



Penitentiary Tutors' Activities with Foreign Prisoners. Between Uniformisation and Identity Shaping

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This article tackles the issue of penitentiary tutors' work with foreign prisoners. The analysis provided a premise to explore the directions of a rational proceedings with persons representing different cultures. The article presents two aspects of exploration. First concerned experiences in everyday accomplishment of penitentiary tasks towards foreign prisoners, and the second focused on the analysis of the competences of integration of migrants and the significance of penitentiary influences on such ground. As a result, the concept of rational uniformisation prevails in terms of requirements of the process of serving deprivation of liberty. The objective of consolidation of different identities and the foreigner are more in the focus of attention of international rights declarations, rather than practice.

Key words: *foreign prisoner; penitentiary work; identity; cultural diversity*

Introduction

The issue of knowledge, predispositions and competences which penitentiary tutors possess is undoubtedly complex, as their activity is multidimensional, referring to different disciplines, and accomplished in a total and a paramilitary organisation. Moreover, it is an area of actions affected by antinomy of its objectives.¹ Educational activities, by its very fact of performance in the specific circumstances of penal institution, bring about insufficiency within the range of knowledge as well as pedagogical and psychological skills. There are also different roles such tutor is obliged to adopt, as on one hand, as a resocialisation pedagogue

¹ Lasocik, Z. (2003). Organizacja i zasady działania więziennictwa. In T. Bulenda – R. Musiśdowski (eds.) *System penitencjarny i postpenitencjarny w Polsce*. Warszawa: ISP, p. 196.

he or she participates in support, diagnosis, therapy, criminogenic and social forecasts, whereas as an officer, the process of executing the sentence of deprivation liberty comes as priority. In the context of complex objectives and tasks there are two key aspects of penitentiary influences towards foreign prisoners. Firstly, they concern the application of Polish and international legal regulations that protect the religious freedoms and diversity, and secondly, they refer to the fundamental role of personal readiness and willingness to implement actions oriented at preservation of a given identity. Hence, the title of this article stresses two ways of accomplishing tutorial tasks, i.e. one leading towards uniformisation, i.e. adjusting the foreigners to the prison reality, and the other striving for recognition of their identity.

Legality, i.e. conformity of the Prison Service officers with the state and international laws provide a foundation for the prison management policy as well as for the methodical influences, although penitentiary resocialisation is authorised not as much as by legal science, but rather than by the theory of pedagogy and psychology. Trends in penitentiary policy are also of key importance. Therefore, in order to answer the question concerning the current direction of penitentiary activities towards foreign prisoners, it is essential to introduce multicultural policy to the mode of penitentiary policy.

Searching for principles establishing the organisational policy of Polish Prison Service, Zbigniew Lasocik revealed a rather incoherent image. He drew attention to, among others, antinomy of objectives Prison Service is obliged to accomplish. Namely, legal regulations, i.e. the foundation of penitentiary system, "...aim to guarantee relatively substantial autonomy of the basic system components (penitentiary facilities or remand centres), nonetheless, paramilitary character of Prison Service is maintained ...",² hence on one hand a tutor is a person providing support, but on the other – a uniformed executor of the punishment. Paweł Szczepaniak confirms such duality in his thesis that regulations legally recognise two different modes of prison functioning, i.e. protective (authoritarian) and readaptative (pro-social) one, combining separate functions of readaptation, rehabilitation and isolation.³ Therefore, it is worth to explore the issue whether such antinomy of goals and practice is noticeable within the activities of culturally diverse prisoners.

² Ibidem, p. 196.

³ Szczepaniak, P. (2003). Metodyczne aspekty oddziaływania na więźniów. In T. Bulenda – R. Musiałowski (eds.) *System penitencjarny i postpenitencjarny w Polsce*. Warszawa: ISP, p. 259.

