

PENITENCJARNY IMPREZY W POLSKIEJ KARNEGO-WYKONAWCZEGO PRAWA

Celu wykonania kary pozbawienia wolności polskiego Prawa, wykonawczy, kodeks artykuł 67 §1 stanowi, że wykonanie kary pozbawienia wolności w celu stymulowanie skazanego do współpracy w procesie rozwoju społeczno znaczących stosunków, w szczególności poczucia odpowiedzialności oraz potrzeby przestrzegania prawa i w ten sposób powstrzymać się od powtarzających się przestępstw (w. 67 §1 EPC). Według danych z 1997 roku karnego-wykonawczego do kodeksu, głównym celem wcześniejszego pozbawienia wolności. Uzasadnienie rządowy projekt karnego Kodeks z 1997 roku odпочywał w polskiej tradycji prawa karnego (jako nauki i pozytywnego prawa) jako podstawę dla przyjętych aktów prawnych, a także na postanowienia Międzynarodowego paktu praw obywatelskich i politycznych, minimalne standardowe Zasady dla europejskich penitencjarnych przepisów, w stosunku do których kara pozbawienia wolności, takich jak włączanie sprawcy do powrotu do społeczeństwa i zapobiec nawrotom . Zgodnie z artykułem 67 EPC, odbywających karę pozbawienia wolności, skierowany do realizacji celów kary w zakresie indywidualnego oddziaływania.

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PENITENTIARY MEASURES IN POLISH EXECUTIVE PENAL LAW

The aims of the execution of the penalty of deprivation of freedom The Polish Executive Penal Code in its Article 67 §1¹ reads that the execution of the penalty of deprivation of freedom is intended to encourage the convict to cooperate in the process of developing his or her socially desirable attitudes, in particular a sense of responsibility and a need to observe laws and thus refrain from re-offending (Article 67 §1 EPC). According to the 1997 Executive Penal Code, the primary purpose of imprisonment is special prevention. The rationale behind the governmental draft of the Executive Penal Code of 1997 is rested on the Polish tradition of penal law (both of the doctrine and of positive law) as the foundation for the adopted regulations as well as on the provisions of the International Covenant on Civil and Political Rights, and the Minimum Rules for the European Prison Rules, which regard the penalty of deprivation of freedom as enabling the offender to return to society and prevent recidivism². According to Article 67 EPC, serving a sentence of imprisonment is aimed to fulfil the purposes of the penalty with regard to individual impact.

The aims of the execution of the penalty of imprisonment referred to in Article 67 EPC in 1997 do not overlap with those of the 1969 code³. First of all, the 1997 code departs from the rule

¹ The Act of 6 June 1997 – Executive Penal Code (Journal of Laws No. 90, item 557 as amended), hereinafter «the EPC».

² «Uzasadnienie rządowego projektu kodeksu karnego wykonawczego». In Nowe kodeksy karne z 1997r. z uzasadnieniami. Warszawa 1998, 545.

³ Act of 19 April 1969 – Executive Penal Code (Journal of Laws No. 13, item 98 as amended).

of subjecting convicts to discipline and rigour as the main methods of influence. This rule formed a theoretical and legal basis for the repressive nature of the penitential system. In addition, the 1997 Executive Penal Code fails to include such components of the severity of penalty that do not arise from the mere fact of isolation and the need to ensure safety in a correctional facility and the protection of society. Changes to the rules of execution of custodial sentence stem from the adoption by the 1997 Executive Penal Code of a different axiology and philosophy of execution than in the 1969 Executive Penal Code¹.

The achievement of objectives of imprisonment provided in Article 67 §1 EPC is possible through the use of specific means of influence over convicts, the main list of which is contained in Article 67 §3 EPC.

The justification of the governmental draft of the Executive Penal Code reads that the rehabilitation process is intended to be the inmate's right or an offer from the executing authority that he or she may accept or reject.

The objective of the penalty of deprivation of freedom is defined as: to allow convicts to return to society and function effectively within the society, prevent recidivism and protect the public from crime.

An important assumption behind the executive penal law in force is the approach to the inmate's active attitude («encouraging the willingness to interact», as Article 67 §1 EPC puts it) as a prerequisite of the effectiveness of imprisonment. The Executive Penal Code abandons the compulsory rehabilitation of convicted adults², instead offering them this opportunity as one of their rights. The author of the code adopted an approach, building on the results of available research, that it is more productive to influence convicted adults through allowing them to decide themselves whether to elect, accept and recognize their responsibility for the effects of the rehabilitation action. The provisions of the executive penal law recognize personal freedom, thus excluding the state's right to undertake compulsory intervention in the personality of a mature person, whose integrity is one of the inalienable rights, in the course of a rehabilitation process. This assumption essentially underlay the resignation from the use of the term «rehabilitation» in defining the objective of imprisonment and demonstrates respect for the dignity of the convicted³.

