

dr Konrad Buczkowski
Zakład Kryminologii INP PAN
mgr Katarzyna Drapała

Foreigners in Polish prisons. The law and practice of taking into account cultural differences¹

ABSTRAKT

Polskie prawo wykonawcze zapewnia możliwość realizacji zasady indywidualizmu w odbywaniu kary pozbawienia wolności. Kara ta może być odbywana w systemie programowanego oddziaływania, terapeutycznym lub zwykłym. Polskie przepisy w pełni uwzględniają standardy Konwencji w sprawie zakazu stosowania tortur oraz innego okrutnego, niehumanitarnego lub poniżającego traktowania lub karania, przyjętej przez Zgromadzenie Ogólne Narodów Zjednoczonych w 1984 roku oraz Europejskich Reguł Więziennych wydanych przez Radę Europy. W polskim ustawodawstwie nie ma przepisów szczególnych, które dotyczyłyby odbywania kary pozbawienia wolności przez cudzoziemców, jednak gwarancje poszanowania ich godności i odrębności kulturowych wynikają wprost z ogólnych zasad wykonywania kary pozbawienia wolności. Liczba cudzoziemców odbywających karę pozbawienia wolności w polskich zakładach karnych jest niewielka. Każdego roku prawomocnie skazywanych w Polsce jest około 7000 cudzoziemców. Z tej grupy przeciętnie 300. odbywa karę pozbawienia wolności. Artykuł przedstawia charakterystykę tej grupy skazanych w oparciu o dostępne dane statystyczne oraz w odniesieniu do obowiązujących w Polsce przepisów.

Introduction

The aim of the study, which was based on data obtained from the Central Board for the Prison Service, was to gain knowledge about the national and cultural diversity of persons incarcerated in Polish prisons. In this article we will outline the characteristics of this group of convicted criminals based on the available statistical data and in relation to the regulations in effect in Poland. The analysis encompassed data for the period of 2013-2015 relating to 1495 foreign prisoners.

Therefore, for the needs of this study we have adopted two basic definitions, which have allowed us to define the scope of the data obtained.

The first is the definition of a foreigner. Under this definition we mean any foreign national who does not simultaneously have Polish citizenship. This definition covers both those people temporarily resident in Poland, as well as migrants for whom this is their country of permanent residence.

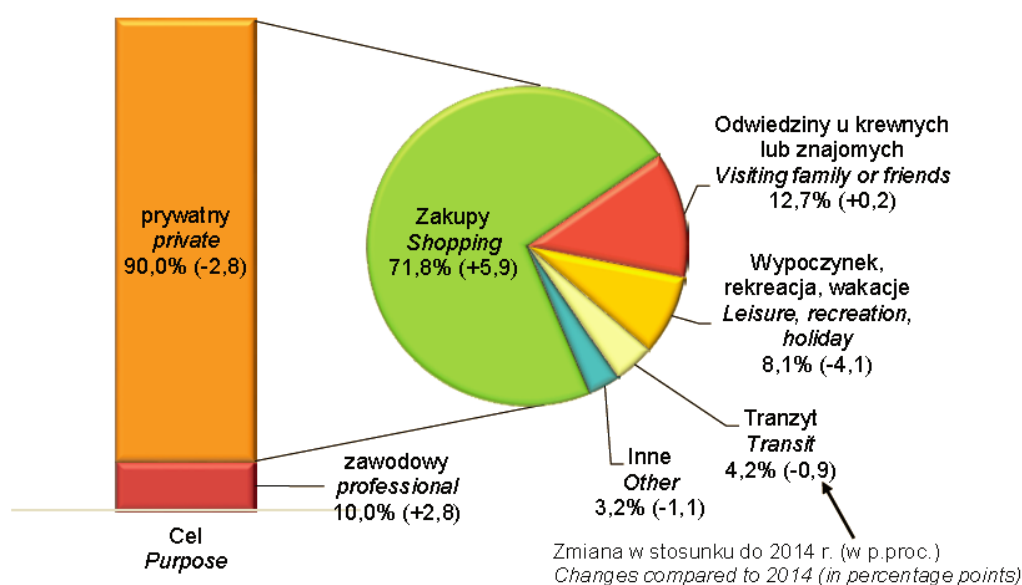
¹ Artykuł stanowi rozszerzoną i zeminioną wersję wystąpienia wygłoszonego na XVII Konferencji Europejskiego Towarzystwa Kryminologicznego, Cardiff, 13 – 16 września 2017 r.

