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Social rehabilitation as the goal of a prison sentence

Abstract: Imprisonment occupies an unparalleled central place within the system of penal sanctions all over the world. In principle, the function of this kind of a penalty has remained unchanged over the centuries, which is retribution. It is assumed that the penal isolation, properly imposed, should, however, fulfill not only the role of retaliation, but also the social rehabilitation function. Participation of convicts in the process of their social rehabilitation finds support not only in their individual interest, but also in an important social interest. The latter fact, however, is not noticed by the public opinion, which usually sees only the privileges of individual convicts in the process of serving a sentence of imprisonment without a broader perspective of assessing this process as a phenomenon with broad social connotations. The aim of the article is to analyze how to reconcile the retaliatory and social rehabilitation functions of imprisonment in the process of its enforcement.

Key words: imprisonment, retribution, rehabilitation, social interes.

Imprisonment has occupied a central place in the system of penal sanctions since the 19th century. In principle, it is undisputed that in the earlier period this punishment was intended to prevent the convicted person from escaping the death penalty or mutilation (Kalisz, 2020, p. 196). It lost this function with the initiation in the 18th century by C. Beccaria of a discussion on the meaning

of criminal sanctions, including in particular the death penalty. The discourse changed the previous approach – it pointed out that the goals of punishment must be future-oriented and not past-oriented (crime is a historical event), in line with utilitarian assumptions, i.e., punishment should not only provide retaliation and revenge, but also prevent crime.

In principle, the function of imprisonment aimed at causing a nuisance to the perpetrators of criminal acts has not changed over the centuries. It is nowadays accepted that this can be done through the most far-reaching interference in the sphere of rights and freedoms of convicts, i.e., personal freedom. In fact, the use of the death penalty is opposed to the principle of humanitarianism, which is based on the inherent and inalienable dignity of every human being. Moreover, the belief in the educative function of punishment remains in conflict with the use of the death penalty. It is difficult to reconcile consideration of the rehabilitative goals of punishment with the permissibility of a *strictly* eliminating sanction, i.e., the death penalty.

It is assumed that properly imposed isolation punishment fulfills not only the role of retaliation for the crime committed, but acts also as an educational factor, allowing the offender to realize both the fact of the unprofitability of violating the law and the consequences associated with it¹.

The modern term “social rehabilitation”, in the context of the improvement of a socially maladjusted individual, appeared in the literature on the subject as late as at the turn of the 20th century, when the positivist trend began to permeate the legal sciences and the way in which imprisonment is carried out in the so-called cell system started to be criticized. In turn, it became popular in Polish literature in the 1960s (Czapów, Jedlewski, 1971 cited from Sztuka, 2018, p. 86), however, it was identified with a compulsory obligation on convicts, obliged to participate in the ideologically-charged process of social rehabilitation (Kalisz, Kwieciński, 2013, p. 117). A. Strzembosz made the following reflection regarding the period of the Polish prison system before 1989: “(...) the slogan of rehabilitation very often acted only as an elegant veil for the intensification of repression (...). For example, before the war, judges perceiving in punishment mainly general-preventive goals tended to impose much more lenient punishments than judges did after the war, justifying punishment with rehabilitative goals” (Strzembosz, 1989, p. 119).

The purpose of the analysis of this study is to try to answer the question of what the social rehabilitation is in the process of serving a prison sentence and whether the goal of social rehabilitation of convicts should be explicitly enshrined in the text of the Polish Constitution, thereby increasing the guarantee function of the executive criminal law.

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¹ Judgment of the Court of Appeals in Wrocław of 10 July 2019, II AKa 129/19, LEX No. 2724248.

