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Statutory Guarantees of Freedom of Conscience and Religion of Convicts and Detainees vs. Security in Prisons and Detention Centres

Citation: Nikolajew J., 2020, *Statutory Guarantees of Freedom of Conscience and Religion of Convicts and Detainees vs. Security in Prisons and Detention Centres*, Nurt SVD, Vol. 148, No. 2, s. 179-197.

Abstract

The enforcement of custodial sentence should take place in a safe manner. Preservation of security guarantees proper implementation of all rights of persons deprived of liberty, including freedom of conscience and religion. Restrictions in this respect may be justified only by the reasons of non-infringement of the principles of tolerance and order in the prison. However, most of the statutory rights that ensure religious freedom for prisoners are exercised without any obstacles.

Keywords: convicts, freedom of conscience and religion, security of prisons.

Streszczenie

Wykonanie kary pozbawienia wolności powinno odbywać się w sposób bezpieczny. Zachowanie bezpieczeństwa gwarantuje należytą realizację wszystkich praw osób pozbawionych wolności, w tym wolności sumienia i wyznania. Ograniczenia w tym zakresie mogą być uzasadnione jedynie względami nienaruszania zasad tolerancji i porządku w zakładzie karnym. Jednak większość ustawowych praw zapewniających osadzonemu wolność religijną jest wykonywana bez żadnych przeszkód.

Słowa kluczowe: skazani, wolność sumienia i wyznania, bezpieczeństwo więzień.

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Introduction

Security in prisons and detention centres appears to be a *sine qua non* condition for actions of state institutions designated to enforce the penalty of deprivation of liberty and detention on remand. The imprisonment is also to serve as an isolation measure, which is implemented in the dimension between the perpetrator of the criminal act and the rest of society. Nevertheless, it is necessary to ensure security of all persons staying in prisons and detention centres. Security involves three key elements. The first one is related to external security i.e. allocation of appropriate place for enforcement of isolation. The second element is related to ensuring security in prisons and detentions centres for all persons staying within their walls, which includes not only the prisoners. The third element is associated with the need to guarantee the personal safety of convicts and detainees.

In addition, prisoners and detainees must be guaranteed all their rights under the Executive Penal Code (Chapter 4 "Rights and Obligations of Convicts"), taking into account the specificity of the right to religious practices and services in prisons and detention centres. Finding a fair balance for the "safe" implementation of religious freedom seems to be an important task for any penitentiary system operating under the conditions of a democratic state ruled by law. Including this fact also in the scientific discussion allows to strengthen the guarantees of the state respecting the freedom of its (also imprisoned) citizens. Therefore, the principle of equality for everyone before the law, as adopted in the Constitution of the Republic of Poland, cannot be disregarded in the protection of the rights of persons serving the penalty of deprivation of liberty (*Constitution*, item 483). The legislator provided such guarantees also in the Executive Penal Code (hereinafter: the EPC) and adopted solutions to protect the rights of convicts to a fairly wide extent. First and foremost, the rights regarding the sphere of living conditions, considered to be fundamental with respect to other rights, have been taken into account. It is difficult to argue with such an assumption, since indeed the issues of proper nutrition, sleep, walk, cell equipment or medical, elderly and disabled care seem to be a simple consequence of adopting an individual approach to treatment of prisoners. Also, the convicts' employment and education rights should allow them to obtain an appropriate level of financial security, also after serving a sentence. Apart from these regulations, the Code took into account the convicts' need to keep in touch with the outside world as well as to practise and use religious services, in addition the right to rewards and

concessions associated with the enforcement of the custodial penalty. It would be difficult to deny the legislator's legitimacy to adopt such a catalogue of rights held by persons deprived of liberty, as otherwise human dignity of convicts would be completely depreciated, and the arguments in support of the need to educate and employ prisoners or create social and living conditions conducive to the rehabilitation process could be questioned. However, it cannot be acknowledged that the regulations adopted in this regard bear the features of optimal solutions. It seems reasonable to conduct a critical discussion, especially when the practice of the authorities enforcing such regulations does not allow for the implementation of all the legitimate rights of prisoners. For this reason, it has been decided not only to present the current regulations but also to include the enforcement authorities' perspective, which is no less important for the overall achievement of the custodial penalty's objectives.