The second definition, "multiculturalism of the prison population", denotes the ethnic diversity of people in prison. A consequence of this is that prisoners have different social attitudes resulting from the different values and cultural differences they hold.

General Remarks

The Central Statistical Office reports that in 2015, Poland's border was crossed 268 million times, including 159 million times by foreigners. It should be noted that "crossing the border" is not the same as the number of people crossing the border. Of this number, as many as 76% of the crossings were for the Polish land border, including over 45% for the border with Germany, over 23% for the Czech Republic, and 13% for Slovakia.²

Graph 1. Structure of foreigners (non-residents) by purpose of visit



Source: Central Statistical Office

The reasons for foreigners travelling to Poland are shown in the graph (Graph 1). It shows that the main purpose of a visit is shopping (here: mainly tourists from Russia, Belarus and Ukraine) and visiting relatives or friends.

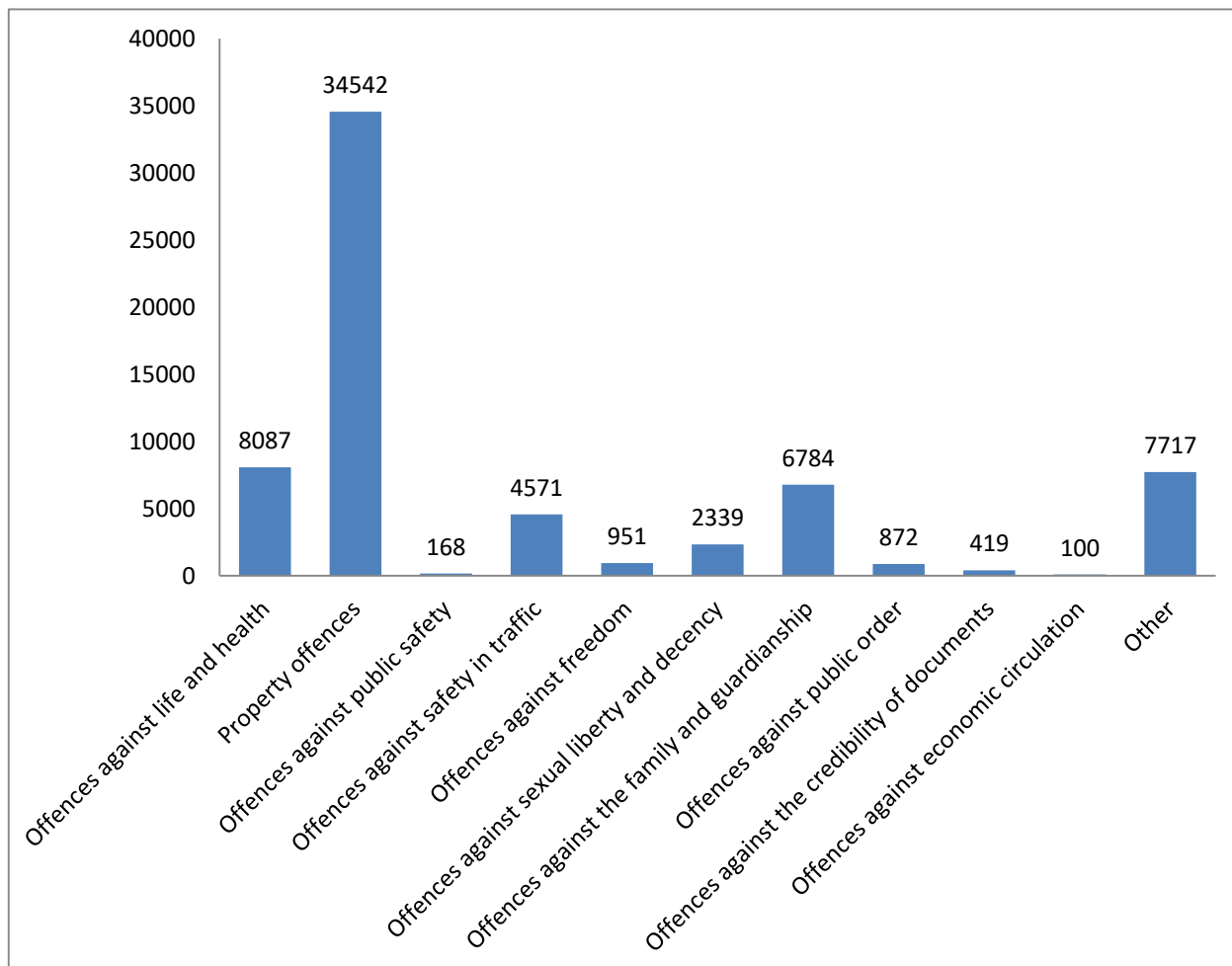
Polish laws take into full account the Convention's standards on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, adopted by the United Nations General Assembly in 1984 and the European Prison Rules issued by the Council of Europe. There are no specific provisions in Polish legislation relating to the imprisonment of foreigners, however, the guarantees of respect for dignity and cultural distinctiveness arise directly from the general principles for imprisonment.

