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Administrative and legal status of the Prison Service in Poland – an outline of the issues

Administracyjnoprawny status Służby Więziennej w Polsce – zarys problematyki

The Prison Service is an example of a uniformed and armed apolitical formation. This formation is subordinate to the Minister of Justice and at the same time ensures order and security in the office supporting the Minister of Justice and in the National Public Prosecutor's Office. The Prison Service is among other units of the penitentiary system, the entity of the leading executor of the state penitentiary policy in the execution of the custodial sentence. The Prison Service implements on the principles set out in the Act of 6 June 1997 of the Penal Enforcement Code which functions in the field of the execution of detention on remand and custodial sentences and coercive measures resulting in deprivation of liberty. The article presents the Prison Service in Poland from the perspective of administrative and legal solutions determining the status of this formation.

Key words: Prison Service, administration, direct coercive measures.

Służba Więzienna to przykład umundurowanej i uzbrojonej formacji o charakterze apolitycznym. Formacja ta podlega Ministrowi Sprawiedliwości i jednocześnie zapewnia porządek i bezpieczeństwo w urzędzie obsługującym Ministra Sprawiedliwości oraz w Prokuraturze Krajowej. Służba Więzienna stanowi, obok innych jednostek systemu penitencjarnego, podmiot wiodącego wykonawcy polityki penitencjarnej państwa w wykonywaniu kary pozbawienia wolności. Służba Więzienna realizuje bowiem na zasadach określonych w ustawie z 6 czerwca 1997 r. Kodeks

karny wykonawczy funkcje w zakresie wykonywania tymczasowego aresztowania oraz kar pozbawienia wolności i środków przymusu skutkujących pozbawieniem wolności. Przedmiotowy artykuł ukazuje Służbę Więzienną w Polsce w perspektywie administracyjnoprawnych rozwiązań określających status tej formacji.

Słowa kluczowe: Służba Więzienna, administracja, środki przymusu bezpośredniego.

Administration of the Prison Service

The legal activity of the Prison Service in Poland has its legal basis in the Act of 9 April 2010 on the Prison Service. The Prison Service was organized in a manner characteristic of uniformed formations. And so, from the administrative and legal point of view, its organs are: the General Director of the Prison Service, the District Inspectorate's Director of the Prison Service, the director of the custody suite and the director of the remand center, as well as Rector-Commandant of the University of the Prison Service, the Commandant of the Central Prison Service Training Center, the commandant of the Prison Service Training Center and the commandant of the Staff Training Center. In organizational units there are officers on duty and employees may be employed. The Minister of Justice determines, by way of a regulation, positions in which only officers may perform service, taking into account organizational units and types of these positions and the specificity of tasks at individual positions (Pływaczewski, Pomiankiewicz, 2014; Mazuryk, Zoń, 2013; Ciosek, 2003).

Pursuant to the Act on the Prison Service, the scope of activities of the General Director includes in particular:

- determining the directions of penitentiary interactions and supervision over their implementation;
- creating conditions for the correct and lawful execution of custodial sentences and pre-trial detention;
- establishing the rules of technical protection and safety in organizational units, the type of armaments and protection measures used by officers in various types of organizational units, and the detailed manner of using animals to perform the tasks of the Prison Service;

- establishing methods and forms of activity in the field of protection and defense preparations in subordinate organizational units; participation in works on the draft state budget in the field of the prison system and the development of a plan of incomes and budgetary expenses of the prison system within the amounts resulting from the budget act;
- supervising the activities of district inspectorates of the Prison Service, the Central Training Center of the Prison Service, training centers of the Prison Service and centers for training staff of the Prison Service directly subordinate to him and supervising the organization and implementation of tasks by other organizational units;
- shaping the personnel policy in the Prison Service;
- determining the number of positions and positions in the Central Board of the Prison;
- service, the number of positions in district inspectorates of the Prison Service and the total number of positions in subordinate organizational units;
- establishing initial, vocational and specialist training programs in the Prison Service for officers and employees;
- determining the detailed method of managing assets and the rational use of funds allocated to the operation of the Prison Service;
- initiating research on the tasks of the Prison Service and cooperation with research institutions in this area;
- determining the methods and forms of performing official tasks by officers within the scope not covered by the regulations issued on the basis of this Act;
- implementation of tasks resulting from other acts (Przesławski, 2012).
As for the scope of activities of the District Inspectorate's Director of the Prison Service, it includes in particular:
 - coordination of penitentiary interactions carried out in subordinate organizational units and supervision over them, as well as coordination of the manner and supervision over the conditions of proper and lawful execution of imprisonment sentences and temporary detention in subordinate organizational units and control of the observance of the rights of persons deprived of liberty in them;
 - organizing a system of cooperation of subordinate organizational units in maintaining security and order within them, and cooperation in this respect with the Police and other services, as well as institutions and bodies of state protection;

