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Extreme criminal penalties: Death penalty and life imprisonment in the Polish penal and penitentiary system

Skrajne kary kryminalne – kara śmierci i dożywotniego więzienia w polskim systemie karnym i penitencjarnym

Abstract: In the article we analysed how the introduction and application of life imprisonment in the period of transformation has impacted the development of the penitentiary system to date. We answered how and why the legislature eliminated the death penalty from the catalogue of penalties in the Polish Penal Code of 1997, and replaced it with life imprisonment. We took into account the statistics on life sentences passed in Poland. We present the evolution of the prison system, which for a quarter of a century had to cope with this difficult category of prisoners by finding new legal solutions and applying international standards. We also discussed some conclusions of the scholarly study 'The best of the worst and the still evil: Prisoners serving life sentences', which has been conducted since 2014 by our research team. The study focuses on the management and application of this extreme punishment in Poland, the adaptation of prisoners with life sentences to the isolation and social dimension of imprisonment.

Keywords: life imprisonment, death penalty, prison, penitentiary system, transformation, human rights

Abstrakt: W artykule przeanalizowałyśmy wpływ wprowadzenia i wykonywania kary dożywotniego pozbawienia wolności w okresie transformacji na dotychczasowy rozwój systemu penitencjarnego. Przedstawiłyśmy to, jak i dlaczego ustawodawca usunął karę śmierci z katalogu kar w polskim

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kodeksie karnym z 1997 r. i zastąpił ją dożywotnim więzieniem. Przedstawiłyśmy analizę statystyki orzekania kary dożywotniego pozbawienia wolności w Polsce od daty jej wprowadzenia. Zaprezentowałyśmy ewolucję systemu więziennictwa, który przez ćwierć wieku musiał poradzić sobie z tą trudną kategorią skazanych poprzez sięganie po nowe rozwiązania prawne i standardy międzynarodowe. Omówiłyśmy także niektóre wnioski z badań naukowych „Najlepsi z najgorszych i źli stale. Więźniowie dożywotni" – prowadzonych od 2014 r. przez nasz zespół badawczy. Badania koncentrują się na zarządzaniu i wykonywaniu tej ekstremalnej kary w Polsce, przystosowaniu więźniów do izolacji i społecznym wymiarze więzienia.

Słowa kluczowe: kara dożywotniego pozbawienia wolności, kara śmierci, więzienie, system penitencjarny, transformacja, prawa człowieka

Introduction

We assume the initial date of Poland's transformation to be 1989. This year was a turning point in the history of the Polish state: its system and, consequently, the law.

> The post-socialist systemic transformation is a comprehensive process of transition from a single-party political system, a centrally planned nationalised economy, a top-down society, and the associated culture and mentality towards a parliamentary democracy, a market economy, a civil society, and a new culture and mentality which is linked to these structural features. (Kołodko 2007: 3)

One area of the Polish transformation was penal policy, especially penitentiary – concerning prison isolation. After 1989, but before the modern penal codification of 1997, changes in criminal law 'concerned the removal of the most repressive, inhumane, or even illegitimate laws that cannot be maintained in a democratic state under the rule of law' (Szymanowski 2012: 104). A characteristic effect of the transformations in Europe at the time was a departure from the death penalty in post-communist countries (Frankowski 1996: 215). In this paper, we will focus on this process in Poland: we will present how the policy of handing down and carrying out the most severe criminal penalties has changed over the last 30 years.

Our findings are based not only on the studies we have already found, but also on our research into life imprisonment as a penalty. The first stage of the study, entitled 'Life imprisonment: The killer, his crime, and his punishment' was carried out between 2014 and 2017. Currently, we are continuing it in the project 'The best of the worst and the still evil: Prisoners with life sentences'.[1]

[1] This paper was created as a result of research project no. 2017/27/B/HS5/00633, financed by the National Science Centre. For more see http://lajfersi.uw.edu.pl/en/research/current/ [access 15.03.2020].

1. The harshest criminal penalties during the transformation period in Poland

At the beginning of the transformation, the Penal Code of 1969, which was in force in Poland,[2] provided for the following types of penalties: fines, restriction of liberty, imprisonment (from 3 months to 15 years), and exceptional penalties for the most serious crimes, i.e. a sentence of 25 years' imprisonment or the death penalty.

The law did not provide for life imprisonment, which was known to Polish legislation from the pre-war penal code of 1932.[3] Interestingly, when the legislature introduced the penal code of 1969, they justified the abandonment of this type of punishment on humanitarian grounds (Szumski 1996: 5), though this did not prevent them from retaining the death penalty. Since the 1930s, the application of capital punishment had met with resistance from part of the academic community, and in the draft Penal Code of 1932 the introduction of this punishment passed by a single vote (Zubik 1998: 84). Also, after the Second World War, there were strong voices against the death penalty, such as Stanislaw Ehrlich's

> we were discoloured by the war, oceans of suffering, mountains of corpses. Come terrifyingly close to death for years, losing loved ones, at the same time we lost our sensitivity to the fate of a single person … to the tragedy of taking one's life'. (Szumski 1997: 83)

Representatives of post-war abolitionists included Władysław Wolter, Marian Cieślak, and Maria Ossowska.

The death penalty under the Penal Code of 1969 was provided for in nine cases, as well as in over a dozen extra-codex provisions. Until 1981, 24 crimes were liable for it. The court could not target perpetrators under the age of 18 at the time of the act or pregnant women. In any case, the death penalty could be imposed alternatively with 25 years' imprisonment (Zubik 1998: 88–89).

The events of 1980 in Poland (the creation of 'Solidarity' and growing public dissent) were conducive to starting work on a new shape of the Penal Code. The first proposal was from the Ministry of Justice, which provided either for the abolition of the death penalty and its replacement by life imprisonment, or the retention of the death penalty for only two crimes (murder and treason against the homeland). The second project, described as 'social', was prepared by experts connected with Solidarity. Its authors proposed the complete abolition of the death penalty and, as an alternative, leaving the sentence of 25 years in prison (Szumski 1997: 85). Soon after, as martial law was imposed in December 1981 (lifted in

[2] Act of 19 April 1969 – Criminal Code (Journal of Laws 1969, No. 13, Item 94 as amended)

[3] Regulation of the President of the Republic of Poland dated 11 July 1932, Criminal Code (Journal of Laws 1969, No. 60, Item 571 as amended)

1983), the related circumstances interrupted the debate on these draft bills. Moreover, this period resulted in extending the threat of the death penalty to 86 types of crimes, and during the martial law suspension period it still involved the high number of 40 crimes (Zubik 1998: 91).