This article tackles complex issue, as since 1990s, Polish Prison Service authorities have been working out standards of procedures with the arrested and sentenced prisoners. It also involved additional, equally compound aspect of tutors' competences regarding foreign prisoners serving the sentence of deprivation of liberty. Apart from legal and methodical aspects, there is also a wide range of new challenges of work with culturally diverse persons, often followed by barriers to communication. Even if foreigners speak Polish on the account of their previous long-term residence in Poland, they have no skills to use the terminology of Polish penal executive law. Hence, it appears rather intangible to guarantee their legality of serving the sentence, on the grounds that legal regulations provide a foundation for penitentiary system. This matter is accompanied by ethical issues, namely – how to socialise prisoners in, and to, Polish culture and tradition since after serving the sentence, they will be deported to the country of origin and own culture; or, how to design tutorial tasks within mutual respect for cultures and traditions if it is often incomprehensible to the tutors, who possess insufficient knowledge in this regard. Or, may be, it is just a hypocrisy to declare assignment to penitentiary influences different than, in fact, execution of the punishment, not to mention the efforts to change the character and personality of the prisoner.

Objective of research procedures

The research took place from September to October 2012, funded by the grant from Faculty of Historical and Pedagogical Sciences of the University of Wrocław and the Rector's grant of the Witellonian University of Applied Sciences in Legnica. The study focused on the recognition of the situation of foreign prisoners and penitentiary tutors' activities with such sentenced. The research embraced one district of the Head of the District Prison Services in Lublin, whereas research visits were carried out in 6 Penal Institutions (prisons in Lublin, Opole Lubelskie, Hrubieszów, Biała Podlaska, and two prisons in Zamość). 10 in-depth interviews with foreign prisoners were conducted, excluding those in remand centres. 14 interviews with tutors working directly with foreigners were also carried out.

This article presents a part of the research results, concentrating on the situational contexts and competences worked out within. The author of this study attempts to answer the questions what competence categories are applied by the tutors working with foreigners, and what is

the direction of the tutorial activities towards culturally diverse prisoners. Although the research problems concern wide range of questions and doubts, narrowing the perspective of the analysis at this stage is inevitable.

Legal guarantees concerning procedures with foreign prisoners as a potential of knowledge for the tutor

Outlining the legal issues concerning execution of the punishment it is necessary to distinguish two areas within which such procedures are carried out. One of such aspects, referring to the procedures with a foreigner committing a crime in the territory of the Republic of Poland, is the explanatory procedure at the prosecutors' office, often transforming into judicial proceedings. The legal regulation in this regard include European Convention of Human Rights, or international agreements such as Polish-Turkish agreement concluded in Ankara in 1987 on the obligation to inform diplomatic posts on apprehension of citizens of these countries within 48 hours. Prison Service staff do not participate in such procedures, as their activities predominantly take place in the second area, i.e. procedures related to execution of the judicial sentences of imprisonment or remand. At the same time, their competences within knowledge on procedures and legal regulations are accomplished in other aspect of penitentiary influences.

Upon judicial proceedings, the foreigner is granted the right to interpreter and translator, especially in terms of court documents and giving explanations crucial for the establishment of the circumstances of the crime and punishment, in accordance with the Penal Code articles (§72, §79.1, §204). Moreover, such right also concerns the procedures of contact with diplomatic posts (§612.1, §2). There are also some international guarantees with this regard, particularly expressed within §6.3. of the Convention for the Protection of Human Rights and Fundamental Freedoms, tackling the obligation of translating the judicial documents into the language of the foreigner. The §8 of the Convention acknowledges the right to protect the privacy of the correspondence of the arrested or imprisoned with own defence counsel. Furthermore, it cannot be censored, i.e. the officers can open the letter and check its contents, but cannot read it.⁴

⁴ Redelbach, J. (1999). *Sądy a ochrona praw człowieka*. Toruń: Dom Organizatora, p. 189.

