

ТРИБУНА ЗАРУБІЖНИХ УЧЕНИХ

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PERSPECTIVES ON IMPRISONMENT PENALTY IN THE LIGHT OF EUROPEAN PRISON RULES (2006)

The countries of Central and Eastern Europe such as the Ukraine, Latvia, Estonia, Lithuania and Poland, have, for many years, had an enormous prison population placing these countries at Europe's absolute forefront. This is how it was before 1989 and still is today

Such a situation raises concern not only as being unjustified with crime figures, both the revealed and the actual ones, but also as being harmful in the light of the rational crime policy.¹

This raises the question of how the imprisonment penalty should be executed under the present circumstances.

The relatively long-established experience in the application of the imprisonment penalty allows us to make an assumption that only to a slight degree did it come up to the expectations of penitentiary experts in numerous countries. Despite the application of various penitentiary systems, the imprisonment penalty did not emerge as the ideal measure for the convict's re-education and rehabilitation. This is what Max Grünhut said in his "Penal Reform", claiming that „the theoreticians' ruling standpoint on the efforts put into the prison reform during the last 150 years can be defined as a sceptical approach towards any forms of imprisonment and arduous pursuit for new, appropriate methods of civilising influence to be exerted on prisoners...outside the prison walls.” However, the methods of searching for the civilising impact are not easy and, for the time being, do not yield tangible effects and the imprisonment penalty is still the most frequently applied one. There is no doubt that prisons are often crime schools rather than rehabilitation centres for prisoners. This fact is, actually, one of the main reasons behind the negative assessment of the effectiveness of the imprison-

¹ K. Krajewski. Dlaczego Polska ma wielkich rozmiarów populację więzienną (w:) Problemy penologii i praw człowieka na początku XXI stulecia. Księga poświęcona pamięci Profesora Zbigniewa Hołdy (red.) B. Stańdo-Kawecka, K. Krajewski. Wolters Kluwer. – Warszawa, 2011. – S. 639.

ment penalty as the measure the prisoner's re-education and rehabilitation. Professor Julian Makarewicz, educator of many generations of Polish and Ukrainian lawyers, stated in the „Rules of Polish Criminal Law” in the introduction to the Criminal Code Commentary that: “with the imprisonment penalty hardly anyone is rehabilitated, whereas many are completely spoiled”¹. This is not an isolated opinion. In his „Rules...” J. Makarewicz clearly stated that the 19th century hopes reposed in the criminal and political significance of the imprisonment penalty did not materialise. The normative recognition of the imprisonment penalty actually resulted in its becoming a synonym for the term 'penalty' in general.² This century was defined by Makarewicz as the „prison era” as the imprisonment penalty became the almost exclusive form of punishment applied.”³. Thus, the 19th century saw the bankruptcy of imprisonment as one of the measures used to combat crime in the society moving „within the tight circle of imprisonment penalty and insignificant fine”⁴. J. Makarewicz stressed that „ today it is regarded as a dogma that in a hundred of imprisoned individuals over ninety will sooner or later return to crime, and consequently – to prison”⁵ and added that „ a grand and tragic vicious circle game is continued from prison through crime and back to prison”⁶ In his speech made before the Senate on 7 March 1931 he said that the modern legislator is looking for some more effective measures to deal with crime perpetrators⁷. Prisoners differ from one another in many aspects. Among them there are common thieves and dangerous killers, perpetrators of minor offences, e.g. who stole a bottle of wine from a shop or bike from a yard, and perpetrators of serious crimes – e.g. rapes, assaults, robberies and homicides, individuals committing crimes intentionally or unintentionally, professional and incidental criminals. Among them there are also those recognizing their guilt and those rejecting

¹ J. Makarewicz. Kodeks karny z komentarzem. Lwów 1938 r. s. 42.

² J. Makarewicz. Klasycyzm i pozytywizm w nauce prawa karnego „Przegląd Prawa i Administracji” 1896 r. , s. 715.

³ J. Makarewicz. Ustawodawstwo karne na kongresie paryskim 1895 r. , Kraków. 1895 s. 3.

⁴ J. Makarewicz. Prawo karne i prawa obywatela, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1936 r. z. 2, s. 96.

⁵ J. Makarewicz. Zbrodnia i kara. Lwów 1922 r. s. 124.

⁶ J. Makarewicz. Problemy kodyfikacji (Mowa wygłoszona w Senacie Rz. P. dnia 22 czerwca 1928 r.), „Przegląd Prawa i Administracji” 1928 r. s. 411.

