not have reached in the actual condition, and the carrying out of the activities that represent a distinct manner of passing in detention should not be transformed into a deserving behaviour.

In relation with the crime committed, the fact that he offered money to the judges in order to obtain favourable solutions, the quantum of the punishment of 4 years and 4 months of prison, as well as in relation with the period executed so far by the convict, the representative of the Public Ministry appreciates that this period is not sufficient so that he should make a correct attitude to the constitutional order which was practically noted in the minute of the Penitentiary Commission that, knowing all the health problems invoked before the legal court, appreciated that it was not the case to accept the licence supervision.

With respect to the fulfillment of the fraction of punishment, the representative of the Public Ministry requests the court to take into account that the fraction of 1/3 of the punishment is formally fulfilled because, from the total of the fraction of 530 days, about 383 days were executed in remand of custody and home arrest, respectively 1 year and one month he was in home arrest and only 147 days of prisons (4 months) out of which most of them passed in the hospital.

In accordance with the Commission of the Penitentiary, the representative of the Public Ministry appreciates that, by executing a minimum period, respectively 4 months of prison from the total punishment of 4 years and 4 months of prison, we cannot conclude he had enough time to prove his efforts are real, his behaviour being improved and being possible to put him under licence supervision, without the risk of the criminal reiteration.

He asserts it is true he had no criminal record and was not sanctioned from the disciplinary point of view, but these aspects are less relevant, under the conditions that the observance of the prison norms should be a behaviour as natural as possible. He requests the court to correctly appreciate the period executed by the convict, under the condition that, in this period of 383 days of home arrest, he could not be monitored and supervised to appreciate he behaves in such a way that the court should do the correct interpretation of this fraction.

He considers that the period passed in the penitentiary (147 days) is insufficient, taking into account the remaining period of about 3 years (2 years and 18 months).

He asserts that the multitude of diseases the petitioner-applicant suffers of are put down also in the medical report approved at this hearing and were taken into account by the court on the merits.

Moreover, he asserts that the law maker inserted, by art. 60 paragraph 2 the condition of the solid evidence that his behaviour improved, even if the convict is indeed prevented because of the health condition to participate in the programme and activities carried out in the penitentiary, but the minute of the commission does not specify it, but it is understood that the period of time is insufficient to reach such a conclusion.
He considers that all the appreciations with respect to the convict's health condition were not taken into account by the court on the merits too, and the court on the merits correctly appreciated they corresponded to other institution, respectively for the interruption of the punishment execution.
For all these reasons, he requests to reject the appeal.

As a reply with respect to the newly invoked aspects, the chosen lawyer shows he does not understand how the representative of the Public Ministry made these calculations, respectively the 4 months executed, because, if calculating the moment of the condemnation, respectively the month of May without taking into account the period of remand on custody and the period of the home arrest, we have 7-8 months plus the 4 months of remand on custody, respectively an effective period executed at the Rahova Penitentiary of about 1 year.

He asserts that, indeed, the petitioner remained in home arrest for 7 or 8 months, but the laws provides that this period is assimilated to an arrest deducted from the period to execute and, therefore, we cannot make appreciations with respect to the fact that this period is not detention, and the fraction is formal.

He informs that the National Anticorruption Direction does not make such assertions with respect to other convicts who were in the same situation with the convict's.

He asserts that, since he came in the penitentiary, he was not in an easier situation because his name was Adamescu, but, in the contrary, he was discriminated, his package was very carefully controlled in relation with the other convicts and capsulated.

He informs that the medical report mentions a diet of 180 grams of glucide, 100 grams of proteins, which means that his health condition was serious and it was necessary to assure a well-established dietetic regime, that the penitentiary cannot offer, for this reason the regulation being applied more strictly to him in comparison with other convicts.
Besides, he asserts he does not understand why they speak about the interruption of the execution of the punishment, the reference related to the medical diseases being done only to acknowledge that the provisions of art 60 paragraph Old Criminal Code are applicable and to appreciate the good faith of the convict and his efforts for improvement.

He asserts claims cannot be formulated from a convict who can work in comparison with one having such a health condition, for this reasons submitting to the file the case in question and the reason for which he requested the equality of treatment.

