EFFECTIVE LAW IN AN EFFECTIVE STATE

Local conditions in the global context in the face of 21st century challenges of fighting crime.

PREPARING PRISONERS FOR RE-ENTRY AND LIFE IN THE FREE SOCIETY

Author of the analysis: Dr Grzegorz Skrobotowicz

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Translated by: Marta Cechowicz

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Introduction

Preparing prisoners for re-entry and life in the free society is an extremely difficult task as it takes place in the conditions of confinement, and "one cannot prepare an individual for freedom by depriving them of freedom."[1] Working with a detainee is completely different from working with a person out of prison. These differences are connected with, for example, the regime in total institutions, such as penal institutions or pre-trial detention centres. Once the gate closes behind them, prisoners are deprived of the possibility to freely decide about their lives. Their social roles are no longer relevant, as the law and prison rules make it impossible for them to perform the social role they once had. Consequently, re-entering normal life after serving a sentence is extremely difficult and for many ex-prisoners practically impossible. This is particularly true about prisoners who have spent many years in confinement and isolation. Technological progress and changes taking place in the world outside the prison are positive and desirable, on the one hand, as they contribute to the development of civilization, but on the other hand, prisoners may find it difficult to keep up with these changes, especially when the prison environment is not conducive to them.

Nowadays it is commonly believed that the penalty of imprisonment does not make an individual a better person. On the contrary, while incarcerated, individuals absorb the prison subculture, mainly the unofficial and secret customs and attitudes of prison inmates. The remnants of the prison subculture referred to as *grypsera,* still function in prisons.

[1] J. Śliwowski, *Kara pozbawienia wolności we współczesnym świecie. Rozważania penitencjarne i penologiczne*, Warsaw 1981, p. 52.

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Prisoner re-entry program in international law

Work with prisoners on their attitudes, emotions and post-prison life, has been of interest in many countries, as part of activity undertaken in the area of international law.

The Standard Minimum Rules for the Treatment of Prisoners of 1955[2] are one of the first documents that concern the treatment of prisoners. These rules were adopted to protect the rights of convicts serving a prison sentence and to effectively support and promote mechanisms of influencing prisoners, taking into account the ideas of progression and social rehabilitation.[3]

Another act that should be mentioned in this context is the International Covenant on Civil and Political Rights adopted by the United Nations in 1966[4], which clearly states that the purpose of imprisonment is to reform the prisoner. Art. 10 (3) of this Covenant reads: "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."

Other documents that concern this issue include: the Standard Minimum Rules for the Treatment of Prisoners of 1973 and the European Prison Rules adopted in 1987 and amending the Standard Minimum Rules.[5] Both these acts provide general principles and practices in the treatment of detainees. For example, Rule 3 states that serving a punishment should enable the prisoner to re-enter society, and the measures taken in relation to prisoners should help them develop a sense of responsibility for their own actions. At the same time, these measures are to support prisoners in their belief that it is necessary to lead a law-abiding and self-supporting life. Rules 65 and 70 emphasise that it is important that prisoners maintain ties with their families and relatives and that they are given the opportunity for personal development, which should help them in making a successful transition to society. It is also pointed out that these measures should begin at the point of admitting a person to a penitentiary unit and last until their release, and that prisoners themselves should feel that they belong to society outside the prison walls.

Based on the experiences following from the previous legal acts, another document of international law was developed, namely the European Prison Rules of 2006.[6] They entered into force

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2 Standard Minimum Rules for the Treatment of Prisoners Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolution 663 C I (XXIV) of 31 July 1957.

3 D. Gajdus, B. Gronowska, *Europejskie standardy traktowania więźniów*, Toruń 1998, p. 27.

4 International Covenant on Civil and Political Rights of 19 December 1966 (Journal of Laws 1977, No. 38, item 167).

5 Recommendation No. R (87) to Member States of the Council of Europe on the European Prison Rules adopted on 12 February 1987, referred to as the EPR of 1987.

6 Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules adopted on 11 January 2006, "Przegląd Więziennictwa Polskiego", No. 72-73, Warsaw 2011, referred to as the EPR of 2006.