⁷ J. Makarewicz. Wzrost przestępczości w Polsce, „Przegląd Prawa i Administracji” 1931, s. 168.

it, those willing to compensate for the inflicted harm and unwilling to do so, those intending to improve and those sticking to the criminal lifestyle, those that can be safely socialised with in a small prison cell even for a longer period of time and those arousing fear and anxiety, with whom no one would like to socialize even for a while. Among prisoners there are men and women, young and old ones, single and married ones, cohabitees, widowers and widows, parents and childless ones, healthy and ill ones, physically and mentally fit and disabled ones, strong and weak ones, addicts, e.g. alcoholics, drug addicts and individuals free from any bad habits. These are people with negative and positive qualities, dominated with good or evil, with a positive attitude towards themselves and others, as well as hostile ones, egoists and altruists, illiterate and educated ones, professional and unprofessional ones, hardworking and lazy ones, rich and poor ones, religious ones and atheists, individuals with long or short criminal experience, long-established prisoners and penitentiary novices etc. ¹ Imprisonment has a particularly negative impact on young persons or those sentenced for the first time who stay among older and demoralized criminals. There is a lot of bitter truth in the statement made by the famous German lawyer Franz von List on the status of the German prison system in the second half of the 19th century: „Should a minor person or even an adult commit a crime, then the likelihood that the person will commit the crime once again is much smaller if we let him or her get away with it, than in the case if the person is put into our prison.” The conditions present in German prisons at the time fully justified this claim. However, even today it cannot be denied that prisons often act as places of further demoralisation of criminals although serious efforts have still been undertaken in order to change this state of affairs and enrich the measures of civilising influence to be used in penitentiary institutions.

The general growth of crime rate is a global tendency, including growth of juvenile delinquency, occurrence of mass-scale female delinquency, significant reduction of perpetrators' minimum age limit, escalation of violent criminality (contact crime, aggressive behaviour), significant growth of crime and other types of deviated behaviour among youngsters originating from the families of medium and higher socioeconomic status. The co-existence of crime with other kinds of social pathology (mainly drug addic-

¹ T. Bulenda, *Charakterystyka populacji więziennej (w) System penitencjarny i postpenitencjarny w Polsce (Pod red.) T. Bulendy, R. Musidłowskiego. Instytut Spraw Publicznych. Warszawa 2003 r. s. 226.*

tion), criminal use of state-of-the-art science and research solutions, crime internationalisation tendencies, the emergence of the so called crime games e.g. on sport stadiums.¹ The escalation of general crime, emergence of new categories of criminals, disfunctional criminal policy and sticking to traditional penalties resulted in the application of inadequate solutions with regard to the scope and types of the contemporary crime. The most dramatic aspect of this inadequacy is the overpopulation of penitentiary establishments and custody suites as well as recidivism and released prisoners' low social re-adaptation indexes. These measurable phenomena encourage extremely critical opinions on the penalty execution system and support the belief in its crisis. All these negative tendencies and phenomena stand in deep contrast with the idea of modern punishment which should take into consideration a largely extended scope of freedom, human and civic rights as well as the principle of human dignity and subjectivity originating from the international laws and obligations.² There are numerous studies analyzing the essence, causes and consequences of the crisis concerned for the effects of penitentiary work and, in a broader sense, for the effectiveness of the criminal policy pursued by the state. However, there were only few attempts aimed at indicating how this crisis can possibly be overcome, and, especially, suggesting how prisoners, including minors, should be handled. The reported suggestions are usually of radical nature, i.e. indicate the necessity to replace the imprisonment penalty with other measures of liberational character, especially including the probationary measures system. What gives a significant expression to the modern critique of the imprisonment penalty are the standpoints and opinions of the leading penitentiary science specialists and researchers involved in crime, social rehabilitation and types of the penalties applied. The characteristic feature of the critique concerned is the fact that it is growing out of motivation for the application of better methods of humanitarian rehabilitation. Although this motivation is very strong, it merely leads to indicating the grand inconsistency of the imprisonment penalty and so it ends up with purely negative criticism. Meanwhile, considering the common approval for the existing argumentation against the imprisonment penalty, a hardly contestable counter-argument emerges that prison, as an institution fulfilling general prevention

¹ B. Urban. , J. M. Stanik. Resocjalizacja. Wydawnictwo Naukowe PWN. Warszawa 2007, s. 11.