He shows that, indeed, the term of equality of treatment does not exist in our legislation, but he wished to mention that Mrs. Roventa, a person in a similar situation with that of the petitioner Adamescu Grigore Dan, suffering of renal diseases and having a probe, was freed because of her precarious health condition.

He requests the application of an equality of legal reasoning because a person with a bad health condition, without the possibility of working and having proved he was disciplined and

complied with the penitentiary rules can be under licence supervision, because, after the hearing of 19.02.2016, the petitioner shall be again before the court and does not understand what he could do different in the meantime, so that the court should appreciate the licence supervision can be decided in his favour, taking into account he is immobilized in bed and has multiple diseases.

He appreciates the fraction of punishment is fulfilled according to the law and the law cannot be otherwise interpreted.

Therefore, the request to the court to appreciate that the arguments taken into account by the court on the merits are criticized by the defence and the judiciary control court is going to analyze the invoked elements and the deeds submitted to the file, in order to appreciate if this defendant should go on being a convict and what he will get in the following period.

He appreciates that the court should take into account the social insertion of the convict and not what is invoked at this hearing, because he has already been condemned.

The representative of the Public Ministry submits at the file the judiciary practice by which the court appreciated that the law speaks indeed of the fulfillment of the fraction of 1/3, but the court analysis the institution of the licence supervision, including what the percentage of 1/3 contains.

Subsequently, the court has the right to analyze the fulfillment of this fraction of 1/3.
In reply, the **representative of the Public Ministry,** having the floor, asserts that these statements related to the health condition are indeed serious, but the commission minute shows these matters were known by the commission and, despite this fact, the Commission did not express the agreement for the liberation and there is also a medical report, but not a forensic expertise made by experts.

Therefore, he appreciates that the aggravation of the health condition is mentioned only by the petitioner's lawyer, and the court cannot study concretely the opinion of an expert with this respect.
The Court declares the debates closed and reserves judgment.

THE COURT,

Deliberating on this criminal appeal, acknowledges as follows:

By the criminal decision no. 2847/23.11.2016 pronounced in the file no. 27918/4/2016, the Court of 6th Sector Bucharest, according to art. 587 Criminal Procedure Code in relation with the art. 59 Criminal Code of 1969 and art. 5 Criminal Code, **rejected the request of licence supervision** formulated by the petitioner-convict Adamescu Grigore Dan, son of Grigore and Eugenia, born in 20.09.1948, at present convict at Bucharest Penitentiary of Jilava, **as being unfounded.**
According to art. 587 paragraph 2 Criminal Procedure Code, established a term of reintegration the request on 19.02.2017.
According to 275 paragraph 2 Criminal Procedure Code, obliged the petitioner-convict to pay the amount of lei 100 as judiciary expenditure to the state.

In order to pronounce this solution, the first court acknowledged as follows:

By the request registered at the Court of 4th Sector Bucharest, on 25.10.2016, under number 27918/4/2015, the petitioner convict Adamescu Grigore Dan appealed the minute of the liberations commission within the Bucharest Penitentiary of Jilava by which it was suggested the postponement of the licence supervision, requesting his licence supervision.
On 25.10.2016, the petitioner convict submitted the request of licence supervision from the execution of the punishment of 4 years and 4 months of prison applied by the criminal decision no. 17/02.02.2015 pronounced in the file no. 4153/2/2014 of the Bucharest Court of Appeal, maintained by the criminal decision no. 234/2016 of 27.05.2016 of the High Court of Cassation and Justice.

In the motivation, the petitioner showed, in essence, that the ancient law is more favourable to his situation taking into account the date of the crime; he is executing the punishment in a semi-open system, executed the fraction of 1/3 of the total of the punishment, respectively 534 days of prison from a total of 1467 days.

The petitioner asserted that, during the execution of the punishment, he had a good behaviour and was not sanctioned during the period of detention. He specified he had not the possibility of participating in more programmes and activities because of his extremely bad health status, being immobilized in the invalid chair and undergoing other numerous diseases. He showed that most of the punishment was executed in the penitentiary hospitals and in the hospitals from the public medical system. The petitioner underlined that the conditions for his licence supervision were met, showing he is 68 years old and suffers of many diseases, detailing his medical situation before the imprisonment and subsequent to this moment. The medical situation prevented him from coming into prominence during the execution of the punishment.

