

## PREPARATION OF CONVICTS TO BE RELEASED FROM PRISON UNDER ARTICLE 164 EPC

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1.

A penalty of deprivation of liberty (imprisonment), as no other measure of penal repression for the commission of crime, accumulates a series of defects, but up to now, despite the systematically growing catalogue of non-custodial penalties, no efficient measure of penal response to the commission of crime has been worked out to substitute for this penalty. This stimulates the search for such methods of treating convicts in prison that would make it possible, if not to eliminate the dysfunction of penitentiary isolation, to at least limit them and transform prisons into places where a convict may be helped to acquire skills of living in the society without coming into conflict with law. The issues are the subject matter of numerous debates and discussions at conferences, which result in the development of successive versions of rules for working with prisoners. On the global scale, these are the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) of 2015,<sup>1</sup> and on the regional scale, these are the European Prison Rules of 2006<sup>2</sup>.

Both documents unequivocally indicate that today's tasks are to minimise the negative aspects of prison isolation and organise prison life in such a way that it would match the conditions of life in the society. The Mandela Rules emphasise that meeting the objective of the execution of a penalty of deprivation of liberty, which is deemed to be the protection of the society against criminality, may take

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<sup>1</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted on 7 October 2015 by the United Nations General Assembly, available at: [https://www.rpo.gov.pl/sites/default/files/Reguly\\_Mandeli.pdf](https://www.rpo.gov.pl/sites/default/files/Reguly_Mandeli.pdf), in English: [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf).

<sup>2</sup> Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules adopted by the Committee of Ministers on 11 January 2006 at the 952<sup>nd</sup> meeting of the Ministers' Deputies, *Przegląd Więziennictwa Polskiego* No. 72–72, 2011, pp. 33–69.

place only when the applied period of imprisonment, as far as possible, ensures that after release a perpetrator will be eager and able to comply with law, earn the living and live on his/her own (Rule 4.1). In accordance with the European Prison Rules, "All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty" (Rule 6). The above recommendations suggest that the whole period of imprisonment should be used to facilitate a convict's re-adaptation, however, the authors of both documents recommend paying attention to the final period of a convict's imprisonment, namely to the intensification of activities preparing a convict to return to the society. The Mandela Rules (Rule 87) emphasise that "it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society". The European Prison Rules give this period more attention. The authors recommend, as soon as possible after admission, drawing up a report concerning a prisoner's situation, proposed sentence plans and the strategy for preparation for release (Rule 103). Before release, a prisoner should get support in the form of procedures and special programmes that facilitate transfer from prison life to law-abiding life in the society. In case of prisoners serving long-term sentences, undertaking steps to ensure their gradual return to life in a free society means implementation of pre-release programmes or partial or conditional release under supervision combined with efficient social assistance. It is believed that close cooperation between prison authorities with services and agencies that supervise and assist released prisoners to re-establish in the society, workplace and family is essential. Therefore, prison authorities are obliged to ensure that representatives of those services have access to the prison and to prisoners to allow them to develop a programme of post-penitentiary assistance and provide it at the moment of a convict's release from prison (Rule 107).

## 2.

The significance of the preparation of a convict for life after release from prison has been noticed during the work on the Executive Penal Code (EPC) in force. Based on the assumption that "the appropriate preparation of convicts for release from prison may exert significant influence on effective execution of penalty – it may increase it, or quite the opposite, it may sometimes annihilate it", it was decided that the issues must be regulated.<sup>3</sup>

The authors of the Executive Penal Code decided that it was purposeful to define the time necessary to prepare a convict for life after the release. It is a period of six months before the envisaged conditional release or the end of the sentence (Article 164 §1 EPC). It is considered that it is especially important for a convict

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<sup>3</sup> See, *Uzasadnienie rządowego projektu kodeksu karnego wykonawczego* [Justification for the government Bill of Executive Penal Code], [in:] I. Fredrich-Michalska, B. Stachurska-Marcińczak (ed.), *Nowe kodeksy karne – 1997 r. z uzasadnieniami. Kodeks karny, Kodeks postępowania karnego, Kodeks karny wykonawczy* [New criminal codes of 1997 with justifications: Criminal Code, Criminal Procedure Code, Executive Penal Code], Wydawnictwo Prawnicze, Warsaw 1997, p. 560.

in this period to make contact with a court's probation officer or associations, foundations, organisations and institutions whose aim is to assist convicts in social re-adaptation.