In light of the justification of the governmental draft of the Executive Penal Code, «to recognize the subjectivity of inmates is among the crucial factors in stimulating their activity and a sense of responsibility»⁴. Such an assumption demands that the current legal regulations and executive practice put much emphasis on securing the subjective rights of the convicted while respecting the principle of their fulfilment of duties.

Furthermore, another important assumption behind the proper execution of the penalty of deprivation of freedom is that the convicted be allowed to stay in touch with the outside world, the family being the first priority.

When drawing up the code, the legislator also strove to «a rational diminishing of the social costs of crime reduction»⁵.

¹ Kuć, M., Gałązka, M. *Prawo karne wykonawcze*. 2nd ed. Warszawa 2013, 113.

² Stańdo – Kawecka, B. *Prawne podstawy resocjalizacji*. Kraków 2000, 105.

³ Kuć, M. «Prawo karne wykonawcze – wybrane instytucje». In Guz, T., Głuchowski, J., Pałubska, M. R., eds. *Synteza prawa polskiego od 1989 roku*. Warszawa 2013, 604.

⁴ «Uzasadnienie rządowego projektu kodeksu karnego wykonawczego». In *Nowe kodeksy karne z 1997r. z uzasadnieniami*. Warszawa 1998, 529.

⁵ «Uzasadnienie rządowego projektu kodeksu karnego wykonawczego». In *Nowe kodeksy karne z 1997r. z uzasadnieniami*. Warszawa 1998, 529.

The executive penal law as it is today seeks to «socialize» the execution of penalties and punitive measures, which is achieved by enabling contacts of inmates with the outside world (family, relatives, chaplains of different churches and religious associations, representatives of institutions and associations, access to the press, television, permits to leave the facility temporarily). This area is regulated by Articles 38–43 EPC covering the participation of society in the enforcement of court judgements, aid in social reintegration of convicts and the Victim Assistance Fund and Post Imprisonment Assistance. Public participation in the execution of custodial sentence plays a role in an attempt to «humanize» the penitentiary system as well as offering various forms of assistance to convicts and their families.

The achievement of the objectives of imprisonment is also regulated in Article 73 EPC pertaining to discipline and order in a correctional facility.

The article provides that discipline and order are maintained to ensure safety and pursue the tasks of imprisonment, including the protection of society against crime. The tasks of imprisonment referred to in the quoted regulation should be identified with the objectives of the execution of penalty, and discipline and order should be interpreted as «a general set of orders and bans resulting from: statute, rules of the execution of the penalty of deprivation of freedom or other derivative regulations, or else an order established for a correctional facility or workplace»¹.

The objectives of the execution of the penalty of imprisonment are achieved by penitentiary measures that the convicted are exposed to. In prisons and detention facilities, penitentiary measures are applied in any system of detention; they aim to achieve the objectives of the execution of the penalty of imprisonment specified in the Executive Penal Code. They take the form of tailored and individualized activities fitting the psychophysical properties of convicted persons or groups. The scope of penitentiary measures depends on the applicable system of detention and the character and type of the facility².

The objectives of the penalty of deprivation of freedom specified in the Executive Penal Code are pursued by methods and means falling within the penitentiary activities. The Regulation of the Minister of Justice of 14 August 2003 on the methods of penitentiary influence in correctional facilities and in custody³ defines penitentiary influence as a set of methods and measures applied in a correctional facility and intended to encourage convicts to cooperate in the development of socially desirable behaviours (§1(2)(1) of the said regulation). According to the regulation, the facility implements, regardless of the system of detention, penitentiary measures aimed to achieve the objectives of the execution of the penalty of imprisonment (§2(1) of the said regulation). These measures are offered in the form of personalized activities adjusted to the psychophysical properties of convicted individuals and groups (§2(2) of the said regulation). The scope of penitentiary influence over convicts depends on: the system of execution of the penalty of deprivation of freedom and on the character and type of the correctional facility (§2(3) of the said regulation).

Penitentiary measures consist, on the one hand, in reinforcing the positive and teaching new appropriate behaviours; on the other, they are supposed to prevent incorrect behaviour and phenomena. In accordance with §7(1) of the said regulation, when undertaking penitentiary measures, it is necessary to take action that prevents, in particular: mutual demoralization of the

¹ Lelental, S. Kodeks karny wykonawczy. Komentarz. Warszawa 2012, 335.

² § 2 of the Regulation of the Minister of Justice of 14 August 2003 on the methods of penitentiary influence in correctional facilities and in custody (Journal of Laws No. 151, item 1468 as amended).

³ Regulation of the Minister of Justice of 14 August 2003 on the methods of penitentiary influence in correctional facilities and in custody (Journal of Laws No. 151, item 1468 as amended).

convicted, negative manifestations of the criminal subculture, the occurrence of aggressive behaviour, self-aggression, and different types of addiction.