² B. Urban. , J. M. Stanik. Resocjalizacja. Wydawnictwo Naukowe PWN. Warszawa 2007, s. 12

tasks, cannot be liquidated. For some categories of criminals it practically is an irreplaceable measure. As it is proven by the history of civilisation, prison has always been, and everything points to the belief, will still be one of the basic measures applied in response to crime. Such are the social realities and expectations which cannot possibly be disregarded. Under such circumstances a question arises of how the imprisonment penalty should be executed so that its objectives could be met. Some answers may be sought in international acts regulating such issues¹. Some answers can be sought in the international acts regulating these issues.

The first prison rules were enacted by the Nations League in September 1934. After the Second World War, the First United Nations Congress in Geneva passed new rules by the resolution as of 30 August 1955 regarding Crime Prevention and Treatment of Criminals, which rules were approved by the UN as the Standard Minimum Rules for the Treatment of Prisoners (SR); constituting the resolution 663 CI (XXIV) as of 31 July 1957. The standards originated from the tradition of the Universal Declaration of Human Rights 1948. Such content was also included in the European Convention of Human Rights as of 1950 (art. 3) and was repeated in the International Covenant on Civil and Political Rights as of 1966 (art. 7).

The SR constituted an attempt at the reconciliation of differences resulting from the distance in space, climate, politics, culture, history and even architecture, customs and routines. These rules, out of necessity general and unequipped in strong executive measures, made one aware of the similarities which have been accompanying the execution of the imprisonment penalty. The prisoners' population is extremely hegemonic – irrespective of the continent, system or historical development of a given state. The imprisonment conditions are similarly imperfect; the problems with prison staff are similar, former convicts' re-adaptation to social life is equally unsuccessful, which is confirmed by the almost 60 – 80 % recidivism. Prisoners are still being commonly exploited as cheap workforce or a reservoir of its redundant surplus on the labour market. The UN Standards and the experiences collected during the application process thereof allowed for some global conclusions to be drawn and for some local, more detailed recommendations to be developed.²

¹ Zob. P. Stępnia, Kryzys resocjalizacji penitencjarnej, a praca socjalna. (w:) Przegląd Więziennictwa Polskiego nr 44-45. Warszawa 2004. s. 29.

² M. Płatek, Europejskie Reguły Więzienne z 2006 r. Państwo i Prawo. 2008 r. z. 2, s. 8,9.

In connection therewith, the Council of Europe States enacted their own separate Prison Rules in 1973 as, in the opinion of the Member States, the UN Minimum Standards did not enable pursuing a correct penal policy according to the European standards.

These Standards were amended in the European Prison Rules as of 1987, which had been in force by 2006.

As of 11 January 2006, some new European Prison Rules, adopted during the 952nd Meeting of Vice-Ministers, took effect, constituting the new recommendations of the Council of Europe Ministers Committee for the member states, regarding the imprisonment penalty execution standards.

The 2006 European Prison Rules not only act as an amended version of the previous edition of international regulations. They also contain a new philosophy of the imprisonment penalty execution and, therefore, their significance goes far beyond the narrowly conceived penitentiary policy.

The preceding international documents presented a different approach to the penalty concerned. They neither questioned its essence, nor the necessity of its application. The Standard Minimum Rules for the Treatment of Prisoners adopted in 1955 by the First United Nations Congress regarding Crime Prevention and Treatment of Prisoners precisely defined a certain admissible minimum required in the treatment of prisoners.

The standards indicated what minimum measures prisoners had to be ensured so that their physical and mental health could be preserved. The rules were generally supposed to define the standard code of conduct to be applied in relations with prisoners, protecting them from inappropriate treatment by penal executors. They imposed a vision that the convict has the right of respect for his/her human dignity.

The European Prison Rules as of 1973 and 1987 in particular, essentially constituted a regional and more demanding version of the UN Standards.¹

There is a widely represented opinion² that the prisoner's rights catalogue should be developed on the basis of the UN Minimum Standards and European Prison Rules.

¹ Z. Hołda., Prawa i obowiązki więźniów (w) System penitencjarny i postpenitencjarny w Polsce (Pod red) T. Bulendy i R. Musidłowskiego. Instytut Spraw Publicznych. Warszawa 2003 r. s. 159.

² Z. Lasocik., Prawa więźniów (w) Szkoła Praw Człowieka. Tekst wykładów . Helsińska Fundacja Praw Człowieka. Warszawa 1996 r. s. 311.

