

**SOCIAL AND LIVING CONDITIONS IN POLISH PRISONS
IN THE CONTEXT OF INTERNATIONAL
LEGAL REGULATIONS – SELECTED ISSUES**

*Grzegorz Skrobotowicz**

ABSTRACT

The aim of the study is to determine the current position of a Polish prisoner against the international background, based on the description of hygiene and sanitation conditions as a part of social and living conditions which are the closest to penitentiary everyday life. The study presents main acts of the international law and analyzes selected case-law of the European Court of Human Rights¹ in determining standards for dealing with persons deprived of freedom, as well as the activities of international and national preventive mechanisms, in particular the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment² and the Ombudsman.

Key words: convict, social conditions in prison, standards for executing punishments

1. INTRODUCTION

Penitentiary confinement is undoubtedly an abnormal life situation for people experiencing it and causes a number of traumatizing and de-

* Grzegorz Skrobotowicz, Assistant Professor in the Department of Criminal Procedure, The John Paul II Catholic University of Lublin, e-mail: grzegorz.skrobotowicz@kul.pl, ORCID 0000-0002-0882-0236

¹ Hereinafter referred to as: ECtHR or Tribunal.

² Hereinafter referred to as: CPT.

pressing factors. Its effects are felt not only by the convict himself, but also by his family and people in the immediate environment. The need to abandon their current lifestyle with all its consequences, the inability to meet basic spiritual and physical needs, as well as separation from loved ones, all of them mean that detention in the conditions of penitentiary units becomes a particularly painful ailment for convicts.

In view of the above, it is common ground that the penalty of deprivation of freedom of liberty is an indispensable tool for combating crime. Over the years, it has been noticed that detention in itself, is a huge inconvenience that cannot constitute the only purpose. Deprivation of one's freedom must aim at higher, socially useful goals which are primarily to enable compensation for the evil caused and to restore the prisoner to society as a result of the reintegration process. The supranational community, seeing the issue of prisoner detention, decided to regulate it in detail, which contributed to the development of international standards for the execution of imprisonment guaranteeing minimum penitentiary standards necessary for the proper implementation of the basic purpose of the detention penalty.

2. INTERNATIONAL STANDARDS FOR EXECUTING PUNISHMENTS

The acts of international laws on human rights began to emerge especially after World War II. The rights of the human being are protected all over the world, in all spheres of life³. International documents containing generally formulated rules on the implementation of penalties primarily constitute ratified: treaties, pacts and conventions. Recommendations and resolutions, which are characterized by reduced formalism, contain additional details of the principles they refer to⁴. European countries pay

³ Teodor Szymanowski, „Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności”, In: PWP, Międzynarodowe standardy wykonywania kar, ed. Teodor Szymanowski, Warsaw: Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości, 2011, 19.

⁴ Teodor Szymanowski, „Wstęp”, In: PWP, Międzynarodowe standardy wykonywania kar, ed. Teodor Szymanowski, Warsaw: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości, 2011, 9-11.

considerable importance to compliance with set and accepted standards. Regulations adopted as so-called *soft law*, often after the implementation period, are adopted in the form of *hard law* becoming mandatory standards.

The most important documents protecting human rights on the international stage include the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in Paris on 10 December 1948. It is from the natural law that all people have universally derived the axiology of the Declaration. It constituted the basis for many conventions and documents to be drawn up later⁵. The declaration clearly supports humanism and lawful punishment. Since its adoption, cooperation in the international field has clearly brought better and better results in the form of institutions and documents⁶.

Another global act is the International Covenant on Civil and Political Rights (ICCPR)⁷ adopted by the UN General Assembly on December 16, 1966. It was ratified by Poland on March 13, 1977. Its preamble refers to the United Nations Charter and the Universal Declaration of Human Rights. The remaining parts form a catalogue of the most important rights arising from inherent human dignity⁸. For persons serving a sentence art. 7 and art. 10 of the Covenant are significant because they relate to basic guarantees, i.e. the prohibition of torture and the principle of humanitarianism. Convicts also enjoy many other rights contained in the Covenant, such as the law of religious freedom, compensation in the event of unlawful detention or arrest, the obligation to separate juvenile offenders from adults, or a ban on discrimination. The Covenant also contains general principles related to the conduct of persons serving a sentence, such as

⁵ Todor Szymanowski, „Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności”, In: PWP, Międzynarodowe standardy wykonywania kar, ed. Teodor Szymanowski, Warsaw: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości, 2011, 20.