Since 1988, a period called the de facto moratorium on the use of the death penalty began – the last execution in Poland was carried out in 1988. However, since that time there were still sentences condemning perpetrators to this punishment. The last death sentence was imposed by the 'Court of Appeal in Łódź (24.04.1998, IIAKa 18/97), which upheld the quadruple death penalty for the perpetrator of seven murders, ordered by the Regional Court in Piotrków Trybunalski (26.05.1995, IIIK 173/93)' (Rzepliński 2008: 906).

After the elections to the Sejm and Senate in 1989, on 10 August, a group of 27 MPs from the Solidarity movement submitted to the Sejm a bill on the abolition of the death penalty, providing for a 25-year prison sentence in its place. This initiative failed, which may be justified by the unfavourable attitude of the then authorities towards the abolition of capital punishment, but also by the inadequate preparation of the bill – 'it must be acknowledged that the opportunity was not taken to present the abolitionist rationale more widely, as if it were thought that a noble cause would defend itself' (Grześkowiak 1993: 172).

A year later, however, the abolitionists managed to make progress, when the provision providing for the death penalty for organising and directing a major economic scandal, i.e. an economically motivated crime, was removed through an amendment to the Penal Code in 1990. This step was important because of the embarrassing nature of this sanction, which Polish courts twice managed to use (Szumski 1997: 87).

In 1995, as a result of the amendment of the 1969 Penal Code still in force,[4] a statutory five-year moratorium on the execution of the death penalty was introduced, life imprisonment was reinstated, and 25 years' imprisonment was maintained. However, the moratorium did not prohibit sentencing to the main penalty, i.e. putting convicts to death. The courts could still rule on it, and they did so:

> in 1991 it was used in one case, in three cases in 1992, one in 1993, two in 1994, and one in 1995. However, the judgments were not carried out because there was no response from the President – who took over after the abolished Council of State – to exercise or not to exercise the right of mercy. (Zubik 1998: 91)

[4] Act of 12 July 1995 amending the Criminal Code and the Executive Penal Code and increasing the lower and upper limits of fines and compensation in criminal law (Journal of Laws 1995, No. 95, Item 475).

Such a solution – the suspension of the death penalty for five years but leaving the possibility of sentencing someone to death – was assessed by doctrine as 'flawed', primarily because of the risk of human rights violations: 'five years' imprisonment with the knowledge that there is a final threat of execution must be qualified as a form of psychological torture' (Szumski: 1997: 87).

The introduction of life imprisonment, as proposed in the drafts of the new Penal Code, was widely discussed in the academic community. The opponents of the introduction of this punishment cited its contradiction with human rights: too long a period of time after which one can acquire the right to apply for conditional release (25 years) and the irrationality of maintaining a 25-year prison sentence at the same time (Hołda 1994; Zawłocki 1996). It is worth noting another criticism that has been raised, which coincides with that of the death penalty – from a criminological point of view, there were and are no grounds on which to claim that life imprisonment effectively prevents crime, and thus that its absence will increase crime. There were also voices against this punishment, demanding 'real life imprisonment', i.e. criticising the possibility of conditional release.

In view of the actual cessation of the death penalty since 1988 on the one hand, and the changes that were intended to be achieved through this transformation on the other (including the inclusion of Poland in the Council of Europe [CoE] and the European Communities), it seemed an obvious step to eliminate this penalty from the legislation. Despite the support of abolitionists in the academic community, this was not a foregone conclusion. As one of the previously quoted authors aptly noted,

> it is known that the decisive vote on the possible abolition of the death penalty will belong to the so-called political elite, which – unfortunately – is today the greatest threat to the victory of the idea of abolitionism in our country. This is because some politicians treat this problem instrumentally, as a kind of bargaining chip in the pursuit of their parties' ad hoc interests. (Szumski 1997: 89)

However, the draft of the new Penal Code, for the first time in the history of Polish law, did not provide for the death penalty, which was justified by the fact that this penalty

> is incompatible with the principle of human dignity and the contemporary system of values and with the results of criminological research. These studies have shown that the death penalty is not an effective deterrent against committing the crimes for which it is prescribed and applied, and that abolition of the death penalty does not increase the risk of crime that it should be preventing. The function of protecting society from the most serious offenders can be effectively taken over by life imprisonment, which can also satisfy the public's sense of justice. (Draft Penal Code 1990)

Last but not least, the abolition of the death penalty fulfilled the requirement of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Zagórski 2000: 77).

Finally, the new Penal Code in Poland was passed on 20 June 1997.[5] The Sejm introduced a new catalogue of penalties including fines, restriction of liberty, and three separate isolation penalties: imprisonment from one month to 15 years, 25 years' imprisonment, and life imprisonment. With regard to perpetrators sentenced to death who had not been executed, pursuant to Article 14 of the Act – Provisions implementing the Penal Code,[6] the courts commuted their death penalty to life imprisonment.

In the explanatory memorandum to the draft Penal Code, the legislature argued for the introduction of life imprisonment: 'the highest seriousness of the crimes for which it is provided, the reckoning with the public perception of the death penalty, and the exceptional need for the permanent elimination of the most dangerous offenders' (Szumski 1996: 15–16). It should therefore be concluded that an important reason for introducing lifetime incarceration was to take the place of the death penalty, which society expected. Opinion polls indicated that most Poles were then in favour of the death penalty (Szymanowski 2012: 253, 258).[7] Without entering into a discussion about the importance of public opinion, it is worth recalling the reservations over the way in which this issue was studied at the time in Poland – by asking one abstract question: Are you for or against the death penalty? When looking at more complex studies, where the respondent was to assess his or her position on the basis of examples, it turned out that support for the death penalty was no longer so apparent[8] (Krajewski 1990). As one of the authors criticising the introduction of life imprisonment wrote, 'one might get the impression that replacing the death penalty with life imprisonment for the authors of the bill was essentially about calming down public opinion, which seems to be too high a "price" for abandoning the main penalty' (Szumski 1996: 17).