The petitioner's characterization, the minute drawn up by the commissions in charge with suggesting the licence supervision were attached to the case file.

During the case judgment, the convict had the legal assistance assured by the chosen lawyer Catalin Breazu, according to the power of attorney submitted at the file.
At the term of 09.11.2016, medical documents were submitted at the file by the petitioner's lawyer and the receipt TS701 no. 20100240716 of 08.11.2016 (folios 22-25).
At the hearing of 09.11.2016 the petitioner did not appear and any judgment request in absentia was submitted for this reason the court postponing the case for 23.11.2016.

At the case file, the Jilava Penitentiary of Bucharest submitted, on 09.11.2016, 12.00 o'clock, after the calling of the case, documents showing the impossibility of the petitioner of appearing before the court from medical reasons (folios 26-27).

The following document were also attached to the case file: criminal decision no. 17/2015 of the Bucharest Court of Appeal (folios 30-64); medical documents (folios 75-83). For the hearing of 23.11.2016, the petitioner submitted a request of judging the case in absentia (folio 75), as well as written conclusions.

The court recorded the impossibility of hearing the petitioner by the videoconference, taking into account he is hospitalized in a hospital outside the penitentiary system, respectively in a private hospital.

Analyzing the documents and works of the file, the court acknowledged as follows:
De facto, by the criminal decision no. *17/2015* of the Bucharest Court of Appeal, finalized by the criminal decision no. 234/A/27.05.2016 of the High Court of Cassation and Justice, it was applied the punishment of 4 years and 4 months of prison for having committed the crime provided by the Law 78/2000, being issued the execution warrant of the prison punishment no. 28/2016.
According to the minute no. 43 of 20.10.2016 drawn up by the commission in charge with suggesting the licence supervision within the Bucharest Penitentiary of Jilava, the petitioner started the execution of the punishment of 27.05.2016 and it is going to expire on 09.09.2019 (because the remand on custody of 383 days is deducted). The punishment transformed into days of punishment is equal to 1548 days and, in order to be proposed for the licence supervision the convict that should execute 1/3 of the punishment, respectively 528 days.

The Commission appreciated that the convict could not be under licence supervision and suggested postponing the decision for a period of 4 months, because the petitioner did not make the proof of an improvement of the behaviour, the time passed in the penitentiary being insufficient for the purpose of the punishment. The petitioner is at the first analysis.

De jure, with respect to the applicable criminal law, given the succession of criminal laws determined by the coming into force on 01.02.2014, subsequently to having committed the crime by the convict Adamescu Grigore Dan, respectively in 2013, of the Law 286/2009 with respect to the New Criminal Code, regulating, in a more restrictive way, under the conditions of the subsequent obligations, the institution of the licence supervision, the court specified that, according to art. 5 paragraph 1 the New Criminal Code "in case since committing the crime until the final judgement of the case, one or more criminal laws intervened, the more favourable laws applies".

This is also the way the Constitution Court determines in the decision 214/17.06.1997 according to which the incidence of the New Criminal Code in relation with the facts and the persons is governed by the provisions of art. 15 paragraph 2 from the Constitution that, sanctioning the rule that the law disposes only for the future, admits as a unique exception the more favourable criminal law. The transitory situation in the succession of the criminal law arises if, since committing the crime, when the criminal legal relation of conflict appears and until the termination or settlement of that relation by the execution or the consideration as executed the punishment applied, sometimes until the removal of the consequences of the condemnation by rehabilitation, intervened one or more criminal law. The applicable law is always the more favourable law. In case of the institution of the licence supervision, the transitory situation is also created, when the crime was committed and it lasts until the execution or consideration as executed the punishment of the life detention or the punishment with prison. The intervention, within this period, of a criminal law amending the institution of the licence supervision, as the case of the Law no. 286/2009, makes the determination of the applicable law should be carried out according to the rules recorded at art. 15 paragraph 2 from the Romanian Constitution and art. 5 New Criminal Code, whichever might be the date when the condemnation decision remain final.

