

PENALTIES EXECUTION CODE REGULATIONS WITH REGARD TO EMPLOYMENT OF CONVICTS FROM THE PERSPECTIVE OF THE EUROPEAN PRISON RULES

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I. Numerous identified dysfunctions of penitentiary isolation show that prison does not educate, does not improve and does not make a convict more pro-social than he was when he was imprisoned. Therefore, the problem of how to treat prisoners in order to help them avoid re-imprisonment, or at least reduce the number of repeat prisoners, remains an up-to-date issue. Penitentiary recidivists constituted over half of all convicts (54.85%) serving imprisonment sentences in Poland in 2014¹.

International community has been working on standard rules for the treatment of prisoners for years. This resulted, first of all, in the Standard minimum rules for the treatment of offenders of 1955² or their new version of 1984³, and at the regional level, a successive version of the European Prison Rules. The above-quoted documents constitute the so-called soft law and are not binding, however, they define minimum standards of humanitarian treatment of prisoners and establish guidelines for individual states on developing rules for the treatment of convicts in penitentiary isolation.

Pursuant to the new concept of prison – defined in the European Prison Rules of 2006 – it is a prison that is based on respect for human rights (principle 1), where life shall be organised in the way approximating as closely as possible the positive aspects of life in the community (principle 5) and which facilitates the reintegration into free society of

¹ Centralny Zarząd Służby Więziennej [Central Prison Service Administration], Statistical information on 2014, sw.gov.pl/Data/Files/001c169lidz/rok-2014.pdf (accessed on 22 Jan. 2016).

² The standard rules for the treatment of prisoners were adopted at the 1st UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, adopted in the form of resolution by the UN Economic and Social Council in 1957, the text of the Rules in *Archiwum Kryminologii* 1989, vol. XVI, p. 277 and subsequent ones.

³ The standard minimum rules for the treatment of prisoners of 1984, the text in www.htropol.waw.pl/pliki?Wzorcowe_Reguly_Minimum_Postepowania_z_Wiezniami.pdf (accessed on 15 Dec. 2015).

persons who have been deprived of their liberty (principle 6)⁴. The authors of the Rules for the treatment of prisoners assign a very important role to one of the oldest – since the beginning of modern penitentiary system – means of rehabilitation of convicts, i.e. labour, and formulate a series of fundamental principles, on which this form of social participation of convicts should be based. This induces me to look at the regulations of the Penalties Execution Code governing labour from the point of view of these principles.

II. The European Prison Rules expose the educational aspect of labour and recommend treating convicts' labour as a positive element of the prison regime and bans treating it as punishment (principle 26.1). The authors of the Rules notice an economic aspect of prison employment, however, in their opinion, it should not dominate (principle 26.8). The Rules envisage obliging prisoners to work, subject to their physical and mental fitness, in conditions conforming to the standards that apply in the outside community (principle 105.2, principle 105.3).

Thus, the provisions of international law allow for compulsory work of convicts. Here, it is necessary to mention the Convention of the International Labour Organisation concerning forced or compulsory labour⁵, pursuant to which the ban on forced or compulsory labour shall not cover “all work or services exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations” (Article 2). Similarly, international acts on the protection of human rights, i.e. the European Convention on the Protection of Human Rights and Fundamental Freedoms (Article 4 (2))⁶ and the International Covenant on Civil and Political Rights (Article 8 (3))⁷, ban forced or compulsory labour but do not recognise the work of persons who a court of law sentenced to imprisonment as such⁸.

Polish regulations concerning convicts' labour meet the above-mentioned recommendations of the European Prison Rules. The catalogue of convict rehabilitation measures ranks labour first, as it facilitates the acquisition of vocational qualifications, which demonstrates recognition that labour is the main form of individualised rehabilitation in order to achieve the objective of the penalty of imprisonment. And in accordance with

⁴ For more see, inter alia, M. Płatek, *Zadania polskiej polityki penitencjarnej w świetle Europejskich Reguł Więziennych* [Polish penitentiary policy tasks in the light of the European Prison Rules], *Czasopismo Prawa Karnego i Nauk Penalnych (CzPKiNP)* 2007, vol. 1, pp. 264–265 and *ibid.*, *Wybrane zasady i instytucje Kodeksu karnego wykonawczego z 1997 r. w świetle Europejskich Reguł więziennych z 11 stycznia 2006 r.* [Selected rules and institutions of the Penalties Execution Code of 1997 in the light of the European Prison Rules of 11 January 2006], [in:] *X lat obowiązywania Kodeksu karnego wykonawczego [Ten years of the Penalties Execution Code being in force]*, (ed.) S. Lelental, G.B. Szczygieł, Białystok 2009, s. 106.