Meaning and sense of the term “social rehabilitation” on the grounds of executive criminal law

Few institutions in the modern world are characterized by such a long genesis and non-substitutability as prisons. It is the execution of punishment that gives its true face, proper content and meaning (Śliwowski, 1981, p. 246). It was not until the 20th century that attention was drawn to this circumstance, based on the results of scientific research and the effects of a peculiar experiment, which was the so-called cell system of serving prison sentences, subsequently described in the literature as the greatest aberration of the 19th century (Wala, 2015, p. 142). The effects of the convicts' almost complete isolation from the outside world and the environment of their fellow prisoners were disastrous. It turned out once again that solitude does not produce positive reflections and experiences for a man, who, after all, has been defined as a social animal² since ancient times. The cell system was consequently replaced by a progressive system of serving sentences, which allowed convicts to interact with each other and induced them to change their behavior so that, while already in custody, they would no longer return to crime.

Of course, the method of imprisonment has evolved over the centuries – the old dungeons and locks have been replaced by prisons, which are increasingly equipped with security and safety technology using modern technological advances such as motion sensors, video surveillance, infrared cameras, active track systems, electronic control systems for bars and cell doors, etc. Despite this, deprivation of liberty remains the harshest of all known punishments, excluding, of course, mutilations and the death penalty.

It can be risked to say that the most topical problem of the modern penitentiary system in the world, is the appropriate balance of considerations in favor of maintaining security and order inside the penitentiary unit and considerations related to the need to ensure that all persons serving a sentence of imprisonment participate in the process of social rehabilitation, the end result of which is to enable them to return to an undisturbed life in society.

The legislator, when enacting the new Polish Executive Penal Code in 1997, aimed to introduce standards corresponding to the standard of European countries in the process of adjudication and execution of solitary confinement sentences (Juchacz, Zgoliński, 2014, p. 48). In particular, the legislator was mindful of the content of both the European Convention on Human Rights and the European Prison Rules.

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² Aristotle's *Politikon zoon* (Latin: animal sociale).

Modern European penitentiary systems are based on the principles described in the body of the European Prison Rules. In this act, the term rehabilitation was used in the context of imprisonment, however, without defining it. With regard to this issue, one should point in particular to the preamble and provisions 5, 6, 72 (3), 83 b of the European Prison Rules, from which it is clear that imprisonment should be carried out in such a way that it corresponds to the positive aspects of life at liberty, and that any deprivation of liberty is intended to facilitate the convicts' reintegration into society once they are in conditions of freedom. However, as it is argued in the literature, the term social reintegration or rehabilitation is not used in the key treatment aspect of Rule 102 (Van Zyl Smit 2018, p. 13)³. However, the phrase "leading a responsible and lawful life" was used there. Being full-fledged members of a free society is conditioned, as can be assumed from the wording of the European Prison Rules, by the positive effect of the rehabilitation interventions while serving an isolation sentence, which the convicts must not be deprived of because they are part of the concept of human dignity of the convicted person⁴.

There is no doubt that at the stage of imprisonment, not only the retributive or preventive purpose of the punishment should be taken into account, but also the rehabilitative and educational dimension of the sanction. No European instrument of international law, including the European Convention on Human Rights (also the protocols to the Convention and the European Prison Rules), contains a definition of rehabilitation, and thus determining what is covered by the term requires an analysis of the case law of the European Court of Human Rights. This poses a kind of challenge, since a full conceptualization in any ruling has not taken place so far, and the Court's statements in this regard are scattered and fragmentary (Martufi, 2018, p. 675).

As the European Court of Human Rights has stated, states parties to the European Convention on Human Rights have a positive obligation to take measures to ensure the rehabilitative impact on prisoners sentenced to solitary confinement, including long-term punishment. However, the European Convention on Human Rights does not *explicitly* provide for such a right. This means conceptualizing rehabilitation in the direction of the subjective right of the individual to benefit from rehabilitation (informed and voluntary consent) understood, however, as a proposal, an entitlement and not an obligation of the convict, with which is coupled the positive obligation of the state to ensure that every convict has access to adequate rehabilitation programs. Reconstructing the content of this subjective

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³ The so-called Mandela Rules, on the other hand, use the concept of rehabilitation on several occasions (see, for example, rule 93, 95, 102, 107) in the broader context of a convict's return to life in society after serving a prison sentence.

