

Popularisation of non-custodial penalties for inmates 60+. Reference to fragments of own research results

Upowszechnienie kar nieizolacyjnych dla osadzonych 60+.

Odniesienie do fragmentów wyników badań własnych

Słowa kluczowe: system dozoru elektronicznego, osadzeni, pomoc postpenitencjarna, wsparcie.

Streszczenie: Odnosząc się do ewolucji poszczególnych systemów, wyraźnie można zauważyć, że wraz z postępowaniem i rozwojem cywilizacyjnym akcentuje się istotę oddziaływań probacyjnych w procesie reintegracji. Wraz z rozwojem i upowszechnieniem kar nieizolacyjnych coraz częściej dochodzi do profesjonalizacji działań w obszarze stosowania tychże kar. Jedną z form kar nieizolacyjnych jest m.in. system dozoru elektronicznego. Celem niniejszego artykułu jest przedstawienie głównych założeń SDE i ich zastosowanie w pracy z osadzonymi 60+. Przedstawione zostaną formy wsparcia realizowane w ramach dozoru elektronicznego i opinie na temat odbywania kary w SDE w świetle doświadczeń respondentów.

Key words: Electronic supervision system, Inmates, Post-penitentiary assistance, Support.

Abstract: Referring to the evolution of individual systems, it can be clearly noticed that along with the progress and development of civilization, the essence of probation interactions in the reintegration process is emphasized. Along with the development and dissemination of non-custodial penalties, the professionalization of activities in the area of the application of such penalties is more frequent. One of the forms of non-custodial penalties is electronic supervision system. The aim of this article is to present the main assumptions of ESS and its application in working with inmates 60+. The forms of support provided under electronic supervision and opinions on serving a sentence in ESS will be presented.

Referring to the evolution of individual systems, it can be clearly noticed that with the progress and development of civilization, the significance of probation measures in the reintegration process is being emphasized. Along with the development and dissemination of non-custodial penalties, there is an increasing professionalisation of activities in the area of applying these penalties. One of the forms of non-custodial penalties is, inter alia, the electronic supervision system: "The penitentiary court may permit a convicted offender to serve a sentence of imprisonment for up to one year in the electronic supervision system, who has a determined place of permanent residence and the consent of adults living with him, if it is sufficient to

achieve the objectives of the penalty and if security considerations and the degree of demoralization and other special circumstances do not favour the need for incarceration (...).¹

The use of electronic supervision is based on the following legal regulations:

- The Executive Penal Code – uniform text (Journal of Laws of 1997 No. 90, item 557, as amended)
- Ordinance of the Minister of Justice of 26 May 2015 on the determination of detailed technical conditions and functional requirements to be met by technical means used to carry out electronic supervision, and the manner of functioning of the communication and monitoring system (Journal of Laws of 2015, item 797)
- Ordinance of the Minister of Justice of 28 May 2015 on the manner of archiving and the manner and procedure of deleting personal data and information recorded in connection with the exercise of electronic supervision (Journal of Laws 2015, item 800)
- Ordinance of the Minister of Justice of 10 October 2016 on the model of a written instruction about the convicted person's rights and obligations related to electronic supervision, as well as the consequences of violating these obligations (Journal of Laws 2016, item 1692)
- Ordinance of the Minister of Justice of 10 October 2016 on the manner and detailed conditions for the execution of penalties, penal measures and security measures in the electronic supervision system (Journal of Laws 2016, item 1698)
- Ordinance of the Minister of Justice of 10 October 2016 on the manner and mode of exercising supervision over the performance of electronic supervision (Journal of Laws 2016, item 1700).²

The electronic supervision system is a form of non-custodial supervision that brings many benefits both for the convicted and for the free environment, among others:

- reducing the stress related to prison isolation,
- maintaining positive relationships within the family,
- opportunity to work and learn.

Electronic supervision in figures based on data from the Supreme Chamber of Control

Undoubtedly, an important advantage of the electronic supervision system is its cost-effectiveness, which is shown in the figure 1.

