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**Danuta Janicka**

## **Hube – Makarewicz – Wolter: Three Conceptions of Punishment in the Course of a Century**

The article presents the views of three prominent thinkers regarding criminal punishment: Romuald Hube (1803–1890), the father of Polish criminal law, Juliusz Makarewicz (1872–1955), the most distinguished interwar Polish lawyer, and Władysław Wolter (1897–1986), the founder of the Krakow school of criminal law. A presentation of the ideas on punishment developed by these masters of Polish jurisprudence provides an overview of the evolution of criminal law and political-criminal thought in Polish lands over the course of a century. Citing selected fragments from the works of the three professors, the Author examines how they interpreted punishment, what they believed its role to be, and what theories of punishment they put forward; moreover, which specific sanctions they supported. The article also assesses the language and discursive style of these leading lights of Polish legal science.

Romuald Hube represented the classic school of criminal law. He published his *Ogólne zasady nauki prawa karnego* (General principles of the study of criminal law), a rudimentary, systematic interpretation of criminal law, at the age of 27. He was one of the first scholars in Europe to promote a mixed theory of punishment, inspired by Hegelianism and combining the idea of retribution with the preventive aims of punishment. Juliusz Makarewicz was a representative of modernism, the leader of the sociological school of criminal law, and the father of the first penal code in independent Poland. He made his reputation in 1906 with the publication of a work on the philosophy of criminal law. He published a broad range of dogmatic and historical studies, textbooks and a commentary on the 1932 Polish penal code. Makarewicz proposed an absolute justification of punishment, yet he saw retribution as ultimately preventive, *nolens volens* developing a mixed theory of punishment oriented towards specific prevention. Władysław Wolter was a student of the last eminent exponent of the classic school in Poland, Edmund Krzymuski (1851–1928), and at the same time a representative of normativism. He dealt mainly with general issues in criminal law, particularly criminal science. After the introduction of Makarewicz's penal code, he immediately published his first textbook. He continued his academic career after the war all the way into the 1970s. Wolter adopted a modernist position within penal science and indicated the need for purposive punishment within the bounds of justice; he was therefore also a supporter of a mixed theory of punishment.

Although all of the named professors promoted or embraced a mixed theory of punishment, their approach to the penal system differed to some extent. Hube gave priority to imprisonment, which he strongly believed to be important and effective.

Makarewicz questioned the effectiveness of imprisonment and proposed a broad array of protective and probation measures, in addition to non-prison punishments. Like Wolter, he espoused the idea of two-track penal repression, i.e. a system of penalties and protective measures in response to criminal offenses. None of the named scholars rejected capital punishment outright, although all of them distanced themselves from it and hoped that it would be abolished in the future. Hube saw death as an exceptional, rarely used sanction. Makarewicz still foresaw no possibility of removing it from the catalogue of punishments due to the needs of criminal policy – he saw capital punishment as a deterrent, thus a general preventive measure. Wolter denied that it had any such impact, arguing that capital punishment did not deter offenders and was only a protective measure. As for monetary fines, Hube believed them to be appropriate only in the case of petty crimes, although he rejected confiscation of property as a sanction that affected the convict's family. Makarewicz accepted fines, although he pointed to their limited impact and inequality. Wolter wrote in a similar vein, expressing an ambivalent attitude toward this legal sanction, revealing the inequality of its burden given convicts' differing material status and recommending different legal solutions when it came to this type of punishment.

The excerpts from the works of the great masters of Polish criminal science cited by the Author also allow us to see how the language and style of criminal science has changed. Hube was the father of Polish legal language. His analyses were mainly conducted in a philosophical and historical vein. Makarewicz employed a rhetorical style, often emotional, making legal comparisons. Wolter perfected his arguments, often highly abstract, relying mainly on logic and dogmatics. All three scholars were quite familiar with European legal theory and drew on its achievements.

