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The institution of conditional early release in the Polish and Hungarian penitentiary systems – research report

Instytucja warunkowego przedterminowego zwolnienia w polskim i węgierskim systemie penitencjarnym – raport z badań

In some of the world's penitentiary systems, one of the alternative measures to the absolute penalty of imprisonment is the institution of parole, which allows for early release from prison. The subject of considerations in this study are three fundamental problems.

Initially, the authors wanted to illustrate the legal regulations and premises regarding the possibility of applying conditional early release. The discussion of this issue is preceded by the presentation of the historical background showing the establishment of this institution in the course of changes taking place in the functioning of prison systems. Secondly, based on the statistical data of the Polish and Hungarian penitentiary services, the authors present selected information on the population of prisoners applying for parole. The study closes with the third problem, in which a discussion on the possibilities related to the use of this alternative measure in relation to the absolute penalty of imprisonment was undertaken.

Key words: penitentiary system in Poland and Hungary, executive penal law, penitentiary court, institution of conditional early release, convict.

W niektórych światowych systemach penitencjarnych wśród środków alternatywnych wobec bezwzględnej kary pozbawienia wolności można

wymienić instytucję warunkowego przedterminowego zwolnienia, która pozwala na wcześniejsze zwolnienie z zakładu karnego. Przedmiotem rozważań w niniejszym opracowaniu uczyniono trzy zasadnicze problemy. Po pierwsze, autorzy chcieli ukazać regulacje prawne oraz przesłanki dotyczące możliwości stosowania warunkowego przedterminowego zwolnienia. Omówienie tej kwestii poprzedzone jest zaprezentowaniem tła historycznego ukazującego powstanie tej instytucji na przestrzeni przemian zachodzących w funkcjonowaniu systemów więziennictwa. Po drugie, w oparciu o dane statystyczne polskich i węgierskich służb penitencjarnych, autorzy zaprezentowali wybrane informacje na temat populacji więźniów ubiegających się o skorzystanie z warunkowego przedterminowego zwolnienia. Opracowanie zamyka trzeci problem, w którym podjęto dyskusję na temat możliwości związanych ze stosowaniem tego alternatywnego środka wobec bezwzględnej kary pozbawienia wolności.

Słowa kluczowe: system penitencjarny w Polsce i na Węgrzech, prawo karne wykonawcze, sąd penitencjarny, instytucja warunkowego przedterminowego zwolnienia, skazany.

Introduction

Prisons have existed since ancient times, primarily for the purpose of isolating perpetrators of crimes from society. Originally, these institutions had a purely punitive function, and for many people, a stay in them usually ended with loss of health and led to death. The Code of Hammurabi occupies a special position in the development of human history. As the first legal act, it regulated the principles of just retaliation for the crime committed. The famous principle of retributive justice “an eye for an eye, a tooth for a tooth” also appears in the Book of Exodus. In the period of antiquity, in the societies of China, Egypt, Greece or Rome, those who committed various crimes were punished with extreme severity¹. The imprisonment, in very inhumane conditions, the perpetrator was in retaliation for the act he had committed against society. The prospect of convicts being released from prison helped them overcome

¹ M. Pędracki, *Przepisy prawne najstarszych „kodeksów” mezopotamskich ustanawiające kary dla ludzi wolnych*, [w:] „Analecta” 1997, nr 6, z. 2, s. 9.

the difficulties associated with solitary confinement. It also provided hope for facing difficult situations, in light of the fact that staying in a solitary confinement causes a number of negative feelings related to a longing for lost freedom. The severity of a prison sentence can be evidenced by the psychological consequences of being in prison, including: the process of stigmatization, standardization or degradation, but also many other negative effects of isolation². The evolution of imprisonment over the centuries has resulted in a change in the conception of punishment for offenders. This has enabled the prison system to bring about a number of positive changes in the conditions of serving a sentence by introducing, inter alia, the institution of conditional early release. We would like to illustrate the historical outline of the early development of this institution.

The beginnings of the institution of conditional early release in Poland

In the medieval era, the punishment was a form of repression. In Poland, the most well-known and applied punishments against prisoners were mainly corporal punishments, measured in a variety of forms, such as the use of caning punishment or mutilation. The primary type of punishment for committing the most serious crimes against prisoners was capital punishment. Far less lenient sanctions were imposed on prisoners who committed minor offenses. Against them, isolation was applied by placing in the “lower tower” as well as the “upper tower”³.

The punishment in the “lower tower” consisted of placing the convict in a room located about ten meters underground, in difficult, cold and damp conditions. Nobody cared about their mental and physical condition, the time of incarceration of the convict in the lower underworld was one year and six weeks⁴. At that time, the convicts could only live on bread and water, which certainly affected the deterioration of their health. Many of the prisoners serving the sentence of the “lower tower” did not survive the entire stay there due to the prevailing severe conditions. A slightly

² M. Ciosek, *Psychologia sądowa i penitencjarna*, Wydawnictwo Prawnicze PWN, Warszawa 2001, s. 216-217.

³ J. Pomiankiewicz, *Zarys historii więziennictwa w Polsce*, [w:] T. Szymanowski, *Prawo karne wykonawcze z elementami polityki karnej i penitencjarnej*, Warszawa 2017, s. 197.

⁴ M. Czerwiec, *Więzioznawstwo. Zarys rozwoju więziennictwa*, Warszawa 1958, s. 21.

milder form of punishment was the already mentioned punishment of “upper tower”, which was imposed on criminals of noble origin. The duration of this sanction ranged from one hour to one year and six weeks. In the upper tower there were much better living conditions because this room was equipped with furniture, stoves or other necessary equipment. Individuals served their sentence there at their own expense, with the ability to have their own food, visits from family, a doctor, or a priest. Placing a prisoner in the upper tower was meant to provoke reflection and penance in him⁵. At the end of the eighteenth century, there was criticism of the conditions of execution of the tower penalty in society. It was postulated to soften it, especially the conditions that prevailed in its lower variety. On the initiative of the Grand Marshal of the Crown Stanisław Lubomirski, in 1769 living conditions were improved in the lower tower by placing a window, stove and toilet⁶. This gave rise to significant changes in the views on the institution of prison sentence. In the Republic of Poland in the second half of the eighteenth century, the Marshal’s prison in Warsaw is pointed to as an example of a model prison. It had the character of a public prison, in which there were many separate rooms in which each prisoner had his own place marked with a number. The convicts tried to provide a system of treatment, the possibility of maintaining hygiene and to place them in cells in such a way as to prevent their possible disputes and quarrels. The incarcerated individuals were given access to religious services and support. Catholics were able to use the prison chapel, while convicted individuals were also allowed to receive visits from clergy of other denominations. The living conditions in the prison were good, with inmates staying in heated rooms, receiving regular warm meals, being allowed to receive visits from relatives and friends, having the right to own their own underwear, clothing, and food, as well as being able to correspond and even file complaints about improper behavior by the prison guards⁷. The progress of civilization and the development of society that accompanied it, meant that the harsh and repressive policy of punishment, which did not fulfill its correctional role, was directed towards educational and resocialization interventions

⁵ K. Pawlak, *Za kratami więzień i drutami obozów*, Kalisz 1999, s. 10-11.