⁴ Cf. e.g., ECtHR judgment of 9 July 2013 in the case of *Vinter v. UK*, application nos. 66069/09, 130/10 and 3896/10.

right already at this point, it should be noted that its object is not simply the entitlement to rehabilitation interventions, but to appropriate interventions. It is clear that the ways, techniques and methods of conducting rehabilitation activities in the conditions of penitentiary units are different from the ways, methods and techniques that are used in a free environment. The very place or environment in which the interventions are carried out, which is the penitentiary unit, must project this dissimilarity. In addition, interactions should be carried out on the basis of methods, techniques and methods in accordance with the available results of the most current scientific research, which means that they must not constitute experimental activities. Thus, it goes without saying that as such, therefore, they require the special knowledge of those who apply them, consist of frequent modifications and, due to frequent changes, cannot be normalized by law. A certain category of convicts cannot be excluded from the circle of convicts who are entitled to this subjective right, so even those who have been sentenced to life imprisonment.

In this context, the question of how to implement therapeutic and rehabilitative interventions towards convicts sentenced to absolute imprisonment so that their desired social reintegration (by minimizing or even eliminating the risk of penitentiary recidivism) occurs, remains very relevant and topical. At the same time, we can risk the thesis that in an individual case, the conduct of rehabilitation interventions will always bear the mark of uncertainty. Interventions that have proven effective even in most cases may not lead to the desired effect in certain individuals. A factor that increases the effectiveness of rehabilitation is certainly the proper identification of those deficits on which the intervention should be directed. There is also never complete certainty as to how an offender, already in and under the influence of a free environment, will use newly acquired knowledge or skills.

Views on what rehabilitation is, consequently, vary significantly from one European country to another, although the importance given to educational and rehabilitative measures in European acts, even if they are only of a soft law nature, points to the growing importance of rehabilitation as a fundamental goal of imprisonment in prisons, more important than other goals of this sanction. This does not mean that, in the past, rehabilitation played no role in the process of a convict serving an isolation sentence. On the contrary, however, in general, rehabilitation interventions were carried out coercively, without respecting the limits of the convict's personal freedom. Nor should we lose sight of the crisis of faith in rehabilitation that occurred in the mid-1970s following the publication of the so-called Robert Martinson Report (Martinson, 1974). The author of this study questioned the effectiveness of the interventions carried out in American penitentiaries at the time, pointing out that they did not have a fundamental effect on reducing recidivism among inmates. As a result, not only in the United States or Anglo-Saxon countries, but also in Europe, the tendency to subject

convicts to activities aimed at their socialization has significantly weakened. However, the aforementioned report turned out to be a contribution to sparking a new discussion on the legitimacy of conducting interventions, which, let's recall, were conceived as a duty of convicts and were often experimental (in the United States even *quasi-medical*) in nature. Considering their nature and the assessment of their efficacy,

it can be inferred that, in the context of the European Prison Rules, rehabilitation comprises the entire set of available measures—methods, programs, and strategies—that, in adherence to the principles of humanity and human dignity, aim to facilitate the successful reintegration of convicted individuals' post-incarceration. Legal enactments, whether European or national, do not explicitly define and identify these methods, programs, and strategies. Still, they indicate certain tools to be employed in the rehabilitation process. Most often, these include work (which must not be compulsory), education and vocational training, the convict's maintenance of external world connections, assistance in the protection of their rights (including the assertion of civil law claims or defense against such claims), the provision of decent living conditions and basic needs—including access to healthcare, prevention of overcrowding—providing suitable mechanisms for classifying convicted individuals, instituting a system of rewards and concessions to motivate participation in the intervention process, promoting efforts to compensate for the harm caused by the crime, and fostering empathy.