In order to enable such the application of such penitentiary measures, personal and cognitive research is conducted and, if need be, psychological tests (§8 of the said regulation).

I. Employment

Pursuant to Article 67 §3 EPC, work plays a crucial role in influencing convicts, especially the work that involves the acquisition of professional qualification. Such a wording of the provision prioritizes employment over other means of influence. Besides the acquisition of professional qualification, the employment of convicts is also intended to be economically beneficial to the convicts themselves as well as to their families and society.

Employment is among the institutions of significance for the execution of the penalty of deprivation of freedom as it serves several types of functions: educational, economic, therapeutic and discipline-oriented. Thus, it occupies an important position not only in the set of penitentiary means designed for the convicted, but also serves a purpose against the backdrop of all the provisions governing the execution of the penalty of deprivation of freedom. This special importance of employment can be attributed to the role that work plays in the rehabilitation of inmates. It aids social reintegration through:

- 1) developing pro-social attitudes and behaviours (especially when attempting teamwork),
- 2) developing a work habit,
- 3) developing a sense of responsibility,
- 4) efficiently used up time, which reduces the occurrence of undesirable action resulting from isolation and idleness: first of all, prison subculture and self-aggression.

In order for the work of the convicted to bring expected results, it needs to adhere to certain principles. An extensive list of rules governing the work performed by convicts can be found in S. Pawela. The author proposes that such a work must be:¹

- 1) productive, i.e. while being prepared for the work, the inmate must feel and understand the need and usefulness of the work,
- 2) so organized as to accommodate the future of the convicted and incorporate such forms and methods of work that will reflect the forms and methods of work that are considered a standard outside prison,
- 3) adequate, if possible, so that it makes the best of the inmate's actual qualification and can be continued when outside prison,
- 4) combined with the learning of a new profession,
- 5) team-based,
- 6) rewarded the same as the work done outside prison,
- 7) anything but an additional burden for the convicted,
- 8) subject to the same protection as the work performed outside prison.

According to Article 123 §1 EPC, the work of a convict is paid, subject to Article 123a EPC. The terms of remuneration are determined in an agreement concluded by the director of the correctional facility or in a contract made by the convicted. When performing administrative and maintenance functions on the premises of the facility, the remuneration for work is decided by the facility director. The remuneration payable to the convicted employed full-time is so calculated as to reach the level of at least the minimum wage, as set out under separate regulations, when fulfilling the full month working time or completing the monthly work quota (Article 123 §2 EPC).

¹ Pawela, S. Prawo karne wykonawcze. Zarys wykładu. Warszawa 2007, 295–296.

Prior to the amendment of the EPC in 2003, the work performed by convicts during imprisonment was paid the same as the work done outside prison. It was intended to prevent discrimination against the convicted if compared with employees performing the same jobs outside prison. The changes introduced in 2003 modified the method of calculating the remuneration of the convicted working full-time over the period of one month: it was to reach at least half of the minimum wage, as set out under separate regulations, when fulfilling the full month working time or completing the monthly work quota. This change was intended to make inmate workers more competitive than the labour force outside prison. A convict was a cheaper employee, which was to encourage potential employers to hire them. Another amendment to Article 123 §2 EPC (in the current wording) was forced by a judgement of the Constitutional Tribunal and ensures that working convicts may earn at least the minimum statutory wage. In its judgement of 23 February 2010¹, the Constitutional Tribunal ruled that the use of the word «half» in Article 123 §2 EPC is incompatible with Article 32 and Article 65(4) in conjunction with Article 2 of the Constitution of the Republic of Poland². The judgement entered into force on 9 March 2011.

Exceptions to the rule that the work performed by the convicted is paid (Article 123 §1 EPC) are contained in the following provisions:

1) provision of Article 123a §1 EPC, according to which auxiliary and maintenance work performed for the organizational units of the Prison Service as well as maintenance work performed for the local selfgovernment which totals no more than 90 hours per month is not paid work,

2) provision of Article 123a §2 EPC, according to which the convicted (upon his or her written consent or at his or her request) may be allowed to perform unpaid public work for public administrative bodies and charity organizations, as well as any auxiliary and maintenance work performed for the organizational units of the Prison Service.

In the case of unpaid work done by the convicted, he or she may be rewarded accordingly (Article 123a §4 EPC).

The employment of convicts is governed by a series of recommendations and directives. One of them, indicated in Article 121 §1 EPC, obliges the prison administration to ensure, as far as possible, that inmates can take on work. In light of the effective Executive Penal Code (unlike pursuant to Article 48(3) of the 1969 Executive Penal Code), a convict is not obliged to demand employment. However, it is the obligation of the prison administration to make every effort to secure employment for the convicted so that they can take advantage of this measure.

The employment of convicts is possible under: a work appointment, contract of employment, contract for a specific work, contract of mandate, tolling arrangement, other legal basis (Article 121 §1 EPC). Employment diversification with regard to convicts, as provided for in the EPC, is there to meet the requirements of the free market economy.