Referring to the above data, it is clear that the monthly cost of serving a sentence under the conditions of prison confinement is much higher than serving it under the non-custodial conditions. It is also clear from my research that was conducted on convicted that they consider the effectiveness of imprisonment under non-

¹ Act of 7 September 2007 on Execution of Prison Sentences Outside Prison in Electronic Supervision System, Journal of Laws of 2008, No. 172, item 1069 as amended, § 6.

² http://www.dozarelektroniczny.gov.pl/?page_id=764, [access date 30.11.2016].

custodial conditions to be much more effective. This position is completely opposite to the position of the general public, which, however, insists on the total isolation of convicted. It should be pointed out here that „in the centre of today’s philosophy of penal punishment is not isolation, revenge, retaliation, but as it is stated in the Executive Penal Code, the purpose of imprisonment is to arouse in the convicted person the will to cooperate in shaping his or her socially desirable attitudes, in particular the sense of responsibility and the need to observe the legal order, and thus to refrain from returning to crime”.³ The supreme aim of the penalty is to “improve, upbringing and treat”.⁴ And to be able to talk about upbringing through education, it is necessary to use methods based on encouragement and motivation to change behaviour and not the use of repression as a means of coercion.

Electronic Supervision System in figures

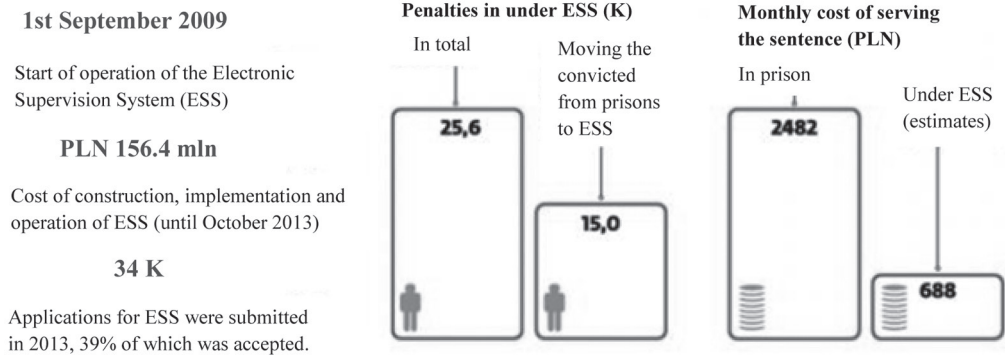


Fig. 1. Electronic Supervision System in figures

Source: Report of the Supreme Chamber of Control dated September 3, 2014.

The key determinant influencing the effectiveness of re-adaptive actions, whether in the conditions of prison confinement, or when serving sentences in the non-custodial conditions, is undoubtedly the possibility to earn money and undertake work in the community. The importance of creating more work opportunities for the convicted in the perspective of their future professional activity is evidenced by numerous research and social forecasts. At the end of April 2016, the Ministry of Justice announced the implementation of a pilot program of work for convicted. Within its framework, 40 production halls are to be built near prisons within 8 years. The Ministry also announced the increase of reliefs for entrepreneurs employing

³ Executive Penal Code, art. 67 § 1; M. Badowska-Hodyr, *Polityka karania wobec dorosłych sprawców zabójstw na terenie województwa podkarpackiego w latach 1999–2000* [Penal Policy towards Adult Killers within Podkarpackie Voivodship in Years 1999–2002], [in:] *Resocjalizacja instytucjonalna. Perspektywy i zagrożenia* [Institutional Resocialisation. Perspectives and Threats.] ed. F. Kozaczuk, Rzeszów 2004, p. 280.

⁴ M. Foucault, *To Supervise and Punish*, Aletheia, Warsaw 1998, p. 13.

the convicted and the extension of the possibility of unpaid work of the convicted for local self-governments.

"The money needed to implement the program will be obtained from the Fund for the Professional Activation of Convicted and the Development of Prison Workplaces. The money for this fund comes from deductions from convicted' salaries, thus the program will not be financed from taxpayers' money," the ministry added. Thanks to the project, the Polish taxpayer will pay 30 percent less for each convicted. According to the assumptions, about 20 percent of the funds generated by the convicted' work program are to be returned to the state budget. What is most important from the point of view of the Polish state: the convicted will start working. If they begin to work, then, firstly, there will be a social sense of justice, and secondly, as everyone, regardless of their views, emphasizes, work is the best element of re-socialization for a convicted," said deputy minister of the Ministry of Justice Patryk Jaki.