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on 11 January 2006, replacing The European Prison Rules of 1987. The European Prison Rules (EPR) of 2006 introduced the principle of normalisation, according to which each prisoner should retain all civil rights enjoyed by other citizens in society and the only right he was deprived of was the right to liberty. Rule 6 of the EPR of 2006, included in Part I "Basic principles and scope of application", stated that all detention from the very first day should be managed so as to facilitate the reintegration of prisoners into the free society, as the goal of imprisonment is not only to prevent re-offences, but mainly to work on developing independence and responsibility of the inmates.[7]

After analysing international acts, it can be stated that the European penitentiary policy and the standards adopted in the European Prison Rules, aim at reducing to the maximum the differences between life in confinement and life out of prison. These standards can be implemented only when an inmate is treated as a subject of rights and obligations, and not as an object placed outside the social framework.[8]

[7] Reg. 120 EPR of 2006

[8] W. Liszke, *Przygotowanie skazanego* do życia po zwolnieniu z zakładu karnego przez kuratora sądowego, Probacja 2009, no 3-4. p.113.

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Normative regulations on assisting prisoners in social re-adaptation

After death penalty has been removed from the catalogue of penalties[9], imprisonment[10]as an *ultima ratio* penalty, is the most severe reaction of the state to a crime.[11] As such, it should be imposed only on those perpetrators for whom non-custodial penalties[12] would be pointless and unjustified.[13] Consequently, rehabilitation of those perpetrators who have been sentenced to imprisonment is an extremely difficult and complicated task. This difficulty is caused by the human factor (a convicted person and the prison administration) as well as by the socio-legal factors.

Preparing convicts for life after serving a sentence of imprisonment is an E2E process and as such it should consist of three obligatory elements:

1. Actions carried out during the entire time of confinement in a penitentiary facility;
2. Measures taken prior to a prisoner's release from prison;
3. Support and assistance provided to prisoners immediately after they are released from a penitentiary facility.[14]

Sometimes implementing these elements will require involvement of other subjects and enforcement bodies as well as taking some other actions.

The first point (actions carried out during the entire time of confinement in a penitentiary facility) will require involvement of those working in the prison administration in addition to commitment on the part of a prisoner. These actions should focus on the in-prison education and training (which are time-consuming processes) to help prisoners improve their professional qualifications. Simultaneously, it is necessary to take actions that would enable prisoners to maintain contacts and ties with their families and relatives, to build a kind of "bridge" between life in prison and life in the free society.[15] Only in this way is it possible to improve chances of a successful reintegration into society[16] because this will help inmates "stay close" to normal life, at least to some extent.

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9 Art. 32 of the Act of 6 June 1997 – The Penal Code (Journal of Laws of 1997, No 88, item 553 as amended).

10 Also the penalty of 25 years' imprisonment and the penalty of life imprisonment.

11 L. Bogunia, T. Kalisz, *W sprawie interpretacji art. 67 k.k.w. Rozważania o celach wykonywania kary pozbawienia wolności i kierunkach współczesnej penitencjarystyki*, Nowa Kodyfikacja Prawa Karnego, Vol. XXVI, Wrocław 2010, p.123.

12 M. Malezini, A. Sakowicz, *Kara pozbawienia wolności jako instrument polityki kryminalnej* [in:] *X lat obowiązywania kodeksu karnego wykonawczego*, eds. Lelental S., Szczygieł G.B., Białystok 2009, p. 77.

13 Art. 53 of the Polish Penal Code

14 A. Iwanowska, *Przygotowanie skazanych do życia na wolności w trybie art. 164 k.k.w.*, Warszawa 2013, p. 5.

15 Art. 67 § 3 of the Act of 6 June 1997 – The Executive Penal Code (Journal of Laws of 1997, No 90, item 557 as amended).

16 J. Migdał, G. Skrobotowicz, *Możliwość realizacji Europejskich Reguł Więziennych z 2006 r. w zakresie reintegracyjnego modelu wykonywania kary pozbawienia wolności a przeludnienie polskich jednostek penitencjarnych* - "Roczniki Nauk Prawnych KUL", Vol. XXIV, no 1/2014, p. 111.

The second element of an effective reintegration process focuses on intensifying actions immediately before a prisoner is released (either because of completing the full term of prison sentence or on conditional early release) which are aimed at smooth transition into the community.[17] In accordance with the legal provisions, these may involve granting a prisoner a leave pass to complete formalities related to the future employment or to finding accommodation. Additionally, at this stage it is necessary to involve the institutions and entities providing statutory support for inmates leaving penitentiary institutions, as defined in Art. 38 of the Polish Executive Penal Code.