***Zbigniew Lasocik***

### **Labour Market Criminology**

The aim of the article is to bring attention to certain aspects of the labour market which are not in themselves criminal offenses but can definitely be considered as negative. The labour market has already been studied as an arena of market games as well as a place where the rights of the employee are infringed upon. My intention was to apply concepts from criminal science to the labour market. For the purposes of the text, I adopted a broad definition of this science, viewing it as deepened reflection on the state of society, asking questions about the origins of public order and considering the social consequences of negative actions and behaviour.

Scholarly works and press articles commonly employ the term 'labour market', but this is a misleading designation because unlike in the commodity market, here we are not talking about supply vs demand, while the price is not a key element of free market

play. Moreover, the commodity market is all about exchange, the result being a change of ownership status. Meanwhile, in the labour market a special type of social relationship is established, known as employment. Unlike on the commodity market, in the labour market the 'commodity' itself, i.e. the person, takes part in making market decisions. To be more precise, we should say that participation in decision-making belongs to the person as the key provider of the commodity sold, i.e. work. The labour market is also an arena of purely social interactions because it is here that the employer and employee meet (also literally). Sometimes this meeting produces negative consequences for one of the parties, although more often for the employee. In this context the role of the state as a regulator that can undertake preventive measures (setting up legal and other types of standards to prevent violations) or follow-up measures (building a system of effective redress should violations occur), emerges.

In my view, the complex network of such dependencies and relations as described above should be the focus of labour market criminology. To facilitate description of the social reality considered I propose to introduce a new notion, namely labour market tort. Any action on the part of a market participant that has the potential to infringe upon the rights or holdings of another participant and which endangers common goods such as public order or justice should be considered a case of such tort, as should any action that undermines the economic and social purpose of work. I also propose to develop a new instrument of criminal labour market analysis which I have tentatively called the degree of disturbance on the labour market. This degree could be measured with the number of torts on the labour market per every 100,000 employees. I would also like to propose a theoretical model of analysing violations of public order on the labour market as well as a scheme of dependence between the basic components of the phenomenology of such violations.

Departing from the premise that the aim of criminal science is to describe and explain social reality, I have tried to identify areas that are prone to violations of public order on the labour market, which areas could serve to identify types of torts on the labour market. Among these are the purely economic dimension of the labour market, the rights and duties of its participants with regard to one another, the human dimension of work, i.e. work from a social perspective, and finally the so-called arrangement of market forces which determine whether we are dealing with an employee's or employer's market.

The article also includes a review of the legal regulations pertaining to work, a brief report on pilot empirical research concerning labour market tort, an analysis of data concerning violations of employee rights and an attempt to describe the phenomenon of forced labour as one of the gravest pathologies of the contemporary labour market.

**Łukasz Wieczorek**

## **The Criminological Aspects of Forced Labour in Poland**

The article discusses some of the findings of research carried out in 2008–2012 on forced labour in Poland. The research was done using triangulation methods and consisted in an analysis of seven criminal cases concerning human trafficking with a view to forced labour examined by Polish courts and prosecutors' offices in 1998–2012. Interviews with experts and practitioners working to eliminate human trafficking (29 interviews) and with victims of forced labour in Poland (4 interviews) were also conducted. I also used a content analysis method to study press articles on forcing people to work in Poland and forcing Poles to work abroad that had appeared in the Polish press in 1997–2012. A total of 224 press articles were examined. Another source of information about forced labour in Poland, or rather about the social perception of this phenomenon, consisted in qualitative field research done in 32 localities across eight Polish provinces. This included a total of 137 conversations and interviews.

The findings indicate that the problem of forced work doubtless exists in Poland, although it is difficult to gauge its actual scale. At the same time the phenomenology of forced labour that I present indicates that there are many aspects to forcing someone to work. Those who fall prey to forced labour include both Polish nationals and foreigners (Poles are generally forced to work abroad, while foreigners are subjected to forced labour in Poland). The age and sex of the victims is also irrelevant, as both young and middle-aged persons and both men and women are forced to work. There are many ways of recruiting and then of forcing one to work. In fact, it would be hard to enumerate all the methods employed by perpetrators to make their victims work. It is therefore impossible to indicate any specific group of people that would be particularly prone to this practice, as anyone can become a victim. The same goes for branches of the economy – it is impossible to indicate any one area that would be particularly susceptible to exploitation and forcing individuals to work. Research findings indicate that in Poland forced labour occurs in agriculture, construction, shipbuilding, textiles, sales, and services (particularly housework).