The fact that the post-penitentiary assistance is the area that should have special attention is also evidenced by the actions of the Minister of Justice, who announced an open contest for the implementation in 2017 of the public task: "Post-penitentiary assistance for persons deprived of liberty, released from penitentiary facilities and detention centres and members of their families" within the framework of a targeted grant from the Fund for Victims' and Post-Penitentiary Assistance.⁵

Process of social readaptation of the 60+ convicted in theoretical approach

Readaptation is the process of "readjustment of an individual to an active and independent life, fully expressed in social roles related to the basic spheres and planes of human existence".⁶ In the moment of incarceration, the convicted feels anxiety about what their future will look like, and at the time of leaving prison, the sense of stress is reinforced, due to the new life situation.⁷ Due to the emergence of a new situation and new challenges, the vision of the future is rather difficult, unknown, and sometimes even frightening.⁸

The concept of social reintegration, on the other hand, became popular in Poland due to Poland's preparation and accession to the European Union. "It happened in the context of one of the processes launched under the Lisbon Strategy 3, one of

⁵ <https://bip.ms.gov.pl/pl/dzialalnosc/fundusz-pomocy-pokrzywdzonym-oraz-pomocy-postpenitencjarnej/pomoc-postpenitencjarna/>, [access date 18.11.2016].

⁶ W. Ambrozik, *Proces readaptacji społecznej i jego istota* [The Process of Social Readaptation and its Being], [in:] *Resocjalizacja. Teoria i praktyka pedagogiczna* [Resocialisation. Theory and pedagogical practice], ed. B. Urban, J. M. Stanik, Wydawnictwo Naukowe PWN, Warszawa 2007., p. 182.

⁷ I. Niewiadomska, *Osobowościowe uwarunkowania skuteczności kary pozbawienia wolności*, Wydawnictwo KUL, Lublin 2007, p. 221.

⁸ Ciosek M., *Psychologia sądowa i penitencjarna* [Court and Penitentiary Psychology], LexisNexis, Warsaw 2003, p. 302–304.

its names is Social Inclusion Process".⁹ In the translation of official EU documents, social inclusion is understood as "including into the society". In literature, the term "social inclusion" is¹⁰ also used. In Poland, the following terms are used in a similar sense to reintegration: rehabilitation, readaptation, re-socialisation.¹¹ The first one appears in the context of disability; the addressees of rehabilitation activities are people with disabilities. Another two terms are used mainly in relation to persons sentenced to imprisonment, either during or after their imprisonment.¹²

The creators of the 2006 European Prison Rules recognised "that imprisonment should be carried out in such a way as to facilitate the convicted' reintegration into free society. Therefore, upon admission to prison, a study is prepared on the personal situation of the convicted, the proposed plans for serving the sentence and the strategies for preparing for release. A code institution that can help a convicted in social readaptation already at the stage of serving of the sentence is the maintenance of ties of persons deprived of liberty with the outside world".¹³

A very important measure that can affect the appropriate course of the reintegration process are probation activities. Probation is generally understood as re-socialisation with the participation of the society. The area of probation activities can be e.g.

Social reintegration programs, which activate both the convicted and the outside world. K.W. Frieske points out that "the impulse to establish programs of social reintegration is always finding out some form of a deficit that characterizes the persons for whom these programs are created".¹⁴ A person leaving penitentiary facility, not equipped with social competences, will encounter many difficulties in becoming independent and undertaking socio-occupational activation. Hence the necessity of carrying out programs aimed at changing attitudes and behaviours of the convicted was noted.

