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So-called "dangerous prisoners" – selected issues from the perspective of individual's rights protection

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Abstract: The issue of "dangerous" prisoners is of utmost importance, mainly regarding the restrictions imposed on offenders of this category. The restrictions in question introduce significant limitations of the statutory rights of individuals and alter the purposes of the penalty of deprivation of liberty. For this reason, it is necessary to align the Polish law, and above all penitentiary practice, with the international standards of human rights protection. This paper analyses both the Polish legislation and practice in terms of the qualification and treatment of "dangerous" prisoners. The paper points to the obscurity of certain legal regulations and the broad limits of discretion in applying and extending "dangerous prisoner" status. Furthermore, the paper evaluates the concept of distinguishing the category of "dangerous prisoners" and the operation of "N" wards from the perspective of the impact that such heightened isolation exerts on the individual, but also on the society and the penal institution.

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1. Introduction

The issue of so-called "dangerous prisoners", even though they do not represent a significant percentage of the prison population, is of extraordinary importance as it involves a major interference with the rights and freedoms of an individual serving the penalty of deprivation of liberty by placing the individual under a high-security regime and further restricting their communication with other prisoners and the external world. In view of this, there is a need for continuous monitoring of whether the Polish regulations and, above all, the realities of handling "the dangerous" are consistent with international standards of handling prisoners of this category. This paper aims to indicate the size of this group of prisoners, draw attention to the practical aspects of the classification procedure, and indicate the multi-faceted consequences carried by "dangerous prisoner" status, both from the perspective of the penal institution and the individual in question. In line with these assumptions, this paper goes beyond an analysis of available statistical data, views of legal scholars and commentators, and judicial decisions to also include an analysis of information collected by the Polish Central Board of Prison Service.

2. International standards of handling "dangerous" prisoners

Considering that the existence and application of special regulations concerning so-called "dangerous" prisoners leads to placing them under numerous restrictions and constraints over the course of their penalty of deprivation of liberty or when on remand, these matters continue to be a point of interest for international authorities, particularly those united around human rights protection.

European Prison Rules[1] emphasise that restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed (Rule 3). Special high security or safety measures shall only be applied in exceptional circumstances, under clear procedures specifying the manner of handling the prisoner (Rule 53).

[1] Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies, accessed July 30, 2021, ttps://rm.coe.int/16804bfde1.

The issue of so-called dangerous prisoners has a special place in Recommendation No. R (82) 17 of the Committee of Ministers of the Council of Europe concerning the custody and treatment of dangerous prisoners[2]. The authors started with the premise that dangerous prisoners should also be provided with appropriate treatment and security measures must be applied in a manner respectful of human dignity and human rights. The Convention points to the need for a reasonable approach to security, which includes the application of security measures only to the extent to which they are necessarily required, and the need for varying these measures in line with the type of danger involved. The Recommendation emphasises that a "dangerous prisoner" should also submit to social rehabilitation, which requires appropriate measures in reinforced security conditions. Another matter of critical importance is the introduction of national regulations allowing for continuous supervision over the enforcement of the sentences in special conditions and, consequently, a regular review of the need for (and the scope of) the measures applied.

Judgments of the European Court of Human Rights reveal that handling "dangerous prisoners" often leads to violations of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms[3]. That being said, note that the Court does not challenge the acceptability of imposing special rules on certain categories of offenders, but obliges the State to provide such prisoners with conditions that are not contrary to human dignity and protect against the severity of punishment greater than necessarily required. Many decisions of the Court point to the need for a readjustment of the array of measures applied to the degree of real rather than the potential threat posed by the prisoner. The Court emphasises that the authorities are obliged to present sufficient, material and specific reasons to legitimize the severity of measures inflicted upon a dangerous prisoners to safeguard the security of the penal institution. Furthermore, the Court accentuates that the penalty of deprivation of liberty should be

[2] Recommendation adopted by the Committee of Ministers on 24 September 1982 at the 350th meeting of the Ministers' Deputies, accessed July, 30, 2021, http://prison.eu.org/recommendation-rec-82-17-custody .

[3] Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, amended by Protocols Nos. 3, 5 and 8, and completed by Protocol No. 2, Journal of Laws of 1993, No. 61, item 284.

served under a special regime only in exceptional cases and on a temporary basis. The judgments explicitly state that a prolonged continuation of a high-security regime imposed on the prisoner solely on the grounds stated in the initial classification decision is unacceptable. Decisions on extending the "dangerous prisoner" status cannot be "a pure formality, limited to a repetition of the same grounds in each successive decision"[4].