1. External Security of Prisons and Detention Centres

The external security of prisons is a concept that is difficult to define. Nevertheless, it can be assumed that it involves a system of so-called technical and protective measures i.e. a set of mechanisms designed to protect the prison from the outside. Most often, it consists of protective walls, wire mesh fencing, concertina wire, security zone, guard towers, cameras installed around the so-called strict prison grounds, service dogs, and firearms with live or rubber bullets used by prison officers. The area of the prison (detention centre) must be clearly designated and at the same time it is necessary to strengthen the ceilings, foundations and walls of prison facilities. External security also means the need to build walking areas that prevent people from getting outside the prison. Overcoming the double line of external prison fencing seems to be a difficult task, especially when the facility is monitored by officers patrolling the area, security guards, infrared detection system, sound signalling, and at night also by service dogs responding to any of intruders. However, the variety of these expensive security measures does not completely eliminate the prisoners' attempts to get outside the prison. In the event of escapes, the Prison Service may use the help of other law enforcement agencies such as the police, municipal police and border guards. Providing support is possible on the basis of agreements concluded between these agencies and prisons.

The external security of prisons involves also the system of opening gates and bars, signalling external threats as well as independent sources of electricity and water used during breaks in their normal supply from the utility companies. Shortages in the supply of utilities from external operators can be mitigated by own sources of supply e.g. power generators or deep wells drilled inside prison facilities. It guarantees continuous operation not only of electrically powered security devices (vision systems) but also the preparation of meals or bathing arrangements. Undoubtedly, such solutions are more costly but necessary for the proper performance of the prison staff's official duties. Also, sanitary hazards, such as contamination of water intakes delivered to prison, can realistically threaten the safety of prison facilities and those staying there.

Another way to maintain external security of prisons is the use of movement control systems. Such a system involves identification of presenting persons entering the facility and performing personal checks and inspections of items brought to prisons. An absolute obligation to cover all persons, including officers and employees of prisons with such checks would also contribute to the prison security. Depositing mobile phones or firearms within the entry sector makes it difficult to move them to residential cells and other places of detainees' residence. A similar rule applies to other dangerous and illegal items, the catalogue of which should be available to those entering the prison.

The external security of prisons can be effectively threatened in the case of attacks from outside of the prison. A terrorist attack is the most serious threat for the functioning of prisons and detention centres. Serious problem may be posed also by natural forces such as fires or floods covering areas larger than the prison perimeter. In such cases, it is necessary to evacuate the prisoners to safe places in cooperation with other services based on previously pre-arranged and practiced procedures.

2. Internal Security of Prisons and Detention Centres

There is no doubt that ensuring internal security and order is the responsibility of state authorities. The Minister of Justice delegated his competences to the Prison Service, which has been statutorily obliged to respect the prisoners' rights, also with regard to security (*Act of 9 April*, items 631, 1321; of 2018 items 138, 739, 912, 1000, 1010). The prisoners' right to security has not been explicitly articulated in the provisions of Article 102 of the Executive Penal Code (*Act of 06 June*, items 652

& 1010) but it falls within the notion of the right to stay healthy. The Polish regulations correspond to the recommendations of the Council of Europe contained in the so-called European Prison Rules. These include the rules referring directly to the need to take measures to prevent escapes (Rule 49), security measures applied to individual prisoners as necessary to achieve their secure custody (Rule 51), assessment of the risks to the prisoners' safety (Rule 52) and special high security or safety measures (Rule 53).

They provided the basis for adopting statutory provisions (as recommended by the Council of Europe) regarding the use of coercive measures and firearms by certain formations, including officers of the Prison Service (*Act of 24 May*, item 1120; of 2018 items 106, 138, 730, 912). The said regulations guaranteed the possibility of using physical force, firearms, service dogs, guides, water stream and other force solutions against those prisoners who do not comply with the orders issued and in extreme situations also against other people who do not have such status. Furthermore, special intervention groups of the Prison Service were trained, for example, to break up barricades in prison cells.

To maintain order and security, the Prison Service may also impose disciplinary sanctions. The punishment of detention in an isolation cell for up to 28 days is particularly severe. The severity of this punishment comes down to the fact that it consists in placing a prisoner in a cell all alone without the possibility of contact with others and using other rights (visits, telephones, TV, shopping, cultural and educational activities).

For the purposes of maintaining order and security in prisons, the regulations for the execution of sentences and temporary detentions were issued in the form of a regulation of the Minister of Justice, which specify in detail the type and size of items that can be held in a prison cell. This solution is to serve the purpose of arranging the rules for the prisoners' use of their belongings and enable efficient inspections of prison cells. The supervision of the prisoners' space (residential units, places of work and study) is to eliminate all the unauthorized items the presence of which threatens personal and general security in prisons and detention centres. The (detailed) personal checks also serve the same purpose (Szymanowski, 2015, p. 29).

In addition, the prison director is obliged to publish the rules governing visits, delivery of parcels and moving around the facility e.g. for suppliers of goods and services. The instructions issued for this purpose are to ensure the internal order at prisons and eliminate violations of such rules.