The employment of the convicted requires the approval and observance of terms imposed by the facility director; they ensure the proper course of the execution of the penalty of imprisonment (Article 121 §3 EPC). It is assumed that when giving consent to employment and defining its terms, it is necessary to refer to the provisions of Article 67 §3 EPC (concerning the importance of work as a means of influence over convicts and enhancing the acquisition of professional qualification) and those of Article 122 EPC which lays down the criteria of appointment of an inmate to do a specific work. The facility director defines the terms of employment at the request

¹ Judgement of the Constitutional Tribunal of 23 February 2010 (Journal of Laws No. 34, item 191).

² Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 as amended).

of the convicted (§5(1) of the Regulation of the Minister of Justice of 9 February 2004 on the detailed rules of employment of convicts¹). Failure to observe the terms of employment set by the director by the employer and convict may result in the withdrawal of the work approval (Article 121 §4 EPC). Such a withdrawal can also take place if the operation of the correctional facility, especially its security, is likely to be compromised (Article 121 §5 EPC).

The employment of inmates sentenced to life imprisonment and serving a sentence in the so-called closed-type prison is yet another case that deserves special attention. This type of convicts can perform work only on the premises (Article 121 §10 EPC).

They are instructed on how to perform the assigned work; they are trained in occupational health and safety, fire regulations and the operation of machinery and equipment; they are instructed in the fundamental labour standards and principles and the remuneration rules (Article 122a §2 EPC). The convicted are obliged to demonstrate application and work efficiently, observe discipline and working rules, follow regulations with regard to order, fire hazard and occupational health and safety at work as well as cleaning the workplace and taking care of the machinery and equipment (Article 122a §2 EPC).

From the rehabilitation point of view, it is particularly important to permit work outside prison (at external employers), especially in the final period of imprisonment. It may be regarded as a practical test for the level of social reintegration and, for example, resistance to the temptation of escape.

It also facilitates employment after being released – if proven effective, a convict worker can even apply for a job at the same employer. A positive aspect of working outside prison is also the socialization factor which alleviates the burden of isolation.

The identification of the purpose of employment is provided in Article 1(2) of the Act of 28 August 1997 on Employment of Persons Subject to Deprivation of Freedom², according to which the employment of inmates should first seek to exert a positive impact on their attitudes and profitmaking should be subordinated to rehabilitation.

The question of work is inseparable from the problem of unemployment among the convicted. It is of importance in the overall system of influence over a convict as it poses a risk of developing a demanding attitude related to the satisfaction of basic needs, thus preventing the nurturing of the work habit, a sense of responsibility, etc. This issue is currently (due to the overall level of unemployment, including among convicts) considered a serious penitentiary problem.

In the light of Article 122 §1 EPC, the following criteria are taken into account in work appointments: profession, occupation, education, interests, personal needs. The optimum solution, as regards the purpose of penitentiary measures, would be to hire convicts for jobs overlapping with their qualification, interests and needs. However, not all these criteria can be taken into account in each case of employment. For this reason, noteworthy is Article 122 §2 EPC which favours the employment to those convicts who are obligated to pay alimony, as well as having a particularly difficult financial, personal or family situation. Of crucial importance are also nonstatutory instruments which highlight the need to consider, when appointing convicts to take on specific work, such criteria as: age, sex, the sentence remaining to be served, order and security

¹ Regulation of the Minister of Justice of 9 February 2004 on the detailed rules of employment of convicts (Journal of Laws No. 27, item 242 as amended).

² Act of 28 August 1997 on Employment of Persons Subject to Deprivation of Freedom (Journal of Laws No. 123, item 777 as amended).

considerations (§40 of the Regulation of the Minister of Justice of 25 August 2003 on the rules of organization of the execution of the penalty of deprivation of freedom¹).

The significance of employment of convicts is confirmed in the regulations on the penitentiary supervision. Pursuant to these regulations, the penitentiary judge inspects and assesses (§2(1)(9) of the Regulation of the Minister of Justice of 26 August 2003 on the manner, scope and procedure of penitentiary supervision):²

- 1) the use of work as a means of influencing convicts,
- 2) compliance with regulations on time, health and safety at work,
- 3) priority work appointment for convicts obligated to pay alimony and having a particularly difficult financial and family situation,
- 4) the accuracy in determining remuneration for work done.

The convicted who takes on work while serving a sentence enjoys certain rights. These rights cover remuneration and rest from work (Article 124 EPC).

Employment during imprisonment based on honesty, reliability and commitment translates into the prevention of crime. It fills up the time of the convicted, thus reducing the likelihood of negative attitudes and behavior arising from the participation in a prison subculture. On the other hand, work teaches how to find yourself in the role of an employee and develops the awareness of the connection between the satisfaction of needs (e.g. a need for food, clothing) and the necessity to perform work. This is a key element of social reintegration of inmates.