⁵ Convention 29 of the International Labour Organisation concerning forced or compulsory labour adopted in Geneva on 28 June 1930, *Journal of Laws of 1959*, No. 20, item 122.

⁶ Convention on the Protection of Human Rights and Fundamental Freedoms, *Journal of Laws of 1993*, no. 61, item 284.

⁷ International Covenant on Civil and Political Rights, *Journal of Laws of 1997*, no. 38, item 167.

⁸ Also see the stand of the European Court of Human Rights [in:] J. Potulski, *Kodeks karny wykonawczy. Komentarz [Penalties Execution Code: Commentary]*, (ed.) J. Lachowski, Warszawa 2015, p. 465.

the Penalties Execution Code (Article 67 § 1 PEC), the objective of a penalty is to induce a convict to co-operate in the development of a socially desired attitude, especially the sense of responsibility and the need to comply with the legal order and thus to refrain from committing a crime again. Also the Act on employment of prisoners⁹ (Article 1.2) emphasises that the aim of employment is first of all positive influence on convicts' attitudes and gaining profits should be subordinated to criminal rehabilitation.

Exposing labour among convicts' participation measures seems to be absolutely justified. Labour makes people develop working habits and most convicts do not have them. It enables them to learn skills that can be useful when they leave prison and contribute to life in compliance with law. It also serves the purpose of maintaining physical and mental health, which is essential in penitentiary isolation. Obviously, economic aspect is also important because a convict can meet his financial obligations owed to relatives (alimony, maintenance, assistance) and liabilities to the state (fines, court proceeding costs) as well as can save money for basic necessities on release from prison.

Labour, pursuant to the Penalties Execution Code (Article 116 (4)), is one of a convict's duties. It is in full compliance with the Constitution¹⁰, which envisages a possibility of an obligation to work imposed by statute (Article 65 (2)).

It must be noticed that an obligation to work is not a peremptory norm. It applies to convicts whose physical and mental fitness has been confirmed by a physician¹¹. Prisoners convicted for politically, religiously and ideologically motivated crimes are exempt from the obligation to work (Article 107 PEC)¹².

The legislator provides a penitentiary commission with discretion to make a convict exempt from the obligation to work in case he studies. It seems to be fully justified because most convicts, especially young persons, do not have vocational qualifications. From the point of view of a convict's return to the community, acquisition of qualifications is socially desired because it creates employment opportunities after a penalty has been served. Having a job is also important in case of those convicts who, having left prison, will not be able to do their former job. A penitentiary commission may also make a convict exempt from the labour obligation based on other reasons. According to T. Kalisz¹³, this "specific general clause" gives grounds for making exemption flexible. It is hard to disagree with S. Lelental¹⁴, who states that these reasons are going to

⁹ Act of 28 August 1997 on employment of prisoners, uniform text, Journal of Laws of 2014, item 1116.

¹⁰ The Constitution of the Republic of Poland of 2 April 1997 r. passed by the National Assembly on 2 April 1997, approved in the national referendum on 25 May 1997 and signed by the President of the Republic of Poland on 16 July 1997, Journal of Laws of 1997, no. 78, item 483.

¹¹ Pursuant to the Labour Code (Article 229) an employer cannot employ an employee without a valid medical certificate confirming that their work on the given post is not contraindicated.

¹² For more see G.B. Szczygieł, *Obowiązek świadczenia pracy przez skazanych odbywających karę pozbawienia wolności* [Prisoners' obligation to work], [in:] *Z aktualnych zagadnień prawa pracy i ubezpieczenia społecznego. Księga Jubileuszowa Profesora Waleriana Sanetry* [Current issues of labour law and social insurance. Professor Walerian Sanetra jubilee book], (ed.) B. Cudowski, J. Iwulski, Białystok 2013, p. 414.

¹³ T. Kalisz, *Zatrudnienie skazanych odbywających karę pozbawienia wolności* [Employment of convicts serving imprisonment], Wrocław 2004, p. 185.