Drawing on B. Andress's idea of the *continuum of exploitation* (B. Andress, *Forced labour and trafficking in Europe: how people are trapped in, live through and come out*, International Labour Office, Geneva 2008), I discovered that when it came to forced labour in Poland there was a distinctive succession of phases at play before people were actually forced into labour. In other words, 'employers' used various types of violence, threats or ruses to test the employee's susceptibility to exploitation, trying to find out to what extent they could make the person work harder, while at the same time increasing the conditions of enslavement eventually resulting in forced labour. This finding is important when it comes to the scope of the legal provisions penalising human trafficking and forced labour in Poland. In their current wording, these provisions do not include behaviour such as progressive exploitation.

My research clearly shows that Polish law enforcement and work inspection agencies have difficulty identifying cases of forced labour. Cases were often discovered by accident or by a coincidence as a result of which police agencies received information about a particular situation. Another weak spot in the identification of such cases is the lack of police intelligence about work agencies bringing foreign workers to Poland, particularly from Asian countries. Another issue is the lack of any regulation that would clearly and unequivocally penalise forced labour. The field research seems to indicate that law enforcement officers, prosecutors and judges are not familiar with the phenomenology of forced labour and do not always consider it a form of human trafficking, particularly when the victims arrived in Poland via legal channels and/or were not sold.

The ineffectiveness of the Polish system of eliminating forced labour and human trafficking is another problem due to the lack of joint action by law enforcement and the judiciary. The ineffectualness of law enforcement agencies isn't only due to poor organisation and lack of human resources, but also due to a lack of instruments and procedures for detecting these kinds of crimes.

Finally, low social awareness of the problem and social consent to people being exploited in the work setting are another aspect making it difficult to eliminate forced labour in Poland. The awareness of the foreigners themselves is another issue. They often come to Poland looking for work and agree to poor working conditions, hoping to earn more than in their home countries.

*Olga Sitarz, Anna Jaworska-Wieloch*

### **The Right of Inmates of Remand Prisons and Penitentiary Facilities to Religious Observance in Penitentiary Theory and Practice**

The article discusses the right to religious observance as one possible form of exercising one's freedom of conscience for persons in temporary detention or serving a sentence of (unconditional) imprisonment. Detention involves a range of (usually justified) restrictions and deprivations, some of which apply to the sphere of religious practices. We must not forget that freedom of conscience and religion is not only internal to a person, but also relates to his or her actions in their semi-private and public space and, as such, must be regulated, particularly in conditions of detention. Importantly, the article does not focus on the influence of religious life on the rehabilitation of inmates but on whether their right to religious freedom is respected. The aim was not to find out whether inmates needed religious practices and services in prison, but to assert that they had a right to them, while the state had a duty to respect that right.

We departed from the assumption that religious practices were a matter of public or private cult and included performing certain actions dictated or forbidden by