The principles provided for in the above referenced documents are complementary to the general formulations of the Universal Declaration of Human Rights, International Covenant on Civic and Political Rights and European Convention of Human Rights.

Thus, the European documents elevated the prisoner's dignity to the rank of the fundamental principle in the execution of the imprisonment penalty and imposed high standards of its realisation, however, not questioning the purposefulness of the imprisonment penalty in itself, though not presenting an euphoric attitude thereto.

The 2006 European Prison Rules approach the problem area of the imprisonment penalty execution differently than the previously enacted documents, not only in terms of axiology, but also in terms of semantics.

Benefiting from the ideas included in the previous enactments and experiences, the practical approaches are modified, concurrently departing from the unreal expectations raised in relation to the imprisonment penalty and formulating a new message.

At the present stage of civilisational development, the 2006 European Prison Rules acknowledge the existence of the imprisonment penalty, but, at the same time, overtly admit that it is harmful and, as such, should be executed in the manner minimalising the inflicted harm and serve the convict's social integration from the very outset. This is supported by the aspiration to minimize both the financial and community costs of imprisonment.

The 2006 European Prison Rules require the conditions of imprisonment to be close, also in terms of duties, to the conditions of the freedom life. The rules stress that the deprivation of liberty is a discomfort in itself. The restrictions imposed have to be justified with safety reasons and house-keeping rules in a degree that would not make the prisoner's social re-adaptation more difficult.

The standardisation principle introduced in the 2006 European Prison Rules provides that both the entities responsible for the functioning of penitentiary establishments and the prisoners themselves, are responsible for the results of the imprisonment penalty execution. The prisoner's right and duty to co-shape, both the conditions of his/her pending prison sentence, and his/her future functioning in the community after its completion is, probably, most symptomatic.

According to the 2006 European Prison Rules, the prisoner may not serve his/her prison sentence in the conditions that teach him/her the prisoner's role. The incapacitation of the imprisoned individual, present even in the tiniest manifestations of prison life, was a characteristic feature of all

prison systems. Prisoners sometimes worked, sometimes learned, were sometimes subject to other forms of civilizing impact, but, in fact, isolated from the outer world and its problems, they did not decide about anything.

After serving their sentence, which had often lasted for many years, they were released from prison and, being out of touch with the reality, they were not able to make the simplest life arrangements. Along with the humanisation of the imprisonment penalty execution in civilized countries, prisoners learned about their rights, but they were not able or did not want to learn about their duties. Being passive and having no sense of responsibility for themselves or others, they presented claiming attitudes.

Repeating the previous regulations concerning prisoners' rights, the European Prison Rules concurrently indicated that the imprisonment penalty should be executed so as to teach them the responsibility for their future fate, serving their social integration. Thus, the principle is that prison life conditions should be maximally close to freedom life conditions, to start from taking care of oneself, i.e. earning one's own living, washing one's own clothes, cooking one's own food and end up with higher-end matters i.e. establishing social bonds and contacts with the outer world, teaching the prisoner the right and duty to decide on himself/herself and bear responsibility for the consequences of the choices taken. The penitentiary staff is supposed to help the convict in this task, yet not assuming his/her duties.

The situation, in which prison administrators decide about almost everything, taking control over the prisoner's life, does not have much in common with the respect for human dignity, but is usually convenient because releases the prisoner from independent thinking and responsibility. However, the community cost of such a solution is high.

The 2006 European Prison Rules provide for the prisoner's subjectivisation and empowerment and recommend taking his/her opinions into consideration, requiring less from him/her than from the functionary or the individual from behind the prison wall. The prisoner is obligated to observe the standards and values applicable in freedom life.¹

Though aimed at the reduction of the harmful consequences of imprisonment, the 2006 European Prison Rules, originate from the contemporary legal culture, practice and routine. The rules cannot go too far as they will become unrealistic visions, which will not even be tried out in practice.

¹ M. Płatek, Europejskie Reguły Więzienne z 2006 r. Państwo i Prawo. 2008 r. z. 2, s.15.

However now, in prediction of the prospective growth of standards, as it was the case with the necessary changes introduced into the 1987 standards, a systematic update of the provisions is recommended in Rule 108.

Introducing the standardisation principle, the 2006 European Prison Rules redefine the prison localisation in the social system. Prison should no longer be a state institution – it is becoming a social institution.