⁶ Jerzy Migdał, Teodor Szymanowski, Prawo karne wykonawcze i polityka penitencjarna, Warsaw: Wolters Kluwer, 2014, 47.

⁷ The International Covenant on Civil and Political Rights of December 19, 1966, ratified by Poland 1977, Journal of Laws 1977, no. 38, item 167.

⁸ Teodor Szymanowski, Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności, 21.

a prohibition of inhuman and degrading treatment or punishment, the obligation to treat persons deprived of freedom in a humane manner, with respect for human dignity, as well as the assumption that the main purpose of the penitentiary system is correction and social rehabilitation of prisoners⁹.

Non-application of the Covenant may result in complaints regarding the rights contained in it. There are two ways of submitting them: - the state party directs the notification to another state party emphasizing that the obligations under the Covenant are not being fulfilled. The party, in turn, has 3 months to provide an explanation and remedy the deficiencies identified. If it does not solve the problem, any State Party may refer the matter to the Human Rights Committee within 6 months of receiving the first notification. The Committee has 12 months to consider the matter, under the so-called good services. If the matter is not resolved in this way, the Committee, with the consent of the States Parties, may appoint a Conciliation Commission. Its purpose within the good services is to bring about a friendly settlement of the matter and to present a report to the chairman of the Committee within 12 months for forwarding to the countries;

- a person who is the victim of the violation directly directs the complaint. An accused state has six months to submit a written explanation to the Committee and to provide remedies¹⁰.

Another important international document regulating the conduct of persons committing a criminal act and the execution of a penalty is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹¹. It was adopted by the UN General Assembly on December 10, 1984. Poland ratified it on October 21, 1989, without recognizing the Committee's powers against torture¹².

⁹ Teodor Szymanowski, Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności, 22-23.

¹⁰ Ibidem, 23-24.

¹¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 Journal of laws 1989, no. 63, item 378.

¹² Teodor Szymanowski, Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności, 26-27.

The essential meaning of this Convention is given to it by Article 1, which contains a detailed definition of torture which cannot be found in other documents. They are defined by indicating their most basic goals and also state that torture does not only constitute an interference in the physical sphere, but also in the person's psyche¹³.

The Council of Europe adopted a significant institutional position in the process of protecting human rights, however at a regional level. This international organization of 47 members, of mostly European countries, has drawn up many documents that enable the application of uniform rules of conduct for persons deprived of their freedom. This allows to provide convicts with proper conditions of serving the sentence and prepare them properly for their return to the society, but also respects the rights of the victims of crime and obligatory protection of the society. The produced documents have a different scope, apply to many aspects of the execution of a prison sentence, ranging from the most general principles to very detailed guarantees¹⁴.

Article 1 of its Statute¹⁵ states that its main objective "is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress"¹⁶.

The Convention for the Protection of Human Rights and Fundamental Freedoms¹⁷, called the European Convention on Human Rights, is of a great significance in the matter of protecting human rights. It was signed in Rome on November 4, 1950, and entered into force on Septem-

¹³ Ibidem, 28.

¹⁴ Maria Ejchart, Krzysztof Kosowicz, „Wprowadzenie”, In: PWP, Międzynarodowe standardy wykonywania kar, ed. Teodor Szymanowski, Warsaw: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości, 2011, 15-16.

¹⁵ The Statute of the Council of Europe of May 5 1949, Journal of laws 1994, no 118, item 565.

¹⁶ Maria Ejchart, Krzysztof Kosowicz, „Wprowadzenie”, In: PWP, Międzynarodowe standardy wykonywania kar, ed. Teodor Szymanowski, Warsaw: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości, 2011, 15.

¹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms done in Rome on November 4, 1950, subsequently amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2, Journal Of Laws 1993, no. 61, item 284, hereinafter referred to as the ECHR.

ber 3, 1953. It was ratified by Poland on January 19, 1993, along with most of its protocols. It is the European equivalent of the Covenant on Civil and Political Rights on a regional scale. The ECHR much more effectively emphasizes the method of challenging violations of rights, while at the same time anticipating their effects, which can be seen by introducing even the functioning of the widely available European Court of Human Rights. The preamble to the ECHR refers to the Universal Declaration of Human Rights, while the remainder is basic human rights and provisions regarding bodies to ensure compliance with the Convention¹⁸.

