

Probation, Parole and Penitentiary Law

class 4

Prisoners' rights



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KATEDRA PRAWA KARNEGO WYKONAWCZEGO

Introduction

Do inmates have rights? If so, what are they?

All persons imprisoned shall be treated at all times with humanity and with respect for the inherent dignity of the human person

- A person's rights while imprisoned vary slightly depending on where they are incarcerated and at what stage of the criminal process their case may be.
- Inmates at the pre-trial stage (those who are in jail awaiting trial) have the right to be housed in humane facilities and cannot be "punished" or treated as guilty while they await trial.
- All other inmates generally have all the other rights - which will be described below.

THE BASIC LAW DEFINING THE LEGAL STATUS OF PRISONER IS THE RIGHT TO HUMANE TREATMENT BY THE PRISON PERSONEL

- This law is based on the correct assumption that we cannot expect lawful behaviour in the future from the inmate - if during his isolation, his right as a person with human dignity has not been respected.

Prisoners' rights

According to the art. 102. of the Executive Penal Code all prisoners shall have:

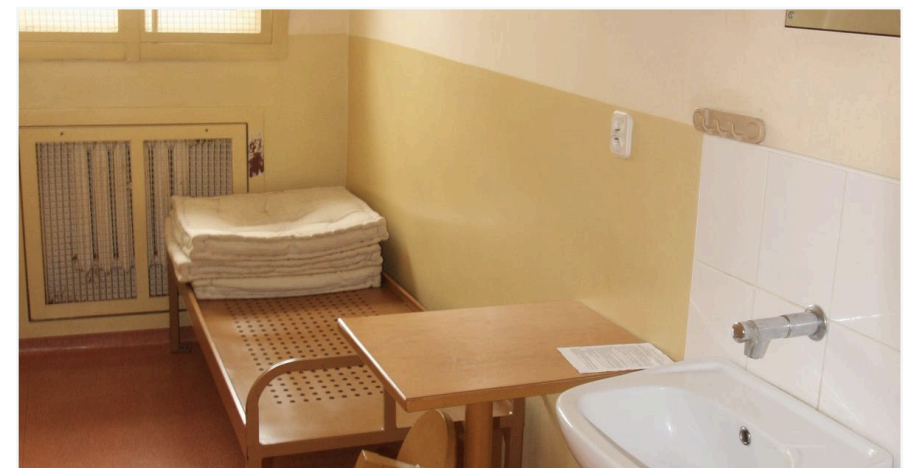
- the right to standard of living adequate for the health, well-being of themselves and their families, including food, clothing, housing and medical care and hygiene
- the right to keep in touch with their families
- the right to practice their religion of choice/ freedom of religion
- the right to employment and the fair distribution of income, including social security and disability benefits
- the right to education and self-education, including being creative, and, with the consent of the director of the penitentiary institution, the right to produce and sell their art
- the right to take part in cultural activities, education and sport activities/events, to listen radio, to watch television, to read books and the press;
- the right to communication with attorneys/ probation officers and representatives (according to the art. 42 of the Executive Penal Code)
- the right to read opinions made by prison administration as a basis for deciding in their cases
- the right to make a request or submit a complaint, without censorship to the central prison administration, the judicial authority or other proper authorities through approved channels.
- the right to communication with investigative authorities, with court and other institutions as Polish Ombudsman

The right to standard of living adequate for the health, well-being of themselves and their families, including food, clothing, housing and medical care and hygiene

- [As it was said in previous presentation](#) - space for one prisoner should be at least 3 square meters (art. 110 § 2 of the Executive Penal Code).
- However, in certain circumstances, the Executive Penal Code allows putting a prisoner in a smaller cell, as long as there is not less than 2 square meters per prisoner (art. 110 § 2a of the Executive Penal Code).
- Polish prisons serve regular diet, diets for juveniles under 18 years of old, therapeutic diets (bland, diabetic, individual-adjusted), extra meals for prisoners working in arduous conditions, and meals adjusted to religious and cultural requirements.
- Each meal is complemented with a beverage - water, tea, or cereal coffee.
- The meals should have adequate nutrition and correspond with prisoner's age, employment and, if possible, their religious or cultural requirements.
- The energy value of meals should not be lower than 2600 calories or 2800 calories in the case of detained juveniles.
- Prisoners have a right to get a meal three times a day, including at least one hot meal. The prison director determines mealtimes. The interval between the meals should not be longer than six hours.

The right to standard of living adequate for the health, well-being of themselves and their families, including food, clothing, housing and medical care and hygiene

- The penitentiary administration provides meals, cleaning products, water and books. It may also provide clothing if the inmate does not have adequate ones.
- Inmates can have their own underwear and footwear (in closed-type units with the permission of the director of the prison)
- Inmates have access to a water source in the cell. Washbasins are sometimes situated outside of the room. Toilets are situated within the cell in some establishments.
- Under the European Prison Rules, prisoners should be enabled to take a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week, or more frequently if it's necessary.
- Men have the right to shower once a week. They can shower twice a week if they do manual work. In practice, they do not always have such possibility.
- Women have the right to shower twice a week.
- The regulation of the Ministry of Justice provides a shower time of 10 minutes.