Taking into account the wide range of benefits that readaptation programs bring, it is worth noting that they also bring some fears. G. Berman and A. Fox, proved that "all undertakings of this kind carry out the danger of raising excessive expectations. The biggest challenge for such initiatives is to overcome the gap between social

⁹ R. Szarfenberg, *Polityka społeczna Unii Europejskiej – przewodnik* [Social policy of the European Union – a guide], WRZOS, Warsaw 2014.

¹⁰ P. Broda-Wysocki, *Wykluczenie i inkluzja społeczna paradygmaty i próby definicji* [Social Exclusion and Inclusion. Paradigms and Attempts of Defying], IPISS, Warszawa 2012.

¹¹ R. Szarfenberg, *Polityka społeczna Unii Europejskiej – przewodnik* [Social policy of the European Union – a guide], WRZOS, Warsaw 2014.

¹² A. Fidelus, *Integracja społeczna podstawą procesu readaptacji byłych przestępców* [Social integration as a basis for the process of readaptation of ex-offenders], "Probation" No. 2/2009.

¹³ Council of Europe – Committee of Ministers – Recommendations Rec (2006)2 of the Committee of Ministers to the Member States of the Council of Europe on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006 at the meeting of its 952 delegates) Part I Basic Principles, pt. 6, p. 2.

¹⁴ K. W. Frieske, *Utopie inkluzji. Sukcesy i porażki programów reintegracji społecznej* [Inclusion Utopias. Successes and Failures of Social Reintegration Programmes], IPISS, Warsaw 2004, p. 19.

expectations and actual capabilities. It is important to recognise that people in penitentiary facilities and those leaving penitentiary facilities are often burdened with addictions, illnesses, material or spiritual poverty. Helping them to put their lives back on track is not an easy task and does not always bring the desired effects".¹⁵

Forms of post-penitentiary support for persons 60+, reference to fragments of own research results

The research was conducted in 2015–2018 in the Penitentiary Facility Cracow Nowa Huta, the Detention Centre in Cracow and the Detention Centre in Cracow Podgórze, and the Penitentiary Facility No. 1 in Wrocław.

Table 1. Percentage of the convicted 60+ in the general population of convicted in Penitentiary Facilities in Cracow as of 19.06.2017

PENITENTIARY FACILITY	N	PERSONS 60+ %
Detention Centre in Cracow	568	6.69%
Penitentiary Facility Cracow Nowa Huta	289	7.96%
Detention Centre Cracow Podgórze	174	2.3%

Source: Own study.

On the other hand, there were 35 convicted 60+ in the Penitentiary Facility in Wrocław on 22 June 2017:

- 13 respondents agreed to be interviewed in-depth using the SOC 29 Life Orientation Questionnaire, of which 10 completed the questionnaire, 2 people changed their minds during the interview,
- 10 convicted refused to meet,
- 5 convicted were "unavailable due to taking up non-custodial work",
- 7 convicted as a result of pre-planned transport were subject to formal measures and were unavailable.

The Polish adaptation of the SOC 29 (sense of coherence – SOC) questionnaire was used to examine the level of sense of coherence. The questionnaire contains 29 items in the form of questionnaire sentences, each of which is provided with seven-point rating scales with described extremes. In the case of 13 items of the questionnaire, the scoring is reversed, which means that it should be changed according to the key before calculating the results, and the total score is calculated by summing up the points from all items of the questionnaire. The tool used consists of three

¹⁵ G. Berman, A. Fox, *Why non profit innovation requires failure*, "Chronicle of Philanthropy" 6/24/2010, Vol. 22, Issue 15, p. 6. after: A. Iwanowska, *Preparation of convicted persons for life at large under Article 164 of the Criminal Code*. Office of the Ombudsman, Warsaw 2003, p. 42.

subscales concerning: the sense of understanding, the sense of resourcefulness and the sense of meaningfulness. Each of the subscales differs in the number of questions and thus the maximum and minimum score for each of them is different. To determine the sense of intelligibility 11 questions were used, from which the respondent can obtain a maximum of 77 points, while a minimum of 11 points. The sense of resourcefulness is determined by 10 questions where the total score can range from 10 to 70 points. Sense of meaningfulness is examined by means of 8 questions, where the minimum score is 8 points and the maximum is 56 points. The maximum possible score to be obtained in the Life Orientation Questionnaire is 203 points, and the lowest is 29 points. The higher the score of the respondents, the stronger their sense of coherence is. The authorial survey questionnaire consisted of three closed questions and two open questions concerning post-penitentiary assistance.