For persons placed in detention facilities, the following are significant: Article 3 prohibiting torture and inhuman, degrading treatment or punishment¹⁹, Article 5 regarding general imprisonment, and Article 8²⁰ guaranteeing the right to respect for private and family life. Depriving someone of his freedom in a different way than regulated in that provision is a violation of the ECHR's provisions. Article 19 created the possibility of establishing the ECtHR, which is also important from the point of view of persons deprived of freedom, while Article 33 and further include important regulations relating to a complaint²¹. What is important, it is a subsidiary system to national law. The ECtHR became permanent court thanks to the entry into force of an additional Protocol to the ECHR.

The Council of Europe, especially for places of detention, seeks to protect the rights and dignity of the human person. To achieve this goal, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was created, also called the Europe-

¹⁸ Teodor Szymanowski, Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności, 25.

¹⁹ Husayn (Abu Zubaydah) v. Poland of 24 July 2014, Former Fourth Section, application no. 7511/13, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-146047%22%5D%7D>, (access date: 14.08.2019).

²⁰ See: Agnieszka Wedeł-Domaradzka, „Prawo do kontaktów z rodziną osób aresztowanych oraz odbywających karę pozbawienia wolności - rozważania na tle standardów soft law oraz art. 8 EKPC”, *Polski Rocznik Praw Człowieka i Prawa Humanitarnego*, 7(2016), 301-318.

²¹ Teodor Szymanowski, Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności, 26-27.

an Convention for the Prevention of Torture²². It was signed on November 26, 1987, and entered into force on February 1, 1989²³. It is a legal act that has a real impact on national law and the actions of the signatory states. Under Article 1 of the Convention, a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was established²⁴, it visits countries to examine the treatment of persons deprived of their freedom. The visits result in reports that also contain recommendations for improvement in the protection of persons deprived of their freedom²⁵. CPT reports and experience of individual countries resulted in the development of minimum standards for dealing with convicts as well as a single criminal policy was adopted, both in the creation and application of law. The provisions of the Convention may not be changed in any way, but the state has the right to terminate them at any time. The visits of committee members, who are independent experts, provide real protection for the rights of persons serving imprisonment. Although no sanctions are provided for in the document for countries that do not display due cooperation, nevertheless there is a certain pressure exerted in the form of a public statement²⁶.

The binding effect of international documents also has a dimension of controlling compliance with their rights²⁷. Deprivation of freedom of liberty in order to enforce a sentence cannot be the basis for taking away domestic or international methods of protecting rights. Ensuring access to the European Commission of Human Rights and the ECtHR to persons

²² European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Treatment or Punishment, done in Strasbourg on 26 November 1987 Journal of Laws of 1995 No 46 item 238.

²³ Poland ratified it in 1994, but it came into force on February 1, 1995.

²⁴ Further referred here as: CPT.

²⁵ Teodor Szymanowski, Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności, 28-29.

²⁶ Teodor Szymanowski, Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności, p. 29.

²⁷ Grażyna Szczygieł, Społeczna readaptacja skazanych w polskim systemie penitencjarnym, Białystok: Temida 2, 2002, 81.

deprived of their freedom is the basic duty of each state which is a party to the ECHR and has recognized the jurisdiction of the bodies above²⁸.

For the system of international protection of human rights to have any *raison d'être*, there must be an instrument that will reliably control the level at which prisoners' rights are actually observed²⁹.

The standard of this law, which is regulated by Article 13 of the ECHR, ensures everyone whose rights or freedoms contained in the Convention have been violated, the right to effectively appeal to the appropriate state body, regardless of whether such violation was made by persons acting in connection with the performance of official functions or not. This right has a very wide scope, since it is assumed that, despite the measure it mentions, it is about a full range of remedies³⁰.

Under Article 13 of ECHR, the states are obliged to introduce an effective system of remedies. The body dealing with complaints does not have to be a judicial body, but only have the appropriate competence as a state body³¹. However, to meet the requirements of Article 13 of the ECHR, it must have the power to decide on the legal consequences of dealing with a given complaint³².

An imprisoned person has to, in order to use the right to apply a complaint to Strasbourg's bodies, comply with all the formal requirements imposed for a formal complaint³³. However, complaints submitted by convicts are examined in accordance with general rules³⁴.

Documents at the international level that contain international standards for dealing with people who have been legally deprived of freedom³⁵

²⁸ Danuta Gajdus, Bożena Gronowska, *Europejskie standardy traktowania więźniów*, Toruń: TNOiK, 1998, 190.