the laws of a given religious community. The question was to what extent these practices were subjected to limitation, which practices were concerned and to what extent the observed limitations were justified. The answer drew on existing legal provisions and on the subjective feelings of inmates themselves. It should be recalled that in 1991, the Polish Ombudsman determined that the right of inmates to practice Catholicism was essentially ensured and properly implemented in prisons. The only shortcoming, as judged at the time, was the lack of a sufficiently high-level normative act regulating all matters pertaining to religious practice in detention in a comprehensive way. It seemed necessary to check whether these findings were still valid. Thus the first part of the article provides an overview of the existing legal provisions defining the scope of religious practices that can be undertaken by inmates, including international regulations, the Polish constitution, acts of law and other relevant regulations. Different groups of inmates were examined, including those in temporary detention, those serving sentences and considered particularly dangerous as well as those subjected to the disciplinary measure of being placed in an isolation cell for a period of up to 28 days. We found that not all restrictions on the exercise of religious freedom in prison, as provided for under the Polish law, were justified. Our assessment of the said restrictions, both when it came to law making and application, took into account the goals and purpose of imprisonment and temporary detention in light of the constitutional criterion of proportionality. In the second part, we present the findings of a survey conducted in two penitentiary facilities among inmates declaring themselves Roman Catholic. The aim was to find out how the inmates viewed their rights when it came to religious practices, to what extent those practices were available to them and whether they felt any deficits in this area. At the general level, we found that the inmates declared significant activity in the religious area and rarely attributed obstacles to the exercise of religious rights to legal provisions or the rules in a given penitentiary facility. The unavailability of particular religious practices was also reported to be low. There were more answers indicating lack of permission to take part in Church ceremonies outside the prison (for example the funeral of a loved one). This is probably the weakest area when it comes to ensuring the exercise of inmates' religious freedoms.

Our analysis of the legal framework and the survey carried out in penitentiary facilities allowed us to formulate certain tentative conclusions (including *de lege ferenda*). The normative provisions do not impose many legal limitations on inmates' access to religious practices and services. Yet respecting the right to freedom of religion is not only about *not* creating unnecessary barriers; it also consists in defining a minimum set of rights conferred on each inmate, on which they can call the prison authorities to account if need be. It seems difficult to accept that the state should define inmates' minimum calorie intake or the length of walks and frequency of bathing, while at the same time leaving the decision concerning the number of religious services organised in a prison to the internal rules of that facility.

**Monika Kotowska**

### **‘White Collars’ in Penitentiary Isolation**

‘White collars’ are perpetrators who do not fit the image of a ‘typical criminal’. They are often esteemed and enjoy a high position in society, while their crimes are part of the professional sphere and often occur ‘on the margins’ of legal activity. They also include people who – unlike ordinary criminals – risk losing their prestige, reputation and professional position. Their criminal activity is often seen as a mistake or omission, rather than as an intentional violation of the law.

It would seem that ‘white collars’ are not a large group and that their crimes are not easily detected. They are not viewed as dangerous offenders who should be isolated. This is due to their personal traits, their *modus operandi* and the nature of their crimes, particularly as the latter are hard to detect, as well as to the fact that they have better access to high-quality legal aid than their less educated and wealthy counterparts. In prison, ‘white collars’ form a group which is difficult to define because of their small number. However, taking into account that Poland has seen a drop in the number of criminal offenses in recent years, with a concomitant rise in the number of economic crimes, the number of ‘white collars’ in penitentiary facilities will surely grow steadily, particularly if a punitive criminal policy is pursued. From the viewpoint of criminal science, ‘white collars’ remain an unstudied phenomenon in Poland. Nor are there any studies of how ‘white collars’ cope with the conditions of life in prison.

Looking for answers to these questions, the Author approached the authorities of one of the largest (the third in size) penitentiary facilities in the Olsztyn region with a request to access the prison archives. She examined the archival prison records of individuals who had served a sentence of imprisonment between 2005 and 2015 in order to identify a group of ‘white collars’. The selection criteria were as follows:

- Final conviction for an economic crime/crimes
- The crime was committed in connection with the person’s professional activity
- Holders of a university/higher degree
- Having a stable legal source of income.

Individuals fulfilling the above criteria were considered as belonging to the category of ‘white collars’. It was found that during the period in question only two inmates detained at the facility matched the criteria, which justified further qualitative research.

A case study was then conducted based on the archival personal records, parts A and B, which the prison made available to the Author. The Author looked specifically at documents like court sentences along with their justification, parole decisions made by penitentiary courts, probation reports, psychological opinions, as well as notes compiled by the inmates’ supervisors based on conversations with them. Because both of the inmates were serving their sentences within the framework of a programme

system, the scope and nature of their personal programmes, including any updates, were also assessed.