⁶ J. Rafacz, *Dawne Polskie Prawo Karne, część ogólna*, Warszawa 1932, s. 138.

⁷ K. Pawlak, *Za kratami ...*, s. 14; J. Czołgoszewski, *Powstanie i działalność pierwszego nowoczesnego więzienia w I Rzeczypospolitej*, [w:] “Lubelski Rocznik Pedagogiczny” 2016, t. XXXV, z. 2, s. 149-157.

aimed at returning the offender to society⁸. Within the framework of this policy, improvements were made not only to the social and living conditions of serving sentences, but also the need to work with prisoners was recognized and noted. In accordance with numerous experiences with criminals, the idea of educational work was undertaken, which in its assumptions includes the institution of conditional early release from prison, from the rest of the prison sentence.

A significant date associated with the beginning of prison in Poland is February 8, 1919. This date is linked with the issuance by Józef Piłsudski, the Chief of State, of the *Decree on temporary prison regulations*⁹. It was one of the first legal acts in the reborn Republic of Poland allowing to build the foundations of the Polish prison system¹⁰. The issue of conditional early release was introduced into the Polish prison until 1927 by the *Regulation of the President of the Republic of Poland dated January 19, 1927, on the early release of individuals serving a sentence of imprisonment*¹¹. According to Article 1 of that provision, those sentenced to imprisonment may be released early if they have already served two thirds, but at least six months of the sentence imposed, and during that time they have been doing well. Prisoners sentenced to life imprisonment may be released on parole if they have served not less than fifteen years. Convicts who have been commuted by an act of clemency to imprisonment may also be released early. In accordance with Article 4 of the aforementioned regulation, parole is ordered and revoked by the Minister of Justice, who may delegate his or her powers in this regard to the prosecutor's office in whole or in part. Before ordering parole, the opinion of the prison management must be heard. In case of refusal of parole, the prisoner may submit a new request no earlier than six months after the date of submission of the previous request.

The first Polish Penal Code from 1932 (Regulation of the President of the Republic of Poland of July 11, 1932, the Penal Code)¹² regulated the institution of conditional early release in Chapter X. Article 65 of

⁸ K. Wierzbicki, *Problematyka aksjologiczno-wychowawcza w profilaktyce społecznej i resocjalizacji. Wprowadzenie do dyskusji*, [w:] „The Prison Systems Review” 2020, nr 107, s. 135-142.

⁹ Dekret w sprawie tymczasowych przepisów więziennych, Dz.Pr.P.P. z 1919 r., nr 15, poz. 202.

¹⁰ R. Maleszyk, *Więziennictwo polskie na tle dziejów państwa w latach 1918-1956*, [w:] „Przegląd Więziennictwa Polskiego” 2009, nr 62-63, s. 9-32.

¹¹ Rozporządzenie Prezydenta Rzeczypospolitej z dnia 19 stycznia 1927 r. o zwolnieniu przedterminowem osób odbywających karę pozbawienia wolności, Dz. U. z 1927, Nr 5, poz. 25.

¹² Dz. U. z 1932 r., Nr 60, poz. 571.

the Penal Code from 1932 indicated as the substantive prerequisites for applying conditional early release to an offender the behavior during the sentence and personal characteristics of the offender, which suggest that the offender will not commit a new crime. The decision on conditional release was made by the Minister of Justice, who could delegate his or her authority in this regard to prosecutors. Before issuing a decision on conditional early release, the opinion of the prison management had to be heard, and the decision itself was non-appealable.

The above provisions were repealed by the Act of 31 October 1951 on conditional early release for persons serving a prison sentence¹³. According to Article 1 of the said Act, a convicted person could be conditionally released from serving the rest of his sentence if his conduct and conscientious attitude to work, as confirmed by the opinion of the prison authorities, allowed to assume that after his release he would lead an honest life of a working person. In accordance with the provisions of the above-mentioned Act, the granting of conditional early release was to be decided by the provincial court, provided that the sentence imposed did not exceed 1 year. In other cases, conditional release was ordered by the Attorney General, who could delegate his powers to subordinate bodies.

In the next legal act – the Act of 19 April 1969 Penal Code – conditional early release is regulated in Chapter XII. Pursuant to Article 90 § 1 of the Penal Code of 1969¹⁴, a person sentenced to imprisonment could be conditionally released from serving the rest of the sentence if his characteristics and personal conditions, his way of life before committing the crime and his behavior after committing the crime. In addition, especially during the period of imprisonment, they justify the assumption that the offender will comply with the legal order after his release, and in particular will not re-commit the crime and, despite the failure to execute the sentence in full, its objectives have been achieved.

The institution of conditional early release in practice

The institution of conditional release in the currently applicable Penal Code of 1997¹⁵ is regulated in provisions of Articles 77-78 of this Code.

¹³ Dz. U. z 1951 r., Nr 58, poz. 399.

¹⁴ Dz. U. z 1969 r., Nr 13, poz. 94.