²⁹ *Ibidem*, 187.

³⁰ *Ibidem*, 189.

³¹ Article 6 of ECHR.

³² Danuta Gajdus, Bożena Gronowska, *Europejskie standardy traktowania więźniów*, 189.

³³ Article 25-27 of ECHR.

³⁴ Danuta Gajdus, Bożena Gronowska, *Europejskie standardy traktowania więźniów*, 190.

³⁵ Maria Nielaczna, *Zmiany za murami? Stosowanie standardów postępowania z więźniami w Polsce*, Warsaw: Stowarzyszenie Interwencji Prawnej, 2011, 104.

are also the European Prison Rules³⁶ constituting so-called *soft law*. They were adopted on January 11, 2006 at a 952 meeting of delegates by the Committee of Ministers for member states of the Council of Europe, as a recommendation of Rec (2006). They practically contain a full set of provisions related to the execution of penalties and measures involving detention. All in all, they cannot replace Polish executive criminal law, as they do not exhaustively specify executive procedures and institutions appropriate for individual countries³⁷.

EPR was preceded by other documents - UN Standard Minimum Rules for the Treatment of Prisoners of 1955, and later also Standard Minimum Rules for the Treatment of Prisoners of 1984. These documents were of great importance in the promotion of modern best practices in dealing with persons deprived of freedom around the world. They were of most importance to the countries which were creating or rebuilding their legal systems at that time. In totalitarian states, they were a counterweight in the fight for the rule of law in dealing with convicts³⁸.

The main goals and tasks of EPR were defined in their introductory part, as well as in the content of the rules themselves. It may be concluded from these regulations that they are primarily lawful execution of isolation sentences and humane treatment of persons serving isolation sentences, proper preparation for their return to society (the principle of reintegration included in rule 102.1, protection of society against crime and security in penitentiary units). EPR should be applied in various areas of activity of state organs, such as legislation, criminal and penitentiary policies, as well as direct execution of punishments and isolation measures against persons deprived of their freedom. All actions of the state in these catego-

³⁶ Hereinafter referred to as EPR. They replaced Recommendation R (87) 3 of the Committee of Ministers of Member States on the European Prison Rules adopted by the Committee of Ministers on February 12, 1987 at 404th meeting of deputy ministers.

³⁷ Teodor Szymanowski, „Rekomendacja Rec (2006) 2 Komitetu Ministrów dla państw członkowskich Europejskie Reguły Więzienne”, In: PWR, Międzynarodowe standardy wykonywania kar, ed. Teodor Szymanowski, Warsaw: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości, 2011, 75.

³⁸ Ibidem, 75-76.

ries should comply with the rules, as they are a kind of axiology of specific standards already being created in the countries that have adopted them³⁹.

Failure to comply with EPR by any of the signatory States may have far-reaching consequences. First of all, there might be negative reactions coming from both the public opinion of a given country and other countries - parties to EPR. NGOs and scientists may also express their dissatisfaction in the form of international publications and mass media. Further consequences are also the report prepared by the CPT, if the state agrees to inspections, and the most restrictive of the reactions - a judgment issued by the CPT in response to a complaint of a person deprived of freedom, in which the violation of the applicant's rights will be found⁴⁰.

3. COMPLIANCE WITH PENAL STANDARDS IN SOCIAL, LIVING, HYGIENE AND SANITATION CONDITIONS.

Living conditions prevailing in prisons are of fundamental importance for the proper conduct of the prisoners' reintegration process. According to the general directives on respecting the dignity of the human person and humane treatment of convicts in penitentiary units, living conditions should correspond to the living standards adopted in a given society. It should be conducted in such a way that they do not negatively affect the sense of dignity of convicts⁴¹, often forced to stay in penitentiary facilities for a very long time⁴².

This position regarding living conditions in prisons was adopted by the ECtHR which emphasized in its case-law that in order to solicit violations of Art. 3 of the ECHR⁴³, the conditions prevailing in penitentiaria-

³⁹ Ibidem, 78.

⁴⁰ Ibidem, 78-79.

⁴¹ Keenan v. The United Kingdom of 3 April 2001, Third Section, application no. 27229/95, https://www.eschr-net.org/sites/default/files/Decision_1.pdf (access date: 14.12.2019).

⁴² Ewa Dawidziuk, *Traktowanie osób pozbawionych wolności we współczesnej Polsce na tle standardów międzynarodowych*, Warsaw: Wolters Kluwer, 2013, 72.

