

SYSTEMS OF EXECUTING THE PENALTY OF IMPRISONMENT PURSUANT TO ARTICLE 81 OF THE EXECUTIVE PENAL CODE OF 1997

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Abstract. This article characterises the systems of executing the penalty of imprisonment as stipulated in Article 81 of the Executive Penal Code of 1997. The article examines the differences in the systems of executing the penalty of imprisonment in relation to the categories of convicts to whom individual systems are addressed and in relation to the principles used to select correctional measures. The diversity of the systems of executing the penalty of imprisonment corresponds to the principle of individualisation in dealing with convicts, which meets the needs related to the execution of the penalty of imprisonment.

Keywords: systems of executing the penalty of imprisonment, convict, correctional measures

INTRODUCTION

The community of convicts sentenced to imprisonment is highly diverse [Pierzchała 2007, 101–108]. This is due to a number of determinants, such as personality-related factors, life experience and criminal experience [Nawój-Śleszyński and Łuczak 2017; Kuć 2007]. To guarantee that the objectives of imprisonment will be successfully achieved, the legislator has divided correctional facilities into prisons for: juvenile offenders, first-time convicts, penitentiary recidivists and those serving a sentence in a military prison (Article 69 of the Executive Penal Code¹). Such facilities can be organised as: closed prisons, semi-open prisons and open prisons (Article 70 EPC). Furthermore, in Article 81 EPC, the legislator has identified the following imprisonment execution systems: correctional programme-based system, therapy-based system and regular system [Lelental 2020, 383–84; Dąbkiewicz 2020, 287–90; Hołda, Hołda, Migdał, et al. 2021, 220–23; Lachowski 2021; Postulski 2017].

¹ Act of 6 June 1997, the Executive Penal Code, Journal of Laws of 2021, item 53 [hereinafter: EPC].

Convicts are referred to specific kinds and types of correctional facilities and sentence execution systems in accordance with the individualisation principle (Article 67(2) EPC) [Nawój-Śleszyński 2014, 113–36] to maximise the effectiveness of the penalty [Szymanowski 2009, 174], especially in the preventive aspect (Article 67(1) EPC). This institutional individualisation supplemented by the classification of convicts (Article 82 EPC and para. 52 of the Regulation on the organisational rules for execution of prison sentences)² builds the foundation for appropriate application of correctional measures (Article 67(3) EPC), i.e. employment and teaching, cultural and educational activities, sports activities, contacts with the family and the outside world, therapy, rewards and disciplinary punishments, in order to prepare convicts to return to the free society after serving the sentence in the best way possible.

The purpose of the article is to present the characteristics of particular prison sentence execution systems provided for under Article 81 EPC while taking into account the legislator's assumptions regarding the effectiveness of the correctional measures applied within those systems.

1. THE CORRECTIONAL PROGRAMME-BASED SYSTEM

The correctional programme-based system is compulsory (Article 95(1) EPC) for juvenile convicts and voluntary for adult convicts, who choose whether or not to agree to participate in the development and implementation of the correctional programme after being presented its draft version [Szymanowska 2001–2002, 53–100]. The correctional programme-based system is rehabilitative by nature. It offers the broadest possibilities of achieving the objectives of the imprisonment. It focusses on correctional measures, mainly teaching, cultural and educational activities, sports activities, community activities and contacts with people from outside the prison.³ Individual correctional programmes define the actions required to prepare the convicts to return to the society. Each programme is developed with the participation of the convict. As S. Pawela emphasises, the underlying concept behind the system is “the belief that a prison sentence should invoke a psychological reaction, be a stimulus influencing the will of a person who has committed a crime voluntarily and as such may also voluntarily decide to change for the better” [Pawela 2003, 219]. The assumption of the convict's collaboration in the preparation of the programme and their full mobilisation in the implementation of

² Journal of Laws of 2016, item 2231.