The security of prisoners is also to be ensured by qualifying prisoners by danger categories. The indicators may include personal characteristics of the prisoners but, above all, the type and nature of the act for which he or she is imprisoned (this also applies to detainees, although they have not been judged yet). In such situations, a different regime of penalty (detention) execution is introduced, consisting in isolation of such persons completely from others and placing them in special cells and wards. This is to ensure safety also for other prisoners.

Security reasons are decisive in the case of so-called protected convicts (a new category of prisoners) i.e. persons whose testimony may be of key importance in the criminal proceedings being conducted, particularly, from the point of view of the state's interest. They are also isolated from other convicts to a maximum extent, so as not to allow them, for example, to be murdered in prison (Stańdo-Kawecka, 2015, p. 281).

The application of specific security requirements with respect to dangerous criminals and protected prisoners is a derogation from the general principle of deprivation of liberty in prisons of certain types and in the penal system as a whole. The Executive Penal Code provides for several types of prisons, which include facilities for juveniles, for those serving punishments for the first time, for penitentiary recidivists and persons in military custody. For example, there are no penal institutions for women, while "military" prisons have long ceased to function physically. The facilities listed by the legislator may be organized as various types of facilities (closed, semi-open and open) and their diversity concerns, in particular, the degree of protection, isolation of convicts and the scope of their rights and duties. In particular, the degree of security of the plant is important from the point of view of its safety, which involves the issues of prisoners being able to move freely or to a limited extent within the facility or leave it without the assistance of officers. It is understandable that in closed facilities, the scope of such rights is strictly regulated, and open type facilities offer a greater degree of freedom. Semi-open facilities are places of imprisonment, where the convicts' privileges are balanced, and the security measures are higher than in open-type facilities and less strict than in closed-type prisons. The slow progression system that allows prisoners to move up to a "higher class" (but also degradation to a lower one) also affects the increase (reduction) of the security of convicts in the cells. Thefts occurring in open cells, lowering the security levels at facilities, result in transferring convicts to prisons of stricter regime. The system in which the isolation punishment is enforced slightly less

affects the internal security in prisons, unless it involves therapeutic requirements associated with the need to take special therapeutic measures towards addicts and educational measures e.g. in case of sex offenders. This principle also applies to people with mental disorders, alcoholics and drug addicts, but in their case, the procedures should be correlated with individual needs and capabilities of such patients (Nikołajew, 2013, p. 137).

3. Personal Safety of Convicts and Detainees

In general, the prisoners' personal security requires ensuring such conditions by the state authority so as to prevent the emergence of threats from other persons. The first element of establishing a prisoners' security system is the proper segregation and classification of prisoners. Separation should be understood as separate placement due to gender, while the classification to a relevant facility should be based on age, crime history, degree of demoralization, susceptibility to social reintegration, and the therapy needs.

Furthermore, personal safety of convicts is also associated with their distribution in prison cells. This issue involves assignment of a sleeping bed by the prison administration (lower or upper bunk), which is of particular importance for the elderly or handicapped persons as well as for epileptics. In the case of an overcrowded cell, mattresses are often used (in which case personal safety and night sleep comfort requirements do not seem to be fulfilled). The prisoners' personal safety requires the use of sufficient cell furnishings so as to enable performance of tasks related to internal order of the prison.

Prison baths and toilets are the most "conductive" places of imprisonment for committing crimes involving the beating or raping of fellow prisoners. In turn, most fights occur during a walk and in cells. Often, such events are motivated by the reasons of the prison subculture, but also are related to conflicts regarding the way of using the cell equipment. For these reasons, the Prison Service was forced to introduce a monitoring system of virtually all prison rooms. Complaints from prisoners, their family members and the legitimate interventions of the Office of the Ombudsman have not improved the situation much, since the control restrictions have always been explained by the need to maintain order and security in prisons (Szczygieł, 2015, p. 111).

In addition to the aforementioned crimes, other ones often include theft, abuse, extortion, destruction of property and assaults

on officers. In such cases, the perpetrators are subject to disciplinary actions taken by the director of the prison and the public prosecutor's office is notified about the possibility of committing a crime (in cases involving property destruction, so-called internal damage proceedings are also held). As a consequence, such behaviours also lead to classifying convicts as dangerous.

Another category of behaviours threatening personal safety of convicts is related to possession of dangerous and illicit items (firearms, drugs, cell phones). Allowing detainees to make calls, for instance, is inadvisable for the benefit of an investigation. In addition, prisoners using "cells phones" can effectively manage criminal groups operating outside the prison. Serious problems include also smuggling of drugs and other similar substances. The prices offered on the prison market also lead to corruption of prison personnel, which makes it difficult to ensure the hermetic nature of prisons (Grabowski, 2015, p. 434).