- supervision and coordination of activities in the field of protection and defense preparations in subordinate organizational units; determining the area of detention for remand prisoners in pre-trial detention centers, supervising the compliance with the designated purpose of pre-trial detention centers and prisons, as well as organizing and coordinating the transport of persons deprived of liberty;
- establishing temporary accommodation units for convicts outside the subordinate prisons and pre-trial detention centers;
- developing a financial plan for budget revenues and expenses for the District Inspectorate of the Prison Service and subordinate organizational units;
- supervising the activities of subordinate prisons and pre-trial detention centers, centers for training staff of the Prison Service and prison workplaces operating at subordinate organizational units; determining the number of positions in the district inspectorate of the Prison Service and the number of positions in subordinate organizational units;
- implementation of tasks resulting from other acts.

On the other hand, the scope of activities of the director of a penitentiary facility or detention center includes in particular:

- coordination and supervision of penitentiary interactions conducted in a subordinate organizational unit;
- ensuring the correct and lawful execution of imprisonment sentences and pre-trial detention as well as ensuring safety and order in a subordinate organizational unit;
- supervising schools and medical entities operating within the prison and pre-trial detention center;
- rational use of financial resources; ensuring the selection and use of staff adequate to the needs, constant improvement of their qualifications, proper performance of duties and discipline;
- determining the number of positions in a subordinate organizational unit;
- implementation of tasks resulting from other acts.

The scope of activities of the commandants of individual centers includes in particular:

- ensuring appropriate training and professional development conditions for officers and employees; coordination, supervision and responsibility for training and professional development carried out in the subordinate center;

- ensuring safety and order in the subordinate center;
- implementation of tasks in the field of protection matters and defense preparations;
- ensuring the selection and use of staff adequate to the needs, constant improvement of their qualifications, proper performance of duties and discipline;
- determining the number of positions in the center and carrying out tasks resulting from other acts.

In turn, the organizational units of the Prison Service include: the Central Board of the Prison Service, district inspectorates of the Prison Service, prisons and pre-trial detention centers, the Central Training Center of the Prison Service and training centers of the Prison Service and centers for training staff for the Prison Service. It should be noted that within prisons and pre-trial detention centers, schools and medical entities within the meaning of the provisions on medical activity may also operate, if necessary, and within the Central Training Center of the Prison Service and training centers of the Prison Service and centers for training staff of the Prison Service of units. organizational – medical entities (Jurgilewicz, 2017).

It is worth adding that along with the amendment to the Act on the Prison Service, by way of the Act of March 22, 2018 on the amendment to the Act on the Prison Service and certain other acts, the organizational unit of the Prison Service, headed by the Rector-Commandant, also became the organizational unit of the Prison Service. The scope of activities of the Rector-Commandant includes:

- ensuring appropriate conditions for the implementation of studies, postgraduate studies, training and professional development;
- coordination, supervision and responsibility for studies, training and professional development conducted at the University;
- implementation of tasks in the field of protection matters and defense preparations;
- ensuring the selection and use of staff adequate to the needs, constant improvement of their qualifications, proper performance of duties and discipline;
- determining the number of positions at the University;
- implementation of tasks resulting from other acts.

However, what is worth adding, among the scope of activities of commandants of training centers of the Prison Service, in particular:

- ensuring appropriate training and professional development conditions for officers and employees;
- coordination, supervision and responsibility for training and professional development carried out in a subordinate center;
- ensuring safety and order in the subordinate center;
- implementation of tasks in the field of protection matters and defense preparations;
- ensuring the selection and use of staff adequate to the needs, constant improvement of their qualifications, proper performance of duties and discipline;
- determining the number of positions in the center;
- implementation of tasks resulting from other acts.

