

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

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### Abstract

This article discusses securing the right to respect for one's own religion, identity, and culture. However, it confronts them with penitentiary practice in Polish organizational and legal conditions. There emerges an interesting space for analysing different tendencies to uniformize the conditions of punishment and protection of individualization. Not only are procedural issues involved, but, above all, the mentality and attitudes presented by penitentiary officers. The deliberations are focused on a kind of conflict between yielding under the demands of a different culture and the resistance of prison staff against respecting them. Presented conclusions are the results of field research among penitentiary officers in Poland, but they all start a discussion on the creation of penitentiary policy in this area, especially in countries with poor experience in working with Muslims.

**Keywords:** multicultural education, muslims, prison staff, synergy

### Introduction

#### Stigma of Difference of the Criminal

The issue of crime and punishment is inextricably linked with the emphasis on the differences between criminals (prisoners) and righteous people. The prison, rightly pointed out by Howard S. Becker, is not only a place of punishment but also a preventive measure, because its existence accentuates and confirms the fact that there has been chosen a group of criminals (branded) from among the people who would not like to share their fate (Siemaszko 1993, p. 302). This stigma is so strong and ubiquitous that it is at the centre of attention of the chosen approaches to rehabilitation work. It is worth referring to theories of rehabilitation based on the concept of E. Goffman (2003, p. 31), in which the elimination of stigmas collected by the convicts throughout their lives marks one of the paths of their personal and social change. From the perspective of discussion about the difficulty of dealing with the criminal, stigmas and differences between them and the rest of society become an important predictor of the shape of penitentiary politics. It is important to assume that the policy of conduct towards convicts, and especially foreigners, cannot only be determined by a set of law rules, without taking into account the social climate. Hence, questions about the understanding of multiculturalism, its axiology and the perception of foreigners by Prison Service officers are so important. Of course, as pointed out by Henryk Machel, the prison community combines staff and convicts, but, at the same time, the author emphasizes the differences between them (Machel, 2003, p. 82, 91, 152).

In this perspective, consideration of penitentiary policies towards convicted foreigners is becoming even more complex. Except for the offender's label, there are another: 'alien', 'different', 'problematic', 'demanding'. Therefore, considering the chances and prospects of developing Polish standards of penitentiary conduct towards foreigners, it is necessary to thoroughly understand the existing tendencies and expectations created by the Prison Service itself. A bottom-up understanding of the situation allows to seek solutions based on synergy rather than top-down concessions. For this reason, the search for standards of penitentiary work should begin with a careful exploration of the staff's personal attitudes towards prisoners who are culturally or religiously different.

The main aim of these considerations is to present the opinion of the Prison Service that shows the difficulties of penitentiary policy. There has been made an analysis of two factors, namely, the perception of concessions to 'aliens' and the differences between 'alien' offenders and the majority. The differences between 'our own people' and 'aliens' – especially in prison conditions – can be one of the most important blocks of communication and rational standards of conduct. Even the most thoughtful ways of acting cannot be implemented without the quality of interpersonal relationships.

The analysis of social background for the standards of penitentiary policy towards foreigners is the result of the author's own research, conducted since 2012 on convicted foreigners in Poland. The conclusions are also a part of the current research carried out in the years 2015-2016 in Polish, Czech, and Lithuanian penal institutions, focusing on interviews with penitentiary officers. The research questions for this discussion can be specified in two problems: What are the difficulties in the implementation of penitentiary tasks for foreigners in prisons? How do officers interpret their relationships towards a multicultural group of convicts?

### **Standards and difficulties of penitentiary conduct with 'alien' convicts**

The quality of relationships between the majority and ethnic, religious, or national minorities in prison conditions is not beyond general tendencies of perception of foreigners. Of course, this fragment of social reality, whose image is distorted by the total jail itself, is not a simple translation of social tendencies. Their distortion results, *inter alia*, from the stigmatization of crime, domination of personnel over the convict, situation of total subjection of the convict to the prison conditions, as well as retributive justice and struggle for domination.

However, when writing about the standards of penitentiary policy towards 'aliens', their cultural, ethnic, or religious diversity should be taken into account. This is especially important in prison conditions, because the convict is subordinated to the conditions that the penitentiary creates. In view of such a relationship, the difficulties in realizing religious freedoms are more pronounced, and the emphasis on ethnic/cultural differences is more difficult than in open society. However, the legal aspects that guarantee the convicts the right to cultivate their distinctiveness should not be overlooked. In particular, the text of Recommendation R(84)12 of the Committee of Ministers for EU Member States concerning foreign convicts is a specific guarantee of certain freedoms.