3. Legal basis for the institution of so-called dangerous prisoners in Poland

In Poland, the first norms concerning so-called dangerous prisoners were introduced in 1995[5]. The establishment of the category of dangerous prisoners, as well as wards and cells designated for their custody in closed-type penal institutions, was related to the concept of combating the most serious crimes, with particular emphasis on organised crime, adopted after 1990. The construction of wards for "N" offenders[6] in closed-type penal institutions commenced after 2000, although concerns regarding the large cost of the investment and its later maintenance were raised from the start[7].

The term "dangerous prisoner" comes from the field of criminology rather than law. It raises both linguistic and ethical concerns in source

4 Judgments of the European Court of Human Rights: of 21 March 2017, Case Korgul v. Poland, application no. 36140/11; of 19 April 2016, Case Karwowski v. Poland, application no. 29869/13; of 16 February 2016, Case Świderski v. Poland, application no. 5532/10; of 12 January 2016, Case Romaniuk v. Poland, application no. 59285/12; of 17 April 2012, Case Piechowicz v. Poland, application no. 20071/07; of 17 April 2012, Case Horych v. Poland, application no. 13621/08; of 30 October 2012, Case Pawlak v. Poland, application no. 13421/03; of 30 October 2012, Case Głowacki v. Poland, application no. 1608/08, accessed July 28, 2021, http://www.echr.coe.int.

5 Act of 12 July 1995 amending the Criminal Code and the Executive Penal Code and increasing the lower and upper limits of fines and compensation in criminal law, Journal of Laws of 1995 No. 95, item 475. For more on the history of Polish regulations, see: Ryszard Godyla and Leszek Bogunia, " Niektóre problemy kwalifikowania skazanych i tymczasowo aresztowanych do grupy osadzonych niebezpiecznych," in *Postępowanie z wybranymi grupami skazanych w polskim systemie penitencjarnym. Aspekty prawne*, ed. Adam Kwieciński (Warszawa: Wolters Kluwer, 2013), 21–25.

6 Translator's note: "N" stands for "dangerous" (*niebezpieczny* in Polish).

7 Jerzy Nikołajew, "Wolność sumienia i religii sprawców szczególnie niebezpiecznych (art. 88a i 88b k.k.w.)," *Studia z Prawa Wyznaniowego,* no 23 (2020): 253.

literature[8]. Nevertheless, it has become a common expression and a permanent element of the Polish legal and criminological vocabulary[9]. It refers to a convict who represents a major threat to society or to the security of the penal institution, placed in a ward or cell designated for their custody in a closed-type penal institution, in conditions that reinforce the security of both society and the institution, under a decision issued by the Penitentiary Committee.

The Polish executive penal law provides detailed regulations on the qualification procedure and status review of prisoners representing a major threat to society or the security of penal institutions, i.e. so-called "dangerous" prisoners. Current regulations are contained in the Executive Penal Code since 2003, wherein they were included under the Act of 24 July 2003 on amending the Executive Penal Code and certain other acts[10]. Previously, these regulations were contained in the Regulation of the Minister of Justice of 12 August 1998 on the rules and regulations of administering a penalty of deprivation of liberty[11]. That solution was incompatible with the requirements of either the Constitution of the Republic of Poland or international standards on human rights and freedoms protection, for all limitations on constitutional rights and freedoms of the citizens may be imposed only by way of statutory legislation. Consequently, it was necessary to transfer the regulations on deprivation of liberty and remand, including the additional restrictions imposed on so-called dangerous prisoners, to a statutory act of law[12]. These regulations are regularly updated. Many a time, the need for changes arises from inspections performed by national and international organisations or institutions concerned with human rights protection or the judgments of the European Court of Human

8 Zbigniew Lasocik, "Funkcjonowanie oddziałów dla tzw. „więźniów niebezpiecznych" w Polsce," *Archiwum Kryminologii,* no. XXXI (2009): 310.