The records provided a glimpse into the perpetrators' social and demographic status, including their financial and family status, as well as an overview of their previous life in society and, finally, in penitentiary conditions. The qualitative research undertaken by the Author did not make it possible to draw general conclusions, particularly since the cases studied were so few. But one can compare the studied perpetrators to the 'statistical' or 'typical' inmate doing time in prison. The literature on the subject indicates that most such inmates are single, young, unemployed, without work habits, they have gaps in their education, are alcohol or substance abusers and come from difficult homes. In prison, they lack external support, which makes their later social adaptation more difficult.

The perpetrators studied as part of the research described here were much older and better educated than 'typical' convicts. They were relatively well-off, with stable incomes, and came from non-pathological homes. Their families were also evaluated positively by probation services, the police and neighbours. Before their stay in prison they had been involved in community initiatives, they were good husbands and fathers, active in the local community and the Church, without alcohol or substance abuse problems. While serving their sentences they received support from family and figures of authority esteemed in the local community. The Prison Service considered them well adapted to prison conditions, calm, often rewarded, obeying the rules, active, highly respected by other inmates, willingly performing unpaid work in behalf of the penitentiary facility and cooperating with the prison administration.

The research material presented only represents two cases; it therefore does not make it possible to draw general conclusions, yet it does highlight certain problems and areas for further research. At the same time it is for the Author a point of departure for reflection on the legal and judicial level of sentences against 'white collars' and the way such sentences are enforced.

*Justyna Siemionow*

### **Convicts' Subjective Worldview vs Planning One's Future**

The prison, as a place of detention, has a number of tasks to achieve, one of the crucial ones being to rehabilitate the inmates, i.e. habituate them to life in basic social groups and institutions. The pursuit of this mission makes it necessary to maintain, construct or reconstruct non-existent, broken or dysfunctional social ties, including family ones. The primary goal of the penitentiary rehabilitation process is for the activities that inmates are involved in while serving their sentences to be conducive to taking up appropriate social roles while satisfying their needs in accordance with accepted

values, models and social norms. A permanent change of behaviour can only be brought about if preceded by a cognitive change in the inmate's system of beliefs and mentality.

According to the cognitive theory of human behaviour, man's actions are conditioned by information, while the structure of the information people have internalised determines what aims they pursue and what they avoid. Information comes from two primary sources – from the individual's environment and from experience. It makes up every person's subjective worldview and to large extent determines his or her actions.

The article presents the findings of research conducted on a group of nine inmates regarding how they planned their future in light of their subjective worldview. The research was conducted in the form of individual, unlimited (time) interviews with the prisoners. The overarching aim was to find out what factors shaped the inmates' subjective worldview and how the latter translated into what they were planning to do with their future after leaving prison.

Family and family relationships are one of the key elements that determine how inmates perceive the world. It is with family in mind – as the findings indicate – that inmates formulate their future goals. It is worth noting that the inmates' approach to planning had changed in the course of serving their sentences – they currently see planning as a value and a condition of a successful return into the open. They shift their attention from the past to the future, they no longer concentrate only on their 'old' experiences, traumas and hurts, but begin increasingly to focus on the future and the present. They are critical of their former (pre-imprisonment) lifestyle and the decisions made then. They also distance themselves from their former crime partners, who have abandoned them.

Hence, basic therapeutic and psycho-educational work with inmates should be based on the principles of cognitive-behavioural psychology. Using their declared willingness to change, we can raise the effectiveness of rehabilitation. Strong unwillingness to take part in therapeutic programmes is a widespread problem in rehabilitation work. Hence, diagnosing or analysing individual perceptions of reality, and particularly the factors that underlie their specificity, is a key factor in bringing about change. Making plans requires looking at one's past and present life from a different perspective. Imprisonment provides such a new perspective which, in spite of the hardships of detention, can also inspire reflection. For this to happen, the staff needs to be engaged in new programmes and methods of working with inmates. Raising one's professional competence and increasing the number of one-on-one meetings with a psychologist and/or therapist are only some of the possible solutions prison staff can undertake. Another important element in the process of planning is time: the time already spent in prison and the time remaining until the end of the sentence. The least planning, as research indicates, is done by people who have just begun serving their sentence or who still have a lot of time ahead until release. Of course this does not mean that they do not think about their future life upon leaving the penitentiary facility. It is too great an emotional strain for these prisoners, however, they therefore focus on adapting to the new conditions in the best way possible from the viewpoint of potential gains. In the studied group, planning