¹⁴ S. Lelental, *Kodeks karny wykonawczy. Komentarz* [Penalties Execution Code: Commentary] 4th edition, Warszawa 2012, p. 548.

justify why a convict does not work. However, he also states that the interpretation is not exhaustive. Reasons for not working have been indicated in secondary legislation on detailed rules for employment of convicts¹⁵. Pursuant to the act (§ 32), these are: illness, participation in proceeding, being on leave, release from prison to pay a visit under no guard's supervision, permission to leave prison and other reasons connected with the functioning of the penitentiary unit. The "other reasons" may be connected with the penitentiary unit administration's obligation to ensure safety, for example, exemption of a convict from work because of a threat to his safety posed by other convicts or a necessity of protecting him (Article 88d PEC). When assessing whether the exemption from the obligation to work is purposeful, a convict's personal conditions and mental health resulting, e.g. in depression, must also be taken into consideration¹⁶.

Labour, in order to be a positive element of prison regime, must be provided for convicts. The authors of the Rules formulate a successive directive addressed to prison authorities. Being aware of possible difficulties with finding work places for convicts, they recommend that the authorities "strive to provide sufficient work of a useful nature" (principle 26.1) suggesting that work for prisoners should be provided by the authorities on their own and in co-operation with private contractors, inside or outside prison (principle 26.9).

Polish regulations meet that standard. Pursuant to the Act on the Prison Service¹⁷ (Article 2 (2)), one of the Prison Service's tasks is penitentiary rehabilitation and criminal rehabilitation first of all through organisation of work conducive to acquisition of vocational qualifications, which obliges it to provide work for prisoners. It is worth mentioning that the Polish legislator also takes into account realities with regard to possibilities of providing work for all prisoners who are fit for it. Pursuant to Article 121 § 1 PEC, convicts are provided work within the bounds of availability.

The Penalties Execution Code envisages various forms of prisoners' employment: referring a convict to a workplace, an employment contract, commissioned work, home work and other types of work under civil law contracts. A convict can be employed for equitable remuneration¹⁸ to clean the facilities of the Prison Service¹⁹, work in their affiliated companies²⁰ or for other outside contractors based on employment contracts, commissioned work and work from home systems. The differentiation of legal bases of employment and work places is aimed at increasing the employment rate.

¹⁵ Secondary legislation of the Minister of Justice of 9 February 2004 on detailed rules for employment of convicts, Journal of Laws no. 27, item 242 with subsequent amendments.

¹⁶ M. Petrikowski, Obowiązek pracy skazanych odbywających karę pozbawienia wolności [Prisoners' obligation to work], *Przegląd Więziennictwa Polskiego* 2001, no. 3, p. 83.

¹⁷ Act of 9 April 2010 on Prison Service, uniform text, Journal of Laws of 2014, item 1415 with subsequent.

¹⁸ Secondary legislation of the Minister of Justice of 9 February 2004 on detailed rules for employment of convicts, Journal of Laws no. 27, item 242 with subsequent amendments.

¹⁹ Pursuant to the Act on Prison Service (Article 8 (1)), the organisational units of the Prison Service are: the Central Prison Service Administration, regional inspectorates of the Prison Service, prisons, temporary detention centres, Central Training Centre of the Prison Service and other staff training centres of the Prison Service.

²⁰ Prison affiliated company, in accordance with the Act on employment of convicts (Article 3 (1)), may be set up and managed as a state-owned company, limited or joint-stock company in which the Treasury or another state entity holds an over 50% stake, and a support company affiliated to the prison.

The European Prison Rules also formulate recommendations on employment of prisoners. As far as possible, the work shall be such as will maintain or increase prisoners' ability to earn a living after release (principle 26.3). The authors recommend indiscrimination on the basis of gender in the type of work provided (principle 26.4) and provision of work that encompasses vocational training for young prisoners (principle 26.5). They believe that it is essential that convicts may choose, within the limits of what is available, the type of employment they wish to participate, proper vocational selection and the requirement of good order and discipline (principle 26.6).

The Penalties Execution Code meets these recommendations. It lays down criteria for referring a convict to work. Pursuant to Article 122 PEC, these are: job, education, interests and personal needs. This catalogue should be supplemented with some criteria laid down in the organisational and disciplinary rules for serving an imprisonment sentence²¹, which are: age, gender, service period left as well as safety and order related factors. The use of the expression "especially" with the listed criteria means that there may be other factors not listed in the act. The above-mentioned criteria show a prisoner-oriented attitude. They also take into consideration the reality of penitentiary isolation and the educational functions as well as the isolation and protection function of the imprisonment penalty. S. Leleńtal²² rightly notices that since labour, especially the one that is conducive to acquisition of vocational qualifications, is the most important of basic measures of convicts' rehabilitation, "undoubtedly, this directive should be of dominant importance in referring convicts to work".