Supervision of the legality of the procedures with foreigners is assigned to the main objectives of the Ombudsman. In 2003 he indicated number of infringements and negligence in penal procedures concerning one citizen of a foreign country, formulating three objections. First of all, the judicial sentences had not been translated into the language of the recipient, there was either no information concerning legal regulation in the language of the foreigner providing information on rights such person is entitled to during the judicial proceedings. Furthermore, negligence of the obligation to inform the diplomatic representatives of apprehension of their citizen was reported.⁵ The statement of the Ombudsman from 14th January 2010 referring to the recognition of the foreign prisoners rights, stressed the disturbances in the flow of information addressed to the foreigners on their rights and duties, especially in cases when they could speak only their native tongue. With regards to the international and state law, the Ombudsman drew attention to the obligation of the tutor or other officers to provide information for the sentenced and arrested. The Ombudsman appealed to promote information leaflets, with reference to the solutions applied by the Police Head Quarter.

As far as international legal regulations are concerned, there are many documents in regard to the sentenced, including foreigners. According to Zbigniew Hołda, „...European standards of procedures of dealing with prisoners (...) are part of the most important legal instruments within the executive penal law”.⁶ Concurrently, they contribute to a significant discourse of European law and penitentiary practice.⁷ Convention for the Protection of Human Rights and Fundamental Freedoms dated 4 November 1950 sets an example of such essential catalogue of international legal regulations in this regard. J Góny additionally emphasises the key importance of The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 1984, ratified by Poland in 1989, and The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment adopted in 1987, and ratified by Poland in 1994.⁸

Particular attention should be drawn to the conclusions of the 1st UN Congress in Geneva in 1995, and the result of the activities of the Crime

⁵ *Biuletyn RPO – Ochrona praw mniejszości narodowych i cudzoziemców. Informacja RPO za 2003 rok*, nr 48/2004, p. 320.

⁶ Hołda, Z. (2009). Europejskie standardy traktowania więźniów. Kilka uwag o Europie, Radzie Europy, Polsce i Prawach więźniów. *Czasopismo prawa karnego i nauk penalnych*, nr. 1, p. 97.

⁷ *Ibidem*, p. 107.

⁸ Górný, J. (1996). *Elementy indywidualizacji i humanizacji karanía w rozwoju penitencjarystyki*. Warszawa: WSPS, pp. 25–26.

Prevention and Control Commission, expressed in the Standard Minimum Rules for the Treatment of Prisoners. Simultaneously, the Council of Europe focused on the issues of prisoners, establishing for this purpose European Committee on Crime Problems in 1957, whereas in 1973 a European decree on standard procedures with prisoners was implemented, referred to as European Prison Rules, subject to further amendments.⁹ The complimentary legal documents are also binding, to recall for instance Recommendation R (84) 12 of the Committee of Ministers to member states concerning foreign prisoners, adopted by the Committee of Ministers on 21 June 1984; Recommendation 1257 (1995) on the conditions of detention in Council of Europe member states; Recommendation 1654 (2004) on nationality rights and equal opportunities including the situation in European prisons and remand centres; Parliamentary Assembly Recommendation 1741 (2006) on the social reintegration of the prisoners, or Recommendation No. R(99) 22 concerning prison overcrowding and prison population inflation.¹⁰ It must be stressed that Recommendation Nr R(84)12 is particularly important, as it directly concerns foreign prisoners.¹¹

Culture of executive organisation of the sentence of deprivation of liberty

The European Prison Rules acknowledging Standard Minimum Rules play significant part in establishing standards of competent tutorial proceedings with the prisoners. Furthermore, the activities of a non-governmental organisation, Penal Reform International (PRI), come across as a great contribution to the issue of punishment and its execution. It was established in London on 12th November 1989 in order to exchange experiences and implement standards of proceedings with prisoners. Its actions are multidimensional, for instance promoting abolition of death penalty, or introduction of legal protection of prisoners within practical international instruments. The activities also strive to eliminate discrimination in the activities at all judicial levels, and to lower the frequency of isolation punishment for the sake of alternative forms to deprivation of liberty.¹²

⁹ Gajdus, D. – Gronowska, B. (1998). *Europejskie standardy traktowania więźniów*. Toruń: Dom Organizatora, p. 28–29.