Other hazards resulting from the lack of prisoners' personal security include risks caused by infectious diseases and poor sanitary as well as epidemiological conditions e.g. prison cuisine. The most common diseases in the environment of persons deprived of liberty comprise almost all diseases, the most common being scabies transmitted by convicts from neglected premises previously occupied by them at liberty. The sanitary and epidemiological threats may turn out to be so serious that the director may temporarily suspend the performance of previously scheduled normal activities (Nawój-Sleszyński, 2009, p. 211).

4. Rights of Convicts Guaranteeing Living Conditions

It should be clearly emphasized that from the point of view of the convicts' interests, their most important rights are related to ensuring proper living conditions, and these are most often identified by providing them with adequate food. Food quality has always been a determinant of the convicts' opinion on "how it is here". This common catchphrase has become an inherent part of the prisons' characteristics and in extreme situations even led directly to prison hunger strikes and other acts of disobedience against prison administration. Undoubtedly, the negative opinion on prison food may be influenced by such factors as low feeding rates limiting the quality and caloric value of prison meals. However, it must be remembered that the issues of prison food have been regulated in detail in statutory provisions (mainly in the Penal Code) and implementing provisions to them. Article 109

of the Executive Penal Code stipulates that three meals of adequate nutritional value shall be served a day, of which one shall be a hot meal. In addition, it has been decided that these meals should meet certain nutritional (caloric) standards and also take into account other requirements. These in turn are determined based on the type of work performed and the age of the convict. Another determinant is also the possibility of serving meals prepared in accordance with religious or cultural requirements. Another category is a separate diet for the sick, as they receive meals in accordance with the doctor's instructions. The established daily standard nutritional value should be no less than 2,800 kcal in food products for prisoners aged up to 18 years of age. However, for other prisoners, the standard value was reduced to 2,600 kcal. At the same time, it has been adopted to use the percentage values to determine standard daily values of nutrients in meals, which should be as follows: proteins (10-15%), fats (less than 30%), carbohydrates (50-65%). The regulations provide also for an appropriate nutritional diet and the division into the standard, juvenile as well as easily digestible and diabetic diets.

At the same time, it has been recognized as necessary to provide prison cells with adequate accommodation equipment, a separate place for sleeping, appropriate hygiene conditions, adequate air supply, proper temperature and lighting suitable for reading and performing work. Analysing individual social and living rights, attention should be paid first of all to the right to a separate place to sleep, and not, for example, a separate bed. Apparently, the concepts of "bed" and "sleeping place" seem to be the same but taking into account the practical implementation of this right, the problem may be much more serious. It turns out that a sleeping place, other than a bed, can mean a need to sleep, for example, on a mattress spread on the floor in a cell, which can lead to internal divisions of prisoners' rights within the same residential cell into those who have a separate sleeping bed and on those who were "forced" to sleep on a mattress. For obvious reasons, such differentiation has the characteristics of discrimination of the rights of persons with an identical legal status and from this point of view appears to be unacceptable under any condition (Kuć, 2009, p. 67).

In addition, the overcrowding of residential cells prevents the convicts and detainees from exercising their rights to use other accommodation equipment outside the sleeping place. Such equipment includes primarily furnishings necessary for everyday life in a cell such as tables, cabinets, stools and toilet facilities. It is the duty of the prison administration to provide such a quantity of equipment so as to

enable prisoners to function peacefully within a cell. This includes, for example, infirmary rooms, hospital rooms, food shopping rooms, and visit rooms. At the same time, the list of necessities includes the items intended for their personal use. This refers, for example, to clothes and footwear appropriate to the season, underwear, personal hygiene products, cleaning agents and tools, dishes and cups for eating.

Also, in order to ensure adequate comfort necessary to maintain mental and physical balance, the prisoners were provided with access to adequate ventilation and temperature. Certain standards related to the cell lighting adequate for reading have also been adopted. These regulations were intended to create at least minimal conditions for humane treatment of the convicts. However, in practice, as evidenced by complaints from convicts, social and living conditions are the main reasons for the majority of complaints addressed to the prison administration (Kuć & Gałązka, 2009, p. 61).