The free choice of employment is limited. Employment of a convict requires consent and must be in compliance with conditions specified by the prison director. The conditions are designed to ensure an appropriate course of penalty execution. The prison director may withdraw his consent for a convict's employment or work because of reasons connected with the functioning of the prison, especially its security. Another reason for withdrawing his consent for employment is a convict's or an employer's failure to meet employment conditions specified by the prison director.

The fulfilment of the isolation and prevention function of serving the penalty of imprisonment, the second most important one after education, has enormous influence on employment of convicts. Having in mind that according to the principle *ultima ratio*, imprisonment should be served by perpetrators of crimes of the highest social harmfulness, perpetrators who have been sentenced to temporary isolation from the community because of the level of demoralisation and threat to the society, the Penalties Execution Code envisages three types of prisons, i.e. a closed one, a partially open one and an open one. There are different protection systems, types of convicts' isolation and duties resulting from that, and rights to move around the prison, which substantially affects a convict's work place.

A convict serving imprisonment in a closed prison may be employed outside it only if he is escorted there (Article 90 (2)), which to a great extent limits employment

²¹ Secondary legislation of the Minister of Justice of 25 August 2003 on organisational and disciplinary rules regarding the execution of the penalty of imprisonment, Journal of Laws no. 152, item 1493.

²² S. Leleńtal, *Kodeks karny wykonawczy Komentarz 4 [Penalties Execution Code: Commentary 4]*, p. 250.

opportunities because of the conditions that must be met in the work place. These conditions, as laid down in secondary legislation on the protection of organisational units of the Prison Service²³ (§14), include protection of the employment area with fencing and establishment of armed guard towers along it as well as an unarmed control station inside. It is also necessary to establish the number of guards escorting convicts taking into account their working hours, work places and the category of convicts.

The legislator treated two groups of convicts referred to this type of prison in a stricter way. Convicts serving a life sentence in a closed prison may work only in this prison (Article 121 § 3 PEC). Convicts who pose serious social threat or threat to the security of the prison may work only in their modules (Article 88b § 3 PEC). Those convicts, as the above-mentioned secondary legislation stipulates (§ 92), cannot be employed to do jobs requiring the use of dangerous objects, operate machines and facilities that can be used to produce dangerous and illegal objects, on posts that may enable them to cause a fire, an explosion or another dangerous incident for the security of the prison and in places enabling them to escape or to contact other persons under no control of the guards.

Convicts serving a sentence in a partially open type of prison have many more employment opportunities. Those convicts may be employed outside prison in the system of reduced escort or without escort, including work at single employee workstations (Article 91 (2) PEC).

Convicts serving a sentence in an open type of prison are in the most favourable situation because employment they are offered is usually outside prison, they do not need escort and can work at single employee workstations (Article 92 (2) PEC). However, in this case, it is important that employers want to employ prisoners.

It is worth mentioning that the recommendation regarding enabling a convict to choose a type of employment is implemented to some extent. If a convict serves a sentence in the system of programmed rehabilitation, which can be chosen by any adult convict while juvenile convicts are obligatorily referred to it, it has influence on the type of employment to some extent. In the system of programmed rehabilitation, a convict participates in the development of an individual programme of rehabilitation and the establishment of the type of employment (Article 95 § 2 PEC²⁴).

In case of convicts serving a sentence in the therapeutic system – these are convicts who need specialist rehabilitation because of non-psychotic mental disorders, including convicts sentenced for crimes under Articles 197–203 CC, committed in connection with disorders of sexual preference, persons intellectually disabled and addicted to alcohol or other intoxicating and psychotropic substances and persons physically impaired – if their health condition requires that, they are employed in special work places for the handicapped (Article 96 PEC).

It must be noticed that the legislator, predicting potential problems with finding work places for convicts, suggests employment priorities. Pursuant to Article 122 PEC,

²³ Secondary legislation of the Minister of Justice of 31 October 2003 on the protection of organisational units of the Prison Service, Journal of Laws of 2003, no. 194, item 1902.

²⁴ Also see § 14 of secondary legislation of the Minister of Justice of 14 August 2003 on ways of exerting penitentiary influence in prisons and temporary detention centres, Journal of Laws of 2012, item 1409.

work should be provided first of all for convicts who have to pay alimony/maintenance and those whose financial, personal and family situation is particularly bad, which shows respect for humanitarian principles.

The authors of the European Prison Rules pay much attention to remuneration for work and recommend equitable remuneration for the work of prisoners in all instances (principle 26.10). They believe the right to spend at least a part of their earnings on approved articles for their own use and to allocate a part of their earnings to their families is equally important (principle 26.11). Taking care of convicts' future, they suggest encouraging convicts to save part of their earnings, which shall be handed over to them on release or be used for other approved purposes (principle 26.12).