⁴³ Convention for the Protection of Human Rights and Fundamental Freedoms done in Rome on November 4, 1950, subsequently amended by Protocols No. 3, 5 and 8 and

ry units have to respect to the maximum extent personal dignity of convicts, while the ways of executing a prison sentence cannot expose them to a threat or barriers exceeding the degree of inconveniences resulting from the very nature of imprisonment⁴⁴. Violation of Art. 3 of the Convention in relation to persons deprived of freedom usually occurs in terms of the conditions in which they are serving an imprisonment penalty, i.e. living and sanitary conditions.

In scope of the former, the most common allegation raised by convicts is insufficient space for residential purposes⁴⁵. According to the Tribunal, too little space available to a prisoner in a residential cell, especially if the prisoner is in such conditions for a long time, constitutes degrading or even inhuman treatment⁴⁶. In its jurisprudence, the Tribunal, in the respect of overcrowding of detention centers and prisons, stated that when assessing the violation of Art. 3 of the Convention, due to insufficient personal space of the prisoner, three elements should be taken into consideration. First, each prisoner should have a single sleeping place. Secondly, the personal space available to every convict cannot be less than 3 square meters. Third, the cell must have a surface that ensures free movement of prisoners. In the absence of any of these elements, the conditions of deprivation of freedom of liberty should be regarded as no less than degrading⁴⁷.

supplemented by Protocol No. 2, Journal Of Laws 1993, no. 61, item 284, hereinafter referred to as the ECHR.

⁴⁴ Michał Zoń, „Orzecznictwo”, Forum Penitencjarne, 11(2009), 22

⁴⁵ Janusz Wojciechowski v. Poland of 28 June 2016, Fourth Section, application no. 54511/11 <https://www.rpo.gov.pl/sites/default/files/Sprawa%20Janusza%20Wojciechowskiego%20vs%20Polska%2C%2028.06.2016%20r.%20-%20wersja%20angielska.pdf> (access date: 15.12.2019); Peers v. Greece of 19 April 2001, Second Section, application no. 28524/95, <https://hudoc.echr.coe.int/tur#%7B%22itemid%22:%5B%22001-59413%22%7D> (access date: 14.12.2019).

⁴⁶ See. e.g. the Court's decision on Kalashnikov v. Russia, Chamber (Section III), application no. 47095/99, § 96-97; Ostrarov v. Moldova of 13 September 2005, Chamber (Section IV), application no. 35207/03, § 84; Orchowski v. Poland of 22 October 2009, Chamber (Section IV), application no. 17885/04, § 122, quoted from: Marek Antoni Nowicki, *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka*, Warsaw: Wolters Kluwer Polska, 2013, 396.

⁴⁷ Annyev and Others v. Russia of 10 January 2012, Chamber (Section I), application no. 42525/07 and 60800/08, § 145 and 148 Judgment.

In Poland, the minimum standard of living space for a convict is 3 square meters. Unfortunately, this standard deviates from the norms in other European countries, as well as the recommendations of the CPT which recommends at least 4 square meters of living space per prisoner for multi-person cells and 6 square meters per prisoner for single cells⁴⁸. In the European Union, the living space is respectively: France from 4.7 to 9 m², Great Britain from 4.5 to 7 m², Spain from 9 to 10 m², Italy from 7 to 9 m²⁴⁹. On July 9-18, 2018, the first visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“SPT”) took place. Among the recommendations, attention was drawn to the still-current problem with the low ratio of residential space per prisoner⁵⁰. Providing adequate living space is particularly important because convicts often spend more than 22 hours in cells⁵¹.

The ECtHR in its decisions⁵² is guided by the CPT standards. The Tribunal clearly emphasized that exceeding the minimum standard of 3 square meters per prisoner is serious overcrowding which in itself justified the finding of a violation of Art. 3 ECHR.

The Constitutional Tribunal⁵³ also commented on the issue of excessive density of residential cells stating that such a practice in itself constitutes inhumane treatment, and in the event of exceptional accumulation of various inconveniences, it can even be classified as torture. The efforts of the National Torture Prevention Mechanism⁵⁴ so far have not been imple-

⁴⁸ c.f. Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015)44; Dwudziesty Szósty Raport Generalny CPT, CPT/Inf (2017)5, par. 56 - <https://rm.coe.int/16806cc449>(access date: 03.10.2019).