The guidelines contained in the Recommendation can be divided in terms of their difficulty, pointing to: those that already form a part of well-established rights of foreign prisoners and those that require additional officers' activity, as well as certain organizational changes and adaptations. The first category includes, for example, access to texts written in the language of the foreigner (Part II A, pt. 3.). This issue is discussed in the Polish penitentiary law. An inseparable element is the cooperation with diplomatic representatives of countries of the convicts' origin, but there are no instruments governing mutual cooperation. Apart from formal diplomatic notes regulating relations in these issues (e.g. of Poland and Turkey, Ankara 1989), in fact, the prison staff actions can be, and often are, superficial. The field research in Polish prisons in the Lublin region (2012/2013) has indicated that the cooperation is irregular, and diplomacy is often not responding to attempts to contact of the convicts, as confirmed by interviews with Russians and Ukrainians. In general, there have been shown the difficulties in dealing with diplomatic representations of the countries of Eastern Europe. On the other hand, the issues of providing legal and proceeding documents, as well as the transfer of prisoner rights and obligations (Part II B, pts. 8, 9) in an understandable language, are already a well-established part of penitentiary practices, especially intensified since 2010, after the Polish Ombudsman's speech.

Similarly, the right to religious practice is governed by law, but determining the right to respect ethnic customs (Part II C, pt. 11) generates a lot of doubts. How to deal with different ethnic customs then? Particularly with those very different from the European culture, e.g., when Muslims refer to the different (superior) relations with women of their African and Asian region. How to deal with different ways of making ablutions, which are a custom and an organizational challenge in Polish, Czech and Lithuanian prisons, whose infrastructure is not adapted to wash the whole body after every

physiological activity? These difficulties are highlighted by the results of the author's own research (2015/2016), as officials from Poland, Lithuania and the Czech Republic have recognized the problems with respecting ethnic differences.

It is therefore much more difficult to implement these recommendations, which are imprecise, with a high degree of vagueness, leaving room for national penitentiary policy. Hence, there emerge the essential questions about mental preparedness to create a different penitentiary policy in this area.

The more difficult issues include ensuring that foreign convicts have an equal contact with the outside world, just like other prisoners (Part II, pts. 6, 7). In addition, activation processes in the local environment are also troublesome to use for 'aliens' who very rarely use job opportunities outside the prison. In the course of interviews with the convicts, the only exception was an option to work outside the jail area of two Russians in Hrubieszów, who were participants of a program of activation through work for the local community and protection of cultural property. There has emerged a particularly complicated problem, as foreigners can really benefit from all the rewards included in the Executive Criminal Code to a small extent. The reason for these limitations are formal considerations and not their attitude. Convicts do not use visits if they are not in contact with the family, nor do they fulfil conditions of visit without supervision outside of prison (Article 138, s.1, pt.7), because they do not contact relatives and do not have relations with trustworthy people. It is difficult to expect that the convict will be able to provide guarantees of a trustworthy person, since he or she has no contact with the local community. Of course, the role of non-governmental organizations, whose activity is visible in this area, should be emphasized. For example, in Warsaw, there are cases where organizations try to help foreigners to use several hours of visit, with the guarantee of a trustworthy person. In the studied penal institutions in the Lublin district, the correction officers did not notice such an initiative. Equally important are organizational considerations, especially in closed and semi-closed institutions, which are generally not prepared to meet even legitimate requests, such as the possibility to prepare and eat meals after twilight during Ramadan.

There are discrepancies between recommendations and reality in organizing vocational courses and trainings, taking into account linguistic, communication, attitudinal, and other difficulties. The correction officers could not really offer anything to the convicts, which would help in their reintegration, especially since they will be deported, having served the sentence of imprisonment. Therefore, there are questions about the competence that should be provided to the convicts; since they do not need Polish documents, they will not be looking for work on the Polish labour market. The main canon of penitentiary programs in social reintegration usually emphasizes social-life tasks, administrative tasks, and teaching professional competences. Their meaning and scope of the expected competences remain outside the area of interest of foreign convicts. After leaving prison, in contrast to the Poles, they will not have the right to use the Polish social assistance system, so social security is not part of their reintegration. Likewise, any issues related to understanding of the local labour market or competencies of applying for employment, in the opinion of correction officers, do not support real opportunities for re-integration. Also the tasks connected with cooperation with the Polish public administration offices pass with the goal of re-integration, because these people will return to their countries, where it is impossible to adapt the gained knowledge, which is useful in Poland. The respondents have pointed out that an important problem is the lack of knowledge necessary to inform the convict about the living conditions in his or her country – although the question is whether such action is manageable and necessary.

### **Axiological Principles and Multiculturalism in Penitentiary Politics**

Combining prisoner's freedoms with total prison conditions generates many difficulties and ambiguities. In addition, the general nature of the recommendations, which are differently understood in different EU countries, causes confusion.