¹⁰ Płatek, M. (2007). Zadania polskiej polityki penitencjarnej w świetle Europejskich Reguł Więziennych. *Czasopismo prawa karnego i nauk penalnych*, nr. 1, pp. 261–266.

¹¹ Szczygieł, G. (2011). Komentarz do Rekomendacji Nr R(84)12 Komitetu Ministrów dla państw członkowskich dotyczącej więźniów cudzoziemców. *Przegląd Więziennictwa Polskiego*, nr. 72/73, p. 183.

¹² Gajdus, D. – Gronowska, B.: op. cit., pp. 29–31.

It is worth to recall the importance of the contents of the Recommendation Nr R(84)12 concerning foreign prisoners, where it states that compensation of the difficulties experienced by a foreigner are compulsory: "...foreign prisoners, who in practice do not enjoy all the facilities accorded to nationals and whose conditions of detention are generally more difficult, should be treated in such a manner as to counterbalance, so far as may be possible, these disadvantages",¹³ i.e. the compensatory activities should set objectives for more liberal approach towards the sentenced, what confirms the dominant role of supportive, rather than formal proceedings.

Competences of penitentiary tutors worked out on the way of experienced relations with foreigners

The title of this part implies a thesis that there are some personal competences that emerge as a result of situational necessity. While interviewing the tutors, they often stressed that they had not been directly prepared to work with foreigners, but their tasks still needed to be accomplished, hence they applied their experience, knowledge and personal skills in order to establish code of conduct in such circumstances. Nonetheless, it is worth to throw light on the recalled competences and situations from prison reality they were related to.

Tutorial accomplishments of supportive, caretaking and upbringing activities constitute a key factor of their competences. As far as issues of personal protection and care for the foreigner are concerned, the activities mainly refer to the principle of location in the cells and providing basic information on the rights and duties of the sentenced, in order to prevent punishment for breaching the regulations on the account of some misunderstandings. Execution of these tutorial tasks involves analysis of personal skills and code of conduct with foreigners. The field research carried out in 2012 in Polish penal institutions provided a tool to depict such competences.

The first recalled situation concerned the issue of relations of the sentenced men of Muslim origin with female tutors. There are sometime problems occurring as a result of lack of acceptance towards women at such position, as in these prisoners' culture a woman should not give commands or execute disciplinary punishment for men. Female tutors were not regarded as partners in a conversation, hence the sentenced

¹³ Recommendation Nr R(84)12, D. 13.

sometimes preferred not to turn to them with their problems, but waited until they could speak to male tutors. The relations were also affected by discriminatory comments towards the female prison staff. It mainly concerned the Muslim male population of the prisoners, hence no similar example regarding other culturally diverse individuals was reported. In such circumstances, penitentiary tutors expressed explicit approach of total disapproval for such discriminatory behaviour. They did not undertake any attempts to establish or accept relations, in which the sentenced prisoners could convey their behaviour towards women from own culture to the Polish realm. Subsequently, it was acknowledged that if a given person serves the deprivation of liberty in Poland, he must accept customs of this country, regardless of recognition for his cultural diversity.