The right to keep in touch with their families

- All inmates have the right to receive visits, except for those placed in solitary confinement for serious misconduct.
- The length of a visit is 60 minutes (art. 105a of the Executive Penal Code)

Open-type prison has no limitations as to the number of visits (art. 92 of the Executive Penal Code)

Semi open-type prisons allow 3 visits per month (art. 91 of the Executive Penal Code)

Closed-type prison allow 2 visits per month (art. 90 of the Executive Penal Code).

Prisoners who are under 21 years old, are entitled to one additional visit per month.

- Prisoners awaiting trial (in pre-trial detention) have very limited access to visits.
- Visits must be authorized by a judge and they take place in a cabin, through a plexi-glass.
- Visits are restricted to two times one-hour per month for “N” status prisoners
- “N” status prisoners also have to speak with their relatives through a telephone. Conversations are listened to by guards.
- Persons authorised to visit are family members and friends. An authorisation from the director is needed for visitors who are not relatives
- Children can be present during visits, with special requirements provided.
- Visitors can bring food parcels of no more than 5 kg

The right to keep in touch with their families

- For those who can't afford the costs of correspondence, the prison administration can provide enough to send letters (paragraph 18, chapter 5 of the regulations of the Ministry of Justice)
- Correspondence is subject to censorship.

Open-type prison -correspondence is never censored

Semi open-type prisons censorship can sometimes be carried out

Closed-type prison correspondence is systematically censored



- Correspondence can be received in a sealed envelope.
- Correspondence with the Ombudsman/ attorneys cannot be censored.
- The receipt of parcels is allowed, but there are some restrictions.
- Phone calls are authorised.
- Untried prisoners must request an authorization from a judge or a prosecutor in order to make phone calls. Restrictions can last several months in some cases. Once they are authorized, remand prisoners are granted one 5-minutes call per day
- Telephones are placed in the corridors.
- The right to make phone calls can be revoked as a disciplinary sanction.

The right to practice religion of choice / freedom of religion

- Inmates have the right to freedom of worship
- They can participate with other prisoners in religious events.
- There are some rules:
 1. Cultural mediators are not paid by the penitentiary administration.
 2. Religious activities are organized exclusively on a voluntary basis.
 3. Only the most represented religions receive visits from chaplains.
These visits are at the initiative of the prisoners
- Dedicated places for worship are available in all facilities.
- Each prison defines the hours to access the chapel as well as the days and hours of the mass.
- The religion which is the most represented in detention is the Catholicism.
- Certain inmates are grouped according to their religion in some facilities.

The right to employment and the fair distribution of income, including social security and disability benefits

- As it was said in previous presentation inmates receive a salary for work in some cases.
- They can also be employed for unpaid work. This latter employment is legal up to 90 hours per month for 'a good cause' to the benefit of a delimited list of authorities or public companies- on behalf of the prison (help cleaning, cooking, meal distribution) or the government, local authorities, local charities and educational organisations if this is done in a civic dimension (no more than 90 hours per month).
- Working inmates paid contribute towards social security, retirement, unemployment.
- A behaviour of the inmate while serving a penalty, including the work may be one of the reasons for granting parole.
- Salary is calculated depends on the type of work.
- Salary received by inmates is below the national minimum salary.
- Professional activities can take place inside and outside prisons. The daily work cannot exceed eight hours a day.

The right to employment and the fair distribution of income, including social security and disability benefits

- The penitentiary administration provides support for destitute inmates.
- According to the article 114 of the Executive Penal Code, prisoners who do not work and do not have any financial resources may receive an allowance from the director of the unit (up to 1/10 minimum wage for employees)
- According to the article 113 of the Executive Penal Code, prisoners must transfer their money to the deposit or on a selected bank account.
- At the request of the prisoner, some funds can be transferred by an outside person.
- The prisoners can use these credentials to make purchases in prison.
- The remaining balance is given to the prisoner upon release or when they have an exit permit (if they are temporally released.)



The right to education and self-education, including being creative, the right to produce and sell their art

- All people who serve their sentences in prisons and custodies have a right for education, and they are allowed to learn.
- [According to the article 102 of the Executive Penal Code](#), prisoners have the possibility of attending a school. All grade levels are offered from elementary school to university.
- Convicts may acquire knowledge and raise their qualifications at various levels and in various fields.
- Education is provided in the first place to convicts who do not have any profession, or to those who will not be able to work in their acquired profession after leaving prison, because they will be still under-aged (not 21 yet) - [art. 130 § 3 Executive Penal Code](#)
- Convicts who do not have sufficient financial means are provided with free handbooks and training aids - [art. 130 § 4 Executive Penal Code](#)
- [According to the article 131 of the Executive Penal Code](#), prisoners have also the possibility to attend classes outside the prison.
- With the permission of the director of the penitentiary institution, prisoners can also produce and sell their own art
- Prisoners are also helped to develop a positive sense of self and a sense of responsibility for their own lives and towards others.