The penalty of life imprisonment has been the subject of criticism from the academic community in Poland and around the world for many years. The arguments for and against its application have been brought up in the discussion on the occasion of its reinstatement in the Polish criminal law and have been raised to this

[5] Act of 6 June 1997 – Criminal Code (Journal of Laws 1997, No. 88, Item 553)

[6] Act of 6 June 1997 – Provisions introducing the Criminal Code (Journal of Laws 1997, No. 88, Item 554 as amended)

[7] In the first years of the 1993–1995 transformation, support remained at 64% and 62%. Also, the opinion about the penalty for murder in those years was 97% in favour of the most severe penalty, i.e. life imprisonment. In 2006 and 2011, over 80% of the respondents were in favour of administering this penalty for murder.

[8] It should be remembered that the quality of this type of research is also dependent on the appropriateness of the wording used in it.

day, except that today we are no longer talking about the theory, but about the real people who are affected by it.

2. Life imprisonment in the current Penal Code

The offences punishable by life imprisonment have been as follows since 1998:[9]

- Initiating or waging an aggressive war (Article 117 §1)
- Genocide (Article 118 §1)
- Participation in a mass attack (Article 118a §1)
- Use of means of mass destruction prohibited by international law (Article 120)
- The killing of surrendering persons, the injured, the sick, prisoners of war, the civilian population of an occupied area, and other categories of persons referred to in Article 123 §1
- Coup d'état (Article 127 §1)
- Assassination of the President (Article 134)
- Murder (Article 148 §1, 2, and 3)

In each of the above-mentioned crimes, lifelong incarceration is accompanied by the alternative of ordinary imprisonment and 25 years' imprisonment. Therefore, in no case is it an absolute sanction.

In accordance with Article 54 §2 of the Polish Criminal Code, life imprisonment cannot be imposed on an offender who is under 18 years of age at the time of the offence. This is the only prohibition the law gives to an offender to exempt him/her from this penalty.

The decision to imprison someone for life as an exceptional punishment is to argue for 'the highest degree of guilt and social harmfulness of the act, the absence of any mitigating circumstances, and consideration of the nature of the perpetrator, his particular antisocial characteristics, and deep immorality' (Melezini 2010: 121). Unlike the Penal Code of 1932, in the present Criminal Code, there is no obligatory sentence of life imprisonment in the form of the loss of public rights forever.

As in the pre-war Polish legislation, there is a possibility for parole with a life sentence.[10] In addition, this penalty may be reduced by granting clemency or as a result of a general amnesty affecting the convicted person.[11] The difference in the

[9] This is the year the 1997 codification came into force.

[10] However, the legislature prepared an amendment to the Criminal Code in 2019, Art. 77 §§3 and 4 of which allow for life imprisonment without the possibility of applying for parole. At the time of writing this article, it is not known whether these changes will come into force, because on 28 June 2019 the president referred the bill to the Constitutional Tribunal.

[11] Another basis for shortening a life sentence at the trial stage may be Art. 60 §3 of the Criminal Code, when the court applies an extraordinary mitigation of punishment in cases where a perpetrator

current Criminal Code is the period that must pass for the convicted person to be able to apply for conditional early release. According to Article 78 §3 of the Penal Code, a person sentenced to life imprisonment may be released on parole after serving 25 years of that sentence. This is only possible

> if his/her attitude, personal characteristics and conditions, the circumstances in which the offence was committed, and his/her conduct afterwards and during his/her sentence justify the belief that the convicted person, after release, will comply with the criminal or protective measure imposed and will respect the legal system, in particular, that he/she will not commit the offence again.

The establishment of a minimum period of 25 years before applying for conditional release was criticised even while the Penal Code was being drafted, and this length of time is not justified in penitentiary experience:

> No view in penitentiary studies based on the pedagogy of rehabilitation expresses the view that improvement in a sentenced person to life imprisonment can be achieved only after serving 25 years, and not before… Our history does not know such a high minimum of serving a sentence as 25 years. (Wąsik 1993: 191–192)

Moreover, attention should be paid to Art. 77 §2 of the Criminal Code, according to which a court, when imposing a custodial sentence, may – in particularly justified cases – set stricter restrictions on the use of conditional early release for a convicted person. This means that the court can raise the limit after which a particular convict can be released on parole from 25 years to, say, 30, 40, or even 50 years. It should be mentioned that the 25-year limitation adopted in the current Penal Code is already high anyway – '10 years higher than the one laid down in the 1932 Criminal Code and 15 years higher than the minimum provided for in the 1951 and 1957 Parole Acts' (Zagórski 2006: 248).

Nevertheless, the courts take advantage of the possibility offered by Article 77 §2 of the Criminal Code by raising the limit at which a person sentenced to life imprisonment may apply for conditional release. The extent to which the court

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cooperating with other persons in committing a crime discloses to the body appointed to prosecute crimes information about other persons participating in the commission of the crime and the relevant circumstances of its commission. The law does not exclude from this measure offences punishable by life imprisonment. Our research shows that such cases occur in practice, such as in the judgment of the Court of Appeal in Poznań of 10 March 2004 ref. II AKa 528/03 or the Court of Appeal in Katowice of 3 February 2000 ref. II AKa 132/99, in which cases the courts of appeal pursuant to Art. 60 §3 of the Criminal Code extraordinarily eased the punishment for perpetrators sentenced in first instance courts to life imprisonment.

may increase the threshold for applying for conditional release is not determined by law, but by reason and the standard of the European Convention for the Protection of Human Rights and Fundamental Freedoms (judgment of 9 July 2013 in the case of Vinter and others v. Great Britain, application nos. 66069/09, 130/10, and 3896/10; judgment of 20 May 2014 in the case of László Magyar v. Hungary, application no. 73593/10; and judgment of 13 September 2019 in the case of Marcello Viola v. Italy, application no. 77633/16).