It should be noted that it is not a new proposal because similar ones occurred when the Executive Penal Code of 1969 was in force and even were practically implemented in Opolszczyzna (Opole region).<sup>4</sup>

Two entities have been entitled to establish the time necessary to prepare a convict for life after the release. These are a penitentiary committee and a penitentiary court. A penitentiary committee establishes this period when necessary and with a convict's consent. This successive prison's offer of assistance in a convict's social re-adaptation should, in the legislator's opinion, be addressed to those convicts who will have difficulties after release from prison.<sup>5</sup> What will be important for evaluating the "need" for establishing such a period is the information on a convict's family environment, the fulfilment of maintenance/alimony obligations by him, a convict's social contacts, behaviour indicating a potential mental disorder or addiction to alcohol, narcotic drugs or psychotropic substances. Periodic appraisals of a convict's rehabilitation performance<sup>6</sup> and personal background surveys<sup>7</sup> are the source of this information as well as other matters important from the perspective of a convict's return to the society. The information collected by a court's probation officer in the course of interviews conducted in a convict's original environment, which can be ordered by a penitentiary committee (Article 14 §1 EPC), is equally important. A probation officer is in direct contact with a convict's family and can assess the environment a convict is to return to, whether and what kind of assistance he can obtain from his family, especially in the first period after release from prison. Of course, the outcome of psychological tests or psychiatric examinations (if performed) may also be used for the assessment of purposefulness of establishing a period of preparation for release.

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<sup>4</sup> For more, see J. Korecki, *Kara 25 lat pozbawienia wolności w Polsce* [Penalty of 25 years' imprisonment in Poland], Warsaw 1988, p. 200 ff; and by the same author: *Uwagi do kilku rozwiązań projektu kodeksu karnego wykonawczego* [Comments on some solutions of the Bill of Executive Penal Code], *Państwo i Prawo* Vol. 2, 1995, p. 73; *Przygotowanie do wolności skazanych odbywających kary długoterminowe; opolska koncepcja warunkowego przedterminowego zwolnienia* [Preparation of convicts serving long-term sentences for freedom: the Opole region conception of conditional release], [in:] G.B. Szczygieł, P. Hofmański (ed.), *Model społecznej readaptacji w reformie prawa karnego* [Model of social re-adaptation in the criminal law reform], Białystok 1999, pp. 268–270.

<sup>5</sup> W. Liszke, *Przygotowanie skazanego do życia po zwolnieniu z zakładu karnego przez kuratora sądowego* [Preparation of a convict for life after release from prison by a court's probation officer], *Probacja* No. III/IV, 2009, p. 113; M. Wilanowska, *Problematyka stosowania artykułu 164 k.k.w. w świetle czynności wykonywanych przez Służbę Więzienną i kuratorską służbę sądową* [Issues concerning the application of Article 164 EPC in the light of activities performed by Prison Service and court's probation officers], [in:] P. Szczepaniak (ed.), *Polski system penitencjarny. Ujęcie integralno-kulturowe* [Polish penitentiary system: integral and cultural approach], collective work, *Wydawnictwo Forum Penitencjarne*, Warsaw 2013, p. 241.

<sup>6</sup> K. Postulski, *Kodeks karny wykonawczy. Komentarz* [Executive Penal Code: Commentary], 3<sup>rd</sup> edition, Wolters Kluwer, Warsaw 2016, p. 1024.

<sup>7</sup> Announcement of the Minister of Justice of 10 April 2013 on the publication of the uniform text of the ordinance of the Minister of Justice on exerting penitentiary influence in prisons and remand centres, *Journal of Laws* [Dz.U.] of 2013, item 1067.

Having diagnosed a convict's situation and having assessed his needs, a penitentiary committee offers a convict a release preparation period. A convict may accept the offer or reject it.<sup>8</sup> If he accepts it, a penitentiary committee determines the period of preparation for life after release. A convict's consent, as T. Szymanowski<sup>9</sup> notices, to be covered by the programme of preparation for release is significant because making use of numerous and important entitlements, he must make adequate, although informal, decisions on cooperation with prison administration.