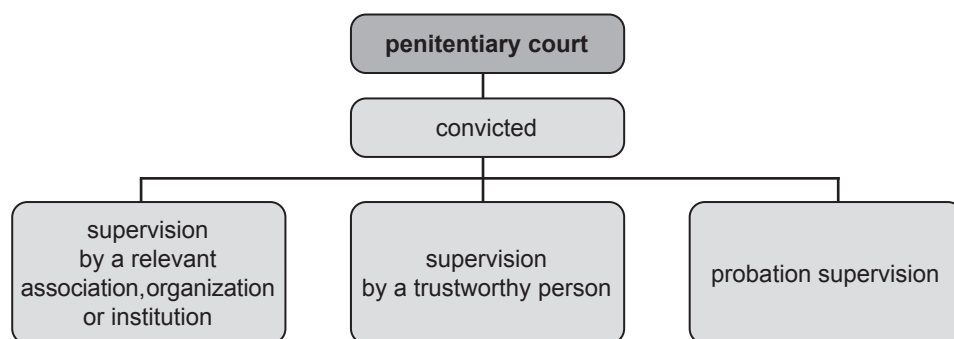
¹⁵ Dz. U. z 2022 r., poz. 1138.

According to the wording of Article 77 of the Penal Code, the material condition for granting conditional early release is a justified belief that the offender will respect the legal order, in particular, will not commit another offense, determined based on the attitude, characteristics, and personal circumstances of the commission of the offense, as well as the behavior of the convicted person after its commission and during the sentence served.

The issue related to the institution of conditional early release in the Polish penitentiary system has also been defined in the Act of June 6, 1997, the Penal Enforcement Code (*Ustawie z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*)¹⁶. In accordance with Art. 159 (1) of the aforementioned legal act, the penitentiary court may, during the probation period, place a conditionally released person under the supervision of a court probation officer, a trustworthy person, an association, organization, or institution whose activity involves the care of upbringing, prevention of demoralization or assistance to convicts, and impose specific obligations on them.

The court's powers in this regard are presented in the form of a diagram below.

Figure 1. Supervision of a conditionally released convict. Developed on the basis of the provisions of the Act of June 6, 1997 – Executive Penal Code



Among the obligations that the penitentiary court may impose on the convicted person is¹⁷ the need to inform the court or the probation

¹⁶ Dz. U. z 2023 r., poz. 127, z 2022 r., poz. 2600.

¹⁷ Art. 72 § 1– ustawa z dnia 6 czerwca 1997 r. – Kodeks karny.

officer about the course of the probation period; apologize to the victim; perform his obligation to support another person; perform gainful employment, study or preparation for a profession; refrain from abusing alcohol or other intoxicants; undergo addiction therapy; undergo therapy, in particular psychotherapy or psychoeducation; participation in corrective and educational activities; refrain from being in certain environments or places; refrain from contacting the victim or other persons in a certain way or approaching the victim or other persons; leave the premises occupied jointly with the aggrieved party; other appropriate proceedings during the probation period which may prevent the offence from being committed again – at least one of the obligations being imposed, and if the damage caused by the offence for which the convicted person is serving his sentence has not been compensated, a pecuniary allowance must be ordered or the convicted person must be ordered to compensate for the damage caused by the offence in whole or in part, unless a compensatory measure has been ordered.

It is worth pointing out that in the case of a convicted person for an offence specified in Articles 197-203 of the Penal Code, committed in connection with disorders of sexual preference, a juvenile offender of an intentional crime, an offender specified in Article 64 of the Penal Code¹⁸, as well as a person sentenced to life imprisonment, it is obligatory to place him under supervision.

A conditionally released person who has been obliged to perform the duties related to the probation period and has not been placed under supervision is obliged to report immediately, and at the latest within 7 days of release from prison, to the probation officer of the district court in whose district he will have his permanent residence; report to the probation officer within the time limits specified by the probation officer and provide explanations as to the probation period; not to change the place of permanent residence without the consent of the court and to perform the duties imposed on him – about which the court instructs the conditionally released person.

The key premise in the case of parole seems to be the offender's behaviour while serving his sentence. In assessing whether this condition

¹⁸ If an offender sentenced to the penalty of deprivation of liberty for an offence committed with intent, during the 5 year period after having served at least 6 months of the penalty, commits an intentional offence similar to the offence for which he had been sentenced, the court may impose the penalty of deprivation of liberty, prescribed for the offence committed, within the statutory penalty further increased by a half.

is met, the attitude of the convicted person to the established internal order in prison, the attitude to work and education, participation in rehabilitation programs, attitude to fellow prisoners and to Prison Service officers will be important.

In harmony with Art. 160 § 1 of the Penal Enforcement Code, conditional release is decided by the court of criminal sentences at a session that should take place in a prison. The public prosecutor takes part in the hearing, and the convicted person and the defense counsel are entitled to attend the hearing, as well as other persons who have the right to apply for conditional release, if they have made such a request. An application for parole may also be submitted by the director of a prison or a probation officer. If the sentence imposed or the sum of the sentences does not exceed 3 years of imprisonment, the application of the convicted person or his lawyer, submitted before the expiry of 3 months from the issuance of the decision refusing conditional release, is not considered until the end of this period. If the sentence imposed or the sum of the sentences exceeds 3 years of imprisonment, the application of the convicted person or his lawyer, submitted before the expiry of 6 months from the issuance of the decision refusing conditional release, is not considered until the end of this period.

The director of the prison, when submitting an application for conditional release, shall at the same time send an opinion drawn up by the prison administration containing, in particular, a criminological and social forecast. In other cases, the director of the prison sends this opinion at the request of the court for sentences or at the request of the convicted person applying for conditional release.

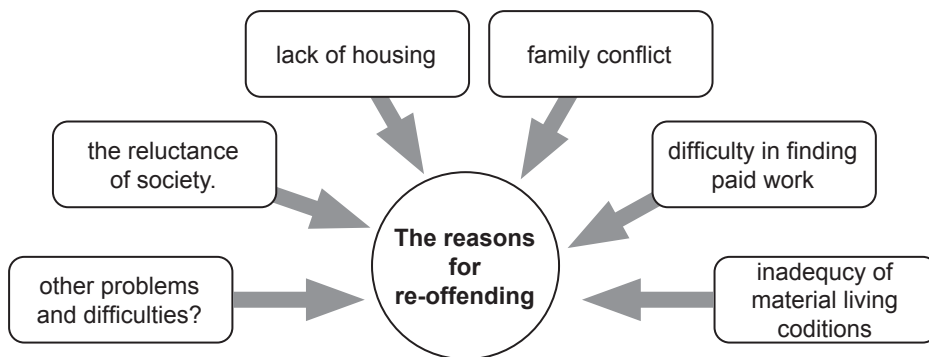
According to the research conducted by H. Machel, among the reasons for re-offending are indicated certain social conditions, related to the difficulty in finding paid work or the inability to take it, insufficient material conditions hindering existence, conflict with family, lack of housing or any accommodation, reluctance on the part of the social environment, remaining beyond any social control¹⁹. Therefore, knowledge of the situation of the convicted person will constitute important information for the court to decide whether or not to grant conditional release.