Analyzing the conditions required by the two successive criminal laws for granting the benefit of the licence supervision, the court acknowledged that the more favourable criminal law is of the Criminal Code of 1969, this law including more permissive conditions both with respect to the imperative requirements for granting the licence supervision and with respect to the petitioner's supervision after his licence supervision.

Subsequently, the court analyzed the situation of the condemned petitioner according to the provisions of the ancient Criminal Code.

Therefore, the court acknowledged that, according to art. 59 from the ancient Criminal Code, a convict can benefit of the licence supervision if he executed the fraction of punishment obligatorily provided by the law, he is disciplined, hard-working and gives solid evidence of behaviour improvement, also taking into account his criminal record.

In this case, taking into account the age of the petitioner convict, the court acknowledged the applicability of the provisions of art. 60 paragraph 2 from the ancient Criminal Code, text providing: "*the persons condemned during the minority, when they are 18 years old, as well as the convicts over the age of 60 years for the males and 55 years for the females can benefit of licence supervision after the execution of one third of the duration of the punishment in case of the prison not exceeding 10 years or one half in case of the prison for more than 10 years, if they satisfy the other conditions provided by art. 59 paragraph 1".*

According to the above-mentioned provisions, it was acknowledged that, for granting the licence supervision, it is necessary, *besides the concrete execution of the fraction of the punishment,* established by the law, *that the convict should have been hard-working, disciplined and should have done solid evidence of behaviour improvement, taking also into account his criminal record.* The court reminds that the execution of the fraction provided by the law grants to the petitioner convict only a vocation of licence supervision, without existing any obligation with this respect. ,

With respect to the *execution of the fraction from the punishment provided by the law*, the court acknowledged, from the minute no. 43 of 20.10.2016, that the convict's punishment is of 1584 days, and in order to be included for a proposal of licence supervision, the convict should execute the fraction of 1/3 from the punishment, respectively at least 528 days of prison. Because the convict executed, since 27.05.2016 until 20.10.2016, 147 days of prisons, plus 383 days in remand on custody, respectively home arrest, arising a total of 530 days of prison, the court acknowledged that the *condition related to the execution of the fraction of punishment established as being mandatory by the law maker is accomplished,* which grants the convict the vocation of the licence supervision.

The circumstance that the petitioner executed the obligatory fraction provided by the law maker did not grant him a right, but only a **vocation** to benefit of the licence supervision, the opportunity of this licence supervision being at the choice of the legal court, being required solid evidence of behaviour improvement so that to be possible to decide the licence supervision.

With this respect, the court acknowledged that the licence supervision represented the measure to be decided by the legal court consisting of the liberation of the convict before the entire execution of the punishment with the prison of the detention on life, if the conditions strictly and limitatively fulfilled by the law. The measure is optional, not representing a right, but only a general vocation of the convict, in the same meaning being the decision of the European Court of the Human Rights that established that art. 5 paragraph 1 letter a) from the Convention does not guarantee the right of a convict of benefiting of a law of amnesty or of being freed, under licence supervision or definitively, before the execution of the punishment (CEDO, the case Kalan c. Turkey, request no. 73561/01, decision of 02.10.2001).

Analyzing the other criteria the convict must fulfill in order to benefit of licence supervision, the court appreciated he *did not make solid evidence of the behaviour improvement,* not making the proof that the period passed in detention led to his reeducation and to the full understanding of the need of observing the social values protected by the law. Thus, the court acknowledged, from the characterization submitted to the file – folio 5, that since his arrival in the penitentiary, the petitioner had a *good behaviour*. The petitioner was not sanctioned from disciplinary point of view but was not rewarded during the detention, which do not represent, in the opinion of the court, reasonable data that he had an attitude confirming the awareness of the purpose of the applied punishment, correlated also with the period to be executed from the applied punishment. At the same time, the court acknowledged that the participation in educational programmes and activities at the detention place was normal, not extraordinary, in relation with the effective period passed inside the detention place. The characterization submitted to the file shows that the petitioner participated in a number of 10 educational programmes. Therefore, the court appreciated that the efforts made by the petitioner were minimum and they cannot lead to the conclusion of the existence of solid proofs of behaviour improvement.
Thus, the court appreciated it was obvious that the petitioner has not yet been aware of the seriousness of his acts and to adjust his behaviour to the legal provisions.