The last point relates to the moment of leaving prison and what happens immediately afterwards. At this point, actions are carried out mainly by the prison administration and the Prison Service officials and they focus on providing interim aid to a prisoner, for example footwear and clothing appropriate to the season, necessary documents and certificates (e.g., about completed courses and termination of imprisonment), a bus or train ticket to get to the place of residence, as well as some subsistence allowance.

In the Polish criminal law, the institution of preparing prisoners for re-entry is derived from the Executive Penal Code of 1969.[18] The relevant regulations can be found in Chapter VII "Post-penitentiary assistance." Art. 34 (1) of the Executive Penal Code of 1969 stated that "the competent bodies of the National Councils Praesidium and social organizations shall provide assistance to those released from prison in order to consolidate their rehabilitation and thereby prevent recidivism." Pursuant to § 2, "this assistance shall consist, in particular, in helping to find a job and in providing temporary accommodation, if necessary." Art. 35 of the Executive Penal Code of 1969 granted the Prime Minister the power to issue a regulation on the scope and principles of providing post-penitentiary assistance.

The Constitution of the Republic of Poland[19] defines the rights of every human being, including a prisoner. Pursuant to Art. 30 of the Polish Constitution, which deals with the principle of respect for dignity, each person has the inherent and inalienable dignity which is "inviolable, and the respect and protection thereof shall be the obligation of public authorities." Art. 40 of the Polish Constitution emphasises the principle of humanitarianism stating that: "No one may be subjected to torture or cruel, inhumane, or degrading treatment or punishment. The application of corporal punishment shall be prohibited." Moreover, a direct reference to convicts can be found in Art. 41(4) of the Polish Constitution, which reads: "Anyone deprived of liberty shall be treated in a humane manner."

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17 Art. 164 § 2 of the Executive Penal Code.

18 Act of 19 April 1969 (Journal of Laws, No 13, item 98, as amended), hereinafter referred to as The Executive Penal Code of 1969

19 Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No 78, item 483, as amended), hereinafter referred to as the Polish Constitution.

Additionally, pursuant to Art. 41(1) "Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute." These constitutional guarantees and principles should be related to the functions of penalties[20]which have been defined in the Executive Penal Code currently in force, and they should constitute the starting point for all types of actions preparing prisoners for re-entry.[21]

As stated in Art. 67(1) of the Executive Penal Code, "the purpose of incarceration is to make the prisoner willing to cooperate in developing socially desirable attitudes, in particular a sense of responsibility and the need to respect the legal order and thus refrain from re-offending." This purpose is twofold – rehabilitation and deterrence.[22] In order to achieve it, the prisoner must be willing to change and see the sense of this change. The scientific literature on the subject distinguishes two goals of penitentiary social rehabilitation, defined as the minimum goal and the maximum goal.

The minimum goal includes, among others:

- the ability to refrain from criminal behaviour;
- avoiding criminogenic situations;
- inability to respect essential moral and social norms, inability to control emotions;
- lack of integration (or reintegration) with family and relatives;
- frequent or very frequent conflicts with family and relatives;
- instability of personal life;
- addiction relapse, substance abuse;
- lack of strategic life goals.

The maximum goal includes:

- being convinced that criminal behaviour is pointless;
- organizing one's personal life in a way that excludes criminogenic situations;
- integration with the family;
- avoiding violation of moral and social norms in social coexistence, being able to control emotions;
- avoiding substance abuse;
- taking up employment or being persistent in job search;
- having strategic life goals.[23]

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20 Cf. Art. 67 of the Executive Penal Code.

21 J. Lachowski, *Kodeks karny wykonawczy. Komentarz*, Warszawa 2015, p. 320.

22 S. Lelental, *Kodeks karny wykonawczy. Komentarz*, Warszawa 2014, p. 238.

23 H. Machel, *Aktualne tendencje resocjalizacji penitencjarnej w polskich zakładach karnych* [w:] *X lat obowiązywania Kodeksu Karnego Wykonawczego*, eds. S. Lelental, G.B. Szczygieł, Białystok 2009, p. 54 et seq.