⁴⁹ Report of the Ombudsman on the activities of the National Torture Prevention Mechanism in Poland in 2018, 135. <https://www.rpo.gov.pl/sites/default/files/KMPT%20-%20raport%20za%20rok%202018.pdf>, (access date: 17.06.2019).

⁵⁰ <https://www.rpo.gov.pl/pl/content/delegacja-podkomitetu-ds-prewencji-tortur-onz-po-raz-pierwszy-wizytuje-miejsca-pozbawienia-wolno%C5%9Bci>, (access date: 03.10.2019).

⁵¹ Maria Niełacna, *Zmiany za murami? Stosowanie standardów postępowania z więźniami w Polsce*, 50.

⁵² *Lind v. Russia* of December 6 2007, case no. 25664/05 LEX no 327271 § 59.

⁵³ Constitutional Tribunal Judgment 26 May 2008, SK 25/07

⁵⁴ Further referred here as NTPM.

mented in reality, because the Ministry of Justice does not change the minimum residential standard⁵⁵.

In addition to the Constitutional Tribunal, the problem of the density of residential cells was also dealt with by courts, which considered this issue in the context of the violation of personal rights of persons deprived of their freedom. In its judgment of February 28, 2008⁵⁶, the Supreme Court stated that the overcrowding of Polish penitentiary units constitutes the basis for a claim for compensation for degrading and inhuman treatment, and the burden of proof that there was no violation of this prohibition rests with the defendant. In the same case, the Supreme Court stated that ensuring adequate living conditions results from the humane treatment of persons deprived of their freedom and respect for their dignity, which is why the state, when carrying out its tasks in the field of repressive policy, must ensure that their implementation does not constitute a greater ailment for convicts than is due to the very nature of the prison sentence. Failure to comply with the minimum surface standard violates international conventions ratified by Poland.

In turn, the decision of the Poznań Court of Appeal of November 24, 2010⁵⁷ stated that the overcrowding of residential cells could not be explained by a large number of crimes or the lack of sufficient places in prisons and detention centers. In this respect, the state is obliged to ensure conditions guaranteeing respect for the dignity of persons deprived of their liberty.

Given the fact that the violation of the minimum surface standard is the subject of jurisprudence of both the Constitutional Tribunal, the Supreme Court and common courts, and that Polish solutions differ significantly from the standards adopted in other European countries, it should be stated that Poland does not comply with the postulate of providing

⁵⁵ Report of the Ombudsman on the activities of the National Torture Prevention Mechanism in Poland in 2018, 134 <https://www.rpo.gov.pl/sites/default/files/KMPT%20-%20raport%20za%20rok%202018.pdf>(access date: 17.06.2019).

⁵⁶ The judgement of the Supreme Court, Civil Chamber, as of 28th February 2007, ref. no. V CSK 431/06, OSNC 2008, no. 1, item. 13.

⁵⁷ The judgement of the Poznań Court of Appeal as of 24th November 2010, ref. no. I ACa 881/10, LEX no. 757733.

convicts for residential purposes an area conducive to respect for the dignity and humane treatment of prisoners.

In respect of sanitary conditions, the Tribunal found that, even though the minimum area standard of 3 square meters per prisoner was maintained, it was necessary to ensure adequate ventilation, natural light or air, heating and the possibility of using the toilet in a way that would ensure at least a minimum of privacy. If the sanitary conditions are not met, then it is also a form of inhuman or degrading treatment⁵⁸.

The obligation to organize appropriate living conditions in prisons rests with the public authorities. The ECtHR⁵⁹ emphasized that regardless of financial or logistical possibilities, the state must create conditions for prisoners to ensure respect for the dignity of prisoners, and in the event that the state is unable to fulfill this obligation, it is necessary to refrain from applying strict criminal policy, thus limiting the number of persons deprived of their liberty or alternative non-custodial punitive measures.

The level of living conditions in Polish prisons is analyzed each time during preventive visits of the NMPT. In 2018, 12 penitentiary units were inspected, i.e. six prisons, two detention centers and four external branches of detention centers and prisons. In general, during the visits the NTPM did not state that the living conditions prevailing in Polish penitentiary units are bad enough to be able to consider in this context the violation of the prohibition of inhuman or degrading treatment. Persons deprived of their freedom paid special attention to the insufficient lighting of residential cells, ventilation problems, lack of access to hot water in cells, as well as damaged residential equipment during the annual conversations with representatives of NTPM⁶⁰.