Regardless of the previously mentioned rights, convicts were also granted the right to rest, understood as the possibility of walking and sleeping. Pursuant to Article 112 paragraph 1 of the Executive Penal Code, prisoners shall be allowed at least an hour walk within a day and the prison's internal order rules must provide for eight hour sleeping time (after 1 July 2015, a convict is no longer entitled to a walk while being escorted). The right to shopping and receiving parcels as well as the right to receive benefits as well as medical services may also be considered as falling within the category of rights guaranteeing proper social and living conditions. Pursuant to Article 113a of the Executive Penal Code, convicts are allowed to purchase food and tobacco products at least three times a month. The convicts' entitlement to receive food parcels prepared in the prison canteen, after placing an order by the convict or a next of kin, should be treated as a new statutory solution (adopted after 2015). However, the costs of preparing such a parcel must be borne by the convicts themselves or their closest relatives. In this way, the possibility of delivering parcels prepared outside of prison was excluded. Such a change was supposed to eliminate the cases of delivering dangerous or illicit items in parcels (mobile phones, drugs). At the same time, it was allowed to provide the prisoners with "non-food" parcels containing the necessary clothing, underwear, footwear, hygiene products as well as, although to a limited extent, medicines (Nikołajew, 2015, p. 57-73).

In addition, Article 114 of the Labour Code provides for the possibility of granting monthly allowances to convicts who are not able to earn money and who do not have the necessary financial means.

At the same time, it was established that the competent authority in this regard is the prison director, while the amount of such allowance shall not exceed 1/10 of the employee's average monthly remuneration (Szymanowski, 2004, p. 242).

A separate module of conduct was adopted for "self-injured" persons who refused to take or continue treatment after being transferred to the prison hospital. In addition, a way of dealing with people infected with contagious diseases infectious diseases was determined and an appropriate procedure for the implementation of the necessary preventive and sanitary measures and observations were defined. A separate place in the regulation is devoted to the issued medical certificates, which specify who and at whose request issues a medical certificate on the health condition of a person deprived of liberty (a sample certificate is attached to the regulation). In addition to medical certificates, prison doctors are also obliged to issue opinions in strictly defined cases such as opinions on the applications of necessary derogations from the regulations (in the prison hospital, infirmary, towards chronically ill, convalescents, pregnant and lactating women). The prison doctor's opinion is also required for authorization to receive a parcel with medicines and medications and for determining admissibility of imposing or executing a disciplinary penalty of placement in an isolation cell (Hołda & Postulski, 2007, p. 149).

5. Convicts' Rights to Communicate with the Outside World

The main purpose of imprisonment (the same as execution of detention orders) is to isolate the convicted persons so as to prevent them from contacting with the outside world easily. However, it is not possible (or purposeful) to fully isolate them, where the penalty of deprivation of liberty is associated with social rehabilitation goals, since Article 67 paragraph of the Executive Penal Code recognizes contacts with family and the outside world as the basic method of executing the isolation punishment. In addition, Article 102 point 2 of the Executive Penal Code stipulates that maintaining relationships with family and other close relatives fall within the category of the most important rights of the convicts, when in custody. However, it was recognized that not only close relatives have a positive impact on the social rehabilitation, but the process itself would not be correct without taking into account the need to communicate with the entities referred to in Article 38 paragraph 1 of the Executive Penal Code. The list of these entities includes mainly

associations, foundations, organizations and institutions helping in the social re-adaptation of convicts, as well as churches and other religious associations and trustworthy persons. The right to contact with the outside world in accordance with the provisions of Article 102 point 6 of the Executive Penal Code is also the right to use cultural-educational and sports equipment and activities, radio, television, books and press. At the same time, it seems that this is the most "economical" form of the convicts' participation in life behind the prison walls, which does not require too much involvement from the prison staff (at the same time from the point of view of the prisoners themselves, it is the most attractive offer). However, the passive nature of participation in life outside the prison enables convicts only to receive and not to make new contacts. The convicts' direct contacts include the ones with the family, the right to be visited, the right to receive food parcels, the right to contact the clergy and also a lawyer, attorney, curator and statutory representative. Another possibility of communication with the outside world is the right to submit complaints, applications and requests (Article 102 point 10 of the Executive Penal Code) and the right to conduct official correspondence without censorship and to contact with the family. This includes, for example, the possibility of using Skype as well as the right to access the Public Information Bulletin, the electronic court, the website of the Prison Service or the legal service "Lex Polonica". Preventing such contacts can be considered as violation of Article 61 paragraph 1 of the Constitution of the Republic of Poland, which expressly states that a citizen has the right to obtain information about the activities of public authorities and persons performing public functions.

6. Convicts' Right to Employment

It should be noted that the convicts are subject to a variety of measures aimed to have an effect on them, which in principle should correlate with the objectives of prisoners' security. According to the provisions of Article 67 § 3 of the Executive Penal Code, as regards the impact on the convicted persons, the first and most important issue is work, especially one that fosters the acquisition of appropriate professional qualifications. Among other means of influence, such a solution gives priority to work, and at the same time entails a commitment to exercise special care in its implementation. In addition to acquiring professional skills, the purpose of employing convicts is also to bring economic benefits to convicts themselves, their families and society.