¹⁹ H. Machel, *Wieżenie jako instytucja karna i resocjalizacyjna*, Gdańsk 2003, s. 298.

The diagnostic and prognostic issues of future prisoner behavior are currently one of the most difficult practical problems related to determining the risk of recidivism, the likelihood of re-offending. As K. Wierzbicki notes, the population of people deprived of liberty is generally characterized by a low level of general education and vocational preparation. The possibility of filling gaps, gaining qualifications, apprenticeships and acquiring specific skills is one of the conditions for proper social adaptation after leaving a penitentiary unit²⁰.

Let us examine the important elements that the criminological and social predictions of the convicted person should contain.

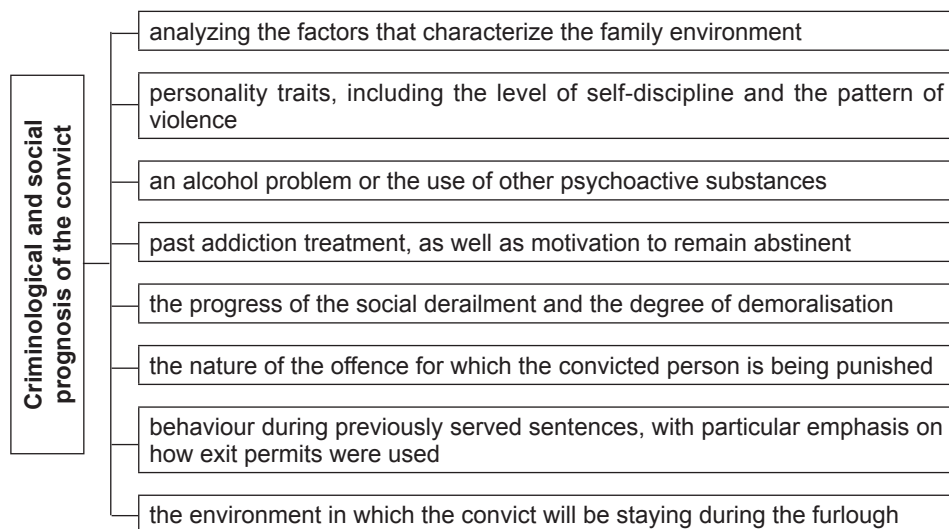
Figure 2. Reasons for re-offending according to H. Machel



The penitentiary court shall hear a representative of the prison administration, and the court probation officer, if he applied for conditional release, and shall take into account the settlement reached as a result of mediation. In the case of a person convicted of a crime against sexual freedom and morality, referred to in Articles 197-203 of the Penal Code (committed in connection with disorders of sexual preference), conditional release may not be granted without consulting experts. Release from the execution of a custodial sentence may take place in relation to a convicted person for whom a positive criminological prognosis is found, so there is a presumption that the custodial sentence has fulfilled its main purpose and there is no need to further isolate him from society.

²⁰ <https://www.nowytydzien.pl/skazany-na-spoleczenstwo/>

Figure 3. Elements of criminological and social prognosis of the convict. Prepared on the basis of the Regulation of the Minister of Justice on the methods of conducting penitentiary interactions in prisons and detention centers (Journal of Laws of 2003 No. 151, item 1469, i.e. Journal of Laws of 2013, item 1067)



Revocation of parole

In accordance with Art. 160 § 1 of the Penal Enforcement Code, the penitentiary court revokes conditional release if the person released during the probation period has committed an intentional crime for which a custodial sentence without conditional suspension of its execution has been finally imposed. The court with criminal sentences also revokes conditional release if the person released, convicted of a crime committed with violence or unlawful threats against a close relative or another minor living with the offender, during the probation period grossly violates the legal order, again using violence or unlawful threats against a close relative or another minor living with the offender. As an optional condition for the revocation of conditional release, the conduct of the dismissed person during the probation period, consisting in a gross violation of the legal order, in particular the commission of another offence or a penalty other than that specified in § 1 was imposed, or when the dismissed person evades supervision, performance of obligations imposed or penal

measures imposed, forfeiture or compensatory measures. When the convicted person has been placed under the supervision of a trustworthy person, association, organization or institution referred to in Article 159 § 1 of the Penal Enforcement Code, an application for the revocation of conditional release may also be submitted by that person or a representative of this association, organization or institution. In matters relating to the enforcement of a decision on conditional release and in the case of revocation of conditional release, the court with regard to the sentence which granted the release has jurisdiction or, if the person is released, with the court with regard to the sentences in whose district the supervision is exercised. The court with criminal sentences may, within the limits laid down in the Penal Code, change the probation period, it may also establish, extend or amend the obligations listed in Article 72 § 1 of the Penal Code during the probation period, or exempt from the performance of the obligations imposed, with the exception of the obligation relating to a pecuniary benefit.

The institution of conditional early release from serving the remainder of a custodial sentence is mentioned among other alternatives to absolute imprisonment. The release of a convicted person from serving a sentence before its completion is certainly part of the essence of the progressive system of serving a sentence, which consists in making all conditions of imprisonment dependent on the attitudes and behaviour of the convicted person. This is still a matter for scientific research and analysis²¹.

Statistical analysis of the application of the conditional release institution

This part of the study presents statistical data on the application of the institution of conditional release from serving the rest of the sentence in various systems of execution of the sentence and in various types of prisons, based on quarterly penitentiary statistics developed by the

²¹ S. Lelental, *Przesłanki orzekania o przerwie w odbywaniu kary pozbawienia wolności oraz o warunkowym przedterminowym zwolnieniu na podstawie ustawy o przeciwdziałaniu narkomanii*, [w:] „Przegląd Więziennictwa Polskiego”, nr 91, 2016, s. 5-19; A. Nawój-Śleszyński, *Rola środków penalnych związanych z poddaniem sprawcy próbie w kształtowaniu rozmiarów populacji więziennej w Polsce* [w:] „Probacja”, nr 2, 2014, s. 5-30; T. Przesławski *Kompetencje sądu penitencjarnego w zakresie instytucji przerwy i warunkowego zwolnienia*, [w:] „Palestra” 2010, nr 7-8, s. 66-76.