The table below presents the respondents' answers to the first question concerning the participation in the Individual Influence Program. Out of 50 convicted, only 15 i.e. 30% declared participation in the program. 43% answered that they were not covered by the program. There were also answers that the convicted does not know whether s/he was covered by the program, which allows one to assume that they were not, as participation in the program requires the consent of the convicted. Only 2 out of 5 women participating in the survey were covered by the program. The participation in the program has a positive impact on the convicted, as those of them who get involved in the activities offered by the Prison Service show much higher level of knowledge and skills useful after leaving the penitentiary facility than the convicted who do not participate or are reluctant to participate in the activities conducted by the institutions.

Table 2. Summary of responses to the question on participation in the Individual Influence Program

Answer	N	Number of respondents
YES	50	15
NO	50	23
I DON'T KNOW	50	7
NO ANSWER	50	5

Source: Own study.

Under the system of program impact, juvenile convicted as well as adult convicted serve their sentences, who, having been presented with a draft of the Influence Program, agree to participate in its development and implementation (Article 95 of the Polish Executive Penal Code). The penitentiary offer is included in individual programs of influence (IPO) developed for each participant. It includes, among others: individual and targeted forms and types of upbringing activities,

employment, education, cultural and educational activities, the scope of contacts with the family, the manner of fulfilment of their alimony obligations. The Individual Influence Program is verified once for six months. Its contents is both confronted with the progress of the convicted and adjusted to the changing situation, taking into account the work done on the deficits. The Individual Influence Program obliges the convicted covered by it to work on themselves, declare their change and engage in activities aimed at social readaptation. It allows to change their attitudes and to prepare them for proper functioning at freedom. The tasks in the program change with the achievements of the convicted working on himself, his motivation and mental condition. Convicted can resign from the program, as well as the penitentiary commission can withdraw a convicted from the program, if he/she does not obey its terms and conditions, i.e. does not fulfil the agreed arrangements. There are as many Individual Influence Programs as many convicted realizing them. The creation of each one is preceded by a diagnosis – an attempt to answer the question, what led to pathological behaviour, committing a crime, what are the basic problems of the convicted person and what resources (potentials, interests, qualifications) will allow them to develop during their sentence. The diagnosis is made on the basis of the analysis of documents such as community interviews, psychiatric opinions as well as an in-depth educational conversation with the convicted person. To start resocialisation work, apart from issues concerning the convicted himself and his personality, including disorders and manner of functioning in social contacts, it is also established what are the characteristics of his closest environment and family and what are the relations of the convicted with his relatives. After creating the holistic picture of the person and his/her problems, the aim of penitentiary actions is set. The main aim is social readaptation, but there are also set intermediate aims to facilitate reaching it. Examples of intermediate aims may be completing education or acquiring skills in dealing with interpersonal relations. Each convicted realizing the Individual Influence Program is given a set of tasks to be accomplished in due time. Evaluation of their realization becomes a component part of periodical evaluation of behaviour and determines the stage of resocialisation process. The realization of the program may result in taking up paid or unpaid job, improving professional qualifications, close relationship with the relatives, participation in prophylactic programs, securing post-penitentiary needs as well as proper preparation to return to the society and proper functioning in it. Internal motivation to change life attitude is important here. In the absence of willingness and commitment of the convicted, even the best programs and wide range of activities offered by the Prison Service will not be effective.¹⁶

¹⁶ E. Krakowska, *Programowe oddziaływanie* [Program Impact] file:///C:/Users/Patrycja%20Bielanska/Downloads/Programmed_oddziaływanie.pdf [access date 17.08.2017].

When asked whether the convicted intends to benefit from post-penitentiary assistance, only 18 convicted (36%) answered positively, 9 were undecided and 23 constituting 46% of the respondents does not plan to benefit from it.

Do you intend to use post-penitentiary assistance?