Pursuant to Article 123 § 1 of the Executive Penal Code, the convicts' work shall be paid for, subject to Article 123a of the Executive Penal Code. The terms and conditions of remuneration for work are determined in the agreement concluded with the prison director or in a contract concluded by the convict. When directing a convict for administrative and procedural work in prison, the remuneration for work is determined by the prison director. Article 123 § 2 of the Labour Code stipulates that the remuneration due to a prisoner employed on a full-time basis shall be determined in a manner ensuring that at least half of the minimum remuneration defined on the basis of separate provisions is obtained, if the full monthly working time or the monthly work standard is completed. If this condition is not satisfied, the remuneration is paid in proportion to the amount of time worked or the work standard completed. In the case of the convicts' employment on a part-time basis, the lowest salary is determined in proportion to the number of hours of employment, taking as a base half of the minimum wage.

An exception to the principle that the work of a convict be payable is defined in Article 123a § 1 of the Executive Penal Code. Pursuant to this provision, no remuneration shall be paid to a convict for cleaning and auxiliary works carried out for the organizational units of the Prison Service or local government, in the amount not exceeding 90 hours per month. Under Article 123a § 2 of the Executive Penal Code, a convict (with his/her written consent or at his /her request) may be allowed to work free of charge for public administration bodies and for charitable purposes as well as perform cleaning and auxiliary works for the organizational units of the Prison Service. In the case of unpaid work, a convict may be awarded prizes.

The employment of convicts is itself accompanied by a number of directives. One of the primary obligations provided for in Article 121 § 1 of the Executive Penal Code requires the prison administration to provide the convict with the opportunity to perform work. In the light of the applicable Executive Penal Code, a convicted person shall have no claim for employment. However, the administration of a penal institution is obliged to make every effort to hire convicts so that they can take advantage of the benefits of this measure as much as possible.

Pursuant to Article 122 § 1 of the Executive Penal Code, when referring to work, the profession, education, interests and personal needs of the convict are taken into account whenever possible. The non-statutory directives pointing to the need to consider such criteria as: age, gender, time left to be served, or order and security reasons are also of great importance.

7. Convicts' Right to Education

In addition to work, education has a special place in the range of measures aimed to influence convicts. The justification for the government draft of the Executive Penal Code stipulates that education for several hundred years has been an undisputed important means of improvement in prisons, and adequate education, especially for younger prisoners, is a condition for their proper adaptation in society. When qualifying for education classes, the convict's motivation, predispositions, time left to be served and, above all, maintenance obligations, are taken into account.

8. Right to Religious Practice and Religious Services

The right to religious practice and religious services by persons deprived of liberty is regulated in Articles 106, 109 and 110a paragraph 1 of the Executive Penal Code. However, the most important provisions are included in Article 106 paragraphs 1 and 2 of the Executive Penal Code, in which the right to religious practices and services was generally granted to the convicts, and the said rights were further regulated in detail. It includes the right to participate in services held at correctional facilities on holidays, the right to listen to services broadcasted by mass media, right to hold books, writings and articles necessary for religious practices, right to attend religious studies held at correctional facilities, right to participate in charitable and social activities of religious communities and the right to individual meetings with the clergy. Article 109 paragraph 1 of the Executive Penal Code governs the so-called religious diets (considerations on this subject have already appeared in the section on nutrition of convicts) and Article 110a paragraph 1 of the Executive Penal Code allows convicts to keep religious items. However, this type of entitlement must be correlated with the relevant provisions contained in the prison's internal regulations. However, the Code does not regulate issues related to the right to religious burial, which may lead to limiting the rights of convicted persons under Article 9 of the European Convention on Human Rights (hereinafter: ECHR).

Furthermore, the Executive Penal Code does not refer in any way to the convicts' right to marry during a religious ceremony, although such entitlement arises under the Act of 17 May 1989 on guarantees of freedom of conscience and religion. In addition, the implementation of specific religious powers cannot violate the principles of tolerance