According to the doctrine,<sup>10</sup> a convict can also apply for assigning him a period of preparation for release. This stand should be approved of. It finds justification in subjective treatment of a convict and his right to assistance in the change of attitudes (Article 67 EPC). It is also necessary to point out a convict's right to apply to prison administration/authorities (Article 102(10) EPC).<sup>11</sup> It should be remembered that in accordance with Article 164 §1 EPC, the period is assigned "when required" and, having recognised a convict's situation, a penitentiary committee may judge that there is no such need. However, even then a committee should treat a convict's application favourably. This is a convict who knows best what he can face after release from prison, whether he will manage in the first, for sure the most difficult, period after the release. Obviously, one cannot ignore various motives behind a convict's application for establishment of the period of preparation for release, e.g. prospects for obtaining permission to leave prison.

In accordance with Article 164 §2 EPC, a court can also assign a period necessary for preparation for release, provided it recognises it as indispensable. It can do this issuing a decision on conditional release or a refusal to grant conditional release. In either case, a convict's consent is not necessary.<sup>12</sup> The legislator, as A. Kwieciński<sup>13</sup>

<sup>8</sup> A. Kwieciński, *Instytucja odroczonego warunkowego zwolnienia (art. 164 §2 k.k.w.) w procesie społecznej readaptacji skazanych* [Institution of postponed conditional release (Article 164 §2 EPC) in the process of social re-adaptation of convicts], *Probacja* No. 1, 2014, p. 24.

<sup>9</sup> T. Szymanowski, [in:] T. Szymanowski, Z. Świda (ed.), *Kodeks karny wykonawczy. Komentarz* [Executive Penal Code: Commentary], Librata, Warsaw 1998, p. 380.

<sup>10</sup> M. Kiryluk, *Przygotowanie skazanego do życia po zwolnieniu (w trybie art. 164 i 165 k.k.w.)* [Convict's preparation for life after release (in accordance with Articles 164 and 165 EPC)], [in:] *Stan i węzłowe problemy polskiego więziennictwa. Część IV: Wybrane instytucje kodeksu karnego wykonawczego w praktyce penitencjarnej* [State and key problems of Polish prison service. Part IV: Selected institutions of the Executive Penal Code in penitentiary practice], *Biuletyn RPO*, Warsaw No. 42, 2000, p. 356; J. Migdał, *Polski system penitencjarny w latach 1956–2008 w ujęciu doktrynalnym, normatywnym i funkcjonalnym. Kontynuacja czy zmiana?* [Polish penitentiary system in 1956–2008 in doctrinal, normative and functional aspects. Continuation or a change?], *Arche*, Gdańsk 2008, pp. 518–525.

<sup>11</sup> G.B. Szczygieł, *Společna readaptacja skazanych w polskim systemie penitencjarnym* [Social re-adaptation of convicts in the Polish penitentiary system], *Temida* 2, Białystok 2002, p. 188.

<sup>12</sup> See, S. Lelental, *Odroczone warunkowe zwolnienie na czas niezbędny na przygotowanie skazanego do życia po zwolnieniu z zakładu karnego (art. 164–165 k.k.w.)* [Conditional release postponed until the end of period necessary to prepare a convict for life after release from prison (Articles 164–165 EPC)], [in:] G.B. Szczygieł, P. Hofmański (ed.), *Model społecznej readaptacji...* [Model of social re-adaptation...], p. 29; G.B. Szczygieł, *Společna readaptacja skazanych...* [Social re-adaptation...], p. 189; J. Potulski, [in:] J. Lachowski (ed.), *Kodeks karny wykonawczy. Komentarz* [Executive Penal Code: Commentary], 2<sup>nd</sup> edition, C.H. Beck, Warsaw 2016, p. 614; S. Lelental, *Kodeks karny wykonawczy. Komentarz* [Executive Penal Code: Commentary], 4<sup>th</sup> edition, C.H. Beck, Warsaw 2012, p. 746.

<sup>13</sup> A. Kwieciński, *Instytucja odroczonego...* [Institution of postponed...], p. 25.

notices, “does not require that a court hear his (convict’s) opinion on this matter, or his consent”.