9 For more information on the diverse usage of the term "dangerous offender" in various legal systems, see: Jörg-Martin Jehle, Chris Lewis, Marleen Nagtegaal, Nina Palmowski, Małgorzata Pyrcak-Górowska, Michiel van der Wolf and Josef Zila, "Dealing with Dangerous Offenders in Europe. A Comparative Study of Provisions in England and Wales, Germany, the Netherlands, Poland and Sweden," *Criminal Law Forum,* no. 32 (2021): 181–245.

10 Journal of Laws 2003, No. 142, item 1380.

11 Journal of Laws 1998, No. 111, item 699.

12 Teodor Szymanowski, " Zmiany prawa karnego wykonawczego (o potrzebie i zbędności nowelizacji przepisów)," *Państwo i Prawo,* no. 2 (2012): 47.

Rights[13]. Although these revisions aim to reinforce the security of the society and the prison population from prisoners who represent a major threat to society or to the security of the penal institution, they are also introduced to guarantee that deprivation of liberty and remand are administered in conditions compatible with the applicable standards of treatment of persons deprived of their liberty.

4. Premises for the qualification as a "dangerous" prisoner

An extremely important element in the procedure of qualifying a prisoner as dangerous is the assessment of whether the prisoner satisfies the premises for qualification set forth in Art. 88a§1 of the Executive Penal Code. It should be emphasised that the fundamental premise therein is the presence of a major threat to the community or a major threat to the security of the penal institution, which would require the application of special measures on the prisoner. The legislation distinguishes three groups of prisoners which may be qualified as dangerous.

The first group includes offenders sentenced for an offence of significant harm to the community. The legislation lists the offences that satisfy this criterion. An offender may be classified as dangerous when sentenced for acting against the Republic of Poland or its defensive power (a coup d'état, an attempt on the constitutional system or national authorities, an attempt on the President, an attempt on a unit of the Armed Forces), an offence of taking or holding a hostage, an offence committed in relation to taking a hostage, the hijacking of a naval vessel or an aircraft, air vessel, an offence committed with particular cruelty, with the use of firearms, explosives or flammable materials. It should be noted that the list is non-exhaustive, which means that other offences may also be found to cause significant harm to the community. However, legal scholars and commentators

[13] Reports to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): CPT/Inf (98) 13, Strasbourg, 24 September 1998; CPT/Inf (2002) 9, Strasbourg, 23 May 2002; CPT/Inf (2006) 11, Strasbourg, 2 March 2006; CPT/Inf (2011) 20, Strasbourg, 12 July 2011; CPT/Inf (2014) 21, Strasbourg, 25 June 2014, accessed July 28, 2021, http://www.coe.int/en/web/cpt/poland; judgments of the European Court of Human Rights issued i.a. of 17 April 2012, Case Piechowicz v. Poland, application no. 20071/07; of 17 April 2012, Case Horych v. Poland, application no. 13621/08.

provide the apt observation that this sort of assessment should be made at sentencing rather than during the exercise of the sentence[14]. On the other hand, let us emphasise that condemnation for a particular type of offence does not, in itself, constitute sufficient grounds for a determination that the prisoner poses a major threat to society or the security of the penal institution. Furthermore, the wording of the premise remains vague, which leaves the assessment of the harm to the community to the Penitentiary Committee.

The second premise for qualification to the group of "dangerous" prisoners is conviction for an offence committed in an organised group or in an association whose purpose is to commit offences, particularly when the perpetrator served a leading or major role within the group or association.

The third premise which may indicate a major threat to society or the security of the penal institution is unrelated to the grounds for conviction and concerns the prisoner's behaviour when in a penal institution or a remand centre. A prisoner may be deemed dangerous if, at the time of their previous or current deprivation of liberty, they posed a threat to the security of the penal institution or the remand centre in such a way that: they were an organiser or an active participant in a mass action at the penal institution or the remand centre, committed an active assault on a police officer or another person employed at the penal institution or the remand centre; committed rape, caused a major bodily injury or abused a person convicted, punished, or on remand; escaped or attempted to escape from a closed-type penal institution or a remand centre during transport outside the premises of such an institution or centre[15].

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14 Nikołajew, "Wolność sumienia i religii sprawców," 248.