In relation with this aspects, the court acknowledged that the purpose of the punishment reintegration was not fulfilled, the convict not making constant efforts for his social reintegration, but adopting a behaviour compliant with the detention rules.

The court, taking into account the above-mentioned aspects, acknowledged, in compliance with the commission of proposals from the Bucharest Penitentiary of Jilava that the time passed in the penitentiary was not enough for him to benefit of the licence supervision, not being fulfilled the functions of the punishment provided by art. 52 from the ancient Criminal Code.

Indeed, according to art. 60 paragraph 1 from the ancient Criminal Code: "the convict who, because of the health condition or from other causes, has never been used at work or is no longer used, can be submitted to the regime of licence supervision after the execution of the fractions of punishment shown at art. 59 or, according to each case, at art. 59.1, *if he makes solid proofs of discipline and behaviour improvement".*

The Court appreciated that the solid evidence of the behaviour improvement can arise from an active involvement within the educational, moral, religious, cultural, therapeutic, psychological counselling and social assistance activities, the school training and professional training carried out at the level of the penitentiary, in case of the petitioner convict who, because of his health condition, cannot be used to the work.

The Court did not deny the precarious health condition of the petitioner convict clearly arising from the medical documents submitted to the file, but it appreciates that the health condition is not the element representing the basis from granting the licence supervision, but the behaviour of the petitioner convict that has to persuade the court that he understood the purpose of the punishment and the consequences of his criminal behaviour.

In this context, the court reminded that the health condition of the petitioner convict could justify a potential interruption of his punishment, as far as the conditions provided by art. 592 in relation with art. 589 paragraph 1 letter a Criminal Procedure Code are fulfilled, not a

request of licence supervision, taking into account the different conditions to be analyzed within the two legal institutions.

The Court acknowledged that the simple pass of the time in the penitentiary could lead automatically to the licence supervision, legal institution that should guarantee at least theoretically that the petitioner convict, once liberated, would not continue his criminal behaviour, guarantee that could arise from the fact that, in the penitentiary, he had a behaviour at least generating a presumption with this respect. In fact, as shown, the petitioner's behaviour in the penitentiary was not like that. The court considered that the petitioner had to prove with more certitude or clarity the fact that the purpose of the punishment is achieved to him, by a highlighted behaviour. Even if he had a precarious health condition, it does not prevent him from participating in the activities carried out in the penitentiary, not involving an effort affecting his health condition.

Therefore, the court appreciated that, at present, the convict's licence supervision is not necessary and, consequently, based on the above assertions, the court rejected his request of licence supervision, as being unfounded.
The court, according to art. 587 paragraph 2 Criminal Procedure Code, established a term of the request reiteration for 19.02.2017, as the court considered appropriate to the petitioner's behaviour so far, period in which the petitioner can think about his behaviour and make efforts justifying his liberation.

Contrary to the petitioner's assertions, the court appreciated that, in this period, he may make efforts to participate in the educational and cultural activities and intensify his efforts for his reintegration in the society.
Taking into account the solution suggested in this case, based on art. 275 paragraph 2, Criminal Procedure Code, the condemned petitioner was obliged to pay the amount of lei 100 representing judiciary expenses forwarded by the state.
Against this decision, the petitioner **Adamescu Grigore Dan** formulated an appeal, recorded at the Ilfov Court – Criminal Section under number 27918/4/2016 on 12.12.2016.

Examining the decision appealed against, based on the invoked reasons and ex officio, the Court rejects the appeal formulated by the petitioner Adamescu Grigore Dan, for the following reasons:

According to the provisions of art. 59 Ancient Criminal Code, a convict can benefit of the licence supervision if he executed the fraction of punishment obligatorily provided by the law, he is disciplined, hard-working and gives solid evidence of behaviour improvement, also taking into account his criminal record.