also coincided with a marked tendency to change, which cannot be achieved without the active support of inmates' families. Hence it is also important to get the family circle involved the rehabilitation process. It is no easy task, yet doable, as shown by numerous programmes implemented in penitentiary facilities (such as 'Daddy behind bars') which particularly today need to be innovative and adapted to the present.

*Kamil Miszewski*

### **On the Harmful/Harmless Effect of Long-Term Imprisonment on the Mental and Physical Health of Prisoners**

In his 1940 book, *The Prison Community*, Donald Clemmer introduced the term 'prisonisation' into criminal science. This notion expresses the view that as the inmate continues to serve their sentence, their mental and physical health sees a continual decline; the inmate becomes more and more involved in destructive activity as part of the prison subculture, prisons as such being responsible for these negative developments. Erving Goffman, who coined the term 'total institution', speaks in a similar tone, describing prison as a place where the individual self is forcibly remoulded. We could also add Gresham Sykes to this group of theorists, with his conception of the 'pain of imprisonment', i.e. types of deprivation that every inmate experiences while in detention. But are these gentlemen not exaggerating? Does the prisoner really stand no chance of adapting to imprisonment in a way that would leave his or her mental and physical health intact?

The European Committee on Crime Problems, set up in 1957, is an organ of the Council of Europe. It has drafted many international agreements and European conventions, including Resolution 76/2 on the Treatment of Long-term Prisoners, adopted by the Council of Europe Committee of Ministers on 17 February 1976. The resolution draft was preceded by a report from two years of research on, *inter alia*, the consequences of long-term imprisonment, including psychiatric and psychological studies. As Elżbieta Janiszewska-Talago writes, the psychiatric studies indicated that after 4–6 years of imprisonment inmates were subject to the occurrence of a functional psycho-syndrome which could be called the isolation syndrome, leading to overall decline of intellectual function, lower concentration, stereotypical and monotonous reactions, and loss of one's sense of reality. The occurrence of this syndrome depended on the personality of the inmate, their age, how long they had been detained, and the routine (rules) followed in the penitentiary facility. The longer the term of imprisonment and the more intense the isolation, the more the nervous defence mechanisms of the inmate deteriorated and the symptoms enumerated above became more frequent. Yet, as Janiszewska-Talago continues, the psychological research indicated quite the contrary. 'It did not discover any case of loss of overall intelligence

that would be proportional to the length of time spent in prison, in fact to the contrary – a statistically significant improvement was noted. Meanwhile motor reactions had declined and a significant drop in the averages pertaining to extraversion was reported. As a result, no mental decline was found to have occurred among long-term prisoners, nor was there any advanced deterioration of cognitive function or personality traits during the time in prison' (Janiszewska-Talago 1980: 39). In light of these discrepant findings, the Committee concluded that the consequences of long-term imprisonment depended on the convict's personality, the social circle they belonged to in prison, their opportunities to interact, develop and make decisions regarding themselves as well as the strictness of the rules followed in the prison.

Since the 1960s there has been ongoing discussion in English-language literature regarding the harmfulness of imprisonment (it continues today [Hulley, Crewe, Wright 2015]). To my knowledge no one has yet unequivocally proven that such harmfulness is the case. What is striking, moreover, is that the condition of many long-term prisoners actually improves. This does not mean that mental or physical deterioration never occur, but no one really knows what factors are responsible. Laying the blame on long-term imprisonment is a shortcut, an oversimplification that proves true every once in a while, seemingly at random. I try to present a comprehensive overview of the large body of works on this subject.