> It is [also] a matter of making the possibility of parole appear real at the time of conviction, so it cannot be ruled, for example, that a 50-year-old person sentenced to life imprisonment will be able to apply for early parole no earlier than after having served 50 years' imprisonment. (Melezini 2010: 127)

Nevertheless, at the beginning of these regulations, there was already an assumption that this gateway to tightening the life sentence by increasing the threshold for applying for conditional release may constitute a compromise between the legislature and supporters of absolute lifelong incarceration (Wilk 1998: 24). The fact that by using this provision, the court may actually eliminate the perpetrator from free society is evidenced by the judgment of the District Court in Łódź of 20 December 2011, which, by condemning a 64-year-old man to life imprisonment, set the threshold for applying for conditional early release at 30 years. The court's verdict has become final, which means that the convicted person will acquire the right to apply for conditional release at the age of 94 (Lelental 2017: 559–560). This case is one exception, but it shows the danger of depriving a convicted person of his or her real right to hope in the current state of law.

3. Lifers: The statistical picture since 1995

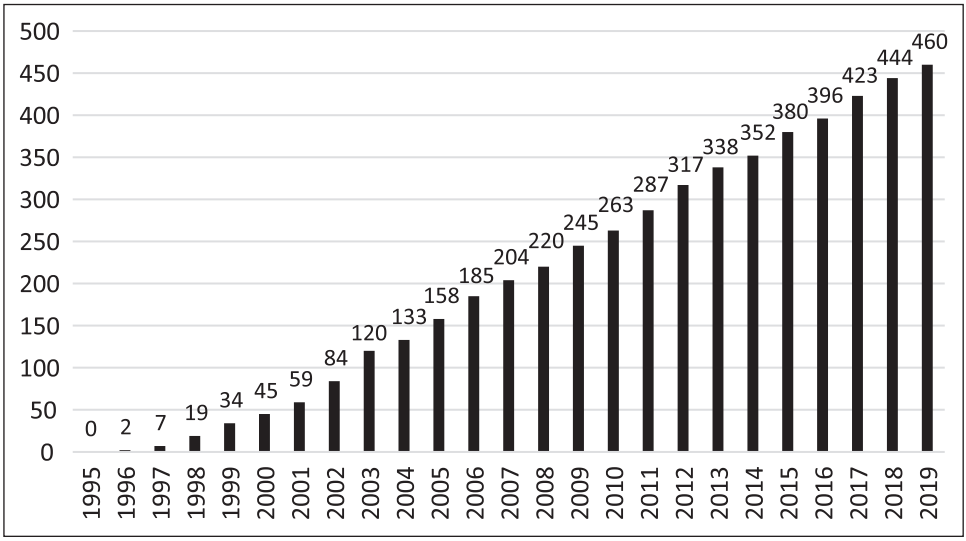
In 1998, when the new Penal Code entered into force, there were 19 prisoners sentenced to life imprisonment. After five years, this number had increased more than sixfold – in 2003, there were 120. Over the next five years, this group almost doubled to 220 prisoners. The trend continued over the following decade (2008–2018), reaching 444 convictions in 2018.

The explanatory memorandum of the Penal Code defines life imprisonment as an exceptional penalty reserved only for the most dangerous offenders requiring permanent elimination. In practice, it is difficult to agree with its exceptionality given that, since 1998, the Polish prison population has increased annually by an average of 20 lifers.

By 1 January 2020, two prisoners with a life sentence had died a natural death, and none of those sentenced to this punishment in Poland had been granted

conditional early release or clemency.[12] For these reasons, the number of lifetime prisoners continues to increase, which will continue until they start to leave prison either through parole or death.

Chart 1. Number of prisoners sentenced to life imprisonment (finally and pending appeal) in Polish prisons, by year



Source: 1995–2013 – Atlas of Crime in Poland 5 (Siemaszko 2015); 2014–2019 – CZSW

In the course of our research on life imprisonment, we established that on 20 December 2019, 455 people were imprisoned in Polish prisons, including 14 women, with a final sentence of life imprisonment. Of these, 55% are serving their first sentence (they are not repeat offenders). Our calculations show that at the end of 2019, 185 prisoners had already served at least 15 years of their sentence, and 64 of them at least 20 years. Five convicts, on the other hand, had already served 25 years of their life sentence, which means that they are able to apply for conditional early release from prison.[13]

Lifetime prisoners, like other prisoners, are subject to the principle of free progression, which allows them to be promoted or demoted between three types of prisons, differing in the degree of security, control, freedom of movement, and

[12] As of 1 January 2020, the right to apply for parole has been acquired by five.

[13] These convicts did not have an increased threshold for applying for conditional early release.

contact with relatives and the public.[14] By law, lifetime prisoners may be promoted from a closed prison to a semi-open one after serving at least 15 years of their sentence. At the end of 2019, 11 lifers had been promoted, i.e. about 6% of all those with a life sentence and at least 15 years behind them. Interestingly, none of the five prisoners with the 'longest seniority' of life imprisonment has been promoted to the conditions of a semi-open unit.

The research we have carried out shows that performing and undergoing life imprisonment is far from 'civil or social death.' Most of them are proactive in the process (writing not only in criminal cases to the court of justice, but also in family, civil, and executive matters involving the Ombudsman of Citizen's Rights, the media, and international institutions, in particular the European Court of Human Rights.

The family relationships of prisoners sentenced to life do not disintegrate; on the contrary, they are established or regenerated. Lifers get married, become parents and then grandparents, and initiate contact with further family members or new people they meet. There are those who prefer or are used to solitude, without the need for social contact, but most lifetime prisoners rely on outside contact and invest in it, regardless of their motive.

The transformation and modern trends in the execution of prison sentences have also included life imprisonment.

4. The execution of life imprisonment in Poland: Regulations and practice

Prison – the institution responsible for the execution of imprisonment – reflected the tension of the repressive system before the political transformation and its irrationality, and was an anachronism in the subsequent era of transition towards the CoE.

In the case of long sentences, it is particularly evident – not only in the evolution of ideology, but also in practice – how the way convicts are treated has changed and how sensitive the prison system is, as a result of the adoption of the new axiology and international standards. The transformation of the prison system after 1989 is not only an intra-system movement, but it also includes external stimuli and influences – the supervision of human rights institutions, public participation in the execution of punishment, and the need to construct a new image for the prison system, and the consequent need to gain support and legitimacy for its activities.