II. Teaching

Among the applied penitentiary measures, much attention is attached to the education of the convicted. The justification of the governmental draft Executive Penal Code highlights that for hundreds of years teaching has been an undisputed and crucial means of influence and education in prisons, and proper education, especially of younger convicts, is a prerequisite for their prospective social reintegration³.

In the light of Article 130 §1 EPC, correctional facilities see compulsory education at the elementary and lower secondary level as well as allowing the teaching at secondary level and in vocational courses. Nonstatutory regulations indicate that correctional facilities primarily train for elementary and lower secondary education, thus offering general knowledge and professional qualification⁴). When enrolling inmates for school programmes, the following are taken into account:⁵ personal motivation, predisposition and the reminding sentence to be served. Inmate's eligibility for education is determined by a penitentiary commission (Article 76 §1(5) EPC). The teaching as such is carried out at schools and life-learning centres organized inside correctional facilities⁶.

Teaching during the execution of the penalty of deprivation of freedom is conditioned by a number of directives and recommendations. One of them says that the priority of participation in

¹ Regulation of the Minister of Justice of 25 August 2003 on the rules of organization of the execution of the penalty of deprivation of freedom (Journal of Laws No. 152, item 1493).

² Regulation of the Minister of Justice of 26 August 2003 on the manner, scope and procedure of penitentiary supervision (Journal of Laws No. 152, item 1496).

³ «Uzasadnienie rządowego projektu kodeksu karnego wykonawczego.» In Nowe kodeksy karne z 1997r. z uzasadnieniami. Warszawa 1998, 556.

⁴ § 2(1) of the Regulation of the Minister of Justice of 13 February 2004 on detailed rules and procedures of teaching in correctional facilities (Journal of Laws No. 37, item 337, as amended).

⁵ § 13 of the Regulation of the Minister of Justice of 13 February 2004 on detailed rules and procedures of teaching in correctional facilities (Journal of Laws No. 37, item 337, as amended).

⁶ § 3 of the Regulation of the Minister of Justice of 13 February 2004 on detailed rules and procedures of teaching in correctional facilities (Journal of Laws No. 37, item 337, as amended).

lower secondary school and vocational courses is given to inmates without any certified profession, those who will not be able to continue in their profession after being released, and those who are below 21 years of age (Article 130 §3 EPC). A correctional facility is obliged to offer teaching to juvenile inmates allowing for their capabilities and talents (Article 130 §2 EPC).

The literature on the subject emphasizes that teaching in prisons should be considered as important as the employment opportunities. Teaching held in a correctional facility should be integrated (in terms of didactics and curriculum) with the public education system.

A relevant regulation in this regard provides that a convict who has graduated from school or a course receives a graduation certificate or a certificate of completion of the course; the certificate is a standard, commonly accepted template without any indication that the trainee has earned it during imprisonment¹.

The impact of education on the convicted can even be broadened under Article 130 §4 EPC which provides that convicts with limited or no funds receive free course books and teaching aids.

Classes can be held both within the facility and outside it. In the latter case, there are some limitations arising from Article 131 §1 EPC, namely: the need to obtain the facility director's consent, the need to meet the general requirements of public education, good conduct, lack of threat to legal order.

Teaching also involves work in school workshops and professional training (Article 132 EPC). The latter is mandatory if it has been scheduled in the curriculum.

The provisions on penitentiary supervision demonstrate that the monitoring and assessment carried out by the penitentiary judge focuses on the appointment of inmates to take part in general and vocational teaching and the observance of the established rules of training and self-study.²

A convict attending classes is authorized to take advantage of certain benefits such as:

- 1) reduced working time,
- 2) a monthly flat-rate remuneration when a convict, during professional training in a school workshop, is engaged in production,
- 3) priority in employment among convicts who have earned professional qualification.

Teaching during imprisonment is, besides sharing knowledge with inmates, an important educational and therapeutic means of influence.

III. Educational, cultural and sports activities

To ensure the greatest possible extent of personal development (and this is also true about isolated persons), physical, mental and social activity is needed at different levels.

In the light of Article 135 §1 EPC, correctional facilities furnish adequate conditions for leisure activities by organizing cultural and educational activities, physical education and sports, and by stimulating the social initiatives of the convicted. With this end in view, facilities maintain their own libraries and offer access to audiovisual equipment in day rooms and cells (Article 135 §2 EPC).

Cultural and educational classes may consist in, for example: granting access to radio and television broadcasts, libraries, games and the press, including their purchase at their own expense, as well as participation in day room activities, hobby groups and film screenings.

This list is not closed, consequently, depending on the facility's organizational and financial resources, this offer can be adequately extended.

¹ § 23 of the Regulation of the Minister of Justice of 13 February 2004 on detailed rules and procedures of teaching in correctional facilities (Journal of Laws No. 37, item 337, as amended).