In accordance with the provisions of the Executive Penal Code[24], individualized rehabilitative measures are taken from the very beginning when a person is placed in a penitentiary facility. First, convicts are classified and admitted to an appropriate penitentiary facility in terms of its type and kind. Also the system under which they are to serve their sentence is determined. The legislator provided for a range of penitentiary measures, which focus on work, education, cultural, educational and sports activities, as well as on maintaining contacts with the family and the outside world. If necessary, appropriate therapeutic measures are also provided.[25] All these measures are aimed at enabling the prisoner to rehabilitate and re-enter society successfully.

Strictly speaking, assisting prisoners in their re-entry concerns the last stage of serving a prison sentence and is regulated in the Executive Penal Code, Chapter 12 "Releasing prisoners from penal institutions and the conditions for providing them with assistance." Up to six months before the end of imprisonment or expected conditional early release, the penitentiary commission, with the consent of a prisoner, determines the time[26] necessary "(...) to prepare for life after release, especially to contact a probation officer or entities referred to in Art. 38(1)."[27]

24 Art. 67 § 2 of the Executive Penal Code.
25 Art. 67 § 3 of the Executive Penal Code.
26 Art. 164 § 2 of the Executive Penal Code – "If deemed necessary, the penitentiary court may determine the period referred to in § 1 when granting or denying conditional release."
27 Art. 164 § 1 of the Executive Penal Code.

Prisoner re-entry program in the context of prison types and systems of serving a sentence(2005-2020)

Preparing prisoners for re-entry takes place in different types of penal institutions and under different systems of serving a custodial sentence. The analysis of annual statistical data allows for illustrating some trends in the Polish prison system. The analysed data cover the period between 2005 and 2020, which enables us to point out some phenomena in this time and draw some conclusions.

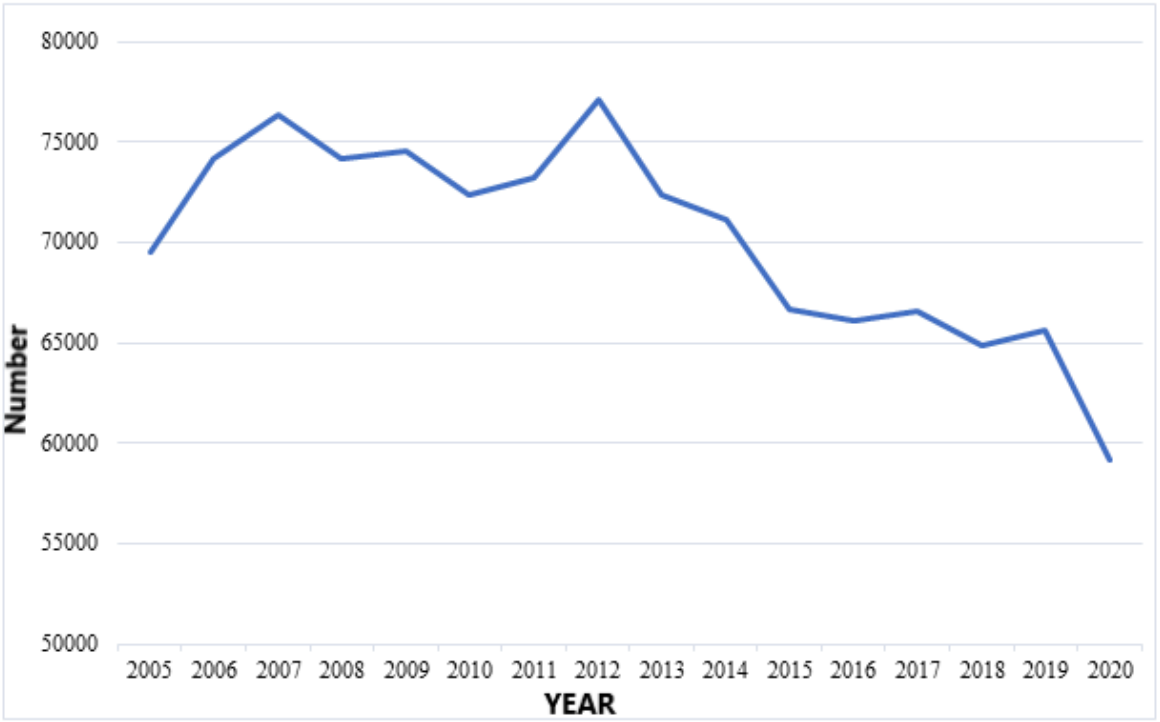

Figure 1. Prisoners by groups and systems of serving a custodial sentence in 2005-2020 (in total).[28]

The statistical data for the period 2005-2020 show that the number of those serving a custodial sentence between 2005 and 2012 stayed above 70,000, to reach a peak in 2012, when it amounted to 77,000. Since 2012, it started to decrease slowly, reaching the level below 59,000 in 2020 (a difference of over 23% when compared to 2012).[29] It should be remembered, however, that 2020 was the first year of the pandemic caused by the SARS-CoV-2.