15 Compare i.a.: Appellate Court in Poznan, Judgment of 1 March 2018, Ref. No. I ACa 962/17, LEX no. 2891803, which has confirmed that such behaviour may include, i.a. an act of spitting on an officer of the Prison Service when being cuffed, destruction of property by breaking a window with a door removed from a sanitary corner, a fight with another prisoner. See also: ECtHR Judgement of 12 January 2016, Case Karykowski v. Poland, application no. 653/12, which observes that the Committee wrongly classified a prisoner as "dangerous" because of a "protest letter" found in his cell, which was signed by around 135 prisoners and criticised the changes to the Executive Penal Code. The letter was addressed to the Minister of Justice and the authorities assumed that the prisoners would organise a collective remonstrance once the new law enters into force. Meanwhile, research

The "dangerous prisoner" status is not assigned automatically upon the determination that the offender has been sentenced for a particular statutory offence, or even that they displayed reprehensible behaviour in a penal institution. It is necessary to conclude that the prisoner poses a major threat to society or the security of the penal institution, and therefore there are legitimate grounds for the application of measures that reinforce the security of both society and the institution. Such an assessment requires the consideration of many factors and circumstances which may testify to the existence of a major threat represented by the prisoner. They involve matters related to the offence, the demeanour of the offender after committing the offence, and others, bearing no direct connection to the offence or the conviction. The first group of factors includes motivations and demeanour at the time of perpetration, the type and scale of detrimental effects of the offence. The other – demeanour of the prisoner in the penal institution and social rehabilitation progress. If the offender is sentenced for an offence committed as part of an organised group or an association whose purpose is to commit offences, the assessment should also consider the threat to the legal order, which may arise as a result of unlawful communications between the offender and other members of the group, and particularly a threat to human life or health or for the activities aimed at disclosing property that constitutes gain from the offence, and the fact that other members of the group or association are free. An assessment of the threat should also consider (a third group of factors) the characteristics and personal situation of the offender and their degree of depravity.

These criteria for assessing whether an offender poses a major threat apply not only during the initial qualification but also the review of these premises over the term of the penalty of deprivation of liberty. That is because the Penitentiary Committee is obliged to review its decision at least once every three months. It should be emphasised that, in line with

conducted by S. Przybyliński indicates that the most common reason for classifying a prisoner as "dangerous" is a conviction (or charges pressed) in relation to an offence committed with particular cruelty, and rape or abuse of another prisoner. Compare: Sławomir Przybyliński, *Więźniowie „niebezpieczni" – ukryty świat penitencjarny* (Kraków: Oficyna Wydawnicza Impuls, 2012), 334.

the multiple observations of the ECHR, the Committee deciding upon the prolongation of the "dangerous prisoner" status is obliged to provide a justification, which cannot be limited to the reiteration of grounds stated in the initial qualification decision[16].

As a guarantee of respect for prisoners' rights and a preventive measure against abuse, the offender or their lawyer have the right to file a motion (no more than once per three months) to disclose the grounds for the classification of the offender as a person posing a major threat to society or the security of the penal institution.

The offender has the right to challenge the decisions of the Penitentiary Committee regarding the initial or prolonged imposition of the "dangerous prisoner" status by filing a complaint with the Penitentiary Court. The Court shall examine the "unlawfulness" of the decision issued by the Penitentiary Committee. Notably, the investigation should be broad-based and go beyond the competence of the authority and the decision-making procedure to cover the substantive-law bases for the decision, i.e. cases of transgressing the limits of discretion, unreasonable action of the authority, or even ill will on its part[17]. It is a matter of utmost importance since existing research demonstrates that, in practice, judicial review is limited to examining the lawfulness of the decision in the formal sense and to the reiteration of the statements and conclusions of the Committee[18]. The oversight of the lawfulness and accuracy of imposing the "dangerous prisoner" status is also the responsibility of the penitentiary judge, who must be notified about the decision on the offender's qualification.

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16 For more information, see: ECtHR Judgement of 16 February 2016, Case Paluch v. Poland, application no. 57292/12; ECtHR Judgement of 12 January 2016, Case Romaniuk v. Poland, application no. 59285/12; ECtHR Judgement of 12 January 2016, Case Karykowski v. Poland, application no. 653/12; ECtHR Judgement of 12 January 2016, Case Prus v. Poland, application no. 5136/11, accessed July 28, 2021, http://www.echr.coe.int. Similar conclusions may be drawn from the research of Przybyliński, *Więźniowie „niebezpieczni" – ukryty świat penitencjarny*, 338.

17 Maria Niełaczna, "Człowiek w akwarium" – postępowanie z więźniami "niebezpiecznymi" w oddziałach o specjalnych zabezpieczeniach," *Archiwum Kryminologii,* no. XXXVI (2014): 37.