However, this state of penitentiary practice is superinduced by a definite, general view on multiculturalism, especially in countries that have not been the place of large influx of ethnically and religiously different foreigners. Alicja Szerlag views the trends of social perception of multiculturalism in two, mutually exclusive directions, such as:

The official-private face of multiculturalism, where social relations are built on the ideals of civil equality, regardless of race, religion or gender, when the cultural heritage of different groups – including minorities – is protected, where there is room to expose different cultures, languages, and history of nations (Szerlag, 2015, p. 73).

The threatening-deconstructing face of multiculturalism that accentuates the disapproval of cultural differences. Divergences generate a social conflict where there is social ethnocentrism and scepticism towards minorities. Such a tendency is triggered by hate crimes (Szerlag, 2015, p. 74).

The understanding of multiculturalism as an opportunity or threat determines trends to interpret the relationships between the minority and majority. Grzegorz Janusz points to the processes of: a) assimilation (voluntary or forced), b) integration (as assimilation managed by the host country, cultural pluralism policy, spontaneous assimilation), and c) integration broadly understood, as a bidirectional process of mutual interpenetration of majority and minorities (Janusz, 1995, p. 16-18).

Likewise, Jerzy Nikitorowicz points out that the minority may be subject to the processes of marginalization, separation, but also assimilation or integration (Nikitorowicz, 2002, p. 66). Although the integration understood as a preservation of native culture (of origin) and incorporation of the culture of country of settlement into it, is undoubtedly a difficult challenge. Actually, it is shaping of a new human identity that is not always compatible with the interests of politics, society, and ethnic groups who want to preserve their legacy and distinctiveness. Examples of these difficulties appear in contemporary Western Europe, with the large and multi-generational Muslim community. These are difficulties in creating one's own identity, mainly in young people. That is why the fundamentalist movements reach European Muslims, who are already born and educated in western countries, and whose grandparents and parents have settled in Europe as migrants. The fundamentalist movement, which does not speak directly about fighting for its own distinctness, refers to the return to the roots of faith and tradition. Islam is supposed to give spiritual peace in a world where there is a relaxation of values and norms of behaviour (Algosaibi, 1985). The fundamental values of Islam include the return to the dignity of Muslims and escape from spiritual dilemmas (Dekmejian, 1995, p. 49). On the other hand, Tariq Ramadan raises questions about the new identity of the Muslim in Europe, wondering whether his ethnic customs and relationship to the country (region) of origin is not a real obstacle to building an unequivocal European identity. European Muslims have to cope with different identities, determining the relevance of each of them and their own loyalty to them, and only on the basis of this diversity, to create their own identity (Widy-Behiesse, 2012, p. 15-16).

Therefore, the questions not so much about the social policy itself, but about the social image of foreigners, are still topical. These are also the questions about the social background for penitentiary policy towards foreigners, which, in my opinion, is even more complicated, because, as indicated at the beginning, it includes additional, pejorative stigmas of a prisoner, alien, and criminal.

Marian Golka, exploring the sources of conflicts in multicultural relations, pointed to the continuum of reactions of the majority to the minority, emphasizing:

Open antagonism,

Passive antagonism,

Striving for overt or concealed segregation and isolation,

Coexistence with mutual accommodation,

Assimilation with mutual adaptation, acceptance, and even amalgamation (Golka, 2012, p. 286).

When the stigmas of a criminal are taken into account, there are big differences between officers and prisoners, between representatives of the majority and the minority. Natural processes of retributive justice indicate that attitudes of open or

passive antagonism towards foreign prisoners can be the major area for penitentiary policy. It is worth emphasizing that from the point of view of social rehabilitation pedagogy, the quality of this policy is not only determined by law, since the social context of their implementation must be discerned. This thesis is confirmed by the situation when law becomes dead in practice, because there is no social will for making concessions or favour. This is the space where, even if there is no obvious antagonism, its passive form of hostility will appear, which is, in fact, easy to implement under conditions of a total institution.

### **Cooperation and Concessions – Willingness to Cooperate for Penitentiary Policy towards Foreigners**

Creation of penitentiary policy in every European country (here, mainly analysed Poland, Czech Republic, and Lithuania) is standard, i.e. it covers conditions for the statistical majority. In these countries, since the early 1990s, the waves of migration have not been large; even if ethnic minorities are observed (especially in Lithuania), their ethnic and cultural distance is not drastic. The relationship with Muslims, whose ethnic and religious diversity, as well as customs closely linked to the different standards of Shari'a law, is clearly highlighted. In general, legal and organizational conditions of the prison are generally intended for similar people, i.e. those that do not represent strong distinctive categories (Szerlağ, 2015, p. 80) that create cultural differences.