This brings about certain consequences. It is the society acting through its representatives, and “ordering” the state the administration of prisons and the imprisonment penalty execution, which bears a part of responsibility for how this order is rendered, how appropriate institutions operate and what they offer to prisoners. What is more, the society assumes the obligation to coparticipate in the prisoner's life in a reasonable degree and monitor the prison phenomena and processes. In the implementation of this mission the society acts through such agencies as non-governmental organisations, local communities, free mass media etc.¹

The imprisonment penalty execution is inseparably connected with the attempted development of systematically structured prisoners' treatment programmes, which were supposed to underlie the rational activities of the state apparatus. For many decades such programmes were being developed on the basis of variously defined, but always compulsory forms of social rehabilitation, undertaken in respect of the entire prisoners' population.

The compulsory nature of the rehabilitation measures imposed on all the imprisoned convicts made these activities even more illusory. The state agencies involved in the execution of the imprisonment penalty, and the penitentiary administration in particular, officially treated these activities as an overriding purpose of the penalty execution, whereas convicts pretended that they, more or less, accepted these activities.

Over the years the divergence between the beautiful facade of the system and the practice pursued was more and more conspicuous.

In the western literature one can find many reports on the rehabilitation conceptions and assumptions implemented in various types of penitentiary institutions dealing with various categories of prisoners.

The meta-analyses of these reports and their constituent assessments may lead to some conclusions not only of practical nature, but also of cogni-

¹ Z. Lasocik. Teoria i praktyka penitencjarna systemu więziennego (w:) Wykonywanie kary pozbawienia wolności w Polsce – w poszukiwaniu skuteczności (pod red.) H. Machel, Wydawnictwo Uniwersytetu Gdańskiego. Gdańsk 2006. s.30.

tive significance, determining the value of the rehabilitation systems based on general and, mainly, psychological theories. The same have already been presented in literature.¹

In their prevailing majority, contemporary reports point to the low effectiveness and significance of such variables as: the convict's age, contacts with external environment, employment during imprisonment, preparation for release and post-penitentiary assistance.²

Eventually, according to the principle that the theory which is untrue, even being the most eloquent and elegant and notwithstanding by whom it is proclaimed, has to be either rejected or subject to criticism – penitentiary science has accepted the truth that rehabilitating all the people imprisoned at a given time in penitentiary institutions is an illusion.

However the fondness for the idea of social rehabilitation is still very strong. There are certain attempts to solve its effectiveness-related problems by actions aimed at defining still other and other conceptual ranges of the phenomenon concerned or application of alternative terminology.³

An opinion is raised in literature, that penitentiary rehabilitation implements two goals: the minimum and maximum one. The minimum goal can be defined as such a condition of the prisoner's personality, which will enable him/her to function in the community (after being released from prison) without violating legal norms. Reaching the minimum goal secures the former criminal from recidivism. The maximum goal can be defined as such a condition of the prisoner's personality, which will enable him/her to function in the community, not only without violating legal norms, but also respecting numerous moral norms essential and important for the community life.

¹ Zob. K. Pospiszyl., Resocjalizacja. Teoretyczne podstawy oraz przykłady programów oddziaływania. Wydawnictwo „Żak”1998.

L. Pytka. Pedagogika resocjalizacyjna. Wybrane zagadnienia teoretyczne, diagnostyczne i metodyczne. Wydawnictwo APS. Warszawa 2000 r.

² B. Urban, Ocena rezultatów resocjalizacji (w) Resocjalizacja (Pod red.) B. Urban, J.M.Stanik. Wydawnictwo Naukowe PWN. Warszawa 2007 r. s. 315.

³ J. Tischner Pomoc w rachunku sumienia. Wydawnictwo Znak. Kraków 2004 r. s. 11-12.; M. Szerer „Karanie a humanizm. PWN. Warszawa 1964 r. s. 211.; Zob. też. K. Pospiszyl, Resocjalizacja. Teoretyczne podstawy oraz przykłady programów oddziaływania. Wydawnictwo „Żak”1998 r. ; K. Obuchowski, Człowiek intencjonalny czyli o tym jak być sobą. Dom Wydawniczy „Rebis” Poznań 2000 r.

Reaching the maximum goal secures the former criminal, after being released from prison, both from a conflict with the law (and so from recidivism), and from a conflict with the generally applicable or commonly recognized moral norms. Reaching the maximum goal enables the individual, who served his/her imprisonment sentence (in part or in entirety), to manage his/her life in compliance with the basic social standards.