With respect to the age of the appellant in this case, the Court acknowledges the incidence in this case of the provisions of art. 60 paragraph 2 of the Ancient Criminal Code, according to which the convicts who are older than 60 years for males can benefit of the licence supervision after the execution of a third part of the punishment in case of the prison not exceeding 10 years if they meet the other conditions provided by art. 59 from the Ancient Criminal Code.

Finally, according to art. 60 paragraph 1 from the Ancient Criminal Code, the convict who, because of the health condition or from other causes, has never been used at work or is no longer used, can be submitted to the regime of licence supervision after the execution of the

fractions of punishment shown at art. 59 or, according to each case, at art. 59.1, if he makes solid proofs of discipline and behaviour improvement

Starting with the above-mentioned legal provisions, the Court acknowledges that, in our case, the condition related to the execution of the fraction of punishment obligatorily established by the law maker is met, as it arises from the content of the minute no. 43/20.10.2016 (folio 3 from the file on the merits).

With respect to the second condition established by the provisions of art. 59 paragraph 1 from the Ancient Criminal Code, the Court acknowledges that, according to the attached characterization attached to the minute no. 43/20.10.2016 (folio 5 from the file on the merits), the appellant was not selected to carry out productive activities because of his medical problems, which makes applicable in this case the provisions of art. 60 paragraph 1 from the Ancient Criminal Code.
As a matter of fact, we cannot deny the precarious health condition of the appellant from this case, obviously arising from the medical documents of the file, both in the stage of the merits and in the procedural stage of the appeal.

However, on the other hand, the Court appreciates that, in this case, the convict has not produced solid evidence of behaviour improvement, according to the imperative requirements from the provisions of art. 59 of the Ancient Criminal Code. Thus, the Court acknowledges from the content of the characterization attached to the file (folio 5 of the file on the merits) that, during the execution of the punishment, the petitioner had a good behaviour.
The petitioner was not sanctioned from disciplinary point of view but was not rewarded during the detention, which do not represent, in the opinion of the court, reasonable data that he had an attitude confirming the awareness of the purpose of the applied punishment.
On the other hand, the court acknowledged that the participation in educational programmes and activities at the detention place is normal, not particular, in relation with the effective period passed inside the detention place.

Therefore, the Court appreciates that the efforts made by the petitioner were minimal and they cannot lead to the conclusion of the existence of solid evidence showing his behaviour improvement.
As a matter of fact, the main reason invoked in the petitioner's request, namely his precarious health condition, could justify a potential request of interrupting the execution of the punishment as far as the conditions provided by 592 in relation with art. 589 paragraph 1 letter a from the Criminal Procedure Code are met, but not a request of licence supervision, taking into account the different conditions to be analyzed within the two legal institutions.

Subsequently, the Court appreciates that, at present, the convict's licence supervision is not required (so much more than it is the first analysis, and, until the expiry of the punishment applied by the legal court there are more than 2 years), rejecting the request, from this reason, as being unfounded, also invoking the application of the provisions of art. 275 paragraph 2 from the Criminal Procedure Code.

FOR THESE REASONS,
IN THE NAME OF THE LAW
DECIDES:

According to art. 425 ind. 1 paragraph 7 point 1 letter b) Criminal Procedure Code in relation with art. 587 paragraph 3 Criminal Procedure Code, rejects as unfounded the appeal formulated by the appellant-petitioner **ADAMESCU GRIGORE DAN** (*son of Grigore and Eugenia, born on September 20, 1948,* at present imprisoned in the Bucharest penitentiary Jilava).
According to art. 275 paragraph 2 Criminal Procedure Code, the court obliges the appellant-petitioner to pay the judiciary expenses forwarded by the state, amounting to lei 100 (to be paid into the account of Ilfov Court - ROl6TREZ4225032XXX001018 open with the Treasury Direction of Buftea – Fiscal Code 29342362).

Final.
Pronounced in public session today, 21.12.2016.

PRESIDENT,
RAZVAN PASTILA

COURT CLERK
VASI VICTORIA

Drawn up and typed jud. R.P. 114.02.2017
Judge of 4th Sector/jud. M.C

Stamp affixed

Signature