Teka Komisji Prawniczej PAN Oddział w Lublinie, vol. XVIII, 2025, no. 1, pp. 375-394
https://doi.org/10.32084/tkp.9410

EXECUTION OF CUSTODIAL SENTENCE IN THE LIGHT OF INTERNATIONAL LAW STANDARDS BASED ON POLISH LEGAL SOLUTIONS AND SELECTED JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

Dr. Grzegorz Skrobotowicz

The John Paul II Catholic University of Lublin, Poland
e-mail: grzegorz.skrobotowicz@kul.pl; https://orcid.org/0000-0002-0882-0236

Abstract. Custodial sentence is a means of state response to a criminal act. From this perspective, it seems important to reflect on the essence of freedom, since it is freedom, next to life, that constitutes the highest value for every human being. International instruments introduce an extensive catalogue of rights and recommendations that can be applied directly or indirectly to a person deprived of his or her liberty. They constitute the implementation of the principle of the convicted person's dignity. The relevance of these instruments in practice, however, depends on their implementation into national law, and on the existence of control mechanisms that would allow, in a manner accessible to everyone, to enforce the effectiveness of international instruments on individuals. In the modern world, we can speak of universal and regional systems for the protection of human rights, which include the United Nations System and the Council of Europe and European Union Systems. This article will present selected inter-state regulations that relate to the execution of custodial sentences and examples of solutions introduced into the Polish legal system on the basis of these regulations. The article will also point out selected judgements of the European Court of Human Rights, issued mainly in cases against Poland, and of the Polish Supreme Court and the Constitutional Tribunal, and introduce the issue of the National Preventive Mechanism.

Keywords: custodial sentence; prison; convict; prisoner; international standards; rights and obligations of prisoners.

INTRODUCTION

Custodial sentence has accompanied mankind since the dawn of time. From ancient times to the present, it has evolved as a result of civilisational, social, political, economic, cultural and demographic changes, repeatedly changing its shape, functions and purposes. Today, as a result of the development of multiple theories and concepts of custodial sentences over the course of the development of civilisation, custodial sentences bear

ISSN 1899-7694
e-ISSN 2719-7379

no resemblance to those of a few hundred years ago. It is important to note at this point that the analysis of isolation punishment cannot be made without reference to the fundamental assumptions underlying the origins of punishment itself, the law of punishment and international standards [Ultrat-Milecki 2006, 46].

A person deprived of his or her liberty, by virtue of incarceration in a penitentiary unit, is particularly vulnerable to violations of his or her rights. This is because the person finds himself or herself in a place that isolates him or her from the outside world and significantly limits contact with his or her loved ones. The international community, therefore, has developed a series of documents that define the status of a detainee, his or her rights and the obligations imposed on him or her, and has developed mechanisms for the continuous monitoring of prisons to ensure the correct implementation of the custodial sentence. The focus of international instruments is the protection of human rights, particularly those relating to respect for the dignity of prisoners, the principles of humane treatment and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

A key aspect of the analysis is the observance of human rights in Polish penitentiary institutions, particularly in light of systemic challenges such as prison overcrowding. The study also considers the role of the National Preventive Mechanism in monitoring detention conditions and ensuring compliance with established standards. Furthermore, the research explores different models of custodial sentence execution, emphasizing the rehabilitative and integrative approaches. It seeks to evaluate the effectiveness of international standards in the Polish prison system while identifying areas that require improvement. The primary goal of this analysis is to assess Poland's compliance with international penitentiary standards and pinpoint challenges hindering their full implementation. It aims to highlight systemic issues in Polish prisons, including limited access to education and employment for inmates, as well as potential human rights violations. In addition, the study presents key control mechanisms, such as the activities of the European Committee for the Prevention of Torture and the National Preventive Mechanism, to ensure humane treatment of prisoners. The research also examines selected rulings from the European Court of Human Rights regarding the protection of prisoners' rights in Poland. Education and employment are crucial factors in the resocialization process, and the analysis explores their impact on reintegrating inmates into society after serving their sentences. Lastly, the study underscores the importance of humanitarian principles in the execution of custodial sentences, ensuring compliance with modern European and international legal frameworks.

1. INTERNATIONAL INSTRUMENTS – HISTORICAL BACKGROUND

At the axiological basis of a custodial sentence is the conviction of the corrective possibilities that can be achieved for the convicted person under conditions of confinement and thus make it possible to repair his or her personality and restore him or her to a life in conformity with generally accepted social norms [Świętochowska 1992, 76]. Inspired by the humanitarian trends, people began to move away from treating human beings merely as objects who, due to their frailty, cease to be useful and thus become superfluous to society. With socio-economic progress, it has been noted that society has, on the one hand, the right to defend itself against criminal individuals and to demand justice for the wrong done, but, on the other hand, also has a duty to find a way for their social readaptation. In cases where these are individuals who have repeatedly demonstrated social maladjustment, society must find humane ways for their isolation [ibid.]. With the emergence of the utilitarian element, deliberations on the punishment issues began to move away from the use of the death penalty, recognising its social uselessness, in favour of humane and rational methods of restoring justice and safeguarding society from crime [Beccaria 1959, 147]. Based on such assumptions, imprisonment has become part of the canon of penalties imposed for violations of a harmonious social reality.

It should first be noted that international law does not define the concept of human dignity. This is a term used in the field of ethics and morality. Dignity is a dynamic value, it is inherent and universal and its qualities are inalienability and permanence [Antonowicz 1990, 7]. In literature, it occurs in two meanings – as personal dignity and personality dignity. Personal dignity is granted to every human being, without exception, and is absolute and inalienable [Krukowski 1997, 40-42]. Personality dignity, on the other hand, is an individual characteristic of a specific person. It can be acquired, developed through work or even lost [Hołda, Hołda, Ostrowska, et al. 2014, 12]. Instruments of international law refer to dignity in the personal sense. Within the international protection of human rights, inherent human dignity exists, as it were, on two levels. Firstly, it can take the form of an axiological postulate and provide a goal and direction for the development of the realisation of the idea of inherent human dignity. From the second perspective, the meaning of dignity as a value protected by a particular norm will depend on its compatibility or contradiction with the normative presupposition [Zajadło 1989, 114-15].