18 Niełaczna, "Człowiek w akwarium," 37–38.

5. Special conditions of serving a penalty of deprivation of liberty by a so-called dangerous prisoner

The application of the "dangerous prisoner" status forces the offender to serve a sentence in a designated ward or cell of a closed-type penal institution, in conditions that reinforce the security of both society and the penal institution. Extra restrictions involve the installation of appropriate technical and protective security solutions in the place of custody (in particular, additional furnishings in a residential cell include: interior bars installed behind the door and in front of the windows; meshes and screens mounted in the windows; window bars with reinforced resistance to cutting or an electronic security system; fixed residential equipment[19]); more frequent cell searches, keeping the cells locked round-the-clock, restricted access to areas outside the ward (for purposes such as learning or work), reinforced oversight when moving across the penal institution, restricted communication with the external world (including visitations), a ban on using own clothes and shoes, and mandatory personal checks anytime the prisoner leaves or enters the cell. Notably, in accordance with the position of the European Court of Human Rights, the unconditional application of the full array of measures available to the authorities in the treatment of "dangerous prisoners" over a long time is not necessary for the security of a penal institution[20]. Checks and searches should not be routine but dictated by security concerns. Furthermore, the authorities are obliged to counteract the effects of heightened isolation by providing the prisoner with the necessary mental and physical stimulation. In practice, the rights of the prisoner in this regard are limited to solitary walks in a designated area, which the Court deemed insufficient.[21]

A "dangerous" offender's behaviour must be continuously monitored. It should be emphasised that the monitoring covers both the residential

19 Ordinance of the Minister of Justice of 17th October 2016 on means of protection of organisational units of the Prison Service, Journal of Laws 2016, item 1804, §94.

20 ECtHR Judgement of 14 June 2016, Case *Pugžlys* v. Poland, application no. 446/10, accessed July 28, 2021, http://www.echr.coe.int.

21 ECtHR Judgement of 21 March 2017, Korgul v. Poland, application no. 36140/11; ECtHR Judgement of 14 June 2016, Pugžlys v. Poland, application no. 446/10, accessed July 28, 2021, http://www.echr.coe.int .

area, including the part designated for the purposes of sanitation and personal hygiene, and the rooms designated for work, learning, walks, visitations, religious services, religious meetings, religious education, or classes exploring culture and education, physical culture or sports. The monitored sounds or images are recorded. The recorded sounds or images are stored for a minimum of seven days, whereupon they are automatically destroyed[22].

As a result of the foregoing restrictions, dangerous prisoners serve their sentences in conditions significantly different from those of other offenders held in a closed-type penal institution. They are assessed to create a phenomenon of "a prison within a prison", "second-degree prison"[23], or "prison ghettoes"[24]. The establishment of separate wards for offenders of this category exemplifies the implementation of "an idea to create multi-level isolation of varying scope and intensity"[25].

The assessment and qualification of the prisoner as "dangerous" falls within the purview of the Penitentiary Committee. In order to curb automaticity in all actions and to advance an individual approach to every offender, the Committee may impose only some of all the restrictions used in the treatment of "dangerous" prisoners. The principle has been enshrined in the Polish legal system only since 2015[26], in the wake of the judgments of the ECHR in the cases of Piechowicz v. Poland and Horych v. Poland[27].

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22 Ordinance of Minister of Justice of 16th October 2009 on devices and technical means to transmit, reproduce, and fix images and sounds from prison monitoring systems, Journal of Laws 2009, No 175, item 1360, §3 (6).

23 Danuta Gajdus, Bożena Gronowska, *Europejskie standardy traktowania więźniów* (Toruń: TNOiK, 1998), 169; Stefan Lelental, *Kodeks karny wykonawczy. Komentarz* (Warszawa: C.H.Beck, 2020), accessed: 30.07.2021, SIP LEGALIS- nb. 4.

24 Joanna Hołda, Zbigniew Hołda, Beata Żórawska, *Prawo karne wykonawcze* (Warszawa: Wolters Kluwer, 2012), 93.

25 Teodor Bulenda, Ryszard Musidłowski, "O więźniach niebezpiecznych w kontekście ochrony praw człowieka," *Przegląd Więziennictwa Polskiego*, no. 60 (2008): 35.