In situations where the total institution is inhabited by people with diverse standards of behaviour, customs, rituals, even diet and the way of perceiving social relationships, new organizational difficulties arise in the total institution. In order to meet them, social will is essential, but also understanding of the meaning of these activities.

Alicja Szerlağ tries to indicate the canon of standards for execution of a prison sentence preserving the multicultural entanglement. These standards include:

Respecting the principles of the foreigner's native culture and dominant culture, especially in the context of social re-integration,

Recognizing the psycho-social causes that arise in the community of officers, fellow prisoners and convicts from other ethnic groups,

Balancing of threats that arise for the native values of foreigners,

Introducing a superior axiology for punishment, recognizing the values of cultural differences, tolerance, compromise, and dialogue.

However, the results of the author's own research carried out in the years 2015 and 2016 involving Prison Service officers in Poland, Lithuania, and the Czech Republic show a great distance of penitentiary staff to these standards. In addition, Recommendation R(84)12 points to the important direction of penitentiary policy that "... 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 counter-balance, so far as may be possible, these disadvantages." (Recommendation R(84)12 concerning foreign prisoners, Part II, C, pt. 13). This points to a tendency in the penitentiary practice to turn away from standardization of conduct with convicts; contrariwise, solutions for those people should be individualized. However, readiness for these activities is not obvious.

However, it is worth to emphasize the difference in perception of this individualization and its different ontological justification. Alicja Szerlağ derives the justification for these different axiological conditions, seeking multicultural values that go beyond retributive justice and severity of punishment. However, from the perspective of the respondents, the sources of individualization and its justification are ontologically related to the necessity of "concessions". The results of the study in the three countries underline the predicted need for concessions, as this is required by international law, unspecified political correctness, and a necessity of democratic societies. It is a perception of the officers that some forces impose concessions to differences, but they cannot necessarily verbalize them.

The concession to convicted foreigners has been presented in different understandings, giving it a pejorative and positive meaning.

Concessions are a threat to the punishment process because they threaten with the sense of injustice and maximize the demands of other prisoners. As many as 25% of the respondents, asked about over-standard claims regarding halal diet, would explicitly deny such claims. Ignoring the motivation and justification of these claims, they were perceived as threatening and excessively ductile. These fears are worth noticing, because the prison community strongly reacts to manifestations of privilege, therefore, the recommendation not always corresponds to the reality. This contradiction is indicated by the officers, for whom the respect for claims and disparate customs are a threat to the internal order.

Concession is a necessity; penitentiary policy assumes that they must exist, which does not change the situation of passive resistance. There has emerged an interesting opinion of the respondents, that if concessions were necessary – and it was commonly known that they are – it is only in the least non-standard situations. So, if this would involve additional organizational activities, then foreigners (here: Muslims) should not count on changes, but if it is not a demanding task, then yes, it should be deferred. Such concessions appeared as a reasoning when the issue of Muslim men's reluctance to be subjected to the orders of female officers was resolved. Regardless of the issues of gender equality and European standards for gender relations, there has appeared an important factor. 26% of the respondents have considered that the European standards of gender equality can be 'sacrificed', if this is to reduce conflicting attitudes of convicts. This concession will improve the relationships between the convict and the officers and organizationally, it is the easiest action. In the surveyed countries, the penitentiary staff, especially in male prisons, were dominated by men. Thus, providing the convict with a contact with officers of the same gender has been explained as an easy operation. At the same time, it has been seen as a concession to these convicts, that is the fulfilment of an unspecified necessity of deferring.

Concessions are seen as a manifestation of legal obligations of European countries, recognizing the values of the different religion and the consequences that arise from the perception of themselves as democratic societies. The arguments deriving from the religious background, ethnic distinctness, or personal dignity of convicted Muslims, which can not be forced to submit to the majority rules, have been perceived – but their frequency has not exceeded 7-10%.

The conclusion that emerged from the interviews points to the important role of understanding concessions to convicted foreigners as something imposed and unjust. On the other hand, the differences between criminals (the minority) and non-criminals (the majority) have been emphasized. The punishment, in the opinion of the respondents, does not enable mitigation of its conditions; it is beyond the issues of multiculturalism and does not allow other axiology as the issues of legality of conduct, according to standard solutions.

In fact, minimizing the cultivation of different traditions and accentuating diversity have dominated understanding of the role of assimilation, described as subordination to the majority culture. In particular, the prison conditions revealed these tendencies, arguing that committing a crime in a given country implicitly causes the need to accept the conditions of execution of the sentence without the right to other claims. Of course, an important argument has been the confrontation of the values of European societies with Islamic communities, indicating that in other Asian or African countries, convicted Christians have no right for their religious and ethnic differences to be respected. This also turned out to be an argument for perceiving concessions to convicted foreigners as unjust and overly liberal.

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