[14] These are closed, semi-open, and open institutions. The rules of executing a sentence, depending on its type, are regulated by Arts. 90–92 of the Executive Criminal Code.

Furthermore, prisons – the last bastion of total power enforced 'behind the curtain' of ignorance and walls – accepted the need to show itself as friendly and law-abiding, according to the principle of building the public trust in state authorities. Prisons have gradually opened up to scientific research, public debates, the media, and organisations involved in the execution of prison sentences which offer rehabilitation programmes and legal counselling.

The dynamics of change and the new pro-CoE trend took place under specific conditions. During the period of transformation and modernisation, the prison service took over the legacy of the regression of the 1970s and the repression of the 1980s. The prison service inherited the infamous memory of what happened at the service of the authorities. It also inherited an underinvested material base, i.e. prison facilities that are old and overrun, often with inadequate infrastructure. This part of the heritage did not work in applying the new axiology of in dealing with convicts.

At the same time, the Polish prison system had more glorious reflections, traditions, and experiences from before the war, and those after 1956, which modernised the way punishment was carried out on an equal footing with Western European countries (Kalisz, Kwieciński 2013: 118, 128). The main 'carriers' were the scientific community and educated practitioners convinced by the idea of humanitarianism. Thanks to them, psychologists and visitors entered prisons, equipped with knowledge and methods to create the prison as a better place – a turning point in returning criminals to an honest life. We learned to associate the execution of punishment more with aid than with retribution.

The dynamics of the transformation of the prison system was in the '90s. It was a revaluation of the prison system: measurable legal, structural, organisational, and personnel changes. After 1989, the Polish prison service carried out the most spectacular, thorough, and exemplary reform of the penitentiary system and its institutions, which is still an example to many countries, especially the young [post-Soviet] democracies (Kosiacki 2018: 124).

The analysis of the regressions and progress of the Polish penitentiary system and the execution of prison sentences from the transformation to 2020 shows that the positive changes have been significant:

- the axiological change in executive criminal law (the subjectivity of the convict, respect for their dignity, and the principles of individualisation and normalisation), the development of human rights and the dissemination of knowledge about them (Hołda 2007: 134); the new codification of 1997, the judgments of the Constitutional Tribunal (CT), and the European Court of Human Rights (ECHR) *pilot judgment* procedure have become the determinants of the aspirations of the modern prison system, which should not be underestimated in the prison service
- the predominance of the corrective purpose of punishment and voluntary rehabilitation (Szymanowski 1996: 15–17; Bogunia and Kalisz 2010: 125, 132);

by implementing the corrective purpose of punishment (individual prevention), the Polish prison system has become a tool for reducing criminal recidivism (Machel 2003: 104; Poklek 2013: 143);
- the principle of openness – inspections by non-systemic national and international bodies and public participation in the execution of deprivation of liberty (public inspection and offers of assistance)
- research and transfer of the results into the prisons and the treatment of convicts
- a change in personnel – the prison service has been fed by people with knowledge and aspirations who are more convinced of the rehabilitative purpose of punishment

The analysis has also allowed the negative changes to be identified:
- the system proved to be inefficient in using scientific and empirical knowledge, as well as 'their own people' – educated prison staff; the inefficiency of the system was 'determined' by the low proportion of officers to convicts (Migdał 2014: 113–116)
- the increase in the prison population (Migdał 2014: 114) and overcrowding in prisons resulted in a loss of control over security (Moczydłowski 2004: 93), limited possibilities in influencing individual convicts, and difficulties achieving the rehabilitative goal of the sentence
- pendulum-swing changes in penitentiary policy and the politicisation of the prison system (Migdał 2008: 279), though by definition it works to ensure the protection of social order against dysfunctional phenomena and political order against destabilisation (Porowski 2016: 11)
- destabilising prison work and efforts to achieve the purpose of the sentence as a result of unpredictable behaviour by convicts
- media coverage of unfortunate events in the prison system (e.g. escapes or corruption); the transparency of the prison tempts the media with scandals from behind the walls and losers 'on the floor' in front of the ECHR; the media only provide negative information (Ćwieluch: 2018), which results in a lack of societal support and recognition for the prison service (Migdał 2005: 142)

Describing the evolution of the Polish penitentiary system in the context of the execution of the most severe punishments, we will present the first years of transformation – the revolution in the concept of rehabilitation and imprisonment as such, the creation of units for dangerous prisoners and diagnostic purposes, the role of external control and public debate and science in connection with the competition for the best rehabilitation programmes (*offender behaviour programmes*). The dynamics of change and the prisons' susceptibility to expert external criticism are reflected in the Supreme Audit Office (NIK) inspections and in Poland's defeat at the ECHR in prison matters.

Poland – thanks to the democratic changes that took place after 1989 – was accepted as a member of the CoE on 26.11.1991. Both state authorities and society started to learn what human rights, democracy, and the rule of law mean in theory and practice (Machel 2003: 163).[15] This was not the beginning of the school of democracy, but a return to it, as Poland had previously recognised and implemented the values and principles of this school. As Andrzej Duda stated at a meeting with the Committee of Ministers' Delegates in the CoE, 'joining the CoE was for us a sign of freedom, a sign of return – I stress, return – to the family of countries of the European cultural circle, to the countries of the West, but above all to democratic countries, free countries' (cited in Bodalska 2016).

However, a condition and, at the same time, a consequence of joining the CoE was the reform of executive criminal law. The codification which came into force in 1998 gave rise to the present-day prison system (Lelental 2009: 95). It remains an example not only of a re-evaluation of the treatment of prisoners, but also of the procedural and material guarantees of respect for fundamental human rights. It has become the culmination of penitentiary law.