or interfere with the order established in the prison. The exercise of the prisoners' religious freedom has been addressed in the Regulation of the Minister of Justice of 05 November 1998 on the detailed rules for the implementation of religious practices and use of religious services in prisons and detention centres. However, the nomenclature used in this Regulation is highly misleading, as the implementing provisions (despite the announcements) provided no details thereof and their modest volume do not specify anything at all. However, based on complaints addressed to various authorities in Poland and the European Court of Human Rights, it appears that the basic problem related to the exercise of rights under Article 106 of the Executive Criminal Code (also regulated in Article 9 of the ECHR) is related to the lack of adequate food prepared according to religious standards, access to clergy and difficulties in access to services (in the latter case it is mainly about temporary detainees brought to religious services according to community group criterion). In addition, teaching of religion in the school system is not practiced, and only catechisation is offered that does not replace the former in any way whatsoever. The school curricula for convicts do not provide for the possibility of teaching religion, although this option was adopted as available at the discretion of the school principals. Polish prisons do not operate rehabilitation programs based on religious values that are popular in the United States and Scandinavian countries. To a limited extent, religious practices that require the prisoners' presence outside the correctional facilities are also allowed e.g. pilgrimages to holy places and participation in charitable and social activities of religious associations due to the isolation nature of imprisonment. Interpretative doubts may arise in case of the right to possess items necessary to perform religious practices. In general, the admissibility of using such items is decided by the prison administration, which has no obligation to consult its decisions with the clergy, churches and other religious associations legally authorized to perform religious services in prison. The adoption of such an option does not guarantee the exercise of the religious rights of prisoners; however, the security concerns will be of favour of the decisions made in this regard by the prison administration (Nikolajew, 2012).

The clause contained in Article 106 paragraph 3 of the Executive Penal Code relating to such use of religious freedoms which neither violates the principles of religious tolerance nor interferes with the order established in the prison. This is all the more important as the legislator did not define the concept of religious tolerance, which, however, should be treated in terms of recognition of all religious but

also areligious, anti-religious and atheistic attitudes. The principle of “privileging” any religious association is not recognized in prisons, but on the other hand, proselytism was not forbidden and after 1989, the “open gate” principle was adopted for representatives of all religious associations, regardless of whether they have a regulated statutory situation. Even more threats can be attributed to the fact that religious organizations of an extremist nature, even after 11 September 2001, have not been excluded from the category of entities entitled to religious activities.

9. Convicts’ Right to Reward and Relief

Pursuant to Article 137 of the Executive Penal Code, a convict distinguished by good behaviour while serving the penalty may be rewarded. The rewards may also be granted to convicts in order to encourage them to improve their behaviour. In the first case, a convict is awarded of a typical reward, while the case is of motivational in nature, in order to encourage improvement of behaviour to obtain specific (desirable) conduct of the convicts. In both cases, the reward is an important instrument with educational influence on the convict (Hołda & Postulski, 2007, p. 139).

Article 138 of the Criminal Code defines the catalogue of rewards that can be awarded to the convicts. They may include permission for additional or long-term visits, or visits in a separate room without supervisors. Another reward may be expungement of all or some disciplinary penalties from the records. The rewards include also in-kind or cash rewards, permission to non-supervised visits outside the prison, with a close person or a trustworthy person, for a period not exceeding 30 hours and permission to leave the prison without supervision, for a period not longer than 14 days. The most commonly used reward is the praise. Other forms of awards include permission for more frequent participation in cultural and educational activities, physical culture and sports events, handing over gifts to the person indicated by the convict, attending visits in their own clothing, receiving additional food parcels, additional purchases of food and tobacco products and items admitted to be sold in prisons, telephone conversations between the convict and the person indicated by the convict at the expense of the prison.

Specific statutory rewards are those related to the convict’s leaving the prison. Rewards granted on the convict’s leaving the prison

are subject to additional conditions. They can be awarded to convicts, whose attitude while serving a sentence justifies the assumption that outside the correctional facility they will observe the legal order. A convicted person using the reward related to leaving the prison has the obligation to immediately report to the police unit, territorially appropriate for his or her place of residence during the period of using the permit, to confirm the place of stay (this obligation also applies to changing the place of stay). The prison director may oblige a convicted person using the reward related to leaving the prison to behave in a specific way, in particular, to stay in a pre-agreed place or to report more frequently to an appropriate police unit.

Conclusion

The regulations contained in the Basic Law and ordinary legislation in general ensure that appropriate standards for protection of the rights of persons deprived of liberty are preserved. It would seem that Poland has duly fulfilled its obligation to provide such rights to convicts so that they would not feel excessive discomfort, except for that resulting from the isolating nature of the imprisonment. The legislator indeed "took care" to secure their basic existential needs regarding food, clothing, sleep and care in the event of illness, old age or disability. The convicts' right education, work, rewarding and reliefs as well as contacts with the non-prison environment and religious rights were also taken into account. However, the extent to which these rights are exercised may be insufficient, especially when difficulties related to the practical application of these regulations in prisons are considered.