³ For more see: Regulation of the Prime Minister dated 28 December 2016 on cooperation between entities in the execution of penalties, penal measures, compensatory measures, security measures, preventive measures and forfeiture, and on social control over their execution, Journal of Laws item 2305.

the programme's activities is consistent with the general rules of correctional activities [Pindel 2009, 114], the effectiveness of which depends on mutual understanding and cooperation between the individual at the receiving end of the activities and the individuals managing the programme (in this case – the staff of the correctional facility). It must be stressed that this is not an easy task in the prison environment since the compulsory nature of the sentence leads to a natural reaction of protest, rebellion, discouragement, resignation. Overcoming such reactions is the prerequisite for taking any further actions allowing the convict to change for the better. An aspect significant in this case is that the convict needs to realise that it was a mistake to commit the crime. It is an important element of the rehabilitation process, the maximum effect of which is full internalisation of the norms of appropriate, lawful conduct by the convict as this guarantees proper functioning in the society, and especially prevents the commission of other crimes. This fully conforms to the assumed objectives of a prison sentence, which the legislator defines as instilling in the convict the will to cooperate in developing socially desired attitudes, especially the sense of responsibility and the need to observe the law and thus to refrain from reoffending (Article 67(1) EPC).

A draft individual correctional programme is based in particular on the results of personal background examination and on an analysis of the records from interviews with the convict and other notes about the individual (para. 14(1) of the Regulation on correctional programmes in correctional facilities and pre-trial detention centres).⁴ The same Regulation states that an individual correctional programme must be preceded by a diagnosis including: description and explanation of the reasons why the convict did not obey the law or the reasons for social maladaptation, description of the convict's functioning in social contacts, description of the basic problems of the convict (para. 14(2) of the Regulation). Development of an individual correctional programme requires defining: the scope of the correctional activities, the objectives of the correctional activities which are attainable considering the possibilities of the correctional facility, the resulting detailed tasks imposed on the convict, task implementation deadlines and the criteria for determining if the convict has completed the tasks specified in the individual programme (para. 14(3) of the Regulation). In accordance with Article 95(2) EPC, correctional programmes define especially: the types of employment and teaching for the convicts, their contacts with their families and loved ones, the way of spending free time, their ability to fulfil their obligations and other undertakings as required to be ready to return to the society. The correctional programme-based system may also use therapy measures, such as aggression management [Linowski and Wysocki 2005; Linowski, Stańczyk, Wysocki, et al. 2004, 66–85; Machel

⁴ Journal of Laws of 2013, item 1067 as amended.

2006, 229–34]. The very fact that a convict agrees to serve their sentence in the correctional programme-based system does not mean that they cannot quit. Likewise, refusal to participate in the development of an individual correctional programme is not final and does not shut the door to that system for the convict. In both cases, the convict may change their mind, i.e. either quit the correctional programme-based system while it is in progress or decide to join it while serving the sentence.

In accordance with the Statement of Grounds for the government's Executive Penal Code bill, the correctional programme-based system is particularly oriented towards rehabilitation of the convict.⁵ Correctional programmes, as per the Statement of Grounds, will define not only the correctional measures or therapy types but also various activities (e.g. external contacts, free time) oriented towards preparing the convict to leave the prison.⁶

Implementation of the programmes prepared for convicts serving prison sentences in the correctional programme-based system is subject to periodic evaluations, which may lead to programme modifications (Article 95(3) EPC). This means that every programme should be adapted to the changing circumstances, e.g. the job qualifications, the employment potential and the education gained by the convict, and to their health. As S. Pawela emphasises, the "Act intends for the correctional measures in the discussed system of penalty execution to be dynamic. An incentive and privilege scheme should stimulate positive attitudes in the convicts and encourage other convicts to follow suit, while at the same time eliminating those convicts who resist the correctional process from the system" [Pawela 2003, 220–21]. Periodic evaluations guarantee that the correctional programmes will duly account for all current conditions and circumstances of the convict.