In the years 2004 - 2014, over 4,600,000 people were convicted of a crime in Poland. It should be noted that the number of convictions has been steadily decreasing since 2004. The

² See: *Ruch graniczny oraz wydatki cudzoziemców w Polsce oraz Polaków za granicą w roku 2015*, Główny Urząd Statystyczny, Urząd Statystyczny w Rzeszowie, Warszawa–Rzeszów 2016, p. 39;
http://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5466/15/2/1/ruch_graniczny_2015.pdf

number of convictions in 2014 is only 57% of the number of convictions in 2004.³ At the end of 2015, nearly 70,000 people were imprisoned or punished.⁴ Over half of them were convicted of crimes against property (Graph 2).

Graph 2. Convictions by crime (absolute numbers)



Data: Ministry of Justice

Foreigners in Polish prisons – data analysis

The number of foreigners incarcerated in Polish prisons is small. Every year, approximately 7,000 foreigners are convicted in Poland. Of this group, on average, 300 are serving a prison sentence. Foreigners account for only 2% of all those incarcerated.⁵ Most of them were in prisons (60%), of which more than half (57%) were in prisons or detention centres in three provinces on the eastern border of Poland and the European Union (Graph 3).

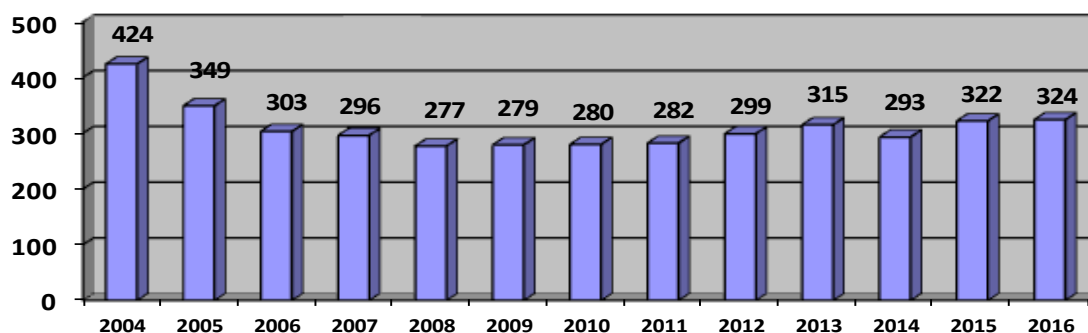
³ See: K. Buczkowski, *Cudzoziemcy jako sprawcy przestępstw gospodarczych - wyniki badań aktowych*, [in:] *Przestępczość cudzoziemców. Aspekty prawne, kryminologiczne i praktyczne*, W. Klaus, K. Laskowska, I. Rzeplińska (ed.), Warszawa 2017, pp. 92 - 92