However, the law does not provide an exhaustive list of measures for the rehabilitation of convicted individuals. Individual states retain discretion in selecting these measures, based on their faith in their effectiveness. It is essential to recognize that the success of the rehabilitation process hinges not only on the suitable design and application of rehabilitation methods and interventions but also on their substantive quality and customization to meet the unique needs of each person deprived of liberty. The demographic of people subjected to such interventions is not homogeneous but, quite the contrary, remarkably diverse. Therefore, a crucial prerequisite for successful rehabilitation is identifying the needs of convicts in this regard and subsequently tailoring the methods and approaches of rehabilitation to the chosen group (Siemionow, 2014, p. 47). Assuming that no categories of convicted individuals are exempt from the interventions, and that all other interactions are at most equivalent to rehabilitative measures,

it is noteworthy that the term “resocialization” is used in different contexts across various countries, if one strives for a certain common denominator. This variation, however, presents challenges in comparative analysis. Rehabilitation, in general terms, should be interpreted as a process that aims to transform an offender into a law-abiding citizen by utilizing suitable intervention methods within the prison or probation framework (Stańdo-Kawecka, 2020). It's also worth mentioning that ideally, this process should continue for a certain period post-incarceration, in post-custodial settings. The rehabilitation of convicts serves

not only to enhance public safety—which is evident as a rehabilitated offender abides by the existing legal order and thus does not pose a societal threat—but it also plays a vital role in the sentencing process. A convict who develops pro-social attitudes is less problematic during the enforcement of an isolation sentence, positively influencing security within the penitentiary unit (Duwe 2017, p. 1). However, rehabilitation should not be used solely as a utilitarian function in relation to the policing and security function both inside and outside the prison.

Can the rehabilitation of convicts be considered a constitutional standard from various perspectives?

Penitentiary systems significantly differ not only in defining rehabilitation as a specific process of interaction with convicts, but also in the priority given to rehabilitation as a goal of imprisonment. In this context, Spain⁵ and Italy⁶ stand out among the European Union countries. Their constitutions explicitly state the rehabilitative value of punishment—and this applies to all forms of criminal punishment. Naturally, such an assumption may be debatable, for instance, in the context of a fine, where its rehabilitative objectives are difficult to discern.

In the Polish Criminal Executive Code, Article 67 § 1 explicitly stipulates that the primary aim of punishment is to deter the offender from recidivating, thereby attributing a preventive purpose as the fundamental objective of punishment. According to Lachowski's commentary, the goal defined in this provision is **postulatory**, meaning the authorities' actions should aim towards its realization, but it doesn't guarantee achievement in every case (Lachowski, 2018, online). This is particularly evident in the case of the programmatic impact system, a type of imprisonment specifically designed for rehabilitation. This system is only mandatory for juveniles, whereas adult convicts participate voluntarily. Forcing convicts to participate in the system is illegal. Therefore, the objectives of imposing a prison sentence reflect the system's separation within the overall penitentiary operation (Migdal, 2011, online; Niewiadomska 2016, p. 101). Interestingly, the term "rehabilitation" does not appear in the text of the aforementioned provision. Its absence was a deliberate move by the Executive Criminal Law Team of the Codification Commission, which prepared the 1997 draft of the Code. They justified

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⁵ Article 25(2) of the Spanish Constitution, dated October 31, 1978, on – line www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf [accessed on: 05.08.2022]. states, "penalties related to deprivation of liberty and protective measures aim for rehabilitation and social reintegration and may not consist of forced labor..." (own translation).

⁶ Article 27(3) of the Constitution of the Republic of Italy, dated December 22, 1947, on – line www.prefettura.it/FILES/AllegatiPag/1187/Costituzione_ENG.pdf [accessed on: 05.08.2022]. The Italian Constitution emphasizes that "[no] punishment can consist of inhumane treatment, and its purpose must be the rehabilitation of the convicted person" (own translation).

this omission by citing the ambiguous nature of “resocialization” and its non-legal status, as it is mainly used in pedagogical contexts (Lelental, 2017, p. 332).