With the end of the Second World War on the European continent, the countries of the anti-Hitler coalition began to work on the preparation of international standards for the protection of human rights at the regional

level.[1] In particular, work in this area was initiated by the Council of Europe, established in 1949, which set itself the objective of working to protect the observance and development of human rights. In addition to the Council of Europe, later the European Union (which was established on November 1, 1993, under the Maastricht Treaty signed on February 7, 1992, as the result of a long-term process of political, economic, and social integration) has also begun to develop its system. The protective prison model, which had been in place until then, began to be replaced by a pro-social (readaptive[2]) prison model. It is a clear inverse of the first model as it provides the prisoner with full personal and legal subjectivity. He or she becomes a fully informed participant and co-responsible for his or her own social readaptation. The prison impact is subject to the individual characteristics and qualities of the detainees and their broadly defined needs. It is implemented through the normalisation of living conditions in prison [Szczygieł 2002, 41]. This means that all tasks, duties, activities and conditions of punishment are to be similar to those prevailing in free society. The prisoner is confronted with challenges as similar as possible to typical situations encountered outside the prison walls. In addition, they are intended to teach him or her personal responsibility for his or her own conduct.

The criterion for the classification of legal acts used in the later part of the chapter was based on thematic assumptions – grouping acts according to their scope of regulation, such as fundamental human rights, standards for the treatment of prisoners, and control mechanisms.

The first and fundamental international document on human rights in the modern world is the 1948 Universal Declaration of Human Rights,[3] which explicitly advocated humane and lawful punishment of human beings [Szymanowski and Migdał 2014, 47]. The Declaration is a non-legally binding international agreement, the acts issued thereunder are *soft law*, however, it plays a huge political, moral and ethical role due to the fact that it has been proclaimed by almost the entire international community.

---

[1] In May 1948, the European Congress was convened in The Hague with the aim of manifesting the tendencies of pro-European movements seeking European unification. The congress concluded with the adoption of the "Proclamation to Europeans" that declared a desire for European unification and the development of a Charter of Human Rights. In January 1949, the Council of Europe was established [Astramowicz-Leyk 2009, 39].

[2] Readaptation (social readaptation) refers to the readaptation of an individual to an active and independent life, expressed in the performance of social roles related to the basic spheres and planes of human existence [Ambrozik 2008, 182].

[3] Universal Declaration of Human Rights [hereinafter: UDHR or Declaration]. UN General Assembly Resolution 217 A (III), proclaimed and adopted in Paris on 10 December 1948, in: *Wybór dokumentów międzynarodowych dotyczących praw człowieka. Księga Jubileuszowa Rzecznika Praw Obywatelskich*, vol. II, ed. M. Zubik, Warszawa 2008, p. 11-16.

The Declaration undoubtedly offered a good foundation for international cooperation in dealing with offenders and contributed to the development of increasingly institutionalised forms of crime prevention. Subsequent years saw the adoption of further international acts advocating respect for human rights and acting for the good of humanity, including with regard to criminals [ibid.].

In 1966, the International Covenant on Civil and Political Rights (ICCPR)[4] was adopted under the auspices of the UN and ratified by Poland in 1977. The aforementioned act, together with its protocols, creates certain rights and obligations for the States Parties. The Covenant created an institutionalised entity to oversee compliance therewith, namely the Human Rights Committee.

The two aforementioned acts, together with the UN[5] Charter adopted in 1945[6] and constituting the UN Constitution, make up the universal system of human rights protection. The Declaration undoubtedly offered a good foundation for international cooperation in dealing with offenders and contributed to the development of increasingly institutionalised forms of crime prevention. Subsequent years saw the adoption of further international acts advocating respect for human rights and acting for the good of humanity, including with regard to criminals [Hołda, Hołda, Ostrowska, et al. 2014, 56].

Of fundamental importance in the Council of Europe's system of acts is the peremptory European Convention for the Protection of Human Rights and Fundamental Freedoms, known as the European Convention on Human Rights, adopted on 4 November 1950 at the meeting of the Committee of Ministers of the Council of Europe in Rome.[7] This Convention was adopted by the Council of Europe in response to the UN's creation of the Universal Declaration of Human Rights. From the outset, the idea was to create an international treaty that, unlike the Universal Declaration of Human Rights, would have effective mechanisms for upholding the rights contained therein. To this end, it established the European Court of Human Rights as an independent international court to adjudicate disputes arising from violations of the Convention [Szymanowski and Migdał 2014, 53].

---

[4] The International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966 (Journal of Laws of 1977, No. 38, item 169) [hereinafter: the ICCPR or the Covenant].

[5] The United Nations was established as a result of the signing of the Charter of the United Nations on 26 June 1947 at the United Nations Conference in San Francisco, that was ratified by Poland on 19 January 1993 (Journal of Laws of 1947, No. 23, item 90) [hereinafter: UN].

[6] Charter of the United Nations, signed in San Francisco on 26 June 1945 (Journal of Laws of 1947, No. 23, item 90) [hereinafter: CUN].

[7] Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, subsequently amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284) [hereinafter: the CPHR].

Among the international instruments addressing the issue of custodial sentences, of great importance has also been the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[8] adopted by the UN General Assembly on 10 December 1984, which established a control mechanism in the form of the Committee against torture. The equivalent of the aforementioned Convention on the European continent is the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment signed in 1987.[9] The above-mentioned document is a supplement to the ECHR, more specifically its Article 3 which establishes the prohibition of torture, inhuman or degrading treatment or punishment, hence it does not create specific human rights. The creation of the European Convention for the Prevention of Torture was motivated by the idea that the mechanism of judicial protection provided by the ECHR should be supplemented by non-judicial measures of a preventive nature [Dawidziuk 2013, 37].