² 2 § 2(10) of the Regulation of the Minister of Justice of 26 August 2003 on the manner, scope and procedure of penitentiary supervision (Journal of Laws No. 152, item 1496).

The practice shows, however, that the most common pastimes are the passive watching of TV and video.

Sports and physical education may involve the participation of the convicted in gymnastics classes and sports groups as well as participating in sports tournaments. The first priority is, of course, to help maintain the physical fitness of the convicted.

Article 135 §1 EPC sees cultural, educational, social and sports activities as major and effective time-fillers. Stimulation of convicts by giving them access to books, the press or audiovisual equipment is therefore intended to help arrange «appropriate conditions for leisure activities.» Cultural and educational activities, let alone sports and social involvement, are a counterweight to the sensory deprivation characteristic of isolation in prison; it is further to prevent the emergence of behavioural disorders which may take the form of more or less permanent personality disorders, aggressive behaviour or self-aggression. Sports allow inmates to maintain physical fitness, satisfy the need for movement and neutralize tensions and conflicts.

Cultural and educational activities can be broadened under Article 136 §1 EPC, according to which convicts are allowed to establish teams/groups to carry out cultural, educational, social and sports activities.

For this reason, inmates can be authorized to network and cooperate with any relevant associations, organizations and institutions. In particular, they may be allowed to take on work for public purposes or pursue other socially approved goals.

Participation in cultural, educational and sports activities outside the correctional facility depends on the type of prison. In the open-type prison, the convicted may get involved in collective cultural, educational or sports activities organized off the facility by the administration (Article 92(4) EPC) and in organized off-site cultural, educational or sports activities and events (Article 92(5) EPC). In a half-open facility, inmates may participate in collective cultural, educational or sports activities organized by the administration (Article 91(4) EPC). In the case of imprisonment in a closed-type correctional facility, cultural, educational and sports activities are organized within the facility (Article 90(3) IPC).

A correctional facility can also be a venue for cultural, educational, sports and physical education activities organized with the participation of institutions, organizations, associations and other entities and natural persons outside the facility. These classes or activities can be fully or partially paid. Participation is voluntary, and the organization depends on the existing system of imprisonment and the character and type of the facility. Taking advantage of such activities outside or inside prison, yet with the participation of people from outside the prison wall, is, in addition to the typical benefits embedded in their nature, absolutely crucial as it accommodates the need of contact with the outside world, thus mitigating the burden of isolation.

In its list of rewards, Article 138 §1 EPC mentions a more frequent participation in cultural, educational and sports activities. This provision testifies to the indisputable value of such activities in inmates' rehabilitation and social reintegration. On the other hand, Article 143 §1(3) EPC provides for a disciplinary penalty of deprivation of access to certain cultural and educational activities or sports, with the exception of the use of books and the press, for a period of three months.

The Executive Penal Code provides for the appointment of spokespersons from among the convicted with opinion-making and consultation powers with regard to cultural, educational, social and sports activities. To perform tasks associated with cultural, educational, physical culture and sports activities, the facility director may designate convicts who exhibit outstanding attitude and impeccable conduct (Article 136 §2 and 3 EPC).

The provisions on penitentiary supervision seem to corroborate the significance of cultural, educational, social and sports activities as a means of influence over inmates; at the same time, they point out that the control and assessment of the penitentiary judge focuses on, among others, the management of inmates' free time, including, in particular, the organization of cultural and educational activities, physical education classes and sports as well as stimulating the social activity of the convicted¹.

IV. Rewards for the convicted

The provision of Article 67 §3 EPC, when listing the penitentiary measures, omits to include rewards and disciplinary action. However, nonstatutory instruments make allowances for other means of influence besides work, teaching, cultural and educational activities and sports, that is, rewards and disciplinary penalties, which are governed by separate provisions of the EPC².

In accordance with Article 137 EPC, a convict displaying good conduct may be rewarded while serving his or her sentence. A reward may also be earned by a convict in order to encourage him or her to alter their behaviour.

A reward can be typical («for something», e.g. good conduct, that is, a situation that has already taken place) or motivational, that is, interned «for a purpose» to act as an incentive to improve behaviour to some desired standard. In both cases, the earned reward serves as an important instrument of educational influence over the convicted.

Article 138 EPC provides a list of rewards that may be earned by a convict:

- 1) an additional or longer prison visit,
- 2) authorization for a visit without the supervising prison guard,
- 3) authorization for a visit in a separate room without the supervising prison guard,
- 4) cancellation of all or some disciplinary action,
- 5) material or monetary prize,
- 6) authorization for a meeting without supervision outside prison with a relative or a person of trust, for a period no longer than 30 consecutive hours,
- 7) authorization to leave the correctional facility without supervision for a period no longer than 14 days at a time,
- 8) praise,
- 9) permission to frequent more cultural and educational activities and sports,
- 10) authorization to deliver a gift to a person indicated by the convicted,
- 11) authorization to attend visits in inmate's own clothes,
- 12) authorization to receive an extra food parcel,
- 13) authorization to purchase additional food and tobacco products and items authorized for sale inside the facility,
- 14) authorization to hold a telephone conversation with a person designated by the convict and at the expense of the facility.