Despite the lack of the term “rehabilitation” in the provision governing the purposes of imprisonment, the legislation allows for rehabilitative and educational interventions for prisoners. However, this is presented as an option for the offender to voluntarily accept and partake in, rather than a requirement. This represents a marked shift from the principles of the previous 1969 Criminal Code, which explicitly stipulated convicts undergo rehabilitative activities (Article 37 § 2 and 3 of the 1969 Criminal Code), making their participation mandatory at that time. As A. Ornowska and I. Zdunski highlight, during the era of the People’s Republic of Poland, overcrowded prisons with basic living conditions resulted in violence becoming the primary method of control over inmates. The authorities sought prisoner compliance by arming officers with machine guns, batons, dogs, and shackles, while prison affairs were subjected to stringent control (Ornatowska, Zduński, 2014, p. 34). Prison affairs were surrounded by strict control (Ornatowska, Zduński, 2014, p. 34).

The creators of the 1997 Criminal Code, arguing that forced rehabilitation contradicts an individual’s rights to self-determination (and also considering the misrepresentation of the rehabilitation idea during the People’s Republic of Poland), dismissed rehabilitation as an *expressis verbis* goal of imprisonment. It could be speculated that the abandonment of rehabilitation as an explicitly stated goal in the Code was due to the authors’ belief that the effectiveness of implemented interventions was rather limited. It’s worth noting that following the euphoria of the 1950s and 60s, which accompanied the idea of convict rehabilitation, a notably pessimistic mood began to take hold from the second half of the 1970s, the onset of which can be linked to the publication of Robert Martinson’s⁷ report. This perspective aligns with K. Dabkevich’s observation in the literature that the waning of the rehabilitation idea in prison conditions was evident during the preparation of the new criminal codifications in 1997 (Dabkevich, 2018, online).

However, S. Lelental’s claim that the concept of “resocialization” does not belong to legal language is questionable, as it undoubtedly holds the status of a legal term (used in both the 1969 Criminal Code and the current Code) and is consistently used in the literature on executive criminal law.

B. Stando-Kawecka’s viewpoint is noteworthy, where she emphasizes that the concept of “resocialization” has sparked and continues to spark a great deal of controversy. It is currently used in numerous scientific fields, including criminology, pedagogy, psychology, and penology. Rehabilitation is multi-dimensional and multi-stage. The term itself is extremely ambiguous. Particularly in pedagogical literature, “rehabilitation” has been and continues to be defined in many different

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⁷ This period saw a reassessment of the goals and functions of criminal law and a reorientation towards neo-retributivism.

ways (Stando-Kawecka, 2020, online). In pedagogy, different authors have defined “resocialization” in various ways. B. Toroń-Fórmanek sees rehabilitation efforts as aiming to adequately adapt a person to social norms, develop qualities that enable socialization and cultural participation, and thus, develop one’s identity (Toroń-Fórmanek, 2016, p. 86). H. Machel sees rehabilitation as a set of methods and principles aimed at changing a prisoner’s attitudes to prevent future crime (Machel, 2003, p. 50). J. Siemionow views rehabilitation as creating new situations, experiences, and tasks that allow individuals to gather knowledge and develop their identity and social group membership (Siemionow, 2014, p. 44). In rehabilitation pedagogy, the science of raising and educating socially maladjusted individuals is central (Pytko, 2000). Czapow’s concept sees conscious rehabilitation activity as reforming, either removing the psychological effects of derailment (actual reforming) or the determinants of norm-violating behavior (potential reforming, i.e., preventive activity) (Czapow, 1978). Rehabilitation can be facilitated through diverse approaches such as educational programs, care provision, and psychotherapy. Therefore, when evaluating the effectiveness of rehabilitation as an educational activity, it is sensible, as suggested by the cited author, to utilize criteria employed to assess the effectiveness of general upbringing (Bartkowicz, 2016, p. 51). B. Waligóra sees socialization as “secondary socialization”, i.e., the internalization in an individual of socially accepted values and norms (Waligóra, 1985, p. 53). In turn, K. Pospiszyl sees resocialization as a process of changes in human behavior and personality, primarily aiming to eliminate or reduce the manifestations of social maladjustment in individuals (Pospiszyl, 1998, p. 8). According to K. Postulski, rehabilitation is developmental in its essence and aims to modify the convict’s attitudes and behaviors. If such transformation takes place, then the rehabilitation process is considered successful (Postulski, 2016).