In accordance with the Statement of Grounds of the government Executive Penal Code bill, "Important elements of serving a prison sentence should include: activities of the convicts [...], contact with the outside world, especially the family, a correctional programme and therapy. Rehabilitation (compulsory for juvenile convicts) will no longer be an obligation for adult convicts, becoming their right instead. Subjectivation of convicts is one of the major factors of stimulating their activity and sense of responsibility."⁷

The functioning of the correctional programme-based system has been studied on multiple occasions. According to a study by E. Kircio, the main reason for convicts expressing willingness to take part in a correctional programme is the desire to change their prior conduct (70% of respondents). The

⁵ See *Uzasadnienie rządowego projektu nowego kodeksu karnego wykonawczego*, in: *Kodeksy karne z 1997 r. z uzasadnieniami*, Departament Kadr i Szkolenia Ministerstwa Sprawiedliwości, Warszawa 1998, p. 549.

⁶ *Ibid.*

⁷ *Ibid.*, p. 528–29.

possibility of probation comes second (30%), with an easier sentence mentioned last (10%); 12% of the respondents stated that they wanted to have a job in prison, abandon the life of crime and understand their past mistakes [Kircio 2001, 187]. Different results are presented by A. Szymanowska, who carried out studies involving juvenile convicts (a group for whom the correctional programme-based system is compulsory as they serve their sentence), adult first offenders and penitentiary recidivists. According to her studies, almost half of juvenile convicts do not see any advantages of the correctional programme-based system, and those who have recognised them usually mentioned: a possibility of furlough (14.7%), probation (12.9%), better conditions of serving the sentence (9.8%), the possibility of learning (9.2%) and attending cultural and educational activities (6.1%). Just like juvenile convicts, adult first offenders believed that the system gives them a chance at furlough (33.3%), a job (23.6%), probation (12.9%), learning (8.6%), rewards (6.4%), change of lifestyle. According to studies involving recidivists, the advantages they noticed were: better conditions of serving the sentence (52.8%), a possibility of having a job (27.8%), better treatment by prison guards, including frequent contact with the supervisor (25%) [Szymanowska 2003, 188]. In the summary of her study results, A. Szymanowska emphasises that “Juvenile convicts saw the correctional programme-based system primarily as imposing limitations and forcing them to perform the tasks defined in the programme and to submit to supervision. In contrast, those who accepted this system of serving the sentence, saw it mainly as an opportunity to contact the outside world more often and more freely, and a chance at leaving the prison sooner” [ibid., 189]. Studies by M. Bramska and M. Kiryluk show that “there is a high percentage of convicts who did not actively participate in defining the individual correctional programmes – it is particularly high in the group of juvenile convicts. The commitment of the convicts to the rehabilitation process remains at an unsatisfactory level. The functioning not aware of the objectives that have been set and the tasks they should complete to achieve them” [Bramska and Kiryluk 2002, 48].

The correctional programme-based system was designed in the Executive Penal Code as an offer extended to the convict, which can be either taken or rejected. As B. Stańdo-Kawecka emphasises, “Giving the convicts a right to choose a system that is particularly rehabilitation-oriented recognises them as independent individuals in the process of serving the sentence and is a significant factor increasing the likelihood of positive results of rehabilitation” [Stańdo-Kawecka 2000, 128–29]. There are also opinions critical of the way the correctional programme-based system is used. S. Lelental claims that “the correctional practice has distorted the notion of a correctional programme-based system. This is mainly due to ‘top-down instructions’ to refer convicts to that system rather than allowing them to choose it of their own will” [Lelental 2001, 249].