The right to take part in cultural activities, education and sport activities/ events, to listen radio, to watch television, to read books and the press

- Prisoners can take part in cultural and educational activities
- They have also opportunities to read newspapers, magazines, and books.
- According to the Executive Penal Code, prisoners should be provided with various activities, referring to work, education and socio-cultural activities, and family bonding activities.
- The prisoners may be also punished with disciplinary punishment of a refusal to participate in any cultural, educational or sport event (for up to 3 months)
- Every prison, in their internal regulations, determines the time allowed for cultural and sport activities



The right to take part in cultural activities, education and sport activities/events, to listen radio, to watch television, to read books and the press

- Some prison rehabilitation programs are cultural in nature and have become known as “rehabilitation through culture and art.”
- They aim to provide access to cultural resources and to motivate talented inmates to experiment with various forms of artistic expression—in the literary, musical, or visual arts.
- Inmates can present their artistic creations in a public forum - rehabilitation through theater and public performances has proven to be quite successful. This form of art therapy involves both professional actors and the offenders themselves, who often write the scripts
- Each penitentiary unit in Poland is equipped with a library. Depending upon the prison size, the libraries typically contain about several thousand volumes. The books are usually a gift from liquidated public libraries



The right to take part in cultural activities, education and sport activities/ events, to listen radio, to watch television, to read books and the press

- In most units, there are recreation rooms for sports activities, and a large part of them has independent sports fields.
- Prisoners prefer sports such as football, basketball and martial arts (mainly boxing). Prisoners also have the opportunity to participate in Nordic walking classes, running (they arise a runner's clubs) and canoeing (in the Czarne Prison).
- Gym classes are also of great interest, although the lack of qualified trainers should be considered as a weakness.
- Participation of the convict in sports requires obtaining both administrative and medical consent. Consent usually covers the possibility of a prisoner participating in sports activities no more than twice a week for two hours (or additionally on non-working days)



The right to communication with attorneys/ probation officers and representatives

Polish law guarantees every person who is detained the right to be assisted by a lawyer

1. However, prisoners have access to a legal aid system on the same ground as people who are outside the prison.
2. Communication between prisoner and their lawyers/ attorneys is confidential and cannot be controlled by the Prison Service. This applies both to telephones and letters.
3. Prisoners are allowed to keep in their possession copies of documents related to their case - Art. 110a § 1 of the Executive Penal Code
4. Prisoners who need free legal aid - need to prove that they are unable to bear the costs of legal representation without prejudice to themselves or to their families.

The right to communication with attorneys/ probation officers and representatives

1. The detainee has the right to inform a person of his/her choice about the detention.
2. According to the article 211§ 2 of the Executive Penal Code, arrested persons have the right to inform family or another person about the place of their stay, without delay after settling them in the prison facility. This right is fully respected in practice.
3. An accused person has the right to prepare defence with his/her lawyer before the trial

Polish law provides the possibility to challenge the lawfulness of detention and request compensation in a case of unlawful detention by submitting complaint.

Everyone is entitled to compensation for intangible as well as tangible harm that he or she has suffered because of the unlawful actions of any person.

The court examines the legitimacy, legality and correctness of detention (Article 246 of the Code of Criminal Procedure).

The right to make a request or submit a complaint, without censorship to the central prison administration, the judicial authority or other proper authorities through approved channels

Prisoners have the right to submit complaint, especially to human rights organizations, courts, the Ombudsman and the other institutions.

- The prisoners complain mainly about the way they are treated by prison officers, healthcare , and living conditions.
- The CPT noted, following a visit in 2017, that there were any complaints of allegation of physical ill-treatment by staff and just a few complaints about verbal abuse.
- What also appears in prisoner complaints quite often, is that prison authorities often refuse visits by unrelated persons.

The right to communication with investigative authorities, with court and other institutions as Polish Ombudsman

Penitentiary judge

- Supervision over legitimacy and accurateness of carrying out the prison sentence or remand (pre-trial detention) is being conducted by the penitentiary judge by visiting prisons and convicts in custody and other places where prisoners are detained.
- The judge has full access to those places at any time, without any restrictions, including revision of documents and possibility of demanding an explanation if deemed necessary. The judge also has the right to interview the prisoners, in the absence of third parties, examine their complaints, and request or waive any decision of prison director by announcing it illegitimate.

Ombudsman

- Also, a very important role in Polish legal system is entrusted to the Ombudsman. This person has the authority to examine any case at any time, without notice, and demand documents and explanations concerning files of any case.

Other institutions

- Other organs taking part in oversight of the penitentiary system include the Supreme Audit Office and various non-governmental organizations.

Prisoners' rights in international law

Prisoners' rights in international law are found in a number of international documents

1. Third Geneva Convention
 2. International Covenant on Civil and Political Rights
 3. UN Standard Minimum Rules for the Treatment of Prisoners
 4. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
 5. Convention on the Rights of Persons with Disabilities
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- For those who haven't done that yet- remember to complete previous tasks!
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