'The Moczydłowski Reform' – under the slogan 'from a totalitarian to a pro-social prison' – ameliorated the conditions in prisons and increased convicts' rights (Stępniak 2009: 86). The reform of the prison system was divided into three stages:

- 1989–1994: introduction of a new typology of penal institutions (closed, open, and semi-open) and changes to the classification of convicted persons with an emphasis on personality criteria, strengthening the principle of individualisation in the execution of sentences, though rehabilitation – defined as subjecting a sentenced person to discipline and order in the Penal Institution in order to prepare them for socially useful work and to observe the legal order – was still compulsory
- 1996: introduction of a new law on the Prison Service with an emphasis on the pro-social functions that the Service is to perform
- 1998: introduction of the new penal code, which changed the existing priorities for the execution of imprisonment, its objectives, and the means and methods of penitentiary influence and which eliminated the model of forced rehabilitation in favour of the principles of subjectivity and voluntariness

What the prison system became after 1989 can be summarised in a few words:

- politicisation – before 1989, the prison system, in addition to the tasks arising from the requirements of controlling and combating crime, also pursued political objectives, consisting in the repression of political opponents (Szymanowski 1996: 97; Szczepanik 2015: 37); the prison officer was an officer who broke the

[15] Poland is a party to more than 85 of the CoE Conventions, headed by the Convention for the Protection of Human Rights and Fundamental Freedoms and the Recommendations on the Execution of Life Imprisonment and other long-term penalties Rec (2003) 23.

political awareness of the prisoner through operational work (Moczydłowski 2003: 82; Moczydłowski 2003: 94; Stępniak 2009: 77–93)
- the severity of the law, the repressive execution of punishment, and the practice of legalised violence – these manifestations of state action generated a totalitarian system of prison management (Migdał 2008: 625; Moczydłowski 2004: 89–91)
- the legacy of the revolts which testify to the loss of control over those controlled and of the public trust (Kozłowski: 2014; Moczydłowski 2004: 93, 99)
- an outdated, underinvested material base (Szymanowski 1996: 31)
- the mentality of the staff and staff shortages; in the 1990s, 40% of the prison staff was replaced (Migdał 2005: 147)
- the unemployment rate among convicts is 70%; the democratic market economy led to the collapse of state enterprises (Szymanowski 1996: 58)

The regime change and the democratisation of the prison system meant a multitude of requirements codified in the law. As a consequence, it caused casuistry, and the spread of guidelines and bureaucracy. The implementation of standards has brought about favourable and unfavourable legal and practical solutions (Niełaczna 2017: 35; Adamczyk 2015: 8–9). Over-interpretation of human rights in relation to prisoners and sometimes unrealistic recommendations of control spoiled the human relationship between officers and convicts (Machel 2003: 333).

The limited autonomy of the prison system in relation to the Ministry of the Interior and the paramilitary nature of the Service and the removal of a certain degree of autonomy from it are also worthy of criticism – guidelines or orders from headquarters had to be fulfilled regardless of the risk of arbitrariness and negative side effects. The paramilitary-orientated Prison Service is more focused on fulfilling the alleged will of the superiors through their orders and commands than on carrying out effective work with the prisoners (Migdał 2008: 279).

It is also worthy of criticism that although the prison system does not remain isolated in its problems and dilemmas – it is supported by the penitentiary judiciary, the Ombudsman and Commissioner for Human Rights, and the scientific community and can benefit from dialogue with international bodies, such as the European Committee for the Prevention of Torture (CPT; Niełaczna 2007: 43–65) on the content of the execution of sentences and balancing the interests of the convict and the state – they are cautious about the results of their work. The declaration by the prison administration regarding openness to signals of abuse or risk of abuse or of the implementation of specific practices remains questionable.

4.1 Units for dangerous prisoners

The Criminal Executive Code did not contain the provisions in question until mid-1995 (Kremplewski, 2005–2006: 227; Bulenda, Lasocik 2003: 189). The qualification procedure for this category of prisoners and the manner of dealing with them were not clarified until the passage of the Act of 12 July 1995 amending the Criminal Code, the Executive Criminal Code – tightening criminal responsibility if the perpetrator acted in an organised group or in a relationship aimed at a crime – which covered the regulations for the execution of custody and punishment of 1989 and the Ordinance of 9 April 1996 on the classification and treatment of dangerous prisoners. The creation of this category was a reaction to dangerous perpetrators from organised crime groups. The downside of the country's democratisation was an increase in crime, the most serious kind and previously unknown in Poland – organised crime. This was reflected in the structure of the group of dangerous prisoners – in the period 1992–1993 there was an increase in the number of people remanded in custody in this group (Misztal 2000: 52). They represented a new challenge for the prison system (Machel 2003: 170), which was quite well-prepared to introduce changes in legislation and practice (Lasocik 2009: 322). The Executive Criminal Code in 1997 for the first time contained provisions on dangerous prisoners as universally binding act. In practice – in line with the scattering policy – they were placed in separate cells (Kremplewski 1996: 170). At the beginning of 2003, they were placed in special residential units in closed prisons.[16] The new concept of 'scattering' 'dangerous' prisoners forced the need to select penitentiary units where they could be housed (Misztal 2000: 54). This classification was applied for committing a serious crime or creating a threat to the security of the prison during previous or current incarceration (the same basis applies in 2020).

The radical regime for the dangerous prisoners was the subject of an intervention by an Ombudsman (Misztal 2000: 51) and the Polish Section of the International Commission of Jurists in 2003. The CPT also expressed criticism. As a result, the prison system relaxed the regime and shortened the time for reclassification decisions from six months to three. However, this did not affect the quality of the treatment of this category of convicts, including lifers.

Although the legislature clarified the prerequisites for classification as and the treatment of dangerous prisoners, and prison administrations were intuitive and law-abiding and gaining experience, the two Strasbourg pilot sentences in the cases of dangerous prisoners against Poland in 2012[17] demonstrated that they were being dealt with using inhumane and arbitrary treatment. It was not a matter of complete

[16] There were 16 such branches with a capacity of 400. See: Bulletin 2401/IV Commission for Justice and Human Rights, No. 108, meeting of 22 October 2003.

[17] Both judgements of the ECHR were delivered on 17 April 2012 in the cases of Horych, complaint no. 13621/08, and Piechowicz, complaint no. 20071/07.

social isolation, which in the practices of other countries is a clear violation of freedom from inhumane treatment, nor was it about deliberate forms of humiliation. The infringement concerned the arbitrariness of the extension of the status, since the executive body continued to rely on the same historical grounds for the basis of such decisions, without taking into account the current state of play of the conduct and attitude of the convict. The breach was due to automatically subjecting convicted persons to the same security measures and restrictions, regardless of the passage of time, their conduct, and the type of threat they originally posed.