2. THERAPY-BASED SYSTEM

Under Article 96 of the EPC, the therapy-based system is addressed to: convicts with non-psychotic mental disorders, also convicted of the crimes under Articles 197 through 203 EPC committed in connection with disrupted sexual preferences, to mentally retarded convicts, convicts addicted to alcohol, other intoxicants or psychotropic substances, physically disabled convicts requiring specialist treatment (especially psychological care, medical care or physical therapy) [Konikowska-Kuczyńska 2015; Kwieciński 2013; Kwieciński 2017; Krajewski and Stańdo-Kawecka 2011; Nawój-Śleszyński 2009, 64–69]. Pursuant to Article 96(3) EPC, where this is advised for medical and correctional reasons, other convicts can serve their sentence in the therapeutic facility too, provided that they agree to this. Existence of the circumstances identified in Article 96(1) EPC does not automatically mean that the convict will serve the sentence in the therapy-based system. This happens only if the health of the convict suggests that they require specialist treatment, such as psychological or medical care or physical therapy. Convicts are referred to the therapy-based system based on court judgements.⁸ Pursuant to Article 62 of the Penal Code,⁹ the court may, while issuing a prison sentence, specify both the type of the correctional facility and the therapy-based system for serving the sentence. A convict may also be referred to the therapy-based system by the penitentiary committee (Article 76(1)(2) EPC).

The essence of the therapy-based system is to use therapeutic measures and psycho-correctional measures and to adapt standard correctional methods to individual needs. In the therapy-based system, the prison sentence is served primarily in a therapeutic facility of appropriate specialty (Article 96(4) EPC) by convicts: (a) with mental disorders or mental retardation, (b) addicted to alcohol, (c) addicted to intoxicants or psychotropic substances, (d) physically disabled (para. 15 of the Regulation on correctional programmes in correctional facilities and pre-trial detention centres).¹⁰ The same Regulation states that the therapy-based system involves especially: individual and group therapy, dominance of therapeutic measures over other correctional measures, integration of therapeutic measures with other activities in the correctional facility (para. 18(1) of the Regulation).

Just as in individual correctional programmes in the correctional programme-based system, the individual therapy programme in the therapy-based system is also preceded by a diagnosis, which includes: (a) description of the

⁸ Judgment of the District Court in Gliwice, IV Criminal Department, of 10 November 2016, ref. no. IV K 143/16, unpublished; judgment of the District Court in Częstochowa, II Criminal Department, of 2 July 2016, ref. no. II K 161/18, unpublished.

⁹ Act of 6 June 1997, the Penal Code, Journal of Laws of 2020, item 144 as amended.

¹⁰ Journal of Laws of 2013, item 1067 as amended.

cause of the disorders, (b) description of the impaired cognitive and emotional processes and disturbance in behaviour, (c) characteristics of the current psychophysical condition, (d) description of the problem underlying the referral to the therapy-based system, (e), description of individual problems of the convict, (f) assessment of the convict's motivation for participation in the individual therapy programme, (g) identification of positive personality traits and behaviour of the convict (para. 21(1) of the Regulation). It is a practice of the therapy-based system to have the individual therapy programme specify the types and forms of the specialist measures applied to the convict, especially in terms of psychological care, medical care and physical therapy, as well as any other form of therapy. Where possible, an individual therapy programme is developed with the participation of the convict (para. 21(4) of the Regulation). Article 97(1) EPC defines the general therapy rules for convicts serving a sentence in the therapy-based system, i.e.: the need to prevent the pathological personality traits from deepening, to restore mental balance and to shape the ability to live in a community and prepare the convicts to live on their own. The execution of the penalty is adapted to the medical treatment, job and learning needs and to the hygiene and sanitary requirements. Where health reasons so require, employment is organised in a sheltered environment (Article 97(2) EPC). Individual therapy programmes are revised as needed (para. 21(5) of the Regulation).

For a convict who has served part of the prison sentence in a therapeutic facility and in respect of whom the therapy team has completed the therapy, recommendations are developed – to be implemented while the person serves the remaining part of the sentence (para. 55 of the Regulation on the organisational rules for execution of prison sentences).¹¹ In principle, the therapy-based system is applied to a convict for a specific time during which the convict requires specialist measures. When the specialist care is no longer needed, the convict is transferred to another penalty execution system – either regular or rehabilitation-based (Article 97(3) EPC).