Ensuring total security in prisons is a difficult task, as it is virtually impossible to implement in the conditions of dynamically changing prison reality. It is true that the Prison Service undertakes measures to prevent and eliminate threats to security and prison order; however, it is difficult to eliminate violence and aggression (also against oneself) in the case of demoralized people, towards whom such measures proved ineffective in the past, and where the only solution is to isolate them from society. Even the use of forceful measures does not always bring the expected results, although these should be applied only when necessary and not as the main tool. In addition, the internal classification of convicts and the division of prisons based on their characteristics should be conducive to safe enforcement of the punishment. Likewise, disciplinary penalties, classification of some convicts as dangerous

and continuous monitoring of the facility should be treated should be implemented as the means to maintain order and security in a prison. However, crime occurring in the environment of persons deprived of liberty makes it difficult to achieve the assumed social rehabilitation and safety-related goals. Similarly, the presence of drugs, cell phones and other items that are not allowed inside prisons constitute a drawback. Therefore, all activities carried out by inmates are subject to state control with the use not only of the knowledge and experience of prison officers but also by means of technical equipment and service dogs. It does not provide a full guarantee of security in prison or personal security of prisoners or also security of a protective nature. In addition, there are also escapes from the strict prison facilities or detention centres as well as crimes whose perpetrators and victims are persons deprived of their liberty. Furthermore, fasting, barricading the prison cells, and attacks on officers interfere with the normal operation of the prisons.

Bibliography

- Grabowski M., 2015, *Przestępczość korupcyjna funkcjonariuszy państwowych*, w: Pływaczewski E., Filipkowski W., Rau Z. (red.), *Przestępczość w XXI wieku. Zapobieganie i zwalczanie. Problemy prawno-kryminologiczne*, Wolters Kluwer, Warszawa, s. 843.
- Hołda Z., Postulski, K., 2007, *Kodeks karny wykonawczy. Komentarz*, ARCHE, Gdańsk.
- Kuć M., 2007, *Indywidualizacja wykonywania kary pozbawienia wolności*, TN KUL, Lublin.
- Kuć M., Gałązka M., 2009, *Prawo karne wykonawcze*, C.H. Beck Wydawnictwo Polska, Warszawa.
- Nawój-Śleszyński A., 2009, *Problemy zapewnienia bezpieczeństwa osobistego osobom pozbawionym wolności przez administrację więzienną w warunkach przeludnienia jednostek penitencjarnych*, w: Lelental S., Szczygieł G. (red.), *X lat obowiązywania kodeksu karnego wykonawczego*, Wydawnictwo TEMIDA2, Białystok, s. 24.
- Nikołajew J., 2013, *Areszty śledcze i zakłady karne jako element zapewnienia bezpieczeństwa publicznego*, w: Karpiuk M., Walczuk K. (red.), *Prawo bezpieczeństwa publicznego*, Wydawnictwo Wyższej Szkoły Menadżerskiej, Warszawa, s. 137.
- Nikołajew J., 2015, *Kodeks karny wykonawczy po 1 lipca 2015 r. Wybrane problemy prawno-penitencjarne*, *Studia Prawnicze KUL*, Vol. 64, No. 4, s. 57.

- Nikołajew J., 2012, *Wolność sumienia i religii skazanych i tymczasowo aresztowanych*, KUL, Lublin.
- Stańdo-Kawecka B., 2015, *Europejskie standardy traktowania więźniów*, w: Bulenda T. i Rzepliński A. (red.), *Modernizowanie więziennictwa. V Kongres Penitencjarny*, Centralny Zarząd Służby Więziennej, Warszawa, s. 281.
- Szczygieł G., 2015, *Zagrożenia bezpieczeństwa ze strony skazanych a prawne możliwości ich ograniczania*, w: Bulenda T. i Rzepliński A. (red.), *Modernizowanie więziennictwa. V Kongres Penitencjarny*, Centralny Zarząd Służby Więziennej, Warszawa, s. 111.
- Szymanowski T., 2015, *Bezpieczeństwo w wykonywaniu kary pozbawienia wolności i tymczasowego aresztowania w świetle przepisów prawa*, w: Bulenda T. i Rzepliński A. (red.), *Modernizowanie więziennictwa. V Kongres Penitencjarny*, Centralny Zarząd Służby Więziennej, Warszawa, s. 29.
- Szymanowski T., 2004, *Polityka karna i penitencjarna w Polsce w okresie przemian prawa karnego*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa.

Legal Acts

- European Convention for the Protection of Human Rights and Fundamental Freedoms of 04 November 1950, Journal of Laws of 1993, No. 61, item 284 and the protocols thereto.
- Constitution of the Republic of Poland of 02 April 1997, Journal of Laws of 1997, item 483 as amended.
- Act of 06 June 1997 – Executive Penal Code, consolidated version, Journal of Laws of 2018, items 652, 1010.
- Act of 9 April 2010 on the Prison Service, consolidated version, Journal of Laws of 2017, items 631, 1321; of 2018 items 138, 739, 912, 1000, 1010.
- Act of 24 May 2013 on Coercive Measures and Firearms, consolidated version, Journal of Laws of 2017 item 1120; of 2018 items 106, 138, 730, 912.