Equitable remuneration shall be understood, pursuant to the International Covenant on Economic, Social and Cultural Rights (Article 7 (a))²⁵, as the provision of equal remuneration for work without distinction of any kind. It fully corresponds to Article 32 of the Constitution of the Republic of Poland, which states that all persons shall be equal before the law and no one shall be discriminated against in political, social or economic life for any reason whatsoever. According to the Constitutional Tribunal²⁶, remuneration for work of prisoners is equitable if it is established based on similar principles as those used for work of equal value of persons who are not imprisoned. Forcing convicts to work without the provision of equitable remuneration would be an example of a violation of the constitutional obligation to treat everyone deprived of liberty in a humane manner (Article 41 (4) of the Constitution).

The Polish regulation meets the standard recommended by the European Prison Rules to some extent. The catalogue of convicts' rights that is laid down in the Penalties Execution Code includes the right to receive remuneration for work done under an employment contract (Article 102 (4) PEC). Remuneration for full-time employment is established in the way ensuring the minimum pay level that is laid down in other regulations²⁷, provided that the work accounts for full monthly working time or full monthly amount of work, which had not always been a norm²⁸. In case of incomplete monthly working time or monthly work amount done, proportional remuneration is paid. Convicts are entitled to remuneration for the time when they do not work but are available, provided that it is the employer's fault.

In case they are referred to work, which is the most common form of employment, the role of the prison director is essential because he is involved in negotiating conditions of work and remuneration with the employer. When a convict is referred to do administrative

²⁵ International Covenant on Economic, Social and Cultural Rights of 19 December 1966, Journal of Laws of 1997, no. 38, item 169.

²⁶ Ruling of the Constitutional Tribunal of 23 Feb. 2010, file no. P 20/09, www.okt.trybunal.gov.pl/orzeczenia.

²⁷ Act of 10 October 2002 on minimum remuneration for work, Journal of Laws no. 200, item 1679 (uniform text).

²⁸ Until March 2011, the remuneration was to equal at least half the minimum one, which the Constitutional Tribunal questioned. See the judgement of the Constitutional Tribunal of 23 February 2010 (file no. P 20/09), Journal of Laws no. 34, item 191. For more see E. Dawidziuk, *Traktowanie osób pozbawionych wolności we współczesnej Polsce na tle standardów międzynarodowych [Treatment of prisoners in contemporary Poland against the background of international standards]*, Warszawa 2012, p. 162 and the subsequent ones.

or cleaning jobs in prison, the prison director decides on remuneration. Secondary legislation on detailed rules for employment of convicts defines rules for employment of convicts to do administrative and cleaning jobs for organisational units of the Prison Service²⁹.

There are two expressions used in the Penalties Execution Code to govern remuneration issues. Article 123 § 1 PEC discusses rules for remuneration for work and in the next paragraph “remuneration due a convict”. According to Article 242 § 15 PEC, it is a sum left after a subtraction of social insurance premium and contributions to Fundusz Pomocy Pokrzywdzonym oraz Pomocy Postpenitencjarnej [Victims and Post-penitentiary Aid Fund]³⁰ and Fundusz Aktywizacji Zawodowej Skazanych oraz Rozwoju Przywieszennych Zakładów Pracy [Convicts Vocational Training and Prison Affiliated Companies Development Fund]³¹ and constituting an amount subject to personal income tax deduction. Thus, a convict is not paid the whole remuneration. The contribution to the former is 10% and to the latter – 25%. According to K. Potulski³², these obligatory contributions result in “the reductions of remuneration that are not applicable to other employees and they are extra tax burdens in practice, thus they may and should be recognised as discriminatory practices”. Moreover, he believes that the contributions to the funds are not destined for convicts’ individual use.

It is difficult to approve of the opinion. It is worth mentioning that a deduction of a contribution to the Victims and Post-penitentiary Aid Fund may be recognised as justified because every convict may be granted post-penitentiary aid on release and when he is still in prison his family that is in a difficult financial situation may be granted this aid, too. Post-penitentiary aid is aimed at providing assistance in social re-adaptation in the first period after release from prison. Obviously, convicts who did not work and thus did not save any resources for the future will benefit more often. Undoubtedly, those who worked may also apply for assistance. Taking these into account, we should not treat the deductions as discriminatory. The deduction of a contribution to the Convicts Vocational Training and Prison Affiliated Companies Development Fund seems to be more controversial but not because the resources are not destined for individual use by convicts. Convicts actually benefit from the funds indirectly. Pursuant to the Act on employment of convicts (Article 8 § 1), the funds are used to finance rehabilitation, especially to create new work places for prisoners and the protection of the existing ones, to develop prison infrastructure that is necessary for rehabilitation, modernisation of prison affiliated companies and their production, organisation of vocational training and training in the field of vocational activeness and skills in job seeking. What raises doubts is the very high rate, which is a quarter, while convicts’ remuneration is not very high. In November 2015, the average pay was