The scope of basic tasks of the Prison Service

The tasks of the Prison Service were defined by the legislator in the Act on the Prison Service. Thus, the basic tasks of the formation in question include:

- conducting penitentiary and social rehabilitation activities towards persons sentenced to imprisonment, primarily by organizing work conducive to acquiring professional qualifications, teaching, cultural and educational activities, activities in the field of physical culture and sports, and specialized therapeutic activities;
- carrying out pre-trial detention in a manner securing the proper course of criminal proceedings for a crime or a fiscal offense;
- ensuring that persons sentenced to imprisonment or remand prisoners, as well as persons against whom imprisonment sentences and coercive measures resulting in deprivation of liberty are carried out, respect their rights, especially humane living conditions, respect for dignity, health and religious care;
- humane treatment of persons deprived of their liberty;
- protection of the public against perpetrators of fiscal crimes or offenses incarcerated in prisons and pre-trial detention centers;
- ensuring order and security in prisons and pre-trial detention centers;
- keeping the Central Database of Persons Imprisoned of Freedom
- execution in the territory of the Republic of Poland of pre-trial detention, custodial sentences and coercive measures resulting in

deprivation of liberty, if they are to be performed in prisons and remand centers and if they result from the implementation of a decision issued by a competent authority;

- cooperation with relevant formations of other countries and with international organizations on the basis of international agreements (Malec, 2018).

It is worth adding that the Prison Service, in order to implement its statutory tasks under the Act on the Prison Service and separate acts, is entitled to process information other than personal data and personal data specified in the Act on the protection of personal data processed in connection with the prevention and combating of crime that are necessary for the accomplishment of these tasks.

Although the cooperation of the Prison Service with the Police is not an example of a task that the legislator literally indicated in the Act on the Prison Guard, it is nevertheless worth emphasizing that in the event of a threat or breach of the security of an organizational unit or convoy, if security cannot be ensured by its own efforts and resources, the Service The prisoner cooperates with the Police. The Police Forces may be summoned in the event of a threat or breach of the security of an organizational unit or a convoy, in particular related to the preparation, attempted or execution of a terrorist attack, assault, rebellion, collective escape of inmates, crowd intrusion, fire, catastrophe or natural disaster. On the other hand, depending on the degree and type of the previously indicated threat, the cooperation of the Police may consist in providing information that may be important for the security of an organizational unit or persons deprived of liberty, securing the area of the unit or convoy from the outside, introducing Police forces into the area of an organizational unit, restoring order on the premises of the unit or in its vicinity, strengthening the forces of the Prison Service, repelling an attack, organizing a pursuit, apprehending people deprived of their liberty or their evacuation.

Powers of the Prison Service officers

Officers of the Prison Service, as part of their official duties, were equipped with powers corresponding to the nature of their work. Due to the fact that prison officers are exposed to various kinds of dangers

from inmates, the catalog of their powers is imperative, as their application encroaches on the rights and freedoms of individuals deprived of their liberty.

Thus, officers of the Prison Service have the right to:

- ID cards:
 - about persons applying for admission and leaving the premises of organizational units and depositing identity documents of persons staying on the premises of the organizational unit,
 - officers and employees entering and leaving the organizational unit and requests from these persons to deposit dangerous items and prohibited items,
- making a personal inspection of the above-mentioned people and checking their clothes, shoes and checking the contents of their luggage,
- checking entering and leaving vehicles, as well as their loads, also with the use of technical devices and special dogs trained in the search for narcotic drugs and psychotropic substances or explosives;
- summoning people disturbing the peace and order in the immediate vicinity or on the premises of an organizational unit, establishing illegal contacts with persons deprived of their liberty or attempting to deliver any items to the premises of the organizational entity without the permission of officers, to refrain from such behavior;
- arrest, on the premises of an organizational unit, in order to immediately hand over to the Police, persons for whom there is a justified suspicion of committing a prohibited act under penalty of a penalty;
- removal from the premises of the organizational unit of a person who does not comply with the order issued on the basis of applicable regulations;
- detention of persons deprived of their liberty who:
 - have escaped from a pre-trial detention center or prison, or during escort or employment;
 - on the basis of the permission of the competent authority, they left the detention center or the prison and did not return to it within the prescribed period, using the permit to temporarily leave the detention center or the prison without the officer's convoy;
- demand the necessary help from police officers, Border Guards and soldiers of the Military Gendarmerie, as well as requesting other authorities for the protection of public order and state security or any

person for emergency assistance under applicable law (Malec, 2018; Bulenda, Musidłowski, 2013).

It should be added that a personal inspection carried out by a Prison Service officer may include: body inspection, oral cavity, nose, ear and hair inspection or underwear, and, in particularly justified cases, private places. The personal control is carried out by at least two officers of the same sex as the controlled person, in a separate room not accessible to outsiders during the control. On the other hand, when checking underwear or intimate places, the controlled person should be partially dressed. Nevertheless, the obligation to undergo a personal inspection and control of clothes and shoes does not apply to: the President of the Republic of Poland, the Prime Minister, members of the Council of Ministers, the Ombudsman, the Ombudsman for Children, the President of the Office for Personal Data Protection, as well as persons enjoying parliamentary immunity, judicial or prosecutor's office and persons enjoying diplomatic or consular immunities under statutes, international agreements or generally recognized international customs.