⁴ *Roczna Informacja statystyczna za rok 2015. Centralny Zarząd Służby Więziennej*. <http://sw.gov.pl/Data/Files/001c169lidz/rok-2015.pdf>

⁵ See: <http://www.sw.gov.pl/strona/statystyka-roczna>;

Graph 3: Convicted foreigners in prison in the years 2004-2016

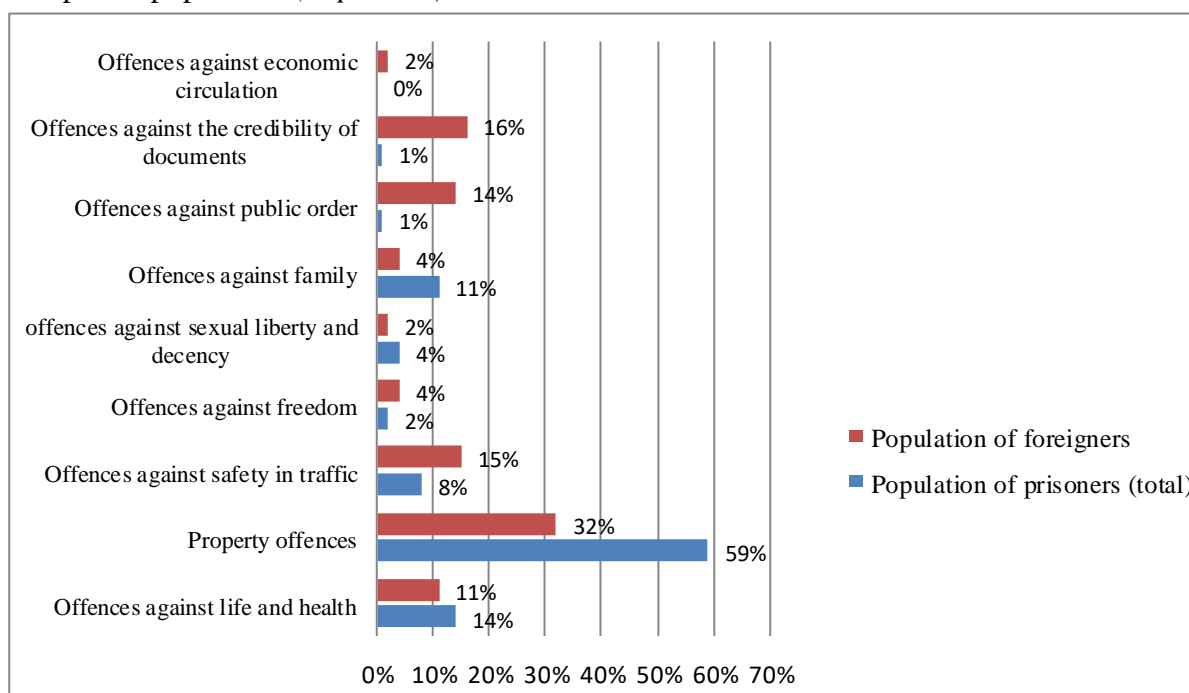
(average and absolute figures)



Data: Central Board of Prison Service

The Graph 4 presents a comparison of the structure of all detainees for selected crimes with respect to the total population of convicted foreigners. It shows that, as in the case of the whole population, foreigners were convicted mostly for crimes against property, followed by falsification of documents (in this case mainly related to the forgery of entry visas for the European Union), followed further down the list by crimes against travel safety (infringement of road traffic regulations, causing an accident) and public order crimes.