The modernisation of this important aspect of prisons is recorded in the reports of international inspections (the CPT and the ECHR), scientific studies (Gronowska 2013: 7), public debate (HFPC 2014: 8–9)[18] and subsequent changes (Kalisz 2017: 178–180).[19] Since 2009, we have had registered programmes dedicated to dangerous prisoners (Przybyliński 2009: 253).[20]

According to our research, by the end of 2014 – after over a quarter of a century – one in three lifetime prisoners (98 out of 299 convicts) were classified as dangerous. Thirty-nine of them had been in a special unit for over 5 years. The longest period in isolation was 16 years.[21] The decisive, overwhelming majority of the circumstances was murder with weapons, explosives, or committed in a group; the second circumstance was murder with aggravating circumstances.

4.2 Diagnostic units and rehabilitation programmes

The inclusion of psychologists and criminologists in the prison system (in 1931, then in 1956) led to the establishment in 2000 of diagnostic units with professional staff delegated exclusively to the difficult-to-manage category of convicts. Diagnostics has become a permanent, documented element of corrective action. Until 1975, before the establishment of the units, the diagnosis was made by

[18] 'The problem remains the length of time a prisoner is classified as "dangerous." In 2011, the maximum time from a detainee being qualified to this group until the classification was removed was over 4,000 days. The record of remaining in this category was 6,000 days, i.e. over 16 years. At present, 108 inmates are staying in the "dangerous" units for no longer than one year… Too little time is spent by dangerous prisoners on organised, cultural, and educational activities, as well as sporting activities,' said the Prison Service spokesperson, Colonel Luiza Salapa.

[19] See the MP's bill on amending the Act – the Executive Criminal Code. Draft print no. 2874.

[20] Instruction No. 15/10 of 13 August 2010 of the Director General on the rules of organisation and conditions for the conduct of penitentiary proceedings against convicted prisoners, remand prisoners, and punished persons who pose a serious social threat or a serious threat to the security of the prison or detention centre under conditions providing increased protection for the public and the safety of the prison

[21] Data from BIS CPSB of 21 June 2016. Poland acknowledged the complaints of five lifetime prisoners brought to the ECHR, agreeing that the long period of detention in the dangerous unit was unjustified.

psychologist-diagnosticians in observation and distribution units (Niewiadomska 2007: 153). After the units were liquidated, personal cognitive research was carried out by unqualified psychologists or prison visitors – neither group was able to construct a pedagogical diagnosis on their own (Machel 2003: 278).

The Ministry of Justice Regulation of 14 March 2000 on the principles behind the organisation and conditions of psychological and psychiatric examinations in diagnostic centres defined these principles of examinations conducted in diagnostic centres, 16 of which were appointed at Prison Service District Inspectorates and were obliged to prepare a psychological-penitentiary certificate or psychological opinion. The research concerned, among other things, prisoners sentenced to life imprisonment and 25 years' imprisonment at important stages in view of the passage of time of their sentence and the possibility of the prison administration making specific decisions (e.g. moving the prisoner to a lighter type of prison).

The study and observation ends with the development of a psychological and penitentiary ruling, i.e. a social, personality, and criminological profile of the convict with a determination of the degree of susceptibility to penitentiary effects. The diagnosis serves not only to design the latter, but also to properly classify the convicts, ensure their safety, and individualise the execution of the sentence.

The range of specialist penitentiary facilities is particularly important for long-term prisoners. Despite the fact that the Ministry of Justice Regulation on the methods of conducting penitentiary interventions in prisons and detention centres of 14 August 2003[22] provided for interventions dedicated to lifetime prisoners and despite the scientific opinion of Andrzej Majcherczyk (head of the penitentiary department at the Central Board of the Prison Service) on implementing specialised rehabilitation programmes whose effects have been empirically proven (evidence-based programmes) (Majcherczyk 2006: 15–49; 2013: 195; 2011: 5–30), programmes dedicated to lifetime/long-term inmates as an area of interest at the central level appeared in 2016 during the third edition of the National Competition for a Programme of Social Rehabilitation Fostering Social Readaptation of Persons Deprived of Freedom (Służba Więzienna n.d.). A jury of external experts – representatives of the scientific community – assessed programmes to prevent the negative effects of isolation on long-term prisoners. In the fourth edition of the competition, one of the proposed thematic areas was individuals sentenced to life imprisonment or 25 years in prison (NIK 2014b). In the following years (2018–2019), the Central Prison Service Board did not conduct a competition.

Seventeen years earlier, in 1999, the Headquarters organised a conference devoted to people sentenced to life imprisonment and other long-term sentences, which resulted in the 'Programme of dealing with people sentenced to life

[22] The Regulation provides that one of the objectives of the rehabilitation programme is to prevent the negative effects of isolation, especially for convicts serving long-term imprisonment, and to change their pro-criminal attitudes (§4[1][1]).

imprisonment' by psychologist Beata Witkiewicz. As they constitute an extreme group, requiring careful observation, in-depth research, and balanced decisions, and as they bring various problems to the prisons – from the need to ensure safety and prevent the effects of long-term isolation to future pension and health issues – the programme recommended in-depth personal research and consideration of the punishment in the interventions dedicated to them (Witkiewicz 2007: 259). The programme was not implemented. Meanwhile, the specificity of the problems, needs, and risks of life for long-term inmates and the empirical and legal facts associated with it (Grudzińska 2013: 231–242; Stępniak 2014: 133–162), have remained a natural and important feature of long-term penal isolation.

4.3 Watchdog supervision

International and national supervision remains a key mechanism for modernising the prison system. The controls of the national authorities leave a permanent mark on the democratisation and humanisation of the oppressive nature of the prison system, which is conditioned by the hardship of the punishment, the totality of the institutions, the para-military service, and the need to control difficult personalities, which are also affected by the obligation to change them.

The text is not conducive to tracing the evolution of the prison system as a result of international inspections (CPT visiting recommendations and ECHR sentences). The source of knowledge on this subject is the publication of Maria Niełaczna (2010) entitled 'European Committee for the Prevention of Torture: Between control and standardisation'.