Where a penitentiary court decides to conditionally release a convict and assigns in the decision the time necessary to prepare a prisoner for life after the leave, the release decision is not executed until the end of the period. One can speak, as S. Lelental<sup>14</sup> described it, about a “postponed enforceability” of the sentence by the time indicated therein. Obviously, it cannot exceed six months. There may be doubts concerning the purposefulness of a convict’s stay in prison when a positive criminological forecast justifies conditional release. J. Lachowski<sup>15</sup> rightly notes that the concept of positive criminological forecast cannot be identified with a convict’s social re-adaptation when he is freed. “The fact that there is a positive criminological forecast of a convict does not mean, in fact, that the decision on conditional release should be positive. A conclusion that a convict already has his free life organised cannot be drawn from a positive forecast. The postponed conditional release is aimed at preparing a process of social re-adaptation in non-custodial conditions”. It should be mentioned that appropriate preparation of a convict to leave prison and assistance provided in the first period of being free may contribute not only to positive performance in the probation period but also prevent relapse to crime when it ends. Obviously, when a convict does not agree with a court’s decision, he may appeal against the decision on conditional release in accordance with the provisions laid down in Article 162 §2 and §3 EPC.<sup>16</sup>

It is assumed in the doctrine<sup>17</sup> that during the period of a convict’s preparation for release, a court may annul the decision on conditional release in accordance with Article 24 EPC in case new or formerly unknown circumstances essential for the decision are revealed. However, A. Kwieciński<sup>18</sup> warns against excessive rigourism and automatism, and refers to the ruling of the Appellate Court in Kraków, which pointed out that “preparation of a convict for life after conditional release is not aimed at checking his behaviour in prison but at dealing with matters facilitating his social re-adaptation”.

Considering the period to be time necessary to prepare a convict for life after release, one should share S. Lelental’s<sup>19</sup> opinion on the possibility of prolonging (of course, not exceeding six months) or shortening the preparation period in case of the postponed conditional release in accordance with Article 24 EPC. A court may do this provided the activities connected with the preparation of a convict for release and first of all establishing relations with a probation officer or institutions that

<sup>14</sup> S. Lelental, *Kodeks karny wykonawczy...* [Executive Penal Code...], p. 745.

<sup>15</sup> J. Lachowski, *Warunkowe zwolnienie z reszty kary pozbawienia wolności* [Conditional release from imprisonment], C.H. Beck, Warsaw 2010, p. 154.

<sup>16</sup> K. Postulski, *Kodeks karny wykonawczy...* [Executive Penal Code...], p. 1027.

<sup>17</sup> S. Lelental, *Kodeks karny wykonawczy. Komentarz* [Executive Penal Code: Commentary], 5<sup>th</sup> edition, C.H. Beck, Warsaw 2014, p. 552; K. Postulski, *Kodeks karny wykonawczy...* [Executive Penal Code...], p. 1026.

<sup>18</sup> A. Kwieciński, *Instytucja odroczonego...* [Institution of postponed...], p. 25.

<sup>19</sup> S. Lelental, *Odroczone warunkowe zwolnienie...* [Conditional release postponed...], [in:] G.B. Szczygieł, P. Hofmański (ed.), *Model społecznej readaptacji...* [Model of social re-adaptation...], p. 32.

assist prisoners in their social re-adaptation have been performed. In S. Leleń's opinion, a court may take the decision on conditional release in the part concerning the period of preparation for release *ex officio* or on the request from the prison governor, a convict, a probation officer and organisations that offer assistance to convicts in their social re-adaptation.

A court may also assign a period of a convict's preparation for release but deny conditional release. This may mean that a court recognises it to be purposeful to motivate a convict to change his attitude, to come into contact with his relations or to undertake other steps important for the criminological forecast but it does not mean that after the period a convict will be conditionally released.

The assignment of time necessary for the preparation of a convict for life after release is connected with a series of obligations for the prison administration. In accordance with Article 165 §1 EPC, a convict should in this period, as far as possible, serve the sentence in the prison that is closest to his future domicile. It is worth pointing out that a convict should serve the whole sentence in an appropriate type of prison. It explicitly results from the aims of convicts' classification (Article 82 §1 EPC). From the perspective of the aim of the discussed period, the best solution would be, provided it does not pose serious social risk or threat to prison security, to place a convict for the period of preparation for release in an open prison. This type of prison creates broad opportunities to have contact with the world outside prison and brings a convict closer to the life that he will live after release. It should be, first of all, pointed out here that there is a possibility of working outside the prison, taking part in education or training, or other activities outside prison facilities. Unlimited number of visits, where the prison is close to the family's domicile, allows frequent contacts with a convict.