This brief overview underscores the variety of interpretations and highlights the challenges lawmakers would encounter in their attempts to legally define “rehabilitation”. The primary unifying factor is the anticipated outcome of rehabilitation, which is the convict’s peaceful reintegration into society.

In the context of incarceration, two main objectives of the punishment emerge: individual prevention and rehabilitation, which should not be seen as independent from one another. Effective deterrence of recidivism is likely to occur only as a result of the application of appropriately tailored educational and rehabilitative interventions for individuals serving solitary confinement sentences. Naturally, this is predicated on the assumption that a specific, relatively small group of people who have a propensity to breach criminal law norms commit most crimes. Consequently, an intensified and appropriate educational and rehabilitative influence on these potential recidivists is particularly meaningful, as it directly contributes to a decrease in recidivism rates. This assumption is supported by available empirical data. According to M. R. Durose, statistically, almost two-

thirds of inmates who served their sentences in U.S. correctional facilities revert to crime within three years of their release, and three-quarters do so within five years (Durose, Cooper, Snyder, 2014, p. 1). In Europe, including Poland, the assumed recidivism rates are between 40 and 50% (Bartkowicz, op.cit., p. 48). The key and constant determinant of rehabilitation's effectiveness, as agreed upon by lawyers and educators, is the recidivism criterion (Bartkowicz, *Ibid*). It can thus be inferred that merely serving the sentence isn't sufficient for reformation. There must be changes in the offender's attitude and psychological transformations such that they don't commit a crime in the future.

In the Polish criminal law system, Articles 38, 39, 40, 41, 42(2), and 45 of the Constitution, which primarily mandate the protection of convicts' lives and provision of humane incarceration conditions, are significant at the fundamental norms level. The aspect of respecting every human's dignity, including a convict's, cannot be reduced solely to the constitutional prohibition of torture, or other inhuman or degrading treatments or punishments.

Although the right to educational and rehabilitative interventions doesn't directly stem from these articles, it's plausible to assume that it's encompassed within the concept of a humane model of prison sentence serving. Support for this hypothesis can be found in the analogous stance of the European Court of Human Rights (ECtHR). Based on the views articulated in various ECtHR judgments, the positive entitlement of convicts to rehabilitation, and the obligation of the legislature and prison administration to provide such interventions, should be seen as a reflection of respect for the convicts' human dignity (Meijer, 2017, p.161). The court views the failure to ensure convicts' participation in programs and therapies facilitating their societal reintegration, considering all the circumstances, as a violation of the principle of respect for the human dignity of every person, the source of individual freedoms and rights (Polak, Trzcinski, 2018, p. 260). As P. Polak and J. Trzcinski note, dignity is a determinant of permissible interference in all aspects of human life, and it guides the realization of freedoms and rights, as well as the resolution of potential conflicts between them (Polak, Trzcinski, 2018, p. 261).

Undeniably, the term "rehabilitation" has firmly entrenched itself in legal parlance, encapsulating the notion of interacting with a convict to eliminate socially undesirable behavior.

As rightly observed by B. Stando-Kawecka, the term "rehabilitation" has been used and continues to be used in varying contexts across different countries. Broadly, it's understood as a process aimed at transforming an offender into a law-abiding citizen through suitable interventions as part of a prison sentence or probationary institutions. This definition, while difficult to contest, is sufficiently broad to accommodate the numerous meanings associated with the term "rehabilitation". For some, the priority interventions might be work activities (both paid and unpaid) performed by convicts; for others, it might be education, while

for some, the focus could be on instilling respect for legal norms in convicts, especially those pertaining to order and security within the penitentiary unit. The fundamental issue lies in the ambiguity of this concept and the discretionary nature of determining the “suitable” interventions needed to mold the convict into a law-abiding individual. It’s evident that the principle of rehabilitating convicts is, by its very nature, a broad and ambiguous concept. This is why the interpretations of the European Court of Human Rights (ECtHR) and national courts play a significant role.