²⁹ Secondary legislation of the Minister of Justice of 9 February 2004 on detailed rules for employment of convicts, Journal of Laws no. 27, item 242 with subsequent amendments.

³⁰ Secondary legislation of the Minister of Justice of 13 January 2012 on Funduszu Pomocy Pokrzywdzonym oraz Pomocy Postpenitencjarnej [Victims and Post-penitentiary Aid Fund], Journal of Laws of 2012, item 49.

³¹ Secondary legislation of the Minister of Justice of 23 January 2012 on Funduszu Aktywizacji Zawodowej Skazanych oraz Rozwoju Przywieszennych Zakładów Pracy [Convicts Vocational Training and Prison Affiliated Companies Development Fund], Journal of Laws of 2012, item 103.

³² K. Potulski [in:] *Kodeks karny wykonawczy. Komentarz [Penalties Execution Code: Commentary]*, (ed.) J. Lachowski, Warszawa 2015, p. 485.

PLN 1,178.05. It is worth mentioning that the European Prison Rules do not envisage deductions but they do not ban them, either.

After the deduction of personal income tax, 60% of a convict's remuneration is exempt from enforcement of any dues.

What should be emphasised is the fact that our legislator not only encourages convicts to save a part of their income that they will be handed out on release but also obliges them to do that. In order to provide a convict with money for travel to the place of residence and the living, an amount equal to an average monthly employee's remuneration is collected. The funds are collected in compliance with the rules laid down in the Penalties Execution Code from funds possessed by a convict, i.e. deposited by a convict on admission, earned and any other income. The funds are kept on deposit accounts in Bank Gospodarstwa Krajowego and handed out to a convict on release.

Discussing the issue of remuneration, one cannot ignore work that a convict is not paid for. The Penalties Execution Code envisages three types of such work:

- 1) cleaning jobs performed for the Prison Service units and territorial self-government provided it does not exceed 90 hours per month (Article 123a § 1 PEC),
- 2) public works for public administration entities, charities and non-profit organisations, and cleaning jobs for the Prison Service units provided a convict agreed in writing or volunteered to do this (Article 123a § 2 PEC),
- 3) work in prison-affiliated companies for up to three months in order to learn a job (Article 123a § 3 PEC).

The work that a convict is not paid for raises a few questions. First of all, it must be noticed that a convict is obliged to do cleaning jobs in prison (Article 116 (4) PEC). Taking that into account, a convict may refuse to do other works if he is not paid for doing them.

As far as cleaning jobs in prison are concerned, lack of remuneration for them can be approved of because everybody must share such everyday chores in the closest surrounding.

S. Lelental³³ highlights difficulties connected with establishing what kind of cleaning jobs for the Prison Service organisational units a convict shall be paid for or not. It must be mentioned that an annexe to the secondary legislation on detailed rules for employment of convicts contains a table of „Basic remuneration for cleaning and service jobs done by convicts for the Prison Service organisational units”³⁴. Thus, these might be jobs other than those in the annexe.

However, the doubts reported in jurisprudence³⁵ with regard to a convict's agreement or volunteering to work without remuneration do not stop being topical issues. It is

³³ S. Lelental, *Kodeks karny wykonawczy. Komentarz [Penalties Execution Code: Commentary]*, 5th edition, Warszawa 2014, p. 411.

³⁴ The jobs include: a transport and administration service employee (a cleaner, a laundry worker etc.), a warehouseman's, a cook's and a stoker's assistant and other jobs that do not require vocational qualifications, a librarian, a cable radio broadcasting centre employee, a farmer, an animal breeder, a gardener, a laundry machines operator, a stoker, a skilled worker – a diploma or vocational course certificate holder (in jobs: a hairdresser, a tailor, a shoemaker, a bookbinder, a cook, a butcher, an electrician, a plumber, an upholsterer, a welder, a machanicist, a steel fixer, a mechanic etc.) and jobs requiring master craftsman qualifications.