Information and Statistics Bureau of the Central Board of the Prison Service in the second half of 2022. The table below presents the number of applications for conditional early release submitted and how they will be considered in the third and fourth quarter of 2022. It is worth noting that as of December 31, 2022, there were a total of 71228 people in penitentiary units in Poland, of which 3422 were women²².

Table 1. Applications for parole in the third and fourth quarter of 2022

Specification	July-September 2022	October-December 2022	%	
Total	5 365	5 731	100,00%	
Applications granted	1 208	1 433	25,00%	100,00%
– director of the penitentiary	333	413	7,21%	28,82%
– prosecutor or court	0	0	0,00%	0,00%
– probation officer	0	1	0,02%	0,07%
– convicted	875	1 019	17,78%	71,11%
Applications rejected	4 157	4 298	75,00%	100,00%
– director of the penitentiary	28	23	0,40%	0,54%
– prosecutor or court	0	1	0,02%	0,02%
– probation officer	1	1	0,02%	0,02%
– convicted	4 128	4 273	74,56%	99,42%
Conditionally released ex officio by the court	0	0	0,00%	100,00%

Ministerial statistics confirm that every year the number of applications for early release to serve a sentence remains at a similarly high level. For comparison, in the third and fourth quarter of 2021, applications submitted by the penitentiary director were considered positively in 22.13%, while negative in 77.87%. As of December 31, 2021, there were a total of 71874 people in penitentiary units in Poland, of which 3382 were women. The analysis of the number and method of consideration of applications for conditional early in the third and fourth quarter of 2022 allows us to ask the following question: What is the reason for such a large number of applications considered negatively? This applies to applications submitted by the convicts themselves, as well as applications submitted by directors of prisons. When looking for answers to these

²² <https://www.sw.gov.pl/strona/statystyka--miesieczna>

and other questions that may arise when analysing the application of the institution of conditional release, it is worth paying attention to detailed information relating to the systems of execution of sentences and the types of prisons in which prisoners were held.

Table 2. Applications for parole settled positively and negatively according to the classification group of convicts and the system of execution of sentences in the third and fourth quarter of 2022

Classification group and sentencing system		III quarter of 2022	IV quarter of 2022	from box 3 applications processed:				Conditionally released from office by the court in the fourth quarter of 2022	
				Positively		Negatively			
				Penitentiary director	other	Penitentiary director	other		
Total		5 365	5 731	413	1 020	23	4 275	0	
Total group M		28	19	3	4	0	12	0	
Juvenile convicts	1	programmed	17	6	0	1	0	5	0
		therapeutic	3	1	0	0	0	1	0
	2	programmed	8	8	1	2	0	5	0
		therapeutic	0	0	0	0	0	0	0
	3	programmed	0	4	2	1	0	1	0
	therapeutic	0	0	0	0	0	0	0	
Total – group P		2 606	2 920	278	600	11	2 031	0	
Convicts serving sentence for the first time	1	regular	335	364	1	26	0	337	0
		programmed	527	633	3	76	0	554	0
		therapeutic	99	109	0	5	0	104	0
	2	regular	229	228	4	51	0	173	0
		programmed	1 174	1 319	224	372	9	714	0
		therapeutic	31	39	0	7	0	32	0
	3	regular	9	11	0	4	0	7	0
		programmed	202	216	46	59	2	109	0
		therapeutic	0	1	0	0	0	1	0
Razem – grupa R		2 731	2 792	132	416	12	2 232	0	
Convicted recidivists	1	regular	513	499	1	28	0	470	0
		programmed	604	637	3	63	1	570	0
		therapeutic	86	95	0	1	0	94	0
	2	regular	357	369	2	52	0	315	0
		programmed	1 032	1 050	111	242	8	689	0
		therapeutic	20	31	1	3	0	27	0
	3	regular	13	14	0	4	0	10	0
		programmed	106	96	14	22	3	57	0
		therapeutic	0	1	0	1	0	0	0

Polish prison law has four types of penal institutions: for young offenders, for people serving sentence for the first time, for penitentiary recidivists and for people serving a military detention sentence. Each of these facilities can be organized as a closed, semi-open and open type prison. The distinction between the three types of prisons in which a custodial sentence may be executed is another (after the types of prisons) element of the classification enabling individualisation on convicted persons. For the purposes of classification, prison types are indicated by digits: Closed type prisons – 1; Semi-open prisons – 2; Open type prisons – 3. These establishments differ in the degree of level security and social isolation, as well as duties and entitlements, and the aforementioned types determine the progressivity of the system. They allow for the use of the so-called free progression, consisting in the fact that those convicts who meet the expectations of resocialization can be promoted to an institution with greater freedom, e.g. to a semi-open institution, and those who fail educationally can be directed to an institution with less freedom, e.g. from a semi-open institution to a closed one. The analysis of the data presented in table 2 shows that the vast majority of convicts serving their sentences in the programmed impact system benefit from parole more often than convicts serve their sentences in the normal system. These differences are particularly evident in the group of convicts serving their sentence for the first time and among penitentiary recidivists.

We can therefore put another question:

1) *what is the difference between the regular penalty system and the programmed influence system?*

In responding to this question, it should be pointed out that the system of programmed influence is one of the three systems of executing a custodial sentence provided for by the Penal Enforcement Code of 6 June 1997. The essence of this system is to direct educational and rehabilitation activities towards convicts who want to accept the offer of assistance and agree to participate in the development and implementation of an individual influence program. The influence programmes shall specify, in particular, the types of employment and education of convicts, their contacts primarily with family and other relatives, the use of free time, opportunities to fulfil their duties and other measures necessary to prepare convicts for their return to society²³. Such an offer

²³ Art. 95 § 1 ustawy z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy.

is not included in the ordinary system, in which the convicted person may take advantage of employment, teaching, cultural, educational and sporting activities available in prison²⁴. In addition, it should be noted that convicted juveniles obligatorily serve their sentence in the regular programmed influence system.