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was established under Article 1 of the European Convention for the Prevention of Torture.[10] The principal means that the Committee uses in its activities include periodic visits during which it examines the treatment of persons deprived of their liberty with a view to strengthening their protection against torture and other unacceptable forms of treatment or punishment. An additional measure prescribed by the Conventions are *ad hoc* visits carried out when the Committee considers it necessary to carry out such a visit as a result of information obtained, inter alia, from the victims themselves or from human rights organisations, or based on its own knowledge [Hołda, Hołda, Ostrowska, et al. 2014, 71].

In accordance with Article 2 of the Convention, the Committee has the power to inspect any place where persons are deprived of their liberty in the territory under the jurisdiction of a State Party.

Under Article 7 of the Convention, when conducting visits, Committee members have the right to request from the State Party any information about places where persons deprived of their liberty are held and have unrestricted

---

[8] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984 (Journal of Laws of 1989, No. 63, item 378).

[9] European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, drawn up in Strasbourg on 26 November 1987 (Journal of Laws No. 46, item 238 as amended) [hereinafter: the Convention or the ECPT].

[10] The Committee is composed of members equal in number to the number of States Parties to the Convention, elected for a period of 4 years by the Committee of Ministers of the Council of Europe from among candidates proposed by the national delegations of each State [hereinafter: the Committee or CPT].

access to such places, including the right to move freely inside such places. They can conduct interviews in private with inmates in the penitentiary units as well as with other persons who can provide relevant information.

As in the case of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a weakness of the monitoring mechanism created by the Convention is the need to inform the State Party in advance of the intention to conduct a visit. Pursuant to Article 10(2) of the Convention, following a visit, the Committee shall draw up a report on the state of treatment of persons deprived of their liberty ascertained during the visit.

European documents have placed human dignity at the forefront by defining it as a fundamental principle of the execution of a custodial sentence and have imposed high standards for its implementation [Hołda, Hołda, Ostrowska, et al. 2014, 71]. While not questioning the necessity of custodial sentences as an important measure against crime, they were strongly against their application.

The last group of documents that should be explicitly mentioned is the regional version of the Minimum Rules adopted by the Council of Europe in 1973 in the form of the European Prison Rules, which were revised in 1987 and remained in force until 2006, the year in which the new European Prison Rules,[11] which are the new recommendations of the Committee of Ministers of the Council of Europe to Member States on standards of imprisonment, came into force. The uniqueness of the European Prison Rules derives first and foremost from the fact that they take a comprehensive approach to the issue of custodial sentence [Migdał 2008, 268].

The 2006 European Prison Rules are a comprehensive document consisting of 108 rules that regulate in detail various spheres of dealing with convicted prisoners as well as persons on remand. Essentially, a comprehensive review of this document leads to the conclusion that its most basic demands are to ensure humane treatment of prisoners while respecting their dignity, to guarantee conditions of imprisonment in prisons that aim to prepare prisoners for their return to society, so that they respect the rule of law and, in particular, refrain from committing crimes upon release, and to ensure the protection of society against crime and security in penitentiary units.

The 2006 European Prison Rules present a different axiological content regarding the execution of a custodial sentence than previous versions. The main differences are due to the fact that, over the years, attention has been

---

[11] Recommendation of the Committee of Ministers of the Council of Europe to Member States Rec (2006) 2 of 11 January 2006 on the European Prison Rules (adopted at the 952nd meeting of the Vice-Prime Ministers), in: "Przegląd Więziennictwa Polskiego" no. 72-73 (2011), p. 33-69 [hereinafter: 2006 European Prison Rules].

drawn to the ineffectiveness of rehabilitation efforts and, therefore, there has been a re-evaluation of the objectives of custodial sentences, moving away from the uno.ealistic assumption that every person in prison will be rehabilitated. The 2006 European Prison Rules explicitly recognise that custodial sentences are not helpful but, on the contrary, are detrimental, hence their implementation requires that these detriments be minimised as far as possible and that measures be taken from the outset of the sentence to promote the social reintegration of the convicted person [Migdał and Skrobotowicz 2014, 112]. The regulation in question requires the creation of prison conditions as similar as possible to those of a free society, in which the convicted person will learn to take responsibility for his or her fate.

The European Prison Rules place particular emphasis not only on allowing convicts to decide their own fate, but also on teaching them responsibility for their lives and choices and self-reliance so that they can function properly in society once they are released [ibid.]. In this respect, a special role is played by the work and education of convicts. The European Prison Rules attempt to create a kind of synergy between these two measures of penitentiary influence. The level of education provided in prisons should therefore correspond to the public system of general education, and should aim to develop the skills and aspirations of the convicted person, so that the education obtained in prison can find tangible results in finding a job after serving the sentence.

The 2006 European Prison Rules rejected the concept of forced rehabilitation of convicted persons and it was replaced by the principle of normalisation. According to this principle, responsibility for the results of a custodial sentence is shared between the prison staff and the convict. Therefore, positive effects of rehabilitation depend on the will and desire of the convicted person to improve. This is because the prison administration is not supposed to bail out the convict and coercively influence him or her in order to fix or reintegrate him or her into society.

2. DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS AND POLISH NORMATIVE REGULATIONS

In the area of European legal culture, centred around the Council of Europe's human rights protection system, the isolation punishment is the most severe criminal law response to a crime [Hołda and Żurawska 2012, 19]. In Poland, custodial sentence has two variations: term imprisonment (ranging from 1 month to 30 years), and life imprisonment.[12]

[12] Article 32 of the Act of 6 June 1997, the Penal Code (Journal of Laws of 2022, item 1138 as amended) [hereinafter: the Penal Code].

In addition to these three predominant custodial sentence variations, there is also a military detention of between 1 month and 2 years (Article 322(2) of the Penal Code), as well as a substitute custodial sentence that can be imposed for an unpaid fine and an unexecuted sentence of restriction of liberty.