Graph 4. Selected categories of crime for foreigners serving prisons sentences compared to the total prison population (*in percent*)



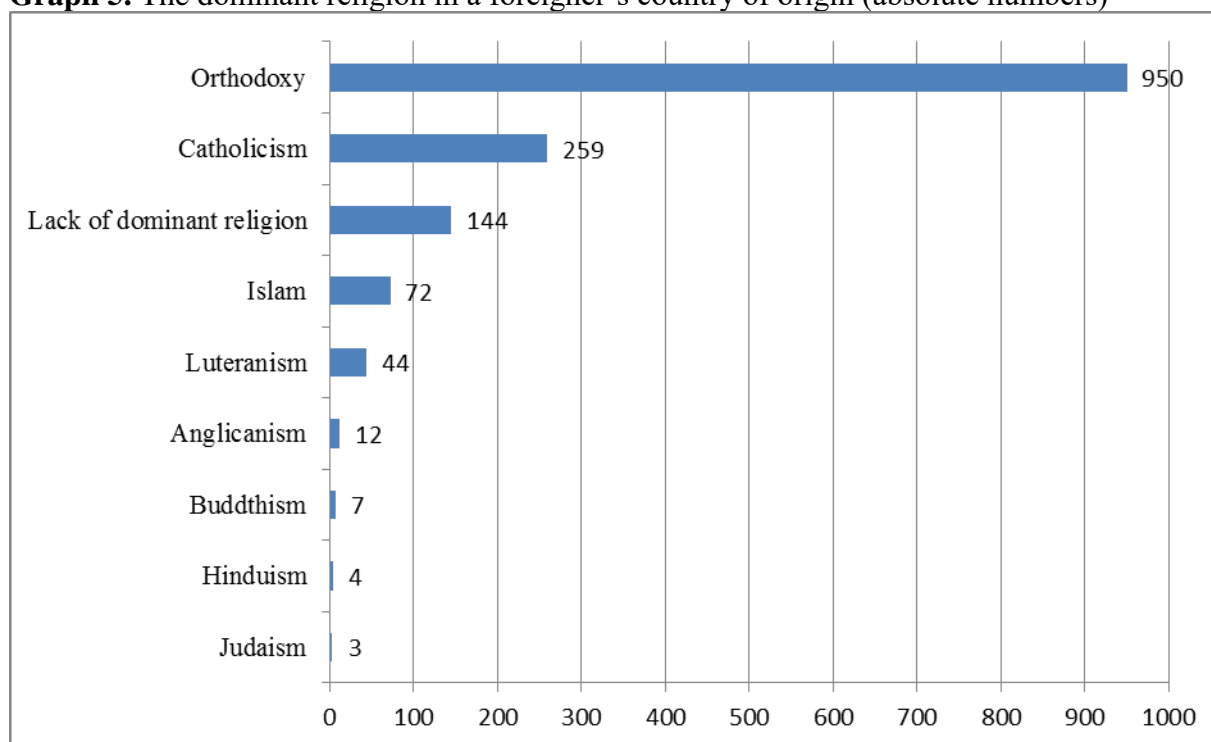
Data: Ministry of Justice

A significant proportion of the respondents, 269 persons (18%), were punished for crimes specified in the Fiscal Penal Code. A relatively large number of foreigners were convicted of smuggling and related crimes, such as failure to pay excise duty.

The vast majority of convicted foreigners are European citizens (83%, of which 35% come from EU member states), 11% are from Asian countries and 4% from Africa. In total, they represent 83 countries, but most of them come from countries bordering Poland (i.e. Belarus, the Czech Republic, Lithuania, Germany, Russia, Slovakia and Ukraine).⁶

Due to the data protection requirements, information on the religion of prisoners is not collected. However, an attempt was made to establish this data by indicating the dominant religion in the country of origin of the convicted person (Graph 5). It was found that 63% of the respondents came from countries where the dominant religion was Christian orthodoxy. Catholicism was the predominant religion in 17% of the countries studied. Approximately 10% of the respondents came from countries where there was no dominant religion or it was not possible to establish the dominant religion. In all other cases the respondents came from countries with different dominant religions (Islam, Buddhism, Hinduism).