³⁵ See G.B. Szczygieł, *Praca skazanych w Kodeksie karnym wykonawczym [Convicts' work as specified in the Penalties Execution Code]*, *Przegląd Więziennictwa Polskiego* 1997, no. 16–17, p. 35;

difficult to speak about somebody's voluntariness when a tutor or an officer proposes a convict to work if one takes into account the potential consequences of their refusal, e.g. when a convict's rehabilitation progress is assessed, opinions are developed for the need of temporary release or the issue of the so-called standard pass as well as a convict's application for release on parole. A convict can be awarded a prize for unpaid work, which can encourage them to volunteer to do unpaid jobs in the event there are no opportunities for remunerated employment.

It seems that the range of entities that can benefit from unpaid work is too wide. The justification that it has an educational effect is rational in case of work for charities and non-profit organisations or in case of natural disasters (e.g. floods). But in case of other work, convicts should be remunerated.

Unpaid work in order to acquire vocational qualifications raises fewest doubts (Article 123a § 3 PEC). The period is short because it is only three months and the acquisition of skills is essential for juvenile convicts and those who are unskilled. And they constitute an abundant group.

Another group of recommendations concerning convicts' work refers to the principle of normalisation adopted by the authors of the Rules. Organisation and methods of work in the institutions, according to the authors of the Rules, should be – as closely as possible – similar to work in the community in order to prepare prisoners for the conditions of normal occupational life (principle 26.7). Health and safety precautions for prisoners shall not be less rigorous than those that apply to workers outside (principle 26.13). Provisions shall be also made to indemnify prisoners against industrial injury and occupational disease, on terms not less favourable than those applicable to workers outside (principle 26.14). The Rules draw attention to the provision of at least one rest day a week and sufficient time for education and other activities (principle 26.16). The maximum daily and weekly working hours of the prisoners shall be fixed in conformity with local rules or custom regulating the employment of free workers (principle 26.15). As far as possible, prisoners who work shall be included in national social security systems (Principle 26.17).

Our regulations are in full conformity with these recommendations and are even more favourable to convicts.

The employer is obliged to instruct a convict on how the assigned work should be done, train them in the field of health and safety regulations, fire protection and machinery operation as well as acquaint them with the principles and rules of remuneration.

Convicts working in an institution or a place assigned by the employer are subject to regulations on occupational medicine service³⁶ and Health and Safety regulations of the Labour Code³⁷. Convicts are entitled to social security in the scope specified in

T. Bulenda, R. Musiński, Nowelizacja Kodeksu karnego wykonawczego w 2003 r. (analiza i ocena) [Penalties Execution Code amendment of 2003 (analysis and assessment)], *Przegląd Więziennictwa Polskiego* 2003, no. 40–41, p. 22.

³⁶ Act of 27 June 1997 on occupational medicine service, *Journal of Laws* no. 96, item 593 (uniform text).

³⁷ See Secondary legislation of the Minister of Justice of 17 November 1997 on the scope of application of the Labour Code with respect to health and safety of convicts in prisons and youth detention centres, *Journal of Laws* of 1997, no. 154, item 1012.

other regulations and to the disabled persons' benefits (Article 102 (4) PEC). As far as working hours are concerned, the Labour Code³⁸ is applied.

A convict employed and paid for work based on a referral to work or a home work contract after a year of continuous work is entitled to 14 working days' leave of absence and remuneration, and a convict doing unpaid jobs is entitled to 14 days' leave of absence without remuneration. In the event of a full-time employment contract, a convict is entitled to 18 days' leave after a year's period of work. During the leave of absence, a convict has various rights specified by the prison director for each convict individually. The rights include: the entitlement to additional visits or longer ones, the right to buy extra groceries, tobacco products and other products that can be sold in prison, the right to longer walks, and priority or more frequent access to cultural, educational and sports events.

The periods of paid work are treated as full contribution social security periods in compliance with the regulations on pension schemes for employees and their families³⁹.

III. The analysis of domestic regulations on convicts' work leads to a conclusion that in basic matters they are in compliance with the recommendations of the European Prison Rules. Some doubts arise in connection with convicts' unpaid work and deductions from remuneration. Obviously, an ideal situation is if all convicts fit to work can be employed and get remuneration. From the perspective of rehabilitation, a convict's contribution to his maintenance in prison should be approved of.

T. Szymanowski⁴⁰ rightly believes that the assessment of the compliance of domestic regulations with international standards cannot ignore the issue of practical functioning of the given regulations. And this causes problems.