A specific category of reward is the permit to leave the facility; such a reward is subject to additional terms set out in Article 139 §1–9 and Article 140 EPC.

A convict taking advantage of such a reward is obliged to promptly report to the police unit having jurisdiction over the area of his or her temporary stay in order to confirm the person's whereabouts (this obligation also applies when the convict changes location) (Article 140 §1–2 EPC).

¹ § 2(1)(11) of the Regulation of the Minister of Justice of 26 August 2003 on the manner, scope and procedure of penitentiary supervision (Journal of Laws No. 152, item 1496).

² § 39 of the Regulation of the Minister of Justice of 25 August 2003 on the rules of organization of the execution of the penalty of deprivation of freedom (Journal of Laws No. 152, item 1493).

The facility director may require a convict leaving the facility as a reward to behave in a certain manner, and especially stay in the declared area or report to the police more frequently (Article 140 §2 EPC). The time outside prison is not to be deducted from the period of imprisonment, unless the penitentiary judge orders otherwise (this applies to a situation of abuse of trust by a convict – Article 140 §4 EPC).

V. Disciplinary responsibility of convicts

Judging by non-statutory instruments, disciplinary penalties are also a means of penitentiary influence¹. According to Article 142 EPC, a convict is subject to disciplinary liability for culpable violation of orders or bans under the act, rules or other regulations issued under it, or order maintained in the facility or work place (breach). If the breach meets the criteria of offence, the convict shall be liable to disciplinary action, unless the offence has been committed while outside the plant.

Article 143 §1 EPC provides a list of disciplinary penalties:

- 1) reprimand,
- 2) deprivation of all or some rewards or privileges unused by the convicted or the suspension thereof for a period of up to three months,
- 3) exclusion from certain cultural and educational activities or sports, except for access to books and the press, for a period of three months,
- 4) deprivation of the possibility of receiving food parcels for a period of up to three months,
- 5) deprivation of or limitation in purchasing food or tobacco products for a period of up to three months,
- 6) preventing direct eye contact with the visiting person during visits for a period of up to three months,
- 7) reduction of remuneration for work payable to the convict by not more than by 25% for a period of up to three months,
- 8) solitary confinement for up to 28 days.

The penalties involving deprivation of food parcels, purchasing for food and placement in solitary confinement do not apply to pregnant and nursing women or ones taking care of their children at mother and child shelters (Article 143 §2 EPC).

The Executive Penal Code provides for specific limitations in levying the most severe penalty, that is, solitary confinement for up to 28 days (Article 143 §3 EPC). It can be imposed on a convict who seriously violated prison discipline and order. The penalty involves placement in a solitary cell, thus preventing any contact with other inmates. While incurring the penalty, the convict is deprived of the following:

- 1) visits and payphone,
- 2) audio-video and computer equipment,
- 3) direct participation, together with other inmates, in religious ceremonies, religious events and religious education; however, at the request of the convicted, he or she should be allowed to take part in religious services in a manner preventing any contact with other inmates,
- 4) participation in cultural, educational and sports activities, except for access to books and the press,
- 5) purchasing food and tobacco products,
- 6) receiving food parcels over a quarter immediately following the quarter in which the penalty was imposed,

¹ § 39 of the Regulation of the Minister of Justice of 25 August 2003 on the rules of organization of the execution of the penalty of deprivation of freedom (Journal of Laws No. 152, item 1493).

- 7) participation in education and employment outside the cell,
- 8) the use of own clothing, shoes and tobacco.

Before the imposition of a disciplinary penalty of solitary confinement, a physician or psychologist issues a written opinion on the penalized inmate's ability to withstand the penalty (Article 145 §3 EPC). The penalty of over 14 days requires the approval of the penitentiary judge (Article 145 §3 EPC). During the execution, a physician or psychologist monitors the inmate's ability to continue the penalty (Article 148 §3 EPC). Also, the facility director may (in cases justified on family, personal or educational grounds) allow the convicted, while in solitary confinement, to take part in a visit or make a telephone call (Article 148 §4 EPC).