Another situation was related to the communication difficulties, notably concerning foreigners speaking uncommon languages. The problems tackled procedures with judicial documents, translated within prosecutor's proceedings and sent to the penal institution. Such foreigner could understand its direct contents, but did not comprehend the binding Polish laws. It thus generates conflicts, as the foreigners do not understand Polish legal regulations and most frequently perceive their situation as the result of maliciousness of the Prison Service staff. Hence, communication with the tutor is of key importance in this regard, as he can try to explain such situation. Nonetheless, barriers to communication work both ways. On one hand, the tutor does not understand the language of a detainee or a prisoner receiving judicial documents due to the fact that prosecutors and courts, obeying the stipulations of the Convention for the Protection of Human Rights and Fundamental Freedoms, commission its translation. On the other hand, the problems occur when it is necessary to explain Polish legal regulations in a foreign language. The language of law is expressed in two ways – one involves direct, literal meaning, whereas the other reflects its “spirit” and philosophy that results from Polish tradition and mentality. Legal regulations are not understood both in linguistic and matter-of-factness contexts, as the tutor has no possibility to convey the meaning of the penal law. It also concerns crimes that are not subject to punishment in other countries (e.g. sexual abuse of wife) that are penalised in Poland. For instance, some Egyptian citizen was convinced that serving punishment for such act in Poland is unfair and discriminatory.

Notwithstanding, it is difficult for the tutor to ease off conflicts, oversensitivity concerning discrimination, and maliciousness that the prison staff are accused of by foreign prisoners. Such situations result from excessive sensitivity towards own cultural diversity, that - from the tutors' perspective – generates misunderstandings. While solving such

problems, tutors often seek assistance among other prisoners, that help to translate, especially if they come from the same ethnic group. Perceptiveness and intuition sometimes come in handy, as the way the document in penal case is formulated in a foreign language reflects the layout in their own language, so it provides some hint regarding the contents. Hence, the tutors can predict contents of the letter and explain it by understanding such document written in Polish.

The issue of recognising manipulation, particularly in penitentiary circumstances, is essential in terms of protection from being manipulated by the apprehended and sentenced. The tutors are always subject to such mechanisms, and it also involves foreigners. This phenomenon is enhanced by insufficient knowledge of religious, cultural and traditional diversity of foreigners in Poland and difficulties in the recognition of relations that exist in a given group. Mutual relations are shaped both by given tradition and religion,¹⁴ as well as bonds with criminogenic environment. On the whole, according to the tutors, foreigners do not inform about their culture and rather avoid talking about their family relations or customs in their country of origin. There was even an opinion expressed, that such alienation and distance within not being understood provides with a specific sense of security. Nonetheless, the literature on the subject perceives this phenomena differently.¹⁵ Manipulating the prison staff most frequently concerns refusal to carry out cleaning activities in the cells on the basis of considering such tasks insulting. While declaring cultural diversity the prisoners explain, that in their tradition only women deal with cleaning, hence for men it is offensive. It undoubtedly awakes internal conflicts as other male prisoners have to serve this function of "cleaning women", and it must be bore in mind, that in the prison circumstances sensitivity to such comparisons is extremely high. Other manipulative situations consider unwillingness to obey the staff orders due to the subculture belonging. Foreign prisoners do not reveal the issues of belonging to criminal or subculture groups, hence the tutor is unaware of the relations and rules within given subculture in other countries. Thus, it is difficult to determine whether symptoms of disease reported by the prisoners result from health issues or simply constitute an attempt of deliberate resistance against carrying out orders that, according to the prisoners, become an act of conformity with the rules of antagonistic subculture.

¹⁴ Adger-Adajew, I. (2005). *Kamienie mówią. Dzieje i kultura Czczenów*. Warszawa: Instytut Kultury i Narodów Kaukazu.

¹⁵ Bauman, Z. (1996). *Socjologia*. Poznań: Zysk, p. 47.