Reaching the maximum goal makes social readaptation and reintegration easier. Reaching the minimum goal allows former criminals to function at the border of the legal norm, often unable to protect them from the violation of certain moral norms, and stops them from or makes it difficult to them to escape stigmatisation which is often responsible for their relapsing into crime. The maximum goal stands for the minimisation of the social maladjustment or its complete liquidation. The minimum goal stands for the fulfillment of social expectations, but only in the scope referring to the non-violation of legal norms.¹ This is, however, a lot as this allows the former perpetrator to somehow function within the society.

On the other hand, the concepts of „social rehabilitation” and „social readaptation” are recognized in literature as synonyms² or close concepts.³ It was ascertained that the concept of the convict’s social readaptation should be understood as such a return to the community, which is characterised not only with refraining from crime, but also with the appropriate conduct in the community (in family environment, workplace, neighbourhood or group of peers), which is equivalent to the observation of not only legal, but also social norms and fundamental ethical standards.

A certain baseline vision of the imprisonment penalty seems to be provided for in the initially referenced 2006 European Prison Rules, in which the principle of incapacitation results directly from the principle of standardisation. This stands for the prisoner’s right and duty to decide about himself/herself and bear the consequences of the choices taken. This is ex-

¹ H. Machel. Psychospołeczne uwarunkowanie pracy resocjalizacyjnej personelu więziennego. Wydawnictwo Uniwersytetu Gdańskiego. Gdańsk 2001r. s. 17.

J. Szłański. Cele resocjalizacji penitencjarnej (w) Resocjalizacja (Pod red.) B. Urban, J.M. Stanik. Wydawnictwo Naukowe PWN. Warszawa 2007r. s. 375.

² T. Kalisz. Cele wykonywania kary pozbawienia wolności (w) Nowe kodyfikacje prawa karnego (Pod red) L. Bogunia. Tom VI Wrocław 2000 r. s. 224.

³ T. Szymanowski, Z.Świda ., Kodeks karny wykonawczy. Komentarz. Warszawa 1998 r. s. 150.

pressed in the convict's obligation to take care of his/her life (long-term) arrangements and everyday matters in the greatest possible degree. The rule refers to the need for the prisoner to be encouraged to independently prepare his/her sentence plan. This concerns such issues as work, education, other activities and preparation for release. There is no place here for any scheme, routine or print-out of a ready-made form. There is no consent either for the prisoners to be divided into those willing or unwilling to participate in the system of programmed impact (Rule 103.4). Prison is neither a camp for immature adults nor a municipal repository. In addition, it costs too much, to allow for the destruction of human potential. Each prisoner has to prepare his/her sentence plan. Functionaries may assist him/her in this task, but they should not complete it themselves. This rule is not a novelty in relation to the stereotypical opinions, which are not hospitable to the organisation of prison life in the way requiring the convict to take care of his/her life matters – starting from nutrition, through making the bed linen and clothes clean, making office arrangements, sorting out family matters, an ending up with planing his/her future.¹

Another problem emerges with the attempted assessment of the penalty effectiveness in respect of the convicts' social readaptation.

Considering all the reservations concerning the correct assessment of this phenomenon, almost all penitentiary specialists agree that it is low. It can be generally agreed that if the existing model of the imprisonment penalty execution is continued, this effectiveness will not reach a higher level.

So the approach to the imprisonment penalty must be changed to the one proposed by the 2006 European Prison Rules.

The Rules read out against other existing international documents stress aiming at the reduced application of this penalty. The imprisonment penalty is supposed to be the ultimate measure and not the routinely applied one.

The recommendations of the Council of Europe Rec (92)16 - European Rules on Community Sanctions and Measures adopted as of 19 October 1992, were conceived as a solution to be used for the simultaneous elimination of crime and negative consequences of imprisonment.

On 29 November 2000 the Council of Europe Rec (2000)22 recommendations were adopted in order to increase the effectiveness of the Rec (92)16 recommendations. They are aimed at the reduction of the imprison-

¹ M. Płatek, Europejskie Reguły Więzienne z 2006 r. Państwo i Prawo. 2008 r. z. 2, s.13.

ment penalty application and point out to all the rational and emotional circumstances that may support departing from the imprisonment penalty. (par. 6.8).

Paragraph 1 of the Annex to Rec(2000)22 contains an open catalogue of suggested measures.