26 Act of 10 September 2015 amending the Executive Penal Code, Journal of Laws 2015, item 1573.

27 For more information, see: Tomasz Artaszewicz-Zawisza, "Problematyka kwalifikowania osadzonych do kategorii tzw. więźniów niebezpiecznych w świetle obowiązującego ustawodawstwa i planowanych zmian w prawie karnym wykonawczym", *Palestra*, no. 3 (2016): 56–63.

The amendment is based on the sound assumption that such a solution should lead to a more flexible application of a high-security regime in respect of the offender posing a major threat to society or the security of the penal institution.

6. "Dangerous" prisoners in statistical

The Polish Central Board of Prison Service collects information on the number of "dangerous" prisoners, which it publishes in monthly reports. Additional data on the topic was obtained under the Access to Public Information Act. However, no data was obtained in regard to the grounds for qualifying the prisoners as "dangerous" in the operating practice of Penitentiary Committees.

In accordance with statistical data of the Central Board of Prison Service, over the years 2001–2020 in Poland, the share of so-called dangerous prisoners in the population of offenders serving the penalty of deprivation of liberty was under 0.5%. Detailed data on the subject are shown in Tab. 1.

Tab. 1. The number of "dangerous" prisoners in Poland over the years 2001–2021

Year	Number of dangerous prisoners	Share of "dangerous" prisoners in prison population (in %)
2001	162	0.30
2002	179	0.30
2003	216	0.36
2004	235	0.37
2005	215	0.31
2006	257	0.35
2007	255	0.33
2008	261	0.34
2009	248	0.44
2010	257	0.34
2011	238	0.32

Year	Number of dangerous prisoners	Share of "dangerous" prisoners in prison population (in %)
2012	223	0.29
2013	161	0.20
2014	152	0.21
2015	156	0.22
2016	123	0.17
2017	113	0.15
2018	142	0.20
2019	143	0.19
2020	139	0.20
2021 (as on 30 June)	141	0.20

Source: Data for years 2001–2008 as in: Ryszard Godyla, Leszek Bogunia, „Niektóre problemy kwalifikowania skazanych i tymczasowo aresztowanych do grupy osadzonych niebezpiecznych", in *Postępowanie z wybranymi grupami skazanych w polskim systemie penitencjarnym. Aspekty prawne*, ed. Adam Kwieciński (Warszawa: Wolters Kluwer, 2013), 35–36. Data for years 2009–2014 as in: Grażyna Barbara Szczygieł, „Kwalifikowanie skazanego jako „skazanego niebezpiecznego" z perspektywy Rekomendacji Rady Europy i prawa krajowego", *Forum Prawnicze*, no 2 (2021): 34. Data for years 2015–2020 – own research on the basis of data obtained from the Polish Central Board of Prison Service.

The situation in Poland does not deviate from that observed in other European countries in which the number of so-called dangerous prisoners is comparable. The data presented by G.B. Szczygieł reveal that the figure ranges from 0.31% in the Czech Republic to 4.5% in Austria[28].

In accordance with the applicable regulations, the "dangerous" status may be applied to both persons serving a penalty of deprivation of liberty and those on remand. The proportions of the two groups are shown in Tab. 2.

[28] Grażyna Barbara Szczygieł, "Kwalifikowanie skazanego jako „skazanego niebezpiecznego" z perspektywy Rekomendacji Rady Europy i prawa krajowego," *Forum Prawnicze*, no. 2 (2021): 34.

Tab. 2. The distribution of convicts and persons on remand in the total number of "dangerous" prisoners

Year	Convicts	Persons on remand	Convicts and persons on remand in total
2015	121	35	156
2016	95	28	123
2017	79	34	113
2018	110	32	142
2019	105	38	143
2020	95	44	139
2021 (as on 30 June)	104	37	141

Source: Own research on the basis of data obtained from the Polish Central Board of Prison Service.

The presented data reveals that convicts represent a vast majority of the "dangerous" prisoners. In the examined period, they made up from 68.34% (in 2020) up to 77.56% (in 2015) of the prison population with that status.

An analysis of the gender distribution of so-called dangerous prisoners also leads to interesting conclusions. Records for the examined period (2015–2021) contain singular cases of qualifying women into the "dangerous" category. Detailed data are shown in Table 3.