Polish penitentiary solutions, especially on normative grounds, meet most of the standards developed by the 2006 European Prison Rules and the European Committee for the Prevention of Torture (CPT). However, it can be observed that there is a significant discrepancy between the implemented legal solutions and penitentiary practice. These discrepancies show how difficult it is to fully implement international standards in the Polish penitentiary reality.

There are currently approximately 61,200 persons serving custodial sentences in Polish prisons and approximately 8,000 pretrial detainees in remand facilities.[13] These numbers are bound to increase as a large number of convicts are still waiting to serve their sentence. Another factor that may exacerbate the degree of prison overcrowding is the obligation to admit Polish nationals serving their sentences in other EU countries to Polish prisons. With such a large prison population, it becomes exceptionally difficult to provide decent living conditions for inmates, find employment for them and guarantee their educational opportunities. In such overcrowded prisons, individual work with prisoners is very difficult, and achieving effectiveness is challenging.

Analyses of the visit reports of the European Committee for the Prevention of Torture in Poland and reports of the Ombudsman, with regard to the implementation of the functions of the National Preventive Mechanism, largely confirm that the main reason for the lack of proper implementation of the objectives of custodial sentences is the widespread overcrowding of prisons and remand facilities. This situation is due, among other things, to the lack of sufficient funds allocated to the functioning of the Polish prison system. The difficulties presented are systemic problems that imply not only the failure to align Polish penitentiary practice with international standards, but also, above all, result in the growing dissatisfaction of persons deprived of liberty, limiting the penitentiary interventions carried out towards them and thwarting the realisation of the objectives of imprisonment. In order to implement its provisions, the ECHR has introduced mechanisms to protect the rights of the individual in the form of the possibility to lodge a complaint with the European Court of Human Rights and the European Commission of Human Rights.

The issue of overcrowding in Polish prisons is of interest both in Poland and abroad. The Polish Supreme Court has commented on this issue on a number of occasions. In its judgment of 28 February 2007,[14] the Court upheld

---

[13] See https://www.sw.gov.pl/strona/statystyka [accessed: 05.10.2024].

[14] Judgment of the Supreme Court of 28 February 2007, ref. no. V CSK 431/06, Lex no. 255592.

the cassation of the incarcerated plaintiff, stating that serving a custodial sentence in overcrowded cells with an unseparated toilet and sanitary facility, insufficient number of beds and inadequate ventilation may constitute a manifestation of degrading treatment. Such conditions may further justify a claim for damages in the context of a violation of personal rights. Subsequently, the Polish Constitutional Tribunal also commented on the matter in the already cited landmark judgment of 26 May 2008.[15] This judgment led to the repeal of Article 248(1) of the Penal Enforcement Code,[16] which allowed the director of a prison or remand facility to place inmates, for a limited period of time, in conditions where the cell space per person was less than 3 m^2.

The lack of respect for space requirements in Polish penitentiary units has also been considered by the European Court of Human Rights. The ECtHR expressed its position on this problem in the *Orchowski v. Poland*[17] and *Sikorski v. Poland*[18] judgments. In the former, the Court found that an inadequate system of penitentiary management had led to overcrowding in prisons and remand facilities. This state of affairs has persisted for many years and, in the Court's assessment, has grown into a systemic problem [Wróbel 2022]. The ECtHR found a violation of Article 3 of the ECHR due to the reduction of the required space. It further pointed out that measures used to deprive an individual of his or her liberty can often involve undue suffering and humiliation. The humiliation and suffering must not exceed the necessary level associated with the specific type of lawful treatment or punishment. At the time the aforementioned cases were pending at the ECtHR, 160 more were filed alongside them concerning Poland's violation of Article 3 of the ECHR [Płatek 2011, 496].

Since then, the number of complaints against Poland concerning detention conditions, in particular the overcrowding issue, has decreased. This is related to the process of reverting complaints to the domestic system, initiated by the ECtHR's decisions of 12 October 2010 in the cases of Łatak *v. Poland*[19] and Łomiński *v. Poland*.[20] In these decisions, the Court declared inadmissible complaints concerning conditions of deprivation of liberty. According to the ECtHR, this is related to the virtual elimination of overcrowding in the Polish national system. Moreover, it stated that if an alleged violation of Article 3 ECHR ceases to exist, it cannot be eliminated with retroactive effect. The Court explicitly stated that persons incarcerated

---

15 Judgment of the Constitutional Tribunal of 26 May 2008, ref. no. SK 25/07, Lex no. 380071.

16 Act of 6 June 1997, the Penal Enforcement Code (Journal of Laws No. 90, item 557 as amended) [hereinafter: the Penal Enforcement Code].

17 ECtHR judgment of 22 October 2009 on *Orchowski v. Poland* (no. 17885/04).

18 ECtHR judgment of 22 October 2009 on *Sikorski v. Poland* (no. 17599/05).

19 ECtHR decision of 12 October 2010 on Łatak *v. Poland* (no. 52070/08).

20 ECtHR decision of 12 October 2010 on Łomiński *v. Poland* (no. 33502/09).

in overcrowded Polish penitentiary units (i.e. in conditions that violate their personal rights – dignity, right to intimacy) should, in accordance with the principle set out in Article 35 of the ECHR, bring an action for protection of the violated personal rights before the competent national court prior to filing a complaint to the Court [Janczarek 2011, 36-37]. However, lawsuits on prison overcrowding brought by detainees are largely dismissed. In the reasons for the judgments of Polish common courts, it is indicated that the claim for compensation is not taken into account when the plaintiff's personal rights are not infringed by actions constituting individually directed repression against the plaintiff. The conditions in which the plaintiffs were detained also concerned the living conditions of other inmates.[21] In contrast, judgments upholding the actions state that the following conditions should be considered cumulatively as degrading and violating human dignity: the fact of overcrowding in the cells and the failure to ensure a minimum level of intimacy and the possibility to take care of physiological needs in separation from other prisoners (e.g. those eating a meal) in every cell, as well as the mouldy walls and other surfaces.[22]