⁵⁸ Babushkin v. Russia judgment of 18 October 2007, Chamber (Section III), application no. 67263/01, § 44.

⁵⁹ Orchowski v. Poland Judgment of 22 October 2009 in case 17885/04, LEX No. 523324, § 153.

⁶⁰ Report of the Ombudsman on the activities of the National Torture Prevention Mechanism in Poland in 2018, 131 and next. <https://www.rpo.gov.pl/sites/default/files/KMPT%20-%20raport%20za%20rok%202018.pdf> (access date: 17.06.2019).

Currently, according to the announcement of the Central Board of the Prison Service⁶¹, as of October 4, 2019, the total population of penitentiary units on a national scale was 93.3%, so there is no overcrowding within the meaning of the Regulation of the Minister of Justice⁶². However, in previous years this problem was identified both in the NTPM reports and by international institutions. The effect of “marking” this undesirable phenomenon is achieved through the use of practices that are inappropriate in the opinion of the representatives of NTPM, which are however allowed under current laws. In reports from previous years, the NTPM pointed out that living rooms are adapted to common rooms and other rooms intended for organizing cultural and educational activities, the number of living cells is included and adapted to such needs of sick rooms, the stay of some people in a cell is extended beyond the norm transition, whether there are people who are not dangerous convicts for the purposes of this category of prisoners and for the purposes of disciplinary punishment in the form of imprisonment⁶³. This practice of the authorities responsible for executing the penalty of imprisonment undoubtedly contributes to minimizing the phenomenon of overcrowding, but it does not eliminate the problem, but only hides or postpones it.

Another disadvantage of the Polish penitentiary system, which the NTPM noticed during the visit, is the problem of the lack of proper adaptation of penitentiary units to the needs of people with physical and sensory disabilities⁶⁴. During the visit, the Ombudsman found that prisons and detention centers still lack residential cells adapted to the needs

⁶¹ Announcement of the Central Board of the Prison Service of 4 October 2019 regarding the population of prisons and detention centers <https://www.sw.gov.pl/strona/statystyka--biezaca> (access date: 06.10.2019).

⁶² Regulation of 25 November 2009 on the procedure to be followed by competent authorities in the event that the number of prisoners in prisons or pre-trial detention centers exceeds the overall capacity of these establishments on a national scale (Journal of Laws of 2018, item 946).

⁶³ Report of the Ombudsman on the activities of the National Torture Prevention Mechanism in Poland in 2012, *Biuletyn Rzecznika Praw Obywatelskich*, 5(2013), 24-25.

⁶⁴ Report of the Ombudsman on the activities of the National Torture Prevention Mechanism in Poland in 2018, 138. <https://www.rpo.gov.pl/sites/default/files/KMPT%20-%20raport%20za%20rok%202018.pdf> (access date: 17.06.2019).

of persons with disabilities and adequate infrastructure necessary to enable such persons to exercise their rights as persons deprived of liberty. In 2018, in the so-called Detention Custody in Lublin and the Bydgoszcz-Fordon Prison as the result of making re-audits it was found that both units have made significant progress in the process of adapting penitentiary units to the needs of people with disabilities, but there are still areas to be improved which would serve to increase the guarantee of protection of the rights of this group of inmates⁶⁵.

As a result of such neglect, disabled people are forced to stay in standard residential cells for other convicts. Such rooms are not adapted for the disabled in every respect, both in terms of sleeping space as well as a sanitary corner. The above problem should undoubtedly be considered in the context of inhumane conditions of serving a sentence, since it raises an additional inconvenience for the disabled significantly exceeding the difficulties arising from the very nature of penitentiary detention.

Also in the context of sanitary and hygienic conditions, the Polish penitentiary system leaves much to be desired. During the audits of Polish penitentiary units, CPT noticed the problem of the poor technical condition of the sanitary stations, which at the same time were not properly separated in a way ensuring care for hygiene with respect for privacy⁶⁶. In turn, the ombudsman report on the NTPM's visit noted the insufficient frequency of bathing for men in penitentiary facilities.

Although the norm of one bath per week guaranteed by law was not found to be violated during the visit, the Ombudsman takes the view that the standard of one bath for men per week cannot be assessed as appropriate for maintaining health, and recommends increasing the frequency of baths at least twice a week. It is also worth noting that the international recommendations also include the postulate that persons deprived of their liberty should be able to take a bath at least twice a week. In this respect, the Polish penitentiary system does not currently implement this standard.