At the end I present my own findings from research on long-term prisoners carried out in Polish prisons. Although my research did not relate directly to the issue of the harmfulness/harmlessness of long-imprisonment (I studied inmates' ways of adapting to prison conditions over the course of at least 20 years, their involvement in work, study, ways of spending free time, strength of attachment to family, relations with prison staff and many other issues), yet it casts a certain light on the problem.

*Joanna Klimczak*

### **Prisonisation and Individuals Sentenced to Life in Prison**

The article is based on my master's thesis and addresses the issue of the prisonisation of inmates serving life sentences.

Ever since Donald Clemmer introduced the idea of prisonisation, different interpretations of this phenomenon have been proposed. In particular, prisonisation has been described as a negative process, forcing a convict to become a 'good prisoner', incapable of fending for him or herself outside the penitentiary walls. According to Clemmer, long-term sentences contribute to a greater degree of prisonisation. Hence life prisoners are doomed to it. Is this a bad thing? In my view, prisonisation cannot be treated as a purely negative phenomenon. Given the unlimited duration of life imprisonment, I decided to formulate my own definition of this concept.

By prisonisation I mean a process that the inmate has to face upon entering prison. It is a way of contributing to the conditions found on arrival: the inmate with his or her personality and past experiences plus the prison environment (other inmates and prison staff). Let me emphasise that everyone influences everyone else to some degree in a prison environment.

The purpose of the research described in the article was to see how prisoners serving life sentences 'prisonise'. My division of inmates according to the length of the served sentence was supposed to reflect the meaning of time in their lives – whether the inmates 'blended into' the penitentiary system as time went by.

I assumed that the way prisoners sentenced to life coped in prison depended on how they assessed their chances of obtaining parole. This is important because looking ahead into the future determines how a convict serves their sentence, i.e. how the process of their prisonisation will unfold.

Secondly, I assumed that in the case of 'life' prisoners, prisonisation was a desired process. Assuming that such inmates will spend all of their life in prison, it is difficult to conceive of prisonisation not taking place. Moreover, lack of prisonisation would pose a serious difficulty in serving the sentence.

Taking into account the time factor in prisonisation, I determined that my research had to reflect the experience of inmates at different stages of their sentences. I divided a group of 15 convicts into five sub-groups of three. I set point 'zero' for my calculations at the date of the final judgment condemning each individual to life. Thus emerged a picture of inmates sentenced to life imprisonment across different time windows.

I conducted 15 open interviews with inmates serving life sentences using my own questionnaire. I also examined the penitentiary records (part B) of inmates who had agreed to be interviewed. This was necessary in order to reconstruct the inmates' 'pre-sentence' and prison past as well as their present circumstances.

Assuming that the actions and behaviour of life prisoners are determined by their perception of how likely they are to be released on parole, I developed the following categories:

- A. Blending into prison – the inmate puts down roots in prison. He/she feels well as a prisoner and sees no other place for him/herself.
- B. Sponger – uses his/her time in prison as he/she likes, insofar as possible. Doesn't want to talk about the future and has no specific view on this matter. Focuses on him/herself in the present; the future will bring what it will.
- C. Light at the end of the tunnel – the inmate knows that the tunnel he/she is in is very long. This is why he/she realizes that he/she must simply inch through it (or march forward). He/she may make plans or find activities to bide the time. Nevertheless, there is a light at the end of the tunnel – a distant one, but a light nonetheless.
- D. I'm not here – the prisoner does not agree with the nature of the sentence they are serving or even questions their guilt with regard to the crime. He/she does not accept him/herself in the prisoner role and does not see prison as a place to live. He or she devises plans that help him/her survive, while being in denial of having

to spend the rest of his/her life in prison. Clings to the world of freedom and feels him/herself a part of it.