Tab. 3 Number of dangerous prisoners by gender in years 2015–2021

Year	Women	Men
2015	0	156
2016	0	123
2017	2	111
2018	0	142
2019	1	142
2020	1	138
2021 (as on 30 June)	1	140

Source: Own research on the basis of data obtained from the Polish Central Board of Prison Service.

The gender data reveal incidental cases of women being qualified as "dangerous". This is justifiable by applicable regulations which oblige female convicts to serve the penalty of deprivation of liberty in a semi-open penal institution, unless the degree of depravity or security concerns provide grounds for placement in a closed-type penal institution (compare: Art. 87 of the Executive Penal Code), where the "dangerous" wards are established. Separate regulations apply to pregnant women and nursing mothers[29]. Commentators emphasise that, in contrast to men, women tend not to represent a threat to society or the penal institution[30]. Yet, it should be noted that in recent years, the number of female prisoners has clearly been on the rise. In 2015, women represented 3.35% of all prisoners. In 2018, their percentage exceeded 4% (4.07%) and increased to 4.67% in June 2021[31]. However, the growing number of women in penal institutions does not translate to a surge in decisions classifying them as "dangerous".

7. The consequences of "dangerous prisoner" status from the perspective of the individual and the penal institution

First and foremost, let us note that the separation of the offender from the prison community and severe limitation of their rights and freedoms of communication with the external world, particularly with the family, also has a detrimental effect on the mental condition of the prisoners and their receptiveness to attitude changes. Furthermore, the restrictions inevitably impair the effectiveness of the basis correctional means used in a penal institution, such as work, learning, cultural or educational activity, or communication with the external world[32]. The potential for social rehabilitation in conditions of reinforced security is minimal, while isolation

[29] For more information, see i.a.: Irena Dybalska, " Wybrane regulacje prawne dotyczące problematyki kobiet w polskich zakładach karnych i aresztach śledczych," in *Kobieta w więzieniu – polski system penitencjarny wobec kobiet w latach 1998–2008,* ed. Irena Dybalska (Warszawa: Instytut Rozwoju Służb Społecznych, 2009), 39–41.

[30] Teodor Szymanowski and Zofia Świda, *Kodeks karny wykonawczy. Komentarz* (Warszawa: LIBRATA, 1998), 192.

[31] Data are based on the contents of monthly statistics (as at the end of December of each year) of the Polish Central Board of Prison Service for years 2015–2021.

[32] Gajdus and Gronowska, *Europejskie standardy traktowania więźniów*, 169; Lelental, *Kodeks karny wykonawczy. Komentarz*.- (komentarz do art. 88b),numer boczny 4.

and security become the overriding and clearly dominating purposes in the treatment of such prisoners, in detachment from the main missions behind the administration of a penalty of deprivation of liberty. Such a level of isolation is degrading, limits stimulation, and invites mental numbness and a sense of helplessness[33]. Furthermore, "dangerous prisoner" status is observed to carry a certain stigma and add to the severity of punishment[34].

It is emphasised that the perpetuation of the "dangerous prisoner" status for a long time, often for the whole duration of the penalty of deprivation of liberty, frustrates a real assessment of the threat and prevents testing the prisoner's functioning in the conditions of a regular ward in a closed-type penal institution.

A separate issue concerns the choice of the most effective form of organisation in the treatment of so-called dangerous prisoners. The validity of the "N" wards in their current shape is brought into question for several reasons. First and foremost, there are the costs and technical difficulties related to the increased surveillance of dangerous prisoners. Inspections in Polish penal institutions reveal a growing number of vacancies, particularly in the security departments, which is a matter of utmost importance, considering the augmented staffing requirements needed in "N" wards (double number of wardens, need for assistance from other officers). Continuous monitoring poses a technical problem, as video quality is at times lacking (especially during night hours), which entails the necessity to invest in high-quality equipment. Furthermore, continuous monitoring requires a team of staff; the job is tiresome and demands a high level of focus and alertness, which means that one person should not be responsible for the monitoring of too many cameras[35]. Moreover, some of the space reserved for "dangerous" prisoners was found not to be filled to capacity, which led to claims of the deficiency of the adopted system. An attempt

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33 Lasocik, „Funkcjonowanie oddziałów dla tzw. więźniów niebezpiecznych w Polsce", 336.