Thus, it is necessary to observe the data in the following years, to be able to draw more reliable conclusions.

[28] Author's study based on statistical data available at: https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/ (accessed: 07.10.2021, 20:00).

[29] Cf. G. Skrobotowicz, *Wykonywanie środków oddziaływania penitencjarnego na przestrzeni lat*, „Roczniki Nauk Prawnych", Vol. XX (2020), no 1, Lublin, pp. 131-133.

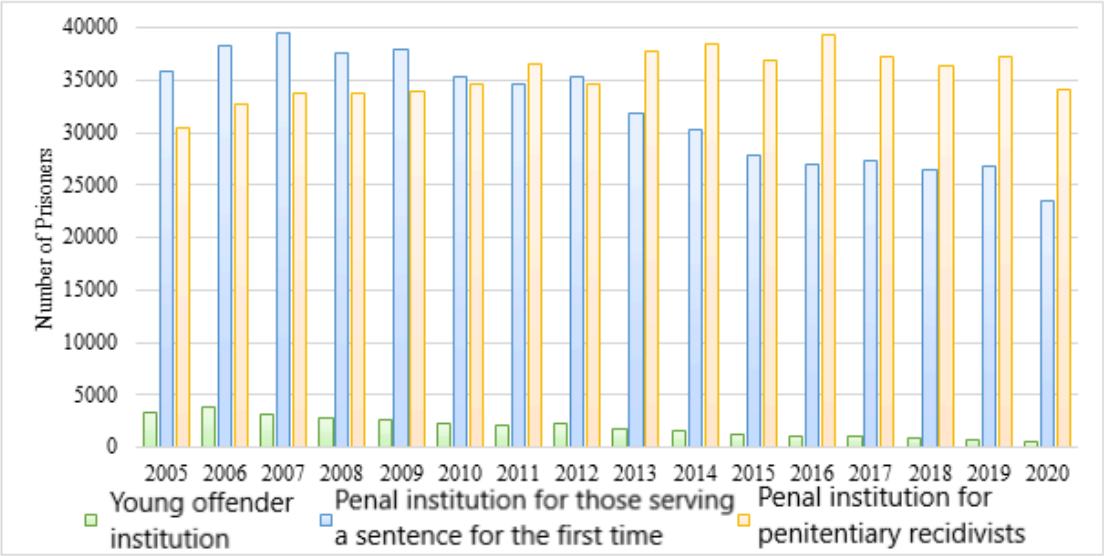

Figure 2. Prisoners by prison types in 2005-2020.[30]

When looking at the distribution of prisoners in different types of penal institutions, two trends are visible. On the one hand, the number of first-time prisoners has been decreasing, which is a positive symptom showing that there is "no" influx of more "new" offenders. On the other hand, the number of penitentiary recidivists remains at a high level, which means that reintegration and rehabilitation of first-time prisoners as well as penitentiary recidivists, is not successful. As a side note, one can observe a positive trend concerning the number of young offenders, which has been decreasing over the years. Thus, at least in this group, there is no visible increase in the number of offenders.

The data in Figure 2 are the most important for presenting the effects of preparing prisoners for re-entry. Aggregated numbers show that the measures taken are not entirely successful and fail to bring expected results. Thus, it is necessary to consider modernization and improvement of the mechanisms currently in use.

[30] Author's study based on statistical data available at: https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/ (accessed: 07.10.2021, 20:00).