In addition to the range of personal and political rights and freedoms expressed in the ECHR, of particular relevance to the issue at hand is Article 3 of the ECHR, which is an absolute standard stating that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment." The article in question cannot be repealed. The ECHR omits the adjective "cruel" when referring to other unacceptable forms of treatment or punishment. However, a wealth of ECtHR jurisprudence has attempted to define the concepts and interrelationships of "torture", "inhuman", "degrading" treatment or punishment, which have so far remained unclarified. In 1978 judgment in a case brought by the Republic of Ireland against the United Kingdom,[23] the ECtHR stated that the difference between the concepts of torture and inhuman and degrading treatment or punishment comes down mainly to the intensity and scale of the suffering inflicted. Torture is a particular form of deliberate, inhumane treatment that causes extremely intense suffering. This is an aggravated form of inhuman and degrading treatment, which in itself is the weakest form of violation of Article 3 of the ECHR [Hołda 2009, 111]. The difference between these concepts is therefore quantitative and not qualitative. Unlike in the acts of the UN system, there is no

---

21 Judgment of the Court of Appeal in Warsaw, ref. no. VI ACa 1128/11; similar judgments: judgment of the Court of Appeal in Warsaw, ref. no. VI ACa 1043/10; judgment of the Court of Appeal in Poznań, ref. no. I ACa 812/13.

22 Judgment of the Court of Appeal in Warsaw, ref. no. VI ACa 585/12; similar judgments: judgment of the Court of Appeal in Warsaw, ref. no. VI ACa 1582/12; judgment of the Court of Appeal in Poznań, ref. no. I ACa 386/13.

23 ECtHR judgment of 18 January 1978 on *Ireland v. United Kingdom*, Series A, No. 25.

explicit reference to the dignity of a human being. The prohibition of torture in Article 3 of the ECHR is the only provision for which no exceptions are provided, and therefore the prohibition, as already mentioned, is absolute. The Court stated in *Ilascu* and Others v *Moldova* and *Russia*[24] that the Convention strictly prohibits torture and inhuman or degrading treatment or punishment even in the most difficult circumstances, such as counter-terrorism and organised crime.

The deprivation of liberty must be carried out with respect to the general principle of legal certainty, which is, as it were, the core of the whole Convention as well as of the legal orders of individual states. It is therefore important, as stressed by the Court, to set out any and all grounds for deprivation of liberty in clearly worded provisions of national law in order to ensure their predictable application.[25] National law should therefore meet the basic requirements of accessibility and precision to the extent that it avoids the risk of arbitrary interference with human freedom. Any deprivation of liberty must correspond to the objective set out in Article 5 of the ECHR, namely the protection of the individual from arbitrariness.[26] Para. 2 to 5 of Article 5 of the Convention provide certain rights to which persons deprived of their liberty are entitled, among which are the right to be informed promptly of the reasons for the deprivation of liberty and of the charges against them, the right to appeal to a court for a judicial determination of the lawfulness of the deprivation of liberty, and the right to compensation in the case of deprivation of liberty in violation of the Convention [Hofmański 1993, 15].

The other major safeguard under Article 7 of the ECHR is the prohibition of punishment without a legal basis. The Convention expressly prescribes that the catalogue of offences and the penalties to be imposed for offences should be clearly defined in the law. It is therefore impermissible to impose penalties, including custodial sentences of course, where the grounds for their application have not been defined by law. Furthermore, the Convention prohibits the imposition of more severe penalties than those provided for by law at the time of the offence. This provision, in the Court's view, has to be interpreted and applied in such a way that it creates effective safeguards for individuals against arbitrary prosecution, adjudication of guilt and punishment. That follows from the object and purpose of this provision.[27]

---

[24] ECtHR judgment of 8 July 2004 on *Ilascu and Others v. Moldova and Russia*, Grand Chamber, application no. 48787/99, para. 424.

[25] ECtHR judgment of 27 November 2003 on *Shamsa v. Poland*, Chamber (Section III), application no. 45355/99 and 45357/99, para. 58.

[26] ECtHR judgment of 2 September 1998 on *Erkalo v. Netherlands*, RJD 1998-VI, para. 56, http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-58233&filename=001-58233.pdf [accessed: 18.12.2024].

[27] ECtHR judgment of 24 July 2008 on *Kononov v. Latvia*, Chamber (Section III), application no. 34854/02, para. 113.

In conclusion, when assessing the effectiveness of the implementation of international standards and mechanisms, it should be noted first and foremost that the implementation of international standards is a process for which international standards that comprehensively define the situations of prisoners are not sufficient on their own. The scope of their application is primarily influenced by the mechanisms for implementing these standards into the internal legal order. Currently, the most effective solutions in this regard are provided by the European Court of Human Rights, through the case law it creates. The work of the European Committee for the Prevention of Torture and the reports and recommendations of its inspection visits also have a strong influence on the implementation of standards guaranteeing respect for human rights. However, while a judicial mechanism such as the ECtHR derives its effectiveness from a *hard law* instrument, the effectiveness of the solutions proposed by the CPT comes solely from the international recognition of the observations it makes following its visits to places of detention. We must also acknowledge the activities of CPT members and experts , who actively and openly assist European countries in implementing the recommendations both those found in the 2006 European Prison Rules and those developed in the Committee's work. These mechanisms complement each other, as the ECtHR reacts to violations that have already occurred and the CPT safeguards against the occurrence of possible violations in the visited States in the future.