National control by the Ombudsman or Supreme Audit Office (SAO) deserves closer attention. The cases won by the Ombudsman as a result of a complaint to the CT or questions to the Supreme Court which resulted in changes to the Polish prison system include the following:

- statutory limitation of cell overcrowding – CT judgement of 26 May 2008, ref. SK 25/07
- equalisation of payment for prisoners' work – CT judgement of 23 February 2010, ref. P 20/09 (Kwieciński 2014: 17)
- elimination of guards' presence during medical examinations – CT judgement of 26 February 2014. ref. K 22/10
- elimination of non-legal prerequisites for parole – judgement of the Supreme Court of 26 April 2016, ref. I KZP 2/17

Between 2010 and 2019, The SAO checked seven aspects of the prison system:

- places for detainees in 2010
- prison schools in 2010
- medical care for prisoners in 2013

- social re-adaptation of long-term convicts in 2015
- work for prisoners in 2017
- the Justice Fund (Injury and Post-Penalty Assistance Fund) in 2019
- social assistance for inmates released from prisons in 2019

In the case of lifetime prisoners and the control of social re-adaptation of prisoners sentenced to long-term imprisonment, during which the SAO investigated institutional support for the return to social, professional, and family life after a period of isolation and the prevention of feelings of exclusion from and condemnation by society, proved to be crucial.[23]

The SAO criticised the impact to the quality of categories of prisoners[24] and prison work.[25] Almost half (44%) of rehabilitation programmes were characterised by dubious re-adaptation effectiveness. The programmes lacked in-depth, up-to-date expertise on the methodology of rehabilitation. The actions taken had little relation to the theoretical model described in the programme. The majority of those assessed (93%) had no tools or methods to measure their effectiveness. The Prison Service did not analyse their effectiveness or their usefulness in the conditions of freedom. It also did not conduct separate, profiled classes for those sentenced to many years' imprisonment, but did subject them to classes analogous to those for other groups of prisoners.

There is a lack of comprehensive research on the effectiveness of life sentences in Poland, and if we assume the level of recidivism is an indicator, it is impossible. In 2013–2014, we conducted research on the implementation of this penalty and the treatment of convicts in thirteen Polish prisons in view of Recommendation Rec (2003) 23 of the Committee of Ministers to member states on prison administrations' management of life sentence and other long-term prisoners and Committee Prevention Torture standards.[26]

To sum up, the reform of the penitentiary system which started twenty years ago aimed at matching the prison system to the new political conditions and the ideological superstructure of the democratic state of law. The public debate on the function of the prison system in serving the interests of citizens and the state, the urgent search for directions for systemic organisational and legal changes, and the strong conviction of the public that the power of punishment lay not in its restrictions, but in the promise of forgiveness, paid for by the suffering of atonement (Porowski 2009: 203–210) played an important role.

[23] For more see NIK 2014a.

[24] In 2013, out of almost 79,000 prisoners, 7,500 were sentenced to more than 5 years, nearly 1,600 were sentenced to 25 years, and 318 were sentenced to life imprisonment.

[25] For more see NIK 2014b; 2015.

[26] The studies have been published in Niełaczna 2014.

An indicator of the modernisation of the culture of a 'learning organisation' – such as the prison service – was also the reference to systemic solutions for lifetime prisoners practised in Western European countries.

Conclusions: 30 years of transformation and further perspectives?

One of the arguments justifying the introduction of life imprisonment to the Penal Code of 1997 was the conviction that some criminals require permanent isolation from society.

In recent years in Poland, we have witnessed a discussion on this subject, triggered by the end of the 25-year prison sentence for a prisoner who was originally sentenced to death (the amnesty of 1989 changed this sentence to 25 years in prison). The case gained media fame, which caused widespread fear in society and increased the popularity of punitive attitudes – it came as a surprise that the perpetrator of such serious crimes may simply end up serving his sentence and returning to society as someone's neighbour.

As a result of this discussion, the Sejm adopted a special Act of 22 November 2013 on the treatment of persons with mental disorders posing a threat to the life, health, or sexual freedom of others (Journal of Laws 2014, item 24), according to which (if the criteria listed in the Act are met) it is possible to isolate perpetrators who have completed their sentence in a specially established centre (the National Centre for the Prevention of Dissocial Behaviour) virtually indefinitely.

Let us mention that the first 'patient' of the centre was the aforementioned convict, whose case – and the prospect of his living in freedom – was the cause of the whole discussion.

Since 2005, the Penal Code has had post-penal measures at its disposal which allow a court, when sentencing an offender, to pronounce a protective measure in the form of therapy or placement in a psychiatric facility at the end of his custodial sentence. On the other hand, in Art. 80 §3 of the amendment to the new Criminal Code of 2019,[27] the trial period after conditional release of a person sentenced to life imprisonment is to last a lifetime – such a solution is practiced in England, for example. In view of all these possibilities, the question has arisen, 'is it more appropriate to maintain the sentence of life imprisonment or to renounce it in favour of timely imprisonment and post-penal safeguards for particularly dangerous offenders?' (Konarska-Wrzosek 2015: 140). Although such a solution is not

[27] Act of 13 June 2019 on amending the Act – Criminal Code and some other acts, http://orka.sejm.gov.pl/opinie8.nsf/nazwa/3451_u/$file/3451_u.pdf [accessed 18.03.2020].

widely discussed, especially at a time of growing penal populism and the preference of both the public and the legislature for more severe punishment, it is worth noting it.

We are now approaching the moment when the courts will have to decide whether or not to give a person sentenced to life imprisonment a chance for parole. Thus, in the coming years we will be able to verify whether life imprisonment is a façade for the permanent isolation (elimination) of dangerous people, or whether it is a punishment to be carried out like any other term of imprisonment, in accordance with the common purpose of punishment, which is rehabilitation.

The beginning of the political transformation was heralded by the need for a more liberal penal code and humanitarian punishment, and after 30 years we are witnessing a growing punitiveness in society – including a parliamentary bill for an absolute life sentence.

Life imprisonment is still an experiment in Polish conditions in terms of how to do it properly and how to work with these people in prison. Can they really count on parole? Looking at the current political and social moods, one cannot help feeling that 30 years after the transformation, we are moving away from abolitionist thought towards pessimistic penal populism.

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