In November 2015, according to the Central Prison Service Administration, there were 66,356 convicts imprisoned and 24,681 of them worked. Thus, the employment rate was 36.6%. Of course, looking at the figures we must remember that some convicts are exempt from work obligation. In fact, 25,675 convicts were exempt (39.08%). The grounds for the exemption were: staying outside prison (138 persons), another criminal proceeding in progress (638 persons) and unfitness for employment (3,610 convicts). Persons made exempt from work obligation because of other reasons constituted a very large group (21,289). This gives rise to concern that the flexible condition for exemption is overused because of difficulties in finding work places for prisoners. 17,123 prisoners (i.e. 25.4%) did not work because of that.

Most convicts did unpaid jobs (58.96%). Workers doing cleaning jobs for the Prison Service organisational units constituted the biggest group: 15,526 (83.32%). 6,559 convicts worked up to 90 hours and 5,976 prisoners agreed or volunteered to work. 3,229 prisoners did public works and 846 convicts worked for charities.

³⁸ Act of 26 June 1974 – Labour Code, Journal of Laws of 1974, no. 24, item 141 (uniform text).

³⁹ Act of 17 December 1998 on pensions and handicapped benefits paid from the Social Insurance Fund, Journal of Laws of 2013, item 1440 with subsequent amendments.

⁴⁰ T. Szymanowski, Międzynarodowe standardy wykonywania kary pozbawienia wolności i ich respektowanie w polskim systemie penitencjarnym [International standards of imprisonment execution in the Polish penitentiary system], *Przegląd Więziennictwa Polskiego* 2006, no. 50, p. 25.

Having in mind that labour, in accordance with the European Prison Rules and the Penalties Execution Code, should help to acquire appropriate vocational qualifications, which is especially important from the perspective of convicts' social re-adaptation, it is difficult to assess the use of this participation measure positively because a quarter of prisoners have not been involved. The fact that most convicts remunerated for their work – 6,232 (60.76%) – were employed to do cleaning jobs for the Prison Service organisational units and only 2,558 (24.91%) worked for outside contractors, and 1,812 (17.65%) in prison affiliated companies, does not give cause for optimism because of the objective assigned to this measure by the legislator, i.e. acquisition of appropriate vocational qualifications.

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PENALTIES EXECUTION CODE REGULATIONS
WITH REGARD TO EMPLOYMENT OF CONVICTS
FROM THE PERSPECTIVE OF THE EUROPEAN PRISON RULES

Summary

Convicts' labour, as the history of penitentiary systems shows, is an inseparable element of imprisonment penalty execution. The establishment of imprisonment objectives has a significant impact on the concept of convicts' labour. The model of a prison developed in the successive version of the European Prison Rules (2006) treats normalisation and convicts' integration with the society, thus such organisation of prison life that enables a convict to acquire skills important for social re-adaptation, as the main task of the treatment of persons sentenced to penitentiary isolation. In the concept of the penalty of imprisonment, labour becomes one of the essential means of their social participation and its organisation should serve the acquisition of vocational qualifications by convicts. Thus, a question arises whether our regulations on convicts' labour take into consideration the concept of labour that is proposed in the European Prison Rules.

Key words: *convict, employment of prisoners, penitentiary rehabilitation, convicts' social participation*

REGULACJE KODEKSU KARNEGO WYKONAWCZEGO
DOTYCZĄCE ZATRUDNIENIA SKAZANYCH
Z PERSPEKTYWY EUROPEJSKICH REGUŁ WIĘZIENNYCH

Streszczenie

Praca więźniów, jak dowodzi historia więziennictwa, to nieodłączny element procesu wykonywania kary pozbawienia wolności. Na koncepcje pracy więźniów istotny wpływ ma określanie celów wykonywania kary pozbawienia wolności. Model więzienia określony w kolejnej wersji Europejskich Reguł Więziennych (2006) za główne zadanie postępowania ze skazanymi w izolacji penitencjarnej uznaje normalizację i integrację ze społeczeństwem, a więc takie zorganizowanie życia w więzieniu, by skazany nabywał umiejętności istotne w społecznej readaptacji. W tej koncepcji wykonywania kary pozbawienia wolności praca staje się jednym z istotnym środków aktywizacji skazanych, a jej organizacja powinna sprzyjać zdobywaniu przez skazanego kwalifikacji zawodowych. Rodzi się więc pytanie, czy nasze regulacje dotyczące pracy skazanych uwzględniają koncepcję pracy zaproponowaną w Europejskich Regułach Więziennych.

Słowa kluczowe: *skazany, zatrudnienie skazanych, oddziaływanie penitencjarne, aktywizacja skazanych*