Graph 5. The dominant religion in a foreigner’s country of origin (absolute numbers)



Data: Central Board of the Prison Service

Foreigners are also provided with the opportunity to practice their religion. In 2015, 68 ecumenical chapels were established in prisons in Poland to cater for their needs, the majority of which were located in voivodships with the highest number of foreigners in prisons.

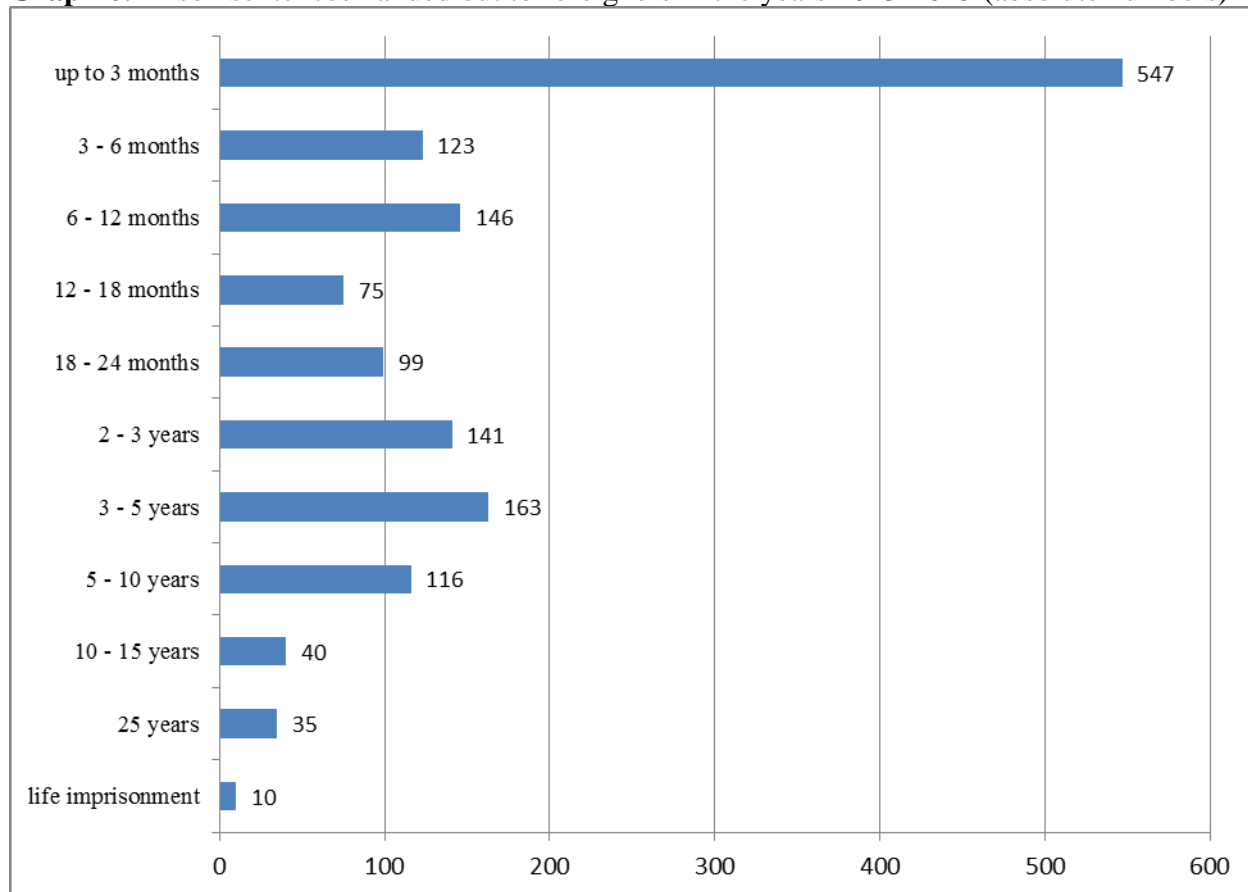
At the end of 2014, 4050 people took advantage of special diets. However, it is impossible to say what the reason was for choosing a particular diet: whether it was a health condition or religious practice. A diet excluding pork was chosen by 1386 people, a totally non-meat diet was chosen by 2243 of people sentenced, and 431 people chose diets tailored specifically for them.