The policy of parole is pervasive in many European countries, including Hungary. The subject of our further considerations is therefore an analysis of the functioning of the Hungarian penitentiary system and the possibilities it offers for conditional early release from prison.

Penitentiary system in Hungary – historical overview

The issue of how to deal with offenders in Hungary at all stages of the criminal process is presented in specialist literature²⁵ and prison statistics²⁶. The beginnings of imprisonment in Hungary should be sought in the early 1840s. In this epoch, the young politicians of the reform era (József Eötvös, Bertalan Szemere, Lajos Kossuth) and liberal thinkers (Károly Balla, Farkas Bölöni, Móricz Lukács) they once more took care of the organisation of the penal system. A new prison law was prepared, which took a position on the creation of ten prisons. However, the arguments presented were overcome by the resistance of the Vienna Chancellery. After the defeat of the War of Independence, the country was forced to adopt the Austrian Penal Code. The Habsburg government had to deal with a huge lack of space. Old castles and other public buildings have been converted into prisons with the most important objectives in mind – cost-effectiveness and time saving. The prison of the Pest County was transferred to Vác, within the walls of the institution once built by Mária Terézia as a boarding school for noble youth. The former Pauline monastery in Marianostra

²⁴ A major study on the systems of execution of custody sentences in the Polish penitentiary system presents A. Nawój-Śleszyński, who notes that these systems have various potential of rehabilitation, in particular based on the conduct of educational and therapeutic effects, they aim to eliminate and neutralize criminogenic factors of the crime perpetrators for which imprisonment is carried out. See A. Nawój-Śleszyński, *Systemy wykonywania kary pozbawienia wolności i ich potencjał reedukacyjny*, [w:] “Przegląd Więziennictwa Polskiego” 2016, nr 92, s. 5-37.

²⁵ J. Lőrincz – Nagy Ferenc, *Börtönügy Magyarországon*. Budapest, Büntetés-végrehajtás Országos Parancsnoksága, 1997.

²⁶ https://bv.gov.hu.translate.google.hu/bortonstatisztikaiszemle?_x_tr_sl=hu&_x_tr_tl=pl&_x_tr_hl=pl&_x_tr_pto=sc

was handed over to the conduct of a penal institution for women²⁷. The period following the settlement was characterised by the efforts of the judicial administration on a European scale to create a modern civil justice system. Extraordinary efforts were made to build a modern prison system. Thanks to significant budget support, the expansion of buildings and staff salaries have been increased. The first Hungarian penal code, known as the Csege Code (Csemegi-kódex) after its codifier Károly Csemege (V. tv. of 1878), contained the most important provisions on imprisonment and its execution. He defined five distinct types of deprivation of liberty: penitentiary prison, state prison, jail, correction facility, solitary confinement. The Code placed great emphasis on the gradual approach of convicts to the conditions of life in freedom. Before the dismissal, a preliminary stage was introduced, the mediation institute. In 1883, the Kisharta Agricultural Brokerage Institute (today: Állampusztá) was established for this purpose. In 1885, the district prison in Szeged, built in a star system, was opened, and in 1886 the Sopronkőhida penitentiary. In 1896, the Budapest Penitentiary, and in 1906, the National Institute of Forensic Psychiatry IMEI. The prison of the Budapest Criminal Court, better known as Markó, was handed over in 1892.

The complete prison network until World War I consisted of 9 state penitentiaries, 65 judicial prisons and 315 district courts. Their number of beds were approaching 17,000, and the number of isolation beds were 2,700²⁸. In the years following the end of World War I and the Treaty of Trianon, prison depression deepened. The management of prisons was entrusted to many officers of the demobilized army, as a result of which prison life acquired a strongly military character. People's Judicial Law created in 1945 It included internment and forced labor as new punishments. II. In the years after World War II, a kind of re-evaluation of prisoners' work under punishment began, the background of which was the reconstruction of the ruined country. On 1 January 1951, Act II of 1950 came into force, abolishing the entire penal system of the Csemege Code. The new regulation recognized only one type of custody: imprisonment. The distorted justice system brought an unprecedented mass of convicts to the penitentiary organization, and behind the measure was the assignment of this mass to unfettered work. A complete

²⁷ https://bv-gov-hu.translate.google.hu/a-reformkor-ekiegyezes?_x_tr_sl=hu&_x_tr_tl=pl&_x_tr_hl=pl&_x_tr_pto=sc

²⁸ https://bv-gov-hu.translate.google.hu/a-csemege-kodex?_x_tr_sl=hu&_x_tr_tl=pl&_x_tr_hl=pl&_x_tr_pto=sc

replacement of prison staff was carried out. New staff were recruited on the basis of criteria of political credibility. Staff and convicts faced each other as political opponents. The imperious motto displayed in the guardhouses well characterizes the specificity of this era: “Not only guard, but also hate!”. After 1950, most of the innocent victims of political terror survived the darkest and most shameful years of Hungarian prisons in prisons taken over by the Ministry of National Defence²⁹. The new general part of the Criminal Code was introduced by Act No. II of 1950, while the provisions of the special part of the Criminal Code from 1878 were still in use. The latter were further enriched by a number of additional acts (including, in particular, Decree No. 24 of 1950 on the protection of social property, which treated all forms of property seizure very strictly, amended by Decree No. 11 of 1956, Act No. V of 1950 on the protection of peace, Decree No. 21 of 1951 on the protection of state and official secrets). The provisions of the general part were governed by Decree No. 12 of 1952, which established conditional release³⁰.

From 1867 to 1952, the supervision of prisons functioned under the supervision of the Ministry of Justice. In March 1952, the prison case was transferred to the Ministry of Interior Affairs, and then again to the Ministry of Justice in 1956. However, this last transfer was delayed until 1963. According to Resolution No. 3624/1956 (October 15) of the Council of Ministers, the execution of judgments was generally placed under the supervision of the Ministry of Justice. However, the October Revolution prevented this from happening, so the actual transfer took place from October 10 to 21, 1963, initiated on the basis of the order of the Minister of Internal Affairs, Decree-Law No. 24 of 1963, which stated that the supervision of the execution of sentences is carried out by the Minister of Justice³¹. Hungary has three categories of prisons based on security classification: 1) minimum, which holds individuals under the age of 18 and prisoners authorized to stay in a transition group at the end of their sentence. Prisoners are allowed to move freely within the parameters of the correctional facility;

²⁹ In March 1952, the organization of prison matters were supervised by the Ministry of Interior Affairs. The National Prison Service (BvOP) was established for central control. A new stage in the history of the Hungarian prison system began during the “soft dictatorship” of the 1960s, after breaking with the Stalinist policy.