Another task of the prison administration, in accordance with the prison rules for organisation and order<sup>20</sup> (§57.1), is to update data collected during personal background surveys and information on a convict's needs. Verification of the data and information obtained from a convict concerning changes in his life situation that have an impact on the preparation for release allows establishing the scope of necessary assistance that a convict should be provided with. In order to supplement or verify the information collected so far, the prison governor may order the collection of information about a convict by conducting interviews in the original environment by a probation officer, which in many cases can confirm or not the information obtained from convicts.

The administration is also responsible for facilitating a convict's contacts with a probation officer and representatives of foundations, associations, organisations and institutions assisting in social re-adaptation of convicts. This facilitation consists in enabling a probation officer and other entities to meet a convict in the prison.

Directly before release from prison, the prison administration should provide a convict with information, especially addresses and the scope of duties of government

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<sup>20</sup> Regulation of the Minister of Justice of 21 December 2016 on rules for organisation and order concerning execution of a penalty of deprivation of liberty, Journal of Laws [Dz.U.] of 2016, item 2231.

units and territorial self-government, institutions and social organisations offering financial, medical, employment and accommodation as well as legal assistance to the released.

A court's professional probation officer is one of the entities whose duties are to organise and perform activities aimed at assisting a convict in social re-adaptation. The legislator indicates that the duties include undertaking activities aimed at preparing a convict to release from prison (Article 173 §2(12) EPC). The regulation on the manner and mode of performing duties by court's probation officers with respect to executive penal cases (§41)<sup>21</sup> precisely defines a probation officer's duties within activities connected with a convict's preparation for life after release from prison. Having received the decision of a penitentiary committee or a penitentiary court, a probation officer is obliged to come into direct contact with a convict. It should take place in the prison because in accordance with the Act on court's probation officers (Article 9(1)),<sup>22</sup> performing his duties, a probation officer has the right to visit a convict in the prison. During the visit, a probation officer should get acquainted with the documents concerning a convict in order to recognise his family and environment-related situation, difficulties he may face after the release and a convict's needs. Obviously, cooperation with a penitentiary committee will be indispensable. A professional probation officer who is competent with regard to the location of the prison where a convict serves the sentence shall perform the activities connected with the preparation of a convict for life after release from prison. The location is not always a convict's domicile after release. A professional probation officer may then apply to a court or the prison governor to order an interview in the original environment concerning a convict's family and environment-related situation by another probation officer who is competent with regard to a convict's domicile. A probation officer should collect all the information about a convict's family situation and the environment to which he will return before the first meeting with him because then he will be able to confront it with the information from a convict. After the meeting and having diagnosed potential problems and a convict's expectations, a probation officer shall develop a non-custodial programme.

Another task of a court's professional probation officer is to prepare the family and social environment for a convict's return. Thus, it is necessary to meet a convict's family and it seems to be the most appropriate solution to visit the family because then a probation officer can learn about the financial situation and relations between the members. A professional probation officer cooperates with government administration units and territorial self-government, associations, foundations, organisations, institutions and other entities assisting in social re-adaptation of convicts. This cooperation is especially important when establishing, together with a convict, and organising the range of assistance and the way of its provision.

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<sup>21</sup> Regulation of the Minister of Justice of 13 June 2016 on the manner and mode of performing duties by a court's probation officers with respect to executive penal cases, Journal of Laws [Dz.U.] of 2016, item 969.

<sup>22</sup> Act of 27 July 2001 on a court's probation officers, Journal of Laws [Dz.U.] of 2001, no. 98, item 1071 (uniform text).

Obviously, as W. Liszke<sup>23</sup> rightly notes, in the period of the release programme implementation, a probation officer should not act for a convict but only activate and assist him suggesting what activities a convict can undertake and to whom and for what kind of assistance he may apply.

The period of preparation for freedom provides a convict with additional rights but, as it is emphasised in the doctrine,<sup>24</sup> also imposes additional obligations. In accordance with the aim of the period, a convict should demonstrate initiative to come into contact and maintain it with a court's professional probation officer, organisations, associations and foundations whose aim is to assist convicts in their social re-adaptation. A convict, in accordance with the prison rules for organisation and order in relation to execution of the penalty of deprivation of liberty (§58), is obliged to notify about the changes in his life situation that have impact on the preparation for life after release and the establishment of forms and the scope of necessary assistance after release from prison.

A possibility of being granted a permission to leave the prison for the maximum of 14 days (Article 165 §2 EPC) is another important right. This permission may be obtained especially in order to make arrangements connected with future accommodation and employment. T. Szymanowski<sup>25</sup> is right to note that a convict may be granted permission to leave because of other reasons important for the future free life. But not every convict shall be entitled to such permission.