Fig. 2. Post-penitentiary assistance

Source: Own study.

The majority of the respondents does not expect any post-penitentiary assistance. However, if the convicted expect any assistance, it is mostly of financial or material nature. The summary of the forms of assistance expected by the convicted is presented below. Among the responses, there were also those saying that the convicted do not expect any form of assistance because they have somewhere to go and "funds to live for". One of the convicted indicated the purchase of tools for work, which may indicate for his desire to undertake actions at liberty aimed at improving his current situation and achieving financial independence. Only in one case, the answer related to guardianship assistance and psychological support. The answers provided show that the convicted have knowledge about the possible forms of assistance.

The answers to the question whether you have been informed about the forms of support and the scope of post-penitentiary assistance is presented in the chart below. 66%, i.e. 33 respondents claim that they have not been informed about the forms of support and the scope of post-penitentiary assistance. However, it indicates that there is a need for further actions in this scope aimed at increasing the awareness of the convicted as regards the forms of post-penitentiary support to which they are entitled.

Table 3. Forms of post-penitentiary assistance expected by the convicted

Form of assistance	N
Financial assistance	7
Material assistance	4
Shopping voucher	1
Food vouchers	1
Flat	1
Subsidised housing	1
Clothing	3
Care and rehabilitation due to an illness	1
Purchase of work tools	1
Conversation, understanding	1
Guardianship assistance	1
Wokanda [cause list]	1
Using the early conditional release	1

Source: Own study.

**Have you been informed about the forms of support
and the scope of post-penitentiary assistance?**

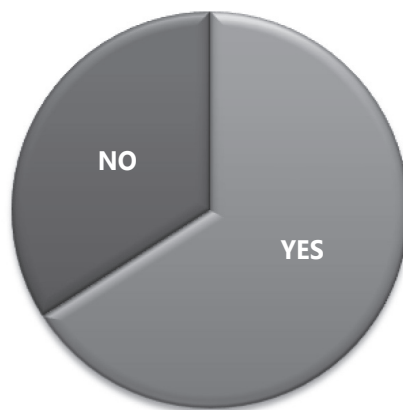


Fig. 3. Receiving information by the convicted on forms of support and the scope of post-penitentiary assistance

Source: Own study.

When asked about their knowledge of institutional forms of support in the field of post-penitentiary assistance, 15 respondents answered negatively. Having analysed the data, most of the answers squared with the information on lack of information about the forms and scope of support. However, in few cases, despite being provided with information about support for convicted, they were not able to name the institutions where they would find assistance. The institutions and forms of support mentioned by the convicted are as follows:

- Assistance in finding a job;
- Municipal and Communal Social Assistance Centres;
- Employment Agency;
- Caritas;
- Brother Albert's Kitchens;
- Court-appointed administrator;
- Court.

None of the convicted mentioned organisations such as "Patronat" Penitentiary Association, Polish Penitentiary Association, MONAR or Wrocław Society for the Care of Convicted.

The analysis of the survey questions shows that the knowledge of forms of support and post-penitentiary assistance among convicted 60+ is low, regardless of whether they have been covered by the Individual Influence Program or not. It should be noted that there is an obligation to inform convicted about forms of post-penitentiary assistance. Additionally, the analysis of the questionnaires shows that often they are not aware whether they have been included in the above-mentioned program. The majority of the respondents does not intend to use the post-penitentiary assistance, and if they decide to do so, it should take a financial or material form. Providing a positive answer to the question about receiving information on the forms of support and the scope of post-penitentiary assistance does not determine the knowledge of the institutions offering such support.

In conclusion, I believe that a fundamental role in the process of preparing for life at liberty is a thorough analysis of the lot and life situation of a convicted, so as to be able to create an individual plan taking into account the needs and problems of the a convicted. However, out of 50 convicted, only 15, i.e. 30%, declared participation in the Individual Influence Program, while participation in the program has a positive impact on the convicted, because those who engage in the activities offered by the Prison Service show a much higher level of knowledge and skills useful after leaving penitentiary institution than the convicted who do not participate or reluctantly participate in the activities conducted by the facilities.

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