The current Penal Enforcement Code has adopted an inclusive model of executing a custodial sentence. The basic premise of this model is to ensure that convicts serving a custodial sentence are provided with conditions that approximate as closely as possible the life in community. The inclusive model seeks to maximise the socialisation of the execution of a custodial sentence, which is achieved by enabling convicts to maintain contact with the outside world, especially with family and relatives, but also with clergy, associations and organisations whose tasks include providing assistance and support to persons deprived of their liberty and their families [Kuć 2007, 87]. Convicts have access to the press, television, the internet (subject, of course, to limitations based on the specifics of the particular prison and its nature). An important role is also played by the system of rewards and concessions, in particular the possibility for the convict to be allowed to leave prison temporarily, which enables him or her to interact more closely with society and the possibility of closer and less constrained contact with family and relatives, which is extremely important in terms of satisfying the convict's basic emotional needs. Convicted persons are given the opportunity to acquire relevant vocational qualifications and education while in prison and these can help them in finding employment after serving their sentence. An important element in an inclusive model of executing a custodial sentence is the possibility for the convicted person to undertake paid

work while in prison, so that he or she can participate, at least to a small extent, in meeting the economic needs of their family. This is important insofar as such opportunities make the convict feel useful to his or her family and determined to act in a positive way, so that his or her rehabilitation activity increases more and more. Cultural and educational activities as well as various workshops and athletic activities conducted as part thereof are also of great importance. By participating in these types of activities, the convict can acquire many interesting and useful skills that he or she can use upon returning to society.

Undoubtedly, the inclusive model of executing a custodial sentence provides the convict with a wide spectrum for developing his or her own activities, important and needed upon release from prison, and creates an atmosphere of a normal social environment in prison [Pawela 2007, 171].

According to Article 67 of the Penal Enforcement Code, the purpose of a custodial sentence is to instil socially desirable attitudes in the convicted person, thereby deterring him or her from repeating offences after release from prison. The entire period of deprivation of liberty can be considered as a kind of preparation of the convicted person for release [Niewiadomska-Krawczyk 2023, 113-26]. This is similarly governed by Rule 6 of the 2006 European Prison Rules, which states that all detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty. Prior to the expected end of the sentence, prison staff, with the participation of the public, should take specific measures as indicated by, inter alia, the 2006 European Prison Rules.[28]

The current Penal Enforcement Code contains references to the proposals outlined in the 2006 European Prison Rules as it introduces a number of institutions designed to help the convicted person with social readaptation as early as during the execution of the sentence [Iwanowska 2013, 22]. Furthermore, in Articles 164-168 of the Penal Enforcement Code, the legislator envisaged the possibility of intensifying measures to prepare the convict for life in free society in the final stage of his or her sentence and the need to provide independent assistance to persons released from prison [ibid.]. The rationale for the draft Penal Enforcement Code indicates that proper preparation of convicts for release from prison can have a significant impact on the positive aspects of custodial sentence.[29]

---

[28] In Rules 33 and 107, the 2006 European Prison Rules outline the principles of providing assistance and support to convicts prior to release, the need for the prison administration to cooperate with social institutions in this regard and the need for additional intensified programmes of activities aimed at preparing convicts for release.

[29] See *Projekt kodeksu karnego wykonawczego wraz z uzasadnieniem*, "Państwo i Prawo" 7-8 (1994), p. 95.

3. NATIONAL PREVENTIVE MECHANISM

The National Preventive Mechanism[30] is an independent, national visiting body established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[31] The Protocol implies that the protection of persons deprived of their liberty against torture and other inhuman or degrading treatment or punishment may be enhanced by non-judicial preventive measures. These consist of regular visits to places of detention. These visits are conducted on two levels, as it were. Of these, the first ones are carried out by independent international expert groups (the UN Subcommittee on Prevention) and the subsequent ones are carried out by the national bodies designated for this purpose. Chapter IV of the Protocol contains provisions on the establishment and functioning of the National Preventive Mechanism. Under Article 17 of the OPCAT, the Polish authorities were obliged to establish one or more independent prevention mechanisms no later than one year after the entry into force of the Protocol. The Protocol has been binding on the Republic of Poland since 22 June 2006, but it was not until 18 January 2008 that the Ombudsman was assigned the function of the National Preventive Mechanism.[32] As indicated earlier, the Article 210 of the Constitution guarantees the Ombudsman's independence and impartiality of activities and accountability only to the Sejm. The functions of the Ombudsman in terms of the NPM were also introduced in the Law on the Ombudsman.[33] With this provision, the Ombudsman was fully equipped with the mechanism required by Article 18 of OPCAT to guarantee the functional independence of his office and subordinate staff.

Article 19 of the OPCAT sets out the tasks to be performed by the National Preventive Mechanism. The role of the NPM is to make regular visits to examine places of detention of persons deprived of their liberty.[34] The visits are

---

30 Hereinafter: NPM.

31 Optional Protocol to the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly Resolution of 18 December 2002, No. 57/199 [hereinafter: OPCAT].

32 See *Informacja o działalności Rzecznika Praw Obywatelskich za rok 2008 oraz o stanie przestrzegania wolności i praw człowieka i obywatela*, "Biuletyn RPO. Źródła" 1 (2009), p. 22.

33 Act of 18 August 2011 amending the Law on the Ombudsman (Journal of Laws No. 222, item 1320).

34 This refers to places of detention within the meaning of Article 4 of OPCAT, which are understood to mean "any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence." These include, in particular: prisons, remand facilities, police children's homes, sobering stations, youth education centres, correctional facilities, psychiatric hospitals.

designed to examine the treatment of these persons. These visits are followed by reports and appropriate recommendations and proposals made to the relevant authorities. All these activities are carried out with the aim of improving the treatment and conditions of persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment or punishment. In this respect, the NPM also analyses existing legislation and draft normative acts with regard to which it can make its own comments and proposals.