It is worth mentioning that introducing a period of preparation for release, the legislator has not determined conditions for granting permission to leave the prison, indicating only the purpose of this permission. The amendment to the Executive Penal Code of 2003<sup>26</sup> introduced changes in the form of the forecast of a convict's behaviour after release from prison that should be formulated based on a convict's conduct demonstrated in prison.<sup>27</sup> It must be pointed out that in accordance with the regulation on the methods of exerting penitentiary influence in prisons and remand centres (§25 EPC), a criminological and social forecast is developed before granting a convict permission to leave the prison in the period of preparation for release where a convict has not been given a pass in a semi-open or open prison before or awarded permission to meet a close relation or a trustworthy person without supervision, outside the prison for a period not exceeding 30 hours, or permission to leave the prison for a period not exceeding 14 days. If a convict betrays the trust while on leave or using permissions, or if there are changes in

<sup>23</sup> W. Liszke, *Przygotowanie skazanego...* [Preparation of a convict...], p. 119.

<sup>24</sup> E. Rokosz, *Przygotowanie skazanych do zwolnienia. Wyniki badań na temat oddziaływań penitencjarnych w polskich zakładach karnych* [Preparation of convicts for release. Findings of research into penitentiary influence in Polish prisons], *Analizy. Raporty. Ekspertyzy* (Stowarzyszenie Interwencji Prawnej) No. 3, 2010, p. 6.

<sup>25</sup> T. Szymanowski, [in:] T. Szymanowski, Z. Świda (ed.), *Kodeks karny wykonawczy...* [Executive Penal Code...], p. 382.

<sup>26</sup> Act of 24 July 2003 amending the Executive Penal Code and some other acts, *Journal of Laws* [Dz.U.] No. 142, item 1380. See, G.B. Szczygieł, *Zezwolenia na czasowe opuszczenie zakładu karnego w polskim systemie penitencjarnym* [Permission for temporary leave from prison in the Polish penitentiary system], *Temida* 2, Białystok 2013, p. 137.

<sup>27</sup> For more, see G.B. Szczygieł, *Zezwolenia na czasowe...* [Permission for temporary...], pp. 120–129.

a convict's behaviour, his family situation or other important changes in his legal situation, the forecast shall be updated.

In case of "suspended conditional release", as the legislator has granted conditional release, it means that criminological and social forecast gives grounds for the supposition that after release from prison a convict will comply with the legal order. This justifies granting permission to leave the prison. On the other hand, where a court refuses to grant conditional release and decides it is purposeful to assign a period necessary to prepare a convict for release, a forecast does not give grounds for the supposition that a convict will comply with the legal order after release from prison. Of course, this does not exclude a possibility of granting permission to leave the prison but requires its more thorough preparation.

The prison governor shall grant permission to leave. The decision should be in writing and contain information about the time for which a convict has been granted permission and obligations imposed on a convict as well as consequences resulting from failure to comply with them or failure to return to prison. A convict is obliged to promptly report to the police unit operating in the region of his domicile in order to confirm his stay there. The prison governor may oblige a convict to behave in a specific manner, especially to stay in places determined in the permission or to frequently report to the police unit. It is worth emphasising that in case of the discussed permission, especially as it is granted in order to undertake steps to arrange accommodation or employment after release from prison, it seems purposeful to oblige a convict to perform such activities. A convict who has been granted permission to leave may apply in writing for payment of the money from his account. If a convict does not work in prison and does not have any financial resources, he may apply for a benefit. The prison governor may grant a benefit of one-tenth of an average worker's remuneration in accordance with Article 114 EPC.

In case of refusal to grant permission to leave the prison, it seems reasonable to share an opinion that a convict is entitled to appeal<sup>28</sup> in accordance with Article 7 EPC, due to non-conformity of the decision with law, unless the Act stipulates otherwise. Although the decision on granting permission to leave the prison is discretionary, it is not arbitrary and must be based on established facts.<sup>29</sup> The time spent outside prison is not deducted from sentence service, unless a penitentiary judge rules otherwise because a convict has betrayed trust. If, after granting permission to leave