Hence, it is rather difficult to state what competences should be presented by a tutor in such situations, nonetheless perceptiveness and information exchange between the prison staff are vital. Observing the sentenced in their everyday activities, both in the cell and out of it, allows to gather information concerning their intentions. Documentation of the language comprehension serves a similar purpose, as foreigners speaking Polish often “cease” to understand the language when the prison officer informs on the disciplinary punishment. Claiming they understand nothing, foreign prisoners try to manipulate the staff, accusing them of discrimination and formal errors upon punishment. While manipulating within comprehension and incomprehension of the language, foreign prisoners depict themselves as the victims of the prison system as they claim not to understand what they are punished for, and what is the type of punishment. Hence, as far as this aspect of penitentiary work with foreign prisoners is concerned, knowledge and prior observation are essential, as the tutor can recognise whether it is an act of manipulation or not.

Trends in penitentiary tutors' work

From the perspective of the recalled experiences in penitentiary work, the answer to the second research problem is of paramount importance, namely, how to depict the vision and pragmatism of penitentiary work. It is worth to make a reference to the trends in state policies towards migrants, in a wider, non-penitentiary context. According to analyses by Will Kymlicka, there are two contradictory directions, as on one hand policy towards migrants may correspond to integration objectives, accomplishing the greatest possible assimilation and unification, but on the other, it may act contradictory, preserving the authenticity of the diversity.¹⁶ These constitute a key issue as, according to Grzegorz Janusz, they refer to the change within human awareness. Considering objective measures, the sense of national or ethnic belonging is determined by the origin and process of socialisation in a given culture. Notwithstanding, subjective approach also matters, as sense of belonging results from the will and national awareness, i.e. it provides a subjective identification with a given community and its culture.¹⁷ With this regard, the experiences of European

¹⁶ Kymlicka, W. (1995). *Multicultural Citizenship. A Liberal Theory of Minority Rights*. Oxford: Clarendon Press, pp. 30–33.

¹⁷ Janusz, G. (1995). *Prawo mniejszości narodowych. Standardy europejskie*. Warszawa: Stowarzyszenie „Wspólnota Polska”, pp. 11–13.

countries have adopted three assimilation paths, i.e. state-driven assimilation (Germany), policy of cultural pluralism (Sweden) or spontaneous assimilation, where a country does not interfere in the process of migrant assimilation within the society.¹⁸ Hence, the perspective of understanding the integration itself is essential. Interesting approach was proposed by Hanna Grzymała-Moszczyńska, who claims that integration of foreigners requires a good command of the language and accomplishing financial independence in a new society, enabling to undertake employment in the learned profession, providing opportunities to exist fully within new environment. At the same time, appropriate integration can protect the foreigner from entering criminogenic path and violation of law.¹⁹

In the context of the general reflections on competences and pragmatism of the penitentiary influences towards foreigners, the above-mentioned implications of integration issues additionally complicate this issue. The analysed activities and experiences basically do not allow to generalise a given vision of penitentiary proceedings, as it concerns not only actions within everyday penitentiary pragmatism, but also broad-based reflections. There is no superior idea within the principles or staff experience that would reflect the meaning and direction of influences, and answer whether the tutor's tasks embrace cultivating the sense of identity of culturally diverse prisoners. It comes across rather questionable as there are no methodical trainings within multicultural education as far as resocialisation is concerned.

Besides, the procedures of assimilation do not embrace the offenders that are to be deported after completing the sentence. Hence, uniformisation occurs more appropriate i.e. introducing cultural diversity to the conventional framework of the principles of serving the sentence of deprivation of liberty. Yet, such perspective is dubious, as on one hand there are legal regulations concerning protection of the religious and cultural diversity, but on the other – the rational system of penitentiary influences marks its presence, with no place for excessive manifestations of any sort of diversity. Penitentiary tutors seem to function between these areas, searching for the golden mean, with no particular emphasis on preservation of the diverse identity. Hence, they accomplish their formal procedures related to the identity protection, recognising, for instance, other religious customs or diet.

¹⁸ Ibidem, p. 17.

¹⁹ Grzymała-Moszczyńska, H. (2000). *Uchodźcy. Podręcznik dla osób pracujących z uchodźcami*. Kraków: Zakład Wydawniczy „Nomos”, p. 24.