In order to enable national preventive mechanisms to carry out their tasks, its members have a number of powers, guaranteed by the State Party (Article 20 of the OPCAT). They have access to all information on the number of persons deprived of their liberty in places of isolation, the number of these places and their location. They are free to choose where they want to carry out visits. Moreover, when carrying out their visits, experts have access to all places of detention, their installations and facilities, and can make use of all information concerning the treatment of persons deprived of their liberty, as well as the conditions of their detention. In order to obtain a more comprehensive and, above all, realistic picture of the situation of prisoners, they have the opportunity to conduct private interviews with prisoners, without witnesses, either in person or through an interpreter, if necessary. Such interviews may also be held with any other person whom they feel can provide relevant information.

Annual reports are drawn up on the activities of the National Preventive Mechanism, which are then published in the "Biuletyn RPO". Poland is obliged to develop and disseminate them on the basis of Article 23 of the OPCAT. Reports contain the conclusions of the conducted visits with a detailed breakdown of places of detention. They also include a description of the actions taken by the Ombudsman following the identified violations and irregularities.[35]

Visits within the NPM are unannounced. They have been shaped in such a way as to give as true an image as possible of the audited unit. Had they been announced, the administration would have had time to prepare adequately, which would have distorted the assessment of real problems and possible violations in the units.[36] Prior to the commencement of the visit, the group of experts who, in accordance with Article 18(2) of the OPCAT, should have the relevant skills and professional knowledge,

[35] See *Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji w 2022 roku*, https://bip.brpo.gov.pl/sites/default/files/2023-11/Raport_roczny_KMPT_2022_dostepny.pdf [accessed: 20.09.2024].

[36] See *Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji w roku 2012*, "Biuletyn RPO. Źródła" 5 (2013), p. 22.

is first selected.[37] The duration varies from 1-3 days. Their length depends on the size of the unit and the issues observed on site. In the course of their activities, experts may exercise all of their rights under the OPCAT provisions discussed above. Each visit follows specific stages, which consist of: conversations with management; inspection of all rooms; individual and group interviews with persons detained in the facility; interviews with staff; analysis of documentation; formulation of post-visit recommendations during the debriefing with the receipt of explanations from the management.[38]

The information obtained by experts during individual interviews with detainees can be used in two ways. First of all, persons deprived of their liberty who find that violations of the law are taking place in the unit where they are detained may lodge a formal complaint. When convicts do not wish to make formal complaints, the confidential information obtained from them can provide experts with the basis for further investigation.

The visit is followed by the preparation of a report which includes the conclusions and observations made by the experts. They address the living conditions and observance of the rights of persons deprived of their liberty on an issue-by-issue basis.[39] The report also sets out recommendations for the facility's governing body. However, when management disagrees with those recommendations, the report is forwarded to the superior unit so that the latter can express its position on the matter and take appropriate action.[40]

Based on its visits, the NPM has identified a number of issues that it encounters during such visits. Of these, the most serious concern of the Polish prison system – noted by both Polish and international visiting bodies – is that of overcrowding in penitentiary units. As pointed out in the NPM's 2019 activity report, inappropriate practices are used to simulate attempts to deal with the problem.[41] Although inadequate, they are nevertheless permitted under current legislation.

---

[37] It is usually a group of several people with a group coordinator selected therefrom. Most often them are people with expertise in law, general medicine, psychiatry and psychology.

[38] See *Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji w 2022 roku*.

[39] These include, in particular, issues such as food, medical care, treatment, cultural and educational activities, correspondence and visits, religious services.

[40] In cases where torture or inhuman or degrading treatment or punishment has been found to take place, a notice of suspected offence is drawn up by the experts after the conclusion of the visit. Where the disclosure of this condition was brought about by the victim, its submission requires the consent of the victim, see *Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji w 2022 roku*.

[41] For example, day-care facilities are being converted into cells, infirmaries are being included in the number of prison cells and adapted to such needs, and the length of detention of some people in temporary cells is being extended beyond the norm.

Furthermore, as shown in the report, comments and recommendations were formulated in relation to cases of: the occurrence of beatings by prison officers of new prisoners admitted to prison; the continuation of coercive measures despite the cessation of their rationale; the downplaying of ailments reported to medical staff; the use of monitoring in unsupervised visiting rooms or the lack of cells adapted to the needs of the disabled and sick.

In addition to the numerous problems of the Polish prison system, positive activities taking place in individual prisons in Poland were also recognised. These include, in particular: training in the development of appropriate interpersonal relations with inmates, organised for Prison Service officers; taking care of the intimacy of inmates while bathing in the prison bathhouse; or creating appropriate infrastructure for sports and cultural and educational activities.

CONCLUSIONS

The process of humanizing criminal law, which has been systematically progressing since the 18th century, has led to the gradual abolition of the death penalty, replaced by imprisonment as the most severe measure of response to crime. Previously, other forms of punishment were also used, such as flogging, mutilation, or exile, yet the deprivation of human life remained the most severe penal sanction. Prison isolation is not only a form of punishment but also a significant challenge for convicts, their families, and the penitentiary system, which must balance between repression and rehabilitation.

Contemporary international standards for the execution of custodial sentences set clear and precise norms designed to ensure respect for human rights. In the context of the Polish penitentiary system, it can be observed that the adopted legal regulations largely align with these standards. However, the actual implementation of these norms faces numerous challenges, primarily stemming from number of prisoners and limited financial resources.

An analysis of the jurisprudence of the European Court of Human Rights, reports from the Committee for the Prevention of Torture, and the activities of the National Preventive Mechanism indicate significant discrepancies between the obligations arising from legal acts and their practical implementation. The issue of number of convicts, along with associated limitations on access to education, employment, medical care, and living space, remains a key challenge for the Polish penitentiary system.

The introduction of a model for the execution of custodial sentences, which seeks to approximate conditions of life in freedom as closely as possible, represents an important step toward the rehabilitation of convicts. This

system is based on maintaining contact with family and society, ensuring educational and vocational opportunities, and fostering a sense of responsibility for one's own life. Many of these elements have been incorporated into the Polish Penal Executive Code, yet their practical implementation requires further development.