Coercive measures and firearms used by officers of the Prison Service

Pursuant to the Act of May 24, 2013 on measures of direct coercion and firearms, PS officers in the event of the need to take at least one of the following actions, i.e.:

- enforcing the behavior required by law in accordance with the instruction issued by the authorized person;
- to counter a direct, unlawful attempt on the life, health or freedom of an entitled person or other person;
- counteracting activities aimed directly at an attempt on the life, health or freedom of the entitled person or other person;
- counteracting violation of public order or safety; counteracting a direct attack on the areas, objects or devices protected by the authorized person; protection of order or security in areas or facilities protected by the entitled person;
- counteracting property damage;
- ensuring the safety of the convoy or escort;

stopping a person, preventing his escape or pursuit of that person;

- overcoming passive or active resistance or counteracting activities aimed at self-harm – have the right to use or use means of direct coercion, i.e. :
 - physical strength (in the form of techniques: transport, defense, attack or incapacitation),
 - handcuffs (put on: arms, legs or bonded),
 - restraining belt,
 - safety helmet,
 - truncheon,
 - water paralyzing agents,
 - service dog,
 - non-penetrating missiles,
 - chemical incapacitating agents (in the form of: hand-held incapacitating substances throwers, tear grenades, other devices designed to throw incapacitating agents),
 - security cell (Jurgilewicz, 2017).

In addition, Prison Service officers also have the right to use firearms in the event of at least one of the following cases, i.e.

- the necessity to counteract a direct, unlawful attack on: the life, health or freedom of the entitled person or another person, or the need to counteract activities aimed directly at such an attack or important objects, devices or areas, or the necessity to counteract activities aimed directly at such an attack or the safety of a convoy or escort;
- the necessity to resist a person: who does not comply with the call to immediately abandon a firearm, explosive or other dangerous object, the use of which may endanger the life, health or freedom of the entitled person or other person, or who tries to unlawfully take the firearm from the holder or other person entitled to possess it;
- direct pursuit of a person against whom the use of a firearm was permitted in the cases specified in the Act on measures of direct coercion and firearms;
- the necessity to prevent the escape of a detained person from a pre-trial detention center or a prison and a person escorted, as well as to pursue this person.

On the other hand, the use of firearms by Prison Service officers may take place in the event of the need to alert or call for help or to fire a warning shot (Jurgilewicz, 2017).

Summary

The Prison Service is an example of a formation whose functioning is aimed at, apart from carrying out the penalty of imprisonment against persons sentenced to such a penalty, also minimizing the objective and potential threats to society in the state that arise in connection with the phenomenon of crime justifying the need to isolate the perpetrators of prohibited acts.

As the analysis shows, both the organization of the Prison Service and the scope of powers of its officers enable the optimal implementation of the statutory tasks of this formation. Nevertheless, as a result of the dynamically changing reality, there is a need to constantly adapt legislative solutions to the current needs, which are also constantly evolving in the prison sector.

Bibliography

- Ciosek M., *Izolacja więzienna*, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2003.
- Jurgilewicz M., *Rola podmiotów uprawnionych do użycia lub wykorzystania środków przymusu bezpośredniego i broni palnej w ochronie bezpieczeństwa i porządku publicznego*, Wydawnictwo Uniwersytetu Przyrodniczo Humanistycznego w Siedlcach, Siedlce 2017.
- Malec N., *Rola służby więziennej w zapewnieniu bezpieczeństwa w jednostkach penitencjarnych w Polsce*, Wydawnictwo Uniwersytetu Przyrodniczo Humanistycznego w Siedlcach, Siedlce 2018.
- Mazuryk M., Zoń M. (red.), *Służba Więzienna. Komentarz*, Wolters Kluwer, Warszawa 2013.
- Pływaczewski W., Pomiankiewicz J., *Więziennictwo jako element systemu bezpieczeństwa wewnętrznego państwa – wariant polski i aspekty międzynarodowe*, „Przegląd Więziennictwa Polskiego” 2014, nr 82.
- Przesławski T., *Służba Więzienna w Polsce. Administracja i podstawy działania*, Wydawnictwo Uniwersytetu Warszawskiego, Warszawa 2012.

Legal acts:

Act of 6 June 1997 *Executive Penal Code*.

Act of 9 April 2010 *Service Prison*.

Act of 24 May 2013 *on measures of direct coercion and firearms*.

Act of 22 March 2018 on the amendment to the Act on the Prison Service and certain other acts.