³⁰ J. Kubiak, *Przestępczość i polityka karna sądów w Węgierskiej Republice Ludowej*, [w:] “Archiwum Kryminologii”, t. XIV, nr 198, s.48.

³¹ https://bv-gov-hu.translate.google.hu/bvop-tortenete?_x_tr_sl=hu&_x_tr_tl=pl&_x_tr_hl=pl&_x_tr_pto=sc

2) medium, holding the majority of pre-trial detainees and those convicted of non-violent crimes. Prisoners are allowed to move freely within designated areas within the parameters of the correctional facility; 3) Maximum-security prisons where inmates serving life imprisonment and those sentenced to more than three years for crimes against the state, terrorism, firearms, drugs, murder, kidnapping, sexual assault, and other violent crimes are held. Prisoners may move within the confines of the correctional facility only with proper authorization and supervision. Exceptions can be made after one year of imprisonment. Female prisoners are separated from male prisoners, and adult inmates are separated from juvenile offenders below 21 years of age.

Selected issues related to conditional release in the Hungarian penitentiary system

According to the expectations of society and the rule of law, after a crime, a punishment follows, the execution of which must ensure justice. This is the responsibility of the state, because the state has exclusive power to punish. This is provided for in § 79 of the Hungarian Criminal Code (Act C of 2012), which states that “The aim of a punishment is to prevent – in the interest of the protection of society – the perpetrator or any other person from committing an act of crime”. The rules for adjudication are set out in § 80 (1) Punishment shall be imposed within the framework provided for in this Act, having in mind its intended objective, as consistent with the severity of the criminal offense, with the degree of culpability, the danger the perpetrator represents to society, and with other aggravating and mitigating circumstances. (2) Where a sentence of imprisonment is delivered for a fixed term, the median of the prescribed scale of penalties shall be applicable. The median constitutes half of the sum of the lowest and highest penalties to be imposed. (3) Where the upper limit of the sentence prescribed in the Special Part for any act of crime is to be increased according to this Act, the calculation specified in Subsection (2) shall be carried out in respect of such higher scale of penalties. (4) If the court delivers a sentence of imprisonment, the

length of imprisonment shall be determined without allowing for the opportunity of probation or parole³²”.

Parole is an element of substantive criminal law with a long tradition, in which a court may waive the execution of a certain part of a sentence if certain conditions specified by law are met. Meanwhile, during the period of reintegration custody, which was introduced into Hungarian criminal law on April 1, 2015, the execution of the sentence is continuous, but the way it is carried out is better adapted to free life, in accordance with the requirements of progressiveness and normalization. This is a transitional instrument that can complement the bipolar system in which a convicted person is either in total isolation (e.g. an institute) or completely free under periodic control (conditional release). The reintegrative arrest, the duration of which is counted towards the imprisonment sentence, abolishes the total deprivation of liberty of the convicted person but restricts their freedom of movement and the right to choose their place of residence freely. The provisions regarding parole have often been subject to change and may have been applied under more rigorous or lenient initial conditions³³. Recently, the legal institution has been applied to a number of serious criminal offenses against life and physical integrity, which has raised serious concerns about the effectiveness of the sentence’s goals. Therefore, the need for societal protection has necessitated a reconsideration of the relevant legal regulations. At the end of 2019, the Minister of Justice of Hungary initiated a comprehensive government procedure. Based on the investigation, a report was prepared for the government, in which the task of the Ministry of Justice was to review the regulations on conditional release, in particular the circumstances that can and should be examined when making a decision on conditional release, and therefore justification for the tightening of the criminal code or other regulations. As a result of the investigation on June 9, 2020, the Hungarian government submitted a bill to the National Assembly under number T/10953 to better protect victims of violent crimes against close relatives. The Hungarian Criminal Code in § 38-40 sets out the rules and possibilities related to applying for conditional release. According to § 38 of the Criminal Code – in the case of a fixed-term imprisonment, the court determines in its judgment the earliest date of conditional release

³² https://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

³³ Lajtár, *A feltételes szabadságra bocsátásról*. In: *Madai Sándor – Pallagi Anikó – Polt Péter* (szerk.): *Sic itur ad astra*. Ünnepi kötet a 70 éves Blaskó Béla tiszteletére. Ludovika Egyetemi Kiadó, Budapest, 2020.

or, in cases specified in paragraph 4, that the possibility of conditional release is excluded. If the possibility of conditional release is not excluded, the earliest date is: a) two-thirds of the sentence, b) three-quarters of the sentence in the case of recidivism, but not less than three months. If a sentence of imprisonment not exceeding five years has been imposed, the court may, in the case of special merits, provide in its judgment that the convicted person may be conditionally released after serving half of the sentence. This provision does not apply if the convicted person is a multiple recidivist.

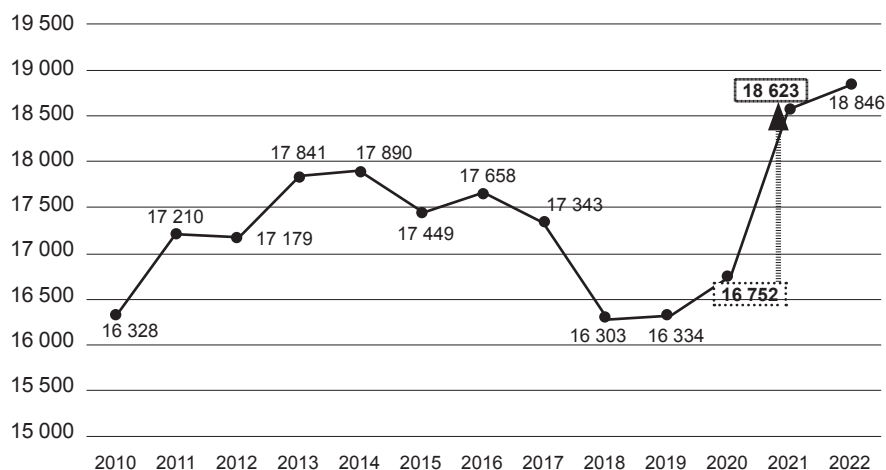
According to paragraph 4 of the criminal code, a) a repeat offender cannot be conditionally released if the sentence is to be served in prison, b) a violent repeat offender, c) who committed a crime in a criminal organization, d) who was sentenced to imprisonment for an intentional crime committed after a previous sentence of imprisonment for a fixed term, before the execution or enforceability has ended. According to § 39 (1), in the case of a fixed-term imprisonment, the period of conditional release is equal to the remaining part of the imprisonment, but not less than one year. If Article 38 (3) applies, the court may provide in its judgment that the period of conditional release will be extended by at least one year, but no more than three years. If the remaining part of the imprisonment is less than one year and its execution has not been ordered, the punishment is deemed to have been completed on the last day of the remaining part of the imprisonment after the conditional release period has expired. According to § 40 (1) of the Criminal Code, the court revokes conditional release if the convicted person is sentenced to imprisonment for: a) a crime committed after the conviction became final during the conditional release period, or b) imprisonment for a crime committed during the conditional release period. The court may revoke conditional release if the convicted person is sentenced to a punishment other than that specified in para. 1. In the case of conditional discontinuation, the time spent on conditional release is not counted towards the term of imprisonment³⁴.