From among an array of regulations under executive penal law, a number of recommendations and directives can be inferred concerning the type and severity of imposed disciplinary penalties (Article 144–145 EPC), namely:

- 1) disciplinary penalties listed in Article 143 §1(4–8) EPC are imposed by the facility director and other penalties by a person authorized by the director (Article 144 §1 EPC),

- 2) penalties are imposed (Article 144 §2 EPC) ex officio or upon a written request of inmate's supervisor,

- 3) the decision on punishment should contain a precise description of the violation committed by the convicted person (Article 144 §3 EPC),

- 4) the decision on imposing the penalty should be made in writing and made known to the convict and other inmates and persons (if justified for exemplary purposes). This rule also applies to the communication of the decision to withdraw, pardon, defer, convert, suspend or terminate a disciplinary penalty (Article 144 §4 EPC),

- 5) by imposing a disciplinary penalty the degree of culpability and the principle of individualized approach are taken into account, in particular with regard to (Article 145 §1 EPC): the nature and circumstances surrounding the act, attitude to the committed violation, the attitude so far, personality traits and health condition of the convict, correctional objectives,

- 6) before imposition of the penalty, it is necessary to hear the accused, learn the opinion of the supervisor, and, if need be, of the person requesting the penalty and of other persons, including those giving the testimony as witnesses. The procedure can be carried out with other prisoners present if correctional objectives prevail (Article 145 §2 EPC),

- 7) before imposing the penalty under Article 143 §1(4–5) of EPC on a convict who, for healthy reasons, is allowed to make additional purchases of food or receive heavier parcels or be on diet, a physician is consulted as to the effects of solitary confinement on the health of the convicted person (Article 145 §4 EPC).

One violation entails one disciplinary penalty. If the convicted has violated more than once before being punished for any of such violations, one but more severe penalty is imposed (Article 146 §1 EPC). Reimposition of a disciplinary penalty must not work as a direct continuation of the same punishment, unless the total duration of imposed penalties exceeds the anticipated time limit for the duration of this punishment (Article 146 §2 EPC). The Executive Penal Code, in Article 146 §3, provides that, in cases justified by correctional objectives, you may: resign from disciplinary penalty, suspend the execution of the penalty for a period of three months, convert the penalty to a less onerous punishment or offer a pardon.

An important issue in the area in question is the expiration of disciplinary action and its execution. Article 147 §1 EPC follows a principle that a disciplinary penalty may not be imposed if 14 days have passed since the date the supervisor learned about the violation or 30 days since the date of the violation. A disciplinary penalty may not be executed after 14 days of its imposition. A rule governing disciplinary punishment is that the disciplinary punishment is

imposed with immediate effect (Article 148 §(1) EPC). However, there are exceptions to the «immediate effect» rule. It is, however, possible for the penitentiary judge to:

- 1) suspend the execution of a disciplinary penalty for the time needed to examine the circumstances justifying its imposition,
- 2) waive the disciplinary penalty because of its groundless character,
- 3) refer the case to the facility director for re-examination.

In addition, the EPC provides for certain cases of withdrawal from the execution of a disciplinary penalty due to health condition of the convicted, which prevents the execution of the imposed penalty in whole or in part (Article 148 §2 GNA). These are: the postponement of penalty, interruption in the execution of penalty, conversion of the imposed penalty into another that the convict, due to health reasons, will be able to accept.

To conclude, it should be noted that Polish executive penal law offers the whole spectrum of penitentiary measures. The convicts serving a penalty of imprisonment may take advantage of various forms of influence, so tailored as to reflect the character and type of the correctional facility in which they serve and also due to the system of the execution of penalty adopted in a given case. Moreover, the diversity of means and methods of penitentiary influence also arises from the need to adopt an individualized approach to the process of the execution of penalty, in accordance with the principle of individualization embedded in the code (Article 67 §2 EPC), so that the influence fitted with the conditions and personality of the convict, thus promising the best results in rehabilitation and reintegration.

However, a serious limitation to the use of the variety of measures and influences provided for by the penal law legislator is underfunding of the correctional sector¹, which too often impedes the achievement of any penitentiary standards determined by applicable laws.

Legislation:

Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 as amended).

Act of 19 April 1969 – Executive Penal Code (Journal of Laws No. 13, item 98 as amended).

Act of 6 June 1997 – Executive Penal Code (Journal of Laws No. 90, item 557 as amended).

Act of 28 August 1997 on Employment of Persons Subject to Deprivation of Freedom (Journal of Laws No. 123, item 777 as amended).

Regulation of the Minister of Justice of 25 August 2003 on the rules of organization of the execution of the penalty of deprivation of freedom (Journal of Laws No. 152, item 1493).

Regulation of the Minister of Justice of 26 August 2003 on the manner, scope and procedure of penitentiary supervision (Journal of Laws No. 152, item 1496).

Regulation of the Minister of Justice of 14 August 2003 on the methods of penitentiary influence in correctional facilities and in custody (Journal of Laws No. 151, item 1468, as amended).

Regulation of the Minister of Justice of 9 February 2004 on the detailed rules of employment of convicts (Journal of Laws No. 27, item 242 as amended).

Regulation of the Minister of Justice of 13 February 2004 on the detailed rules and procedures of teaching in correctional facilities (Journal of Laws No. 37, item 337, as amended).

¹ Machel, H. Więzienie jako instytucja karna i resocjalizacyjna. Gdańsk 2003, 334–335.

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