The flexibility of the terminology renders a comparison of penitentiary systems through the prism of rehabilitative measures an essentially impossible task. We can validly discuss penitentiary systems that engage convicts in the rehabilitation process to varying degrees. However, drawing conclusions in this regard shouldn’t be limited to the analysis of legal norms alone, even though this aspect will play an important role. It should be noted that in many countries, the concept of rehabilitation is treated as a sort of postulate—a necessary ornament in theory, and nominally implemented in practice (Darke, Karam, 2014, p. 6⁸). In the near future, the significant differentiation of penitentiary systems in this area will result from the development and implementation of innovative rehabilitation methods based on new technologies. While states are currently using new technologies to varying degrees to ensure order and security in correctional facilities, the application of these technologies will not be confined to these considerations alone. The SARS-COV-2 pandemic will undoubtedly accelerate the shift towards technologically-driven rehabilitation methods⁹.

A system that involves convicts in rehabilitation is one that provides a specific, coherent concept of rehabilitation, which aligns with other legally-permitted forms of influence on the convict. Therefore, an engaging system isn’t one where some social rehabilitation measures exist, but lack a cohesive concept, vary depending on the specific penitentiary unit, and whose effects aren’t subject to any form of evaluation, especially external evaluation.

Historically, appeals to rehabilitation have sometimes provided a pretext to introduce inhumane solutions related to the processes of serving sentences. Notable examples include the so-called cell system considered the greatest aberration of the turn of the 20th century, the quasi-medical approach to convicts that dominated the post-war penitentiary system in the United States, or the

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⁸ An example of penitentiary systems that currently lack substantial rehabilitation efforts are those in the majority of Latin American countries. References to the concept of rehabilitation of convicts are present in their criminal legal norms, but in practice, such interventions are rarely carried out, or are merely nominal. This can be attributed to the rapidly and steadily increasing numbers of inmates and the resultant overcrowding in prisons

⁹ Global Prison Trends 2022, Justice Institute of Thailand & UN, p. 38 ff, online: <https://cdn.penalreform.org/wp-content/uploads/2022/05/GPT2022.pdf> (accessed: 09.08.2022).

mandatory rehabilitation outlined in the Executive Penal Code, of which the so-called “health paths” may have been a manifestation. These approaches have somewhat discredited the concept of rehabilitation and distorted its meaning in public perception. The “adequacy” of interventions isn’t solely determined by their type and scope, but also by factors such as the stage of punishment at which interventions occur, their relevance to the individual convict (considering their deficits and their relation to the crime), and the qualities and circumstances of the person responsible for the interventions, the properties and conditions related to those who participate with the offender in the process of interventions (provided that the interactions are of a group nature, the selection of people to the group) are also decisive.

Apart from the ambiguity and generality of the concept of rehabilitation, there’s a risk of a manipulative attitude being adopted by both sides of this unique rehabilitation relationship. A convict may be tempted to participate in interventions on a superficial, declarative level during their sentence, while the prison administration might introduce forms of interventions that, although adequate to the deficits of inmates, are deemed useful for reasons such as improving the image of a given penitentiary unit, without being truly engaging or beneficial. It is indeed a plausible assertion that the development of rehabilitation methods, considering the prevailing legal and organizational conditions, is influenced more by the expectations of higher authorities than by a genuine analysis of needs.

A proposed solution (*de lege ferenda*) is to transform rehabilitation into a process that begins when a prison sentence becomes final, at which point the presumption of innocence is overturned. Relevant entities, such as probation officers, could establish contact with the convict while they are awaiting incarceration, which can sometimes be a lengthy period. During this time, probation officers, supported by relevant diagnostic centers, could make preliminary assumptions about the convict’s needs, deficits, and shortcomings based on interviews and evidence from the case file. They could also prepare the convict for their sentence, to hasten the adaptation process and expedite the implementation of interventions. Moreover, throughout this period, it would be feasible to conduct therapeutic or educational interventions within a custodial environment. The incorporation of remote communication technologies would enable the creation of group sessions among individuals awaiting incarceration, enhancing the efficacy of these interventions.