34 For instance, the European Court of Human Rights found that the simultaneous application of two security measures, i.e. a cage and shackles, during court hearings constituted a particularly stigmatizing treatment of a convict classified as a "dangerous prisoner". For more information, see: ECtHR Judgement of 14 June 2016, Pugžlys v. Poland, application no. 446/10 accessed July 28, 2021, http://www.echr.coe.int.

35 A report on the findings of an audit performed by Polish Supreme Audit Office, *Bezpieczeństwo osadzonych* (Warszawa: Supreme Audit Office, 2020), 14–17.

to counter this accusation brought about a "forced" influx of prisoners to the special wards, which evidently involved a broad interpretation of the premises for qualification. This intolerable practice was further confirmed when a slowdown in major crime dynamics led to a rise in "N" ward placements for reasons related to prison behaviour[36]. This indicates that the high-security regime of serving a penalty of deprivation of liberty was applied illegitimately, which constitutes abuse and unlawful restriction of human rights and freedoms.

8. Conclusions

Special "N" wards have been operating in Poland for more than 20 years. The time frame seems sufficient to modify the imperfections of the law and practice in this regard. The practice exposes the weaknesses of the current system. The gravest of these include the lack of methods for risk estimation, i.e. assessing the degree of real threat to society and the security of the institution, the lack of an effective model for the treatment of dangerous prisoners, the lack of methods for reviewing the necessity for the prolonged continuation of "dangerous prisoner" status, and the unlimited freedom to prolong this status, oftentimes even for more than a decade, until the end of the penalty of deprivation of liberty. The automatic prolongation of the status by the Penitentiary Committee is indicated as one of the gravest faults of prison administration in the treatment of "dangerous" prisoners.

It is necessary to develop procedures for the qualification and treatment of "dangerous" prisoners that are compatible with the principle of respect for human dignity of the prisoner, guarantee a proportional application of security measures and vary these measures in conformity with the type of real (rather than only potential) threat. It is also necessary to regulate control over the Penitentiary Committee decisions regarding the security classification of prisoners since these decisions play a part in the imposition of significant limitations on the prisoner's rights in many areas of their life on the premises of the institution and outside.

It should be emphasised that the soundness of legal changes introduced to advance an individual approach in the treatment of every prisoner and

[36] Lasocik, " Funkcjonowanie oddziałów dla tzw. „więźniów niebezpiecznych" w Polsce," 332 and the following.

reinforce protection against automaticity in the application and prolongation of the "dangerous prisoner" status. A particularly noteworthy revision in this regard was introduced in 2015 – and opened the way to impose a selected set of the special measures and restrictions used in the treatment of "the dangerous" serving the penalty of deprivation of liberty with the right to reimpose the conditions lifted or modify their scope.

In this regard, the revision of 2015 should be noted. First and foremost, it empowered the Penitentiary Committee to impose a selected set of the special measures and restrictions used in the treatment of "the dangerous" during their penalty of deprivation of liberty, with the right to reimpose the conditions lifted or modify their scope. Indubitably, this solution will allow for a more flexible application of reinforced security measures, corresponding to the prisoner's behaviour and the degree of the threat posed[37].

Considering the foregoing consequences of the operation of "N" wards for the penal institutions involved, there is a proposition for a systemic change, which would involve the establishment of a new type of penal institution accepting prisoners under a judgment of conviction[38]. On the other hand, such a solution would complexify the proper implementation of the principle of the individualisation of correctional means, as juvenile, first-time, and recidivists, would all live in the same ward[39].

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37 The purpose, which was to create a legal avenue for a gradual relaxation of the high-security regime was stated in the Explanatory Statement to the Deputies' bill on amending the Executive Penal Code,accessed July 20, 2021, http://orka.sejm.gov.pl/.Druki7ka.nsf/0/A4B8BC1EC2B4E008C1257D8700379736/%24File/2874.pdf.

38 Magdalena Całus, "Kwalifikacja i weryfikacja statusu osadzonych „niebezpiecznych" – analiza rozwiązań kodeksowych w kontekście celów wykonywania kary pozbawienia wolności," in *Prawo wobec wyzwań współczesności: z zagadnień nauk penalnych*, ed. Joanna Helios, Wioletta Jedlecka and Adam Kwieciński (Wrocław: Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 2019), 37, 39.

39 Nikołajew, „Wolność sumienia i religii sprawców szczególnie niebezpiecznych (art. 88a i 88b k.k.w.)," 253.

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