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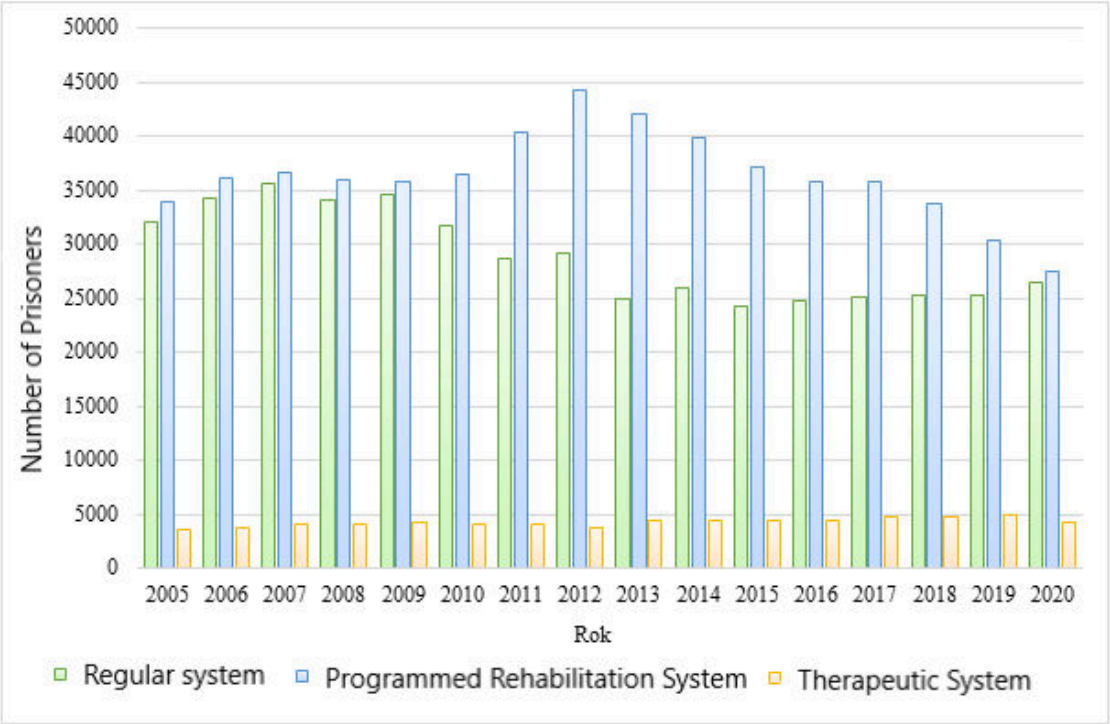

Figure 3. Distribution of prisoners by systems of serving a custodial sentence in the years 2005-2020.[31]

Based on the analysis of data for 2005-2020 on the systems of serving a custodial sentence, two trends should be pointed out. Firstly, since 2012, the number of prisoners serving their custodial sentence in the system of programmed rehabilitation had been decreasing. Secondly, at the same time, the number of prisoners serving their sentence under a regular system had been increasing, though at a much slower rate. In 2020, the number of prisoners covered by the programmed rehabilitation system (27,420) and in the regular system (26,389) was the most similar. The data in Figure 3 correspond with the data on prisoners placed in different types of penal facilities. Prisoners classified as penitentiary recidivists most often serve their penalty under the regular system, which follows both from legal regulations and from their attitude to the entire penitentiary system and unwillingness to work with the prison staff on personal development and future life. Additionally, it should be noted that the number of prisoners that serve their penalty under the therapeutic system fluctuates at the average level of approx. 4,200.

[31] Author's study based on statistical data available at: https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/ (accessed: 07.10.2021,20:00).

Summary

Preparing prisoners for re-entry begins with the moment when they cross the threshold of a penitentiary facility. It is largely up to prisoners how they spend their time during confinement. The Polish legislator provided for mechanisms and procedures that may assist prisoners in rehabilitation and prepare them for a future life as law-abiding citizens complying with social norms and expectations. However, it is mostly up to the prisoner whether he/she will be willing to change. It is justified to quote here a *credo* in penitentiary science, which states that it is always a human that enters prison, while a criminal remains behind the prison gates.[32]

The data analysis shows that the number of offenders classified as penitentiary recidivists is increasing year by year, while the number of those serving their sentence for the first time is decreasing. It is therefore necessary to return to the discussion on the effective rehabilitation of prisoners during their incarceration, especially of those who have been placed in prison for the first time. The potential changes could involve the evaluation and modernisation of penitentiary measures by increasing funding for those measures that are the most beneficial for both the prisoner and the state; e.g., employment or education of prisoners.

[32] D. Gajdus, B. Gronowska, *Europejskie standardy traktowania więźniów*, Toruń 1998, p. 18.

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