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<sup>28</sup> K. Postulski, *Kodeks karny wykonawczy...* [Executive Penal Code...], p. 1029; Z. Hołda, [in:] Z. Hołda, K. Postulski (ed.), *Kodeks karny wykonawczy. Komentarz* [Executive Penal Code: Commentary], Arche, Gdańsk 2005, pp. 86–87; J. Lachowski, T. Oczkowski, *Skarga skazanego w postępowaniu wykonawczym (art. 7 k.k.w.)* [Convict's appeal in executive procedure (Article 7 EPC)], *Przegląd Więziennictwa Polskiego* No. 60, 2008, p. 18; See a different opinion: T. Szymanowski, [in:] T. Szymanowski, Z. Świda, *Kodeks karny wykonawczy...* [Executive Penal Code...], p. 325; S. Leleńtal, *Skarga skazanego na decyzję organu wykonawczego w polskim prawie karnym wykonawczym* [Convict's appeal against a decision of an executive body in Polish executive penal law], [in:] J. Skorupka (ed.), *Rzetelny proces karny. Księga jubileuszowa Profesor Zofii Świdry* [Fair trial. Professor Zofia Świda jubilee book], Warsaw 2009, pp. 666–667.

<sup>29</sup> See, the Constitutional Tribunal ruling of 29 September 1993, K17/92, OTK 1993, part II, p. 305.

prison, new circumstances occur that justify a supposition that a convict will not comply with the legal order in prison or if he is arrested because of a violation of the legal order, the prison governor shall decide to withdraw the permission.

3.

Defining of the period of preparation for life after release is absolutely justified. It refers to the aim of a penalty of deprivation of liberty and is a successive offer of activities that may assist convicts in social re-adaptation. This kind of help is indispensable because of most convicts' diagnosed adaptation difficulties occurring upon release from prison and connected with such problems as homelessness, no professional experience, addiction to alcohol or narcotic drugs, family conflicts, lack of financial resources, maintenance/alimony-related indebtedness, acquired helplessness, lack of plans for the future, low self-assessment or a low level of social skills such as: assertiveness, self-presentation or teamwork skills.<sup>30</sup> Assistance in solving these problems and activating convicts to solve them is especially important in case of convicts serving long-term imprisonment sentences. These convicts after a few or several years return to a new reality outside prison, new social, economic and family conditions. In fact, the period of preparation for release should be applicable to all convicts. They should serve imprisonment sentence – of course, except for those who pose a serious threat to the society and security in prison – in a semi-open prison, because in such a facility the conditions for serving a sentence are most similar to the conditions outside, and make it possible to activate convicts in preparation for release and teach them to take matters into their own hands.

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## PREPARATION OF CONVICTS TO BE RELEASED FROM PRISON UNDER ARTICLE 164 EPC

### Summary

A penalty of deprivation of liberty (imprisonment), in spite of its numerous deficiencies, will undoubtedly remain in the catalogue of measures of response to crime for a long time. Therefore, a task for today is to minimise the negative aspects of prison isolation and to organise prison life in such a way that it would match the positive conditions of life in the society.

Although the whole stay in prison should be used to facilitate a convict's social re-adaptation, the authors of the Executive Penal Code considered it purposeful to select time necessary for preparing a convict for life after release, in order to undertake activities that may help a convict to re-integrate with the society and function in it without coming into conflict with law.

Key words: penalty of deprivation of liberty (imprisonment), preparation for release from prison, convicts' social re-adaptation

## PRZYGOTOWANIE SKAZANYCH DO OPUSZCZENIA ZAKŁADU KARNEGO W TRYBIE ART. 164 K.K.W.

### Streszczenie

Kara pozbawienia wolności z pewnością, mimo rozlicznych wad, długo jeszcze pozostanie w katalogu środków reakcji na przestępstwo. Zadaniem obecnie jest więc minimalizowanie negatywnych aspektów izolacji więziennej i organizowanie życia w więzieniu, tak by odpowiadało pozytywnym warunkom życia w społeczeństwie. Wprawdzie cały pobyt w zakładzie karnym powinien być wykorzystany w celu ułatwienia skazanemu społecznej readaptacji, jednak twórcy kodeksu karnego wykonawczego uznali za celowe wyodrębnienie czasu niezbędnego do przygotowania skazanego do życia po zwolnieniu, w celu aktywizacji działań mogących pomóc skazanemu w reintegracji ze społeczeństwem i funkcjonowania w nim bez wchodzenia w konflikty z prawem.

Słowa kluczowe: kara pozbawienia wolności, przygotowanie do zwolnienia z zakładu karnego, społeczna readaptacja skazanych