⁶ Data source: The Office for Foreigners: <http://udsc.gov.pl/statystyki/raporty-okresowe/zestawienia-roczne>. Graph: „Liczba osób, które posiadają ważne dokumenty potwierdzające prawo pobytu na terytorium RP (stan na 01.01.2015).”

However, there are no data on whether those people choosing special diets are foreigners. Interestingly, there is a noticeable trend among prisoners of Polish origin who are beginning to convert to Islam. The reason for this is not an actual desire to convert to this religion, but primarily the possibility of receiving better meals.

More than half of the respondents served up to 1 year imprisonment. A prison sentence of 1 to 3 years of imprisonment was handed down to 21% of prisoners. Imprisonment for periods from 3 to 10 years was handed down to 19% of foreigners. Long-term custodial sentences were imposed on 5% of the respondents. A sentence of 25 years imprisonment and life imprisonment was imposed on 3% of the foreigners sentenced (Graph 6).

Graph 6. Prison sentences handed out to foreigners in the years 2013-2015 (absolute numbers)



Data: Central Board of the Prison Service

Foreign prisoners are offered the chance to participate in rehabilitation and therapeutic programmes organised inside prisons. The data for 2015 show that 184 convicted foreigners took part in such programmes, of which the most popular were sports related to shaping social skills and combating aggression and violence.

Summary

The data analysis leads us to the following conclusions:

1. Foreigners make up a fairly small group in Polish prisons.
2. The majority have been sentenced for minor crimes against property.
3. Prisons ensure they are able to practise their religions and continue their personal development while taking into account their cultural differences.

The statistical data do not allow an assessment of other elements related to the incarceration of foreigners in Polish prisons. More detailed data on the imprisonment of this group of convicted criminals requires further research based on interviews with the convicted criminals themselves, and interviews with co-prisoners and prison officers.

Bibliography

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<http://sw.gov.pl/Data/Files/001c169lidz/rok-2015.pdf>

Ruch graniczny oraz wydatki cudzoziemców w Polsce oraz Polaków za granicą w roku 2015, Główny Urząd Statystyczny, Urząd Statystyczny w Rzeszowie, Warszawa – Rzeszów 2016,;
http://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5466/15/2/1/ruch_graniczny_2015.pdf

ABSTRACT

Polish executive law allows for the possibility of implementing an individualised approach to imprisonment in a system encompassing programmed, therapeutic or normal rehabilitation. Polish laws take into full account the Convention's standards on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, adopted by the United Nations General Assembly in 1984 and the European Prison Rules issued by the Council of Europe. There are no specific provisions in Polish legislation relating to the imprisonment of foreigners, however, the guarantees of respect for dignity and cultural distinctiveness arise directly from the general principles for imprisonment. The number of foreigners incarcerated in Polish prisons is small. Every year, approximately 7,000 foreigners are convicted in Poland. Of this group, on average, 300 are serving a prison sentence. In this article we will outline the characteristics of this group of convicted criminals based on the available statistical data and in relation to the regulations in effect in Poland.

Słowa kluczowe: zakład karny, cudzoziemiec, uwięzienie, program terapeutyczny

Key words: prison, foreigner, incarceration, therapeutic program