Moreover, it appears essential that the principle of rehabilitation be explicitly stated in the Constitution of the Republic of Poland as the guiding principle throughout the execution of imprisonment. This course of action would resolve the existing dilemma regarding the primary objectives of imprisonment. Moreover, it would provide a clear indication to the legislators that all other objectives, measures, methods, and techniques applicable to those deprived of their liberty should not contradict the primary aim of convict rehabilitation. Consequently, practices such as disciplinary punishments, direct coercive measures, and the

process of classifying convicts would have to consider this overarching aim. Undeniably, rehabilitation cannot be enforced. Within this concept, the primacy of the principle of rehabilitation signifies a state's positive obligation, which should correspond to an entitlement on the part of convicts. Rehabilitation, as an undefined concept, can simultaneously signify a great deal and nothing at all. Employing this concept reassures both state authorities and the public that we have moved far from our primitive human nature and ascended to a higher level of civilization. This civilization is built upon the foundation of human dignity, signifying that imprisonment, conducted under more humane conditions, serves not only to exact retribution but also to reform and repair individuals. All that remains is for convicts to seize the opportunity presented to them. Nonetheless, the situation is neither as straightforward nor as evident as it appears. The penitentiary system must demonstrate internal consistency and thorough planning, truly founded on methods, techniques, and procedures that yield measurable and proven results. A haphazard system, riddled with degrading elements such as uniforming convicts with clothing that stigmatizes and fails to adhere to basic aesthetics, provision of monotonous, poorly prepared, and low-quality meals, or one that employs mentally debilitating methods like prolonged isolations or punishments exceeding 15 days, is not rehabilitation-oriented, regardless of the legislator's declarations. Furthermore, a system that lacks access to modern technological solutions or promotes automated reflexes through the monotony and routinization of daily life does not adhere to the principles of rehabilitation.

Conclusions

Until recently, the concept of rehabilitating convicts deprived of their liberty was understood as preventing recidivism. Currently, it is perceived more as a positive entitlement based on the principle of humanity during the process of serving a sentence. In essence, it is viewed as an offer and commitment undertaken by the convicted individual. The European Court of Human Rights (ECtHR), especially in light of violations of Article 3 (and less frequently Article 5 and Article 8 of the European Convention on Human Rights), interprets the adequate provision of rehabilitative interventions as a positive obligation to provide rehabilitative resources within the penitentiary system. This obligation applies to all convicts, including those sentenced to life imprisonment.

The participation of convicts in the rehabilitation process, and efforts to encourage their full engagement, align not only with individual interests but also with crucial societal interests. However, this aspect often escapes public awareness. The public tends to view the imprisonment process solely in terms of privileges (rights) and drawbacks (duties) for individual convicts, without considering the broader implications and societal connotations of this process. It is irrefutable

that a significant proportion of crimes are committed by individuals who have previously served prison terms. Hence, the recidivism of offenders, including prisoners, has substantial societal implications.

It is widely advocated that rehabilitative interventions should begin at the initial stages of serving the sentence and continue until the end of its term. Furthermore, these efforts should extend for a certain period before and after the custodial sentence (Scheirs, 2016, p. 82 et seq.). However, this poses a challenge, particularly when a convict is not subject to supervision and probation responsibilities associated with conditional early release from imprisonment, or when there is no requirement for the convict to establish contact with their probation officer before starting their sentence. Considering the widely accepted view that rehabilitation is not a process that definitively concludes with the end of the sentence, it would be advisable, *de lege ferenda*, to introduce legal provisions into the Constitution of the Republic of Poland. These provisions would obligate specified entities to ensure the participation of convicts in rehabilitation, both as part of the sentence-serving process and after their release. This is aimed at sustaining the effects achieved during their time in the penitentiary. The type of interventions should be tailored to the individual's circumstances upon leaving the penitentiary unit, placing particular emphasis on assistance in finding employment, vocational training, and therapy for addictions or other mental health disorders. These measures should encourage voluntary and non-stigmatizing social participation and necessitate the involvement of post-penitentiary institutions and organizations, not just public entities.

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Rulings

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