Supervisory actions undertaken by the National Preventive Mechanism allow for the identification of existing problems and the formulation of recommendations that can contribute to improving conditions in Polish penitentiary institutions. Regular inspections and expert reports serve as essential instruments in shaping a more humane approach to the execution of custodial sentences.

The complete realization of international standards depends not only on appropriate legal regulations but also on effective mechanisms for their implementation and adequate resources supporting their enforcement. Only a comprehensive approach, taking into account both normative and practical aspects, will enable the Polish penitentiary system to achieve compliance with the requirements of modern European and international human rights standards.

REFERENCES

Ambrozik, Wiesław. 2008. "Readaptacja społeczna i reorganizacja *środowisk* lokalnych jako warunek skuteczności oddziaływań resocjalizacyjnych." In *Resocjalizacja*, edited by. Bronisław Urban, and Jan Stanik, vol. 2, 184-96. Warszawa: Wydawnictwo Naukowe PWN.

Antonowicz, Lech. 1990. "Ochrona godności człowieka w prawie międzynarodowym." *Annales Universitas Mariae Curie-Skłodowska*, sectio G, Ius, XXXVII:1-9.

Astramowicz-Leyk, Teresa. 2009. *Międzynarodowe systemy ochrony praw i wolości człowieka*. Olsztyn: Olsztyńska Szkoła Wyższa im. Józefa Rusieckiego.

Beccaria, Cesare.1959. *O przestępstwach i karach*. Warszawa: Wydawnictwo Uniwersytetu Łódzkiego.

Dawidziuk, Ewa. 2013. *Traktowanie osób pozbawionych wolności we współczesnej Polsce na tle standardów międzynarodowych*. Warszawa: Wolters Kluwer Polska.

Hofmański, Piotr. 1993. *Prawa człowieka przed Trybunałem w Strasbourgu*. Białystok: Stowarzyszenia Absolwentów "Temida 2".

Hołda, Zbigniew. 2009. "Europejskie standardy traktowania więźniów. Kilka uwag o Europie, Radzie Europy, Polsce i prawach więźniów." *Czasopismo Prawa Karnego i Nauk Penalnych* 1:97-124.

Hołda, Joanna, Zbigniew Hołda, Danuta Ostrowska, et al. 2014. *Prawa Człowieka. Zarys wykładu*. Warszawa: Wolters Kluwer Polska.

Hołda, Zbigniew, and Beata Żurawska. 2012. "Prawo karne wykonawcze i jego nauka." In *Prawo karne wykonawcze*, edited by Joanna Hołda, Zbigniew Hołda, and Beata Żórawska, 13-20. Warszawa: Wolters Kluwer Polska.

Iwanowska, Aleksandra. 2013. *Przygotowanie skazanych do życia na wolności w trybie art. 164 k.k.w*. Warszawa: Biuro Rzecznika Praw Obywatelskich.

Janczarek, Szymon. 2011. "Strasburg o przeludnieniu." *Na wokandzie* 3:36-37.

Krukowski, Józef. 1997. "Godność człowieka podstawą konstytucyjnego katalogu praw i wolności jednostki." In *Podstawowe prawa jednostki i ich sądowa ochrona*, edited by Leszek Wiśniewski, 289-309. Warszawa: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości.

Kuć, Małgorzata. 2007. *Indywidualizacja wykonywania kary pozbawienia wolności*. Lublin: Towarzystwo Naukowe KUL.

Migdał, Jerzy. 2008. "Perspektywy wykonywania kary pozbawienia wolności w polskim systemie penitencjarnym." *Czasopismo Prawa Karnego i Nauk Penalnych* 1:267-80.

Migdał, Jerzy, and Grzegorz Skrobotowicz. 2014. "Możliwość realizacji Europejskich Reguł Więziennych z 2006 r. w zakresie reintegracyjnego modelu wykonywania kary pozbawienia wolności a przeludnienie polskich jednostek penitencjarnych." *Rocznik Nauk Prawnych* XXIV, no. 1:131-52.

Niewiadomska-Krawczyk, Magdalena. 2023. "Warunkowe przedterminowe zwolnienie z odbywania kary dożywotniego pozbawienia wolności – rozważania w świetle nowelizacji Kodeksu karnego." *Radca Prawny ZN* 4:113-26.

Pawela, Stanisław. 2007. *Prawo karne wykonawcze. Zarys wykładu*. Warszawa: Wolters Kluwer.

Płatek, Monika. 2011. "Jakie cele zdolne są pomieścić cele? Zgodność polskiego prawa karnego wykonawczego z Europejskimi Regułami Więziennymi." In *Problemy penologii i praw człowieka na początku XXI stulecia. Księga pamiątkowa poświęcona pamięci Profesora Zbigniewa Hołdy*, edited by Beata Stańdo-Kawecka, and Krzysztof Krajewski, 487-506. Warszawa: Wolters Kluwer.

Szczygieł, Grażyna. 2002. *Społeczna readaptacja skazanych w polskim systemie penitencjarnym*. Białystok: Temida 2.

Szymanowski, Teodor, and Jerzy Migdał. 2014. *Prawo karne wykonawcze i polityka penitencjarna.* Warszawa: Wolters Kluwer Polska.

Świętochowska, Urszula. 1992. *Tymczasowe aresztowanie i pozbawienie wolności. Aspekty demograficzne i społeczne*. Gdańsk: Albatros.

Ultrat-Milecki, Jarosław. 2006 *Podstawy penologii. Teoria kary.* Warszawa: Wydawnictwo Uniwersytetu Warszawskiego.

Wróbel, Agata. 2022. "Standardy orzecznictwa Europejskiego Trybunału Praw Człowieka w sprawach dotyczących osób pozbawionych wolności". www.bip.ms.gov.pl [accessed: 15.06.2022].

Zajadło, Jerzy. 1989. "Godność jednostki w aktach międzynarodowej ochrony praw człowieka." *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 2:103-17.