⁶⁵ Ibidem, 139.

⁶⁶ Ewa Dawidziuk, *Traktowanie osób pozbawionych wolności we współczesnej Polsce na tle standardów międzynarodowych*, Warsaw: Wolters Kluwer, 2013, 122.

4. CONCLUSIONS

Polish prisons within last 30 years underwent a very crucial metamorphosis by trying to comply with the requirements and standards incorporated international legal acts especially in the European Prison Rules of 2006. This task has not been easy to implement due to the occurrence of many negative factors, especially financial ones which obstruct the development of the Polish prison system and thus its adjustment with Western European countries.

Summing up the issues of living and sanitary and hygienic conditions that directly affect the serving of a prison sentence, it should be stated that, as a rule, the Polish penitentiary system provides conditions sufficient to avoid allegations of inhumane, inhuman or degrading treatment in penitentiary units. Unfortunately, the biggest drawback is still a small living space for a single convict in relation to European standards. In this respect, Poland should undoubtedly follow examples from other countries which are members of the Council of Europe, as this will significantly affect the standard of imprisonment and thus will minimize the number of proceedings before the European Court of Human Rights.

REFERENCES

- Dawidziuk Ewa. 2013. *Traktowanie osób pozbawionych wolności we współczesnej Polsce na tle standardów międzynarodowych*. Warsaw: Wolters Kluwer.
- Ejchart Maria, Kosowicz Krzysztof. 2011. „Wprowadzenie”. In: *PWP, Międzynarodowe standardy wykonywania kar*, ed. Teodor Szymanowski, 72-73, Warsaw: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości.
- Gajdus Danuta, Gronowska Bożena. 1998. *Europejskie standardy traktowania więźniów*. Toruń: TNOiK.
- Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015)44; Dwudziesty Szósty Raport Generalny CPT, CPT/Inf (2017)5, par. 56;
- Migdał Jerzy, Skrobotowicz Grzegorz. 2014. „Możliwość realizacji Europejskich Reguł Więziennych z 2006 r. w zakresie reintegracyjnego modelu wykonywania kary pozbawienia wolności a przeludnienie polskich jednostek penitencjarnych”. *„Rocznik Nauk Prawnych”* Vol. XXIV1: 109-120.

- Nielączna Maria. 2011. *Zmiany za murami? Stosowanie standardów postępowania z więźniami w Polsce*. Warsaw: Stowarzyszenie Interwencji Prawnej.
- Nowicki Marek Antonii. 2013. *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka*, Warsaw: Wolters Kluwer Polska.
- Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji w 2012 r., Biuletyn Rzecznika Praw Obywatelskich 2013 r., nr 5; (Report of the Ombudsman on the activities of the National Torture Prevention Mechanism in Poland in 2013 no.5).
- Szczygieł Grażyna. 2002. *Společna readaptacja skazanych w polskim systemie penitencyjnym*. Białystok: Temida 2.
- Szymanowski Teodor. 2011. „Międzynarodowe konwencje o postępowaniu wobec skazanych, zwłaszcza osób pozbawionych wolności”. In: PWP, *Międzynarodowe standardy wykonywania kar*, ed. Teodor Szymanowski: 19-32. Warsaw: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości.
- Szymanowski Teodor. 2011. „Rekomendacja Rec (2006) 2 Komitetu Ministrów dla państw członkowskich Europejskie Reguły Więzienne”. In: PWP, *Międzynarodowe standardy wykonywania kar*, ed. Teodor Szymanowski, 33-70. Warsaw: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości.
- Szymanowski Teodor. „Wstęp”. In: PWP, *Międzynarodowe standardy wykonywania kar*, ed. Teodor Szymanowski, 9-13. Warsaw: Wydawnictwo Centralnego Zarządu Służby Więziennej Ministerstwa Sprawiedliwości.
- Szymanowski Teodor, Migdał Jerzy. 2014. *Prawo karne wykonawcze i polityka penitencjarna*. Warsaw: Wolters Kluwer.
- Wedel-Domaradzka Agnieszka. 2016. „Prawo do kontaktów z rodziną osób aresztowanych oraz odbywających karę pozbawienia wolności - rozważania na tle standardów soft law oraz art. 8 EKPC”. *„Polski Rocznik Praw Człowieka i Prawa Humanitarne* vol. 7: 301-318.
- Zoń Michał. 2009. „Orzecznictwo”. *„Forum Penitencjarne”* 11: 22.