The following are listed among them: home detention, supervision exercised by a definite organisation indicated by the court, probation as an independent penalty to be applied without the adjudgement of the imprisonment penalty; suspended imprisonment penalty, with imposed additional duties; community works (e.g. gratuitous work in favour of the community); compensation in favour of the victim, redressing the damage, mediation between the perpetrator and the victim, delegation of addicts to alcohol or drug rehabilitation, or to therapies for individuals with mental disorders; intensive supervision; restriction on the freedom of movement, electrical monitoring; conditional early release followed by post-release supervision.¹

If, however, the imprisonment penalty would have to be applied, then, compliant with the 2006 European Prison Rules, its execution would considerably increase the chances for the convict's social reintegration.

The 2006 European Prison Rules, undoubtedly, carry the best perspectives for the changes to be introduced in the practice of the imprisonment penalty execution.

Among the obstacles obstructing this process there are institutional, organisational, mental and material restrictions. This study lacks sufficient space for even a brief discussion of them all.

On the one hand, prison will undergo transformations enforced by the external conditions concerned with such spheres as, e.g. cultural changes, penal policy, labour market or condition of the state budget, on the other hand, however, it will constitute an area affected by the conscious human impact, will be an experiment site and exploration area for new solutions to the constantly recurring problems of the prison system. Thus, prison will be the subject of reformatory actions.²

The only problem is what these reformatory actions will consist in. Ordinary citizens, frightened by the vision of growing crime, have an incli-

¹ M. Płatek, Europejskie Reguły Więzienne z 2006 r. Państwo i Prawo. 2008 r. z. 2, s.7.

² Zob. na ten temat: M. Porowski, A. Rzepliński, O granicach reformy więziennictwa (w) Spory wokół reformy więziennictwa, red. S. Walczak, Warszawa 1985.

nation to demand that criminals should be imprisoned and the longer the imprisonment sentence, the better.

In compliance with Rule 4 of the 2006 European Prison Rules, the imprisonment conditions which lead to the restriction of the prisoner's human rights, may not be justified with the shortage of resources (including financial resources). This requirement is reinforced with an expressly defined principle that the domestic law has to provide for the mechanisms preventing the violation of the requirements, specified in the 2006 European Prison Rules, and due to the overpopulation of prisons (Rule 18.4).¹

The indispensable condition, underlying any rational actions, is a radical discongestion of prison populations. Under the conditions of permanent overpopulation the provisions of 2006 European Prison Rules are difficult to implement.

The discongestion of prison populations may be achieved through the construction of new penitentiary establishments, but may also occur through the restricted application of the imprisonment penalty in respect of the individuals who committed minor, but socially burdensome offences.

If the system shifts towards the construction of new prisons, it will turn out that the new establishments will soon be packed with prisoners and a new construction programme for thousands of prison vacancies will have to be developed.

Another barrier obstructing changes in the approach to the imprisonment penalty application is a certain conservatism of the prison communities, i.e. both the Prison Service and the prisoners themselves.

The Prison Service, organised in the paramilitary way, is more oriented towards assuming the role of superiors focused on various orders and commands rather than conducting the ineffective work with convicts.

The prison is supposed to operate correctly, this is its true goal. The prison director's performance is not assessed on the basis of how many convicts were successfully rehabilitated, but on the basis of how many prisoners escaped, how many guards got drunk or how many culprits smuggled in telephones into prison. The section managers are not assessed by the director on the basis of how many prisoners started to write passionate letters to

¹ M. Płatek Europejskie Reguły Więzienne z 2006 r., Państwo i Prawo z 2008 r. nr 2, s. 5.

their relatives, but on the basis of how they (the managers) execute the more or less reasonable orders and guidelines of the head office.¹

And lastly, prisoners themselves are not willing to accept any changes because of their mistrust towards the prison staff.

Strange though it may sound, one has to claim that prisoners are also conservative and do not like innovations. Because of being imprisoned and experiencing their social rejection, prisoners concentrate their attention on themselves, like caring for their own benefits, and like freedom more than any innovations. If a given innovation does not bring them any advantages, they will not accept it only because someone will keep on convincing them that it will help them to rehabilitate. But let us tell the prisoner that the innovation programme will increase his/her chances for a conditional release, he/she will accept it immediately.²

The attempted solution to the problem, compliant with the 2006 European Prison Rules is a suggestion that Prison Service should assume a form of civil service separated from other types of military services, police and investigation services (Rule 71). The staff selection procedures are oriented towards the fulfillment of a certain task, required by the provisions of the 2006 European Prison Rules. Therefore, the emphasis is put on a balanced employment of men and women on all the available prison positions. (Rule 85) They should be educated, extensively qualified and lack illusions as to the effects of their future work, but able to perform their tasks professionally.