The literature emphasises that therapy brings good results in terms of rehabilitation of convicts [Bartnik 2001, 712]. Nonetheless, there are also observations that “Only in the case of some convicts, can we expect that the very fact of successful completion of an addiction therapy will help to significantly reduce the probability of recidivism. Many convicts also need other activities, in particular broad restructuring of the cognitive sphere which includes the cognitive distortions, attitudes and behavioural patterns which they display and which contribute to the commission of crimes” [Dubiel and Majcherczyk 2006, 67–68]. Furthermore, emphasis is put on the need for new therapy forms

¹¹ Journal of Laws of 2016, item 2231.

to actually achieve the objectives of the specialist measures taken with regard to convicts [Witeska 2005, 117–19].

Analyses of the functioning of the therapy-based system unanimously conclude that such a system is needed in the organisation of the execution of imprisonment and they emphasise its humanitarian dimension [Konikowska-Kuczyńska 2009, 353] and its justifiability from the perspective of human rights [Gordon 2008, 697].

3. REGULAR SYSTEM

The regular system is applied to the remaining convicts who did not qualify for serving a sentence in the correctional programme-based system or the therapy-based system, as well as to adult convicts who were transferred from the correctional programme-based system because they failed to abide by the requirements laid down in the individual correctional programme (Article 95(4) EPC). Furthermore, the regular system applies to convicts transferred from the therapy-based system after fulfilling the conditions referred to in Article 97 EPC if they do not agree to participate in the development and implementation of an individual correctional programme. Article 98 EPC states that in the regular system, the convict can make use of the possibilities of employment, learning, cultural and educational activities and sports activities available in the correctional facility. Such a regulation emphasises the rule whereby the fact that the convict did not choose the correctional programme-based system does not deprive them of the possibility of using various positive correctional measures.¹²

Studies show that the regular system is often chosen by recidivists because “many of them have lost faith that completion of the tasks specified in the individual programme may help prepare them to leave the correctional facility. This is why they choose to serve their prison sentence in the regular system” [Bramska and Kiryluk 2002, 40].

Pursuant to Article 71 EPC, the Minister of Justice may, by way of a regulation, define a penalty execution system different than that specified in Article 81 of the Penal Code, based especially on the need to explore new correctional measures and methods that may be applied to the convicts.

¹² See *Uzasadnienie rządowego projektu nowego kodeksu karnego wykonawczego*, p. 550.

CONCLUSIONS

The statutory differentiation between the systems of serving a prison sentence offers an opportunity to account for the differences between convicts in terms of age, addiction to alcohol, intoxicants or psychotropic substances, mental and physical fitness, motivation to make an individual effort towards attainment of the objectives of the imprisonment.

The correctional programme-based system is in principle oriented towards implementation of the individual correctional programme, with the convict's participation in preparation of the draft programme and full commitment to its implementation. In the therapy-based system, the focus is on eliminating the problem underlying the convict's referral to that system (mainly addiction to alcohol or drugs), hence the dominance of therapy over other correctional measures. In contrast, the regular system is addressed to convicts who fail to meet the criteria for referral to the rehabilitation-based system or the therapy-based system. The systems differ as to the organisation of the correctional measures applied to the convicts.

The system that best implements on those assumptions and reflect the principles that the legislator has adopted in the EPC (especially: the principle of individualisation, the voluntary nature of rehabilitation, cooperation with the society) is the correctional programme-based system. It offers the broadest possibilities in terms of rehabilitation of convicts (by influencing the sphere of values, attitudes, behaviour) to help them properly re-adapt to life in the free society. However, it must be emphasised that effective achievement of the assumptions made with respect to the use of the systems depends not only on legislative solutions but also on the organisational and financial possibilities of the prison system connected with providing enough supervisors to supervise the convicts, giving jobs to convicts, and providing the financial resources to make use of other correction measures.

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