³⁴ <https://net.jogtar.hu/jogszabaly?docid=a1200100.tv>

Incarceration rate in Hungary

It is worth noting that the Hungarian population of convicted persons is definitely smaller than in Poland. In recent years, its decline has been noticeable. The prison population as of 31 December 2021 is 18,623. The number of prison employees represented an increase of 11.17%, about 1871 people, compared to 16,752 people registered on December 31, 2020. Year-round accommodation, we were able to increase our production capacity by 7.53% in 2021. by December 31, thus creating 1311 new places. The number of arrested shows an upward trend compared to the previous year, their number in 2020 – 3421, on December 31, 2021 there were 4380 people. The percentage of inmates represents 23.5 percent of the total. The number of final convicts as of December 31, 2021, were 12,867, an increase of 320 people, or 2.55%, compared to the previous year ³⁵.

Chart 1. Overall number of persons detained in Hungarian penitentiaries on 31st December each year



The extent of applying either of the two early release schemes provided by the Hungarian criminal justice system (reintegration custody and release on parole) has significantly decreased since 2019, which the Government's Action Report corroborates. Moreover, the HHC³⁶'s data

³⁵ <https://www.prison-insider.com/en/countryprofile/hongrie-2021?s=vue-d-ensemble#vue-d-ensemble>

³⁶ <https://helsinki.hu/en/>

analysis shows that from 2019 to 2021, the overall number of releases decreased by 12 percentage points and the ratio of early release within all releases of convicted persons decreased by 8 percentage points.

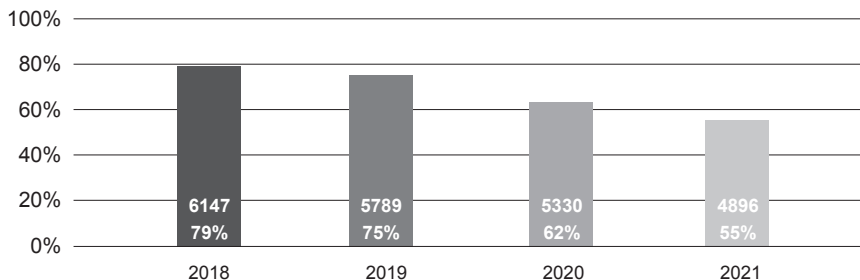
Table 3. – No. of inmates granted reintegration custody 2019-2022; average no. of prison population; ratio of inmates granted reintegration custody within av. no. of prison population

Year	No. of all convicted detainees released early	No. of all convicted detainees released	Ratio of release within all releases of convicted persons (%)
2019	3,202	8,016	40%
2020	2,649	7,444	36%
2021	2,258	7,025	32%
2022	1,500	4,592	33%

According to data provided by the National Penitentiary Administration (hereinafter: NPA), the number of detainees in reintegration custody have been steadily decreasing since 2019. While in 2019, 4.1% of the prison population had access to reintegration custody, in 2021, only 2.7% did. However, the 2022 data suggests that by the end of the year we might see a slight increase in the use of reintegration custody in comparison to 2021. If we assume the positive scenario in which the same level of granting reintegration custody applies to the remaining five months of 2022, extrapolating the data of the first seven months will add up to 507 detainees who will have been granted reintegration custody by the end of this year. In addition, if the average number of the prison population does not change, 2.7% of the whole prison population will have been granted reintegration custody by the end of 2022. The number of detainees granted conditional release has shown a significant decrease: while in 2019 79% of those who had a case were granted conditional release, this dropped to 62% in 2020 and 55% in 2021. Amendment to Act C of 2012 on the Penal Code extended the catalog of certain prohibited acts which generally exclude offenders from parole following highly mediated proceedings law in 2019³⁷.

³⁷ https://2015-2019.kormany.hu/download/4/f0/c1000/felt%C3%A9teles_normasz%C3%B6veg_indokol%C3%A1s_200121.pdf

Figure 4. Number of detainees granted conditional release and their ratio within total number of conditional release cases (total=granted + dismissed), 2018-2021



The number of detainees granted conditional release has shown a significant decrease: while in 2019 79% of those who had a case were granted conditional release, this dropped to 62% in 2020 and 55% in 2021.

Conclusion

Over and above to ensure isolation, one of the main tasks of penitentiary systems should be to promote integration into society, meaning that upon release the convict should return to society, becoming a full member of it. It is possible to achieve this only with the help of individualized methods and measures of education and resocialization. In a manner to remove all doubt., the principle of individualization of the execution of a custodial sentence must treat each convicted person individually, but it requires, in addition to the classification of convicted persons on the basis of sex, age, criminal record and degree of demoralization, creating conditions conducive to the evolution of one's personality and attitude. The institution of conditional release from prison functioning in Polish and Hungarian law gives convicts the opportunity to apply for early conditional release from prison. Prisoners wishing to be granted parole must meet the required conditions. One of them is the proper behaviour of the prisoner during his stay in prison and a positive criminological and social prognosis, justifying that the convicted person after release will comply with the penal or protective measure imposed and will comply with the legal order, in particular he will not commit the crime again.

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