In no way, does this study exhaust the problem area of the imprisonment penalty future perspectives. It can only act as a brief outline of the problem.

The modern world is changing at a pace unimaginable until recently. The penitentiary systems are subject to changes as well, also within the scope of the imprisonment penalty execution. A question arises whether the changes introduced will be of structural or only cosmetic character.

¹ Z. Lasocik *Teoria i praktyka penitencjarna systemu więziennego (w) Wykonywanie kary pozbawienia wolności w Polsce – w poszukiwaniu skuteczności* (Pod red.) H. Machel, Wydawnictwo Uniwersytetu Gdańskiego. Gdańsk 2006 r. s. 33.

² Z. Lasocik *Teoria i praktyka penitencjarna systemu więziennego (w) Wykonywanie kary pozbawienia wolności w Polsce – w poszukiwaniu skuteczności* (Pod red.) H. Machel, Wydawnictwo Uniwersytetu Gdańskiego. Gdańsk 2006 r. s. 34.

The recent changes have often become more dangerous than advantageous because they tend to petrify the old models of activity and obstruct the deep transformation. The requirements placed before the future system are far-fetching,¹ and the 2006 European Prison Rules respond to the expectations.

The 2006 European Prison Rules are facing a difficult task.

Мігдаль Єжи. Перспективи тюремного ув'язнення з урахуванням європейських пенітенціарних правил (2006 р.)

В статті розглядається питання ефективності позбавлення волі засуджених, причини низького рівня ефективності реабілітаційного впливу покарання. Автор, виходячи із стандартів і принципів європейських пенітенціарних правил 2006 року, аналізує наявний стан вирішення цих питань на матеріалах Республіки Польща, а також обґрунтовує конкретні нові підходи щодо удосконалення правового механізму регулювання суспільних відносин у цій сфері. Звертається увага на такі теоретико-прикладні питання, які потребують першочергового вирішення у пенітенціарній доктрині. Окрема увага приділяється проблемі розбудови нових, сучасних пенітенціарних установ, здатних на більш високому рівні забезпечити реабілітаційний вплив покарання у вигляді позбавлення волі.

The author gives careful consideration to the efficiency, or rather lack of it, of the rehabilitation of condemned persons, the foundations of the system crisis and wavering faith in the rehabilitative impact of penalty, as well as analysing the causes of this state of affairs and a possible and desirable course of action to remedy the current situation.

The author agrees with the criticism of detention, while pointing to the fact that no elimination of penitentiary institutions is feasible, since they handle the objectives of general prevention; he also makes conclusions on the purpose, form and definition of rehabilitation, the re-integration model of serving the sentence and the ways and methods of use of penitentiary measures.

In the central part of his work, the author refers to the international instruments and stresses the invariable and vital standards and principles adopted in the European Prison Rules of 2006 on the execution of custodial sentence by inmates; detention must concentrate on instructing the prisoners on bearing responsibility for their fate, offer the opportunity of social integration, and above all furnish such life conditions that might be likened to being free, so that the inmate will not be accus-

¹ Z. Lasocik., Organizacja i zasady działania więziennictwa (w) System penitencjarny i postpenitencjarny w Polsce (Pod red) T. Bulendy i R. Musidłowskiego. Instytut Spraw Publicznych .Warszawa 2003 r. s. 219.

tomed to being a prisoner, but rather be stimulated to participate in the re-integration programme offered by the system.

The article also points out that the question concerning the prospects of imprisonment in the context of normative regulations should be judged against the assumed objectives, which are discussed in detail.

In the concluding part of the article, the author asserts that the penitentiary science comes to terms with the truth that no rehabilitation of all inmates serving at a given time in penitentiaries is workable; moreover, the existing forty-thousand queue of the convicted individuals waiting to start detention, which is attributed to overcrowding, translates into a decline of law and disregard for the principle of humane execution of custodial sentence.

The solution to overcrowded prisons and remands may be the construction of new penitentiaries; however, the author stresses that such measures will only improve the situation in the short-term, because a more reasonable solution is possible, namely to diminish the proportion of imprisonment for persons who committed minor, though socially harmful offences.

One of the final conclusions is to attract the reader's attention to the need to alter the overall approach to inmates.