The 'light at the end of the tunnel' category appeared most frequently (7 out the 15 interviewees, in every group, i.e. at every stage of their sentence). This shows that at every stage of serving their sentence and regardless of the time they have already spent in prison, inmates want to maintain and nourish the hope that they will one day be free. Of course they adapt to prison life and even become 'good prisoners', yet one cannot say unequivocally that prisonisation kills their desire to live beyond the prison walls.

Further, I present four important factors related to prisonisation:

- Time – when serving an unlimited sentence it is extremely important to be active in prison. It is also interesting how inmates change with the passage of time.
- Prison subculture – being part of a subculture is supposed to be a factor that increases prisonisation, but it turned out that the interviewees were not interested in being part of such a group.
- The Prison Service and the inmate – the interviewees receive positive assessments and are regularly rewarded by their supervisors. Meanwhile, in the interviews the inmates said that there was no point resisting the Prison Service and that they saw benefits to maintaining good relations with staff.
- Contacts with the outside world – the inmates maintain contacts with family through every possible channel – by phone, via visits or letters. Family is important for most of them. Sometimes they also have contacts with new acquaintances from outside the prison.

There is no doubt that all of the inmates in the studied group of 15 are 'prisonised' in some way. They have adapted to the daily prison schedule and learned the rules. What is important, it is not possible to pigeonhole them depending on the length of their sentence. We would do well to recall Clemmer's position that the process of prisonisation (and its consequences) depend first and foremost on an individual's personality. It is therefore extremely important to consider every case in its individuality when reviewing parole applications.

*Maria Ejchart-Dubois, Monika Markowska*

### **The 'Penitentiary Age of Majority': Strategies of Adapting to Long-Term Imprisonment – The Case of Three Female Inmates Serving Life Sentences Longest in Poland**

According to Polish Penitentiary Service statistics, there were 2131 women serving sentences in Polish prisons as of January 2016, 400 of whom had been convicted for homicide. 13 were serving life sentences.

The article describes our research on three women who were the first to be sentenced to life imprisonment in Poland and have already served 19 years of their sentences. During this time, each was transferred to another penitentiary facility at least a couple of times, and changed cells and cellmates several times. Each encountered several dozen educators, psychologists, wardens, and prison directors. This long period also saw significant changes in their family status. The places where they were confined and the people they had met impacted the way each functioned in prison.

Our research consisted in an analysis of court records: the sentences, expert, psychiatric and psychological opinions, as well as other documents produced during the course of criminal proceedings, including media reports and prison records (personal file B). Open interviews with the women were a vital component of the study – we met with each inmate at least once and conducted a three-hour interview at her place of detention. The study was carried out between May 2015 and February 2016.

By analysing the material collected, we created a criminal profile of each of the women, who had spent the last 19 years in prison. We described the evolution of their attitudes towards the crime and the trial, as well as their outlook as it had evolved throughout their time in prison; their life goals, and the influence of external circumstances (such as their place of confinement and the type of contacts each had with the outside world) on their lives and life plans.

It proved extremely difficult to say who these women are. They have not confessed to the crimes for which they were sentenced and have spent a great part of their lives in prison, living without the prospect of being released at any specific time. Their functioning in prison does not match any of the adaptation strategies described in the literature on the subject.

The aim of our research was also to determine the purpose of life imprisonment. The question becomes particularly important as the date approaches when these women, the first to be sentenced to this extreme form of punishment, will acquire the right to apply for parole.

Our analysis of the way these women have been serving their life sentences shows that Prison Service officers consider the main purpose of life imprisonment to be isolation. This view is not surprising, yet one must ask whether after 20 years in prison one would not do well to reconsider the hierarchy of goals that are to be served by imprisonment.

It is beyond doubt that the way the women have been serving their sentences has been influenced by their attitude to the crime and by the fact that none of them had ever admitted her guilt. At the same time none of them denies her responsibility as a participant of the event. Because none of the women studied had 'killed someone with her own hands', they are in a convenient psychological position. They do not have to come to terms with having deprived another human being of life, although they do not deny their complicity. Their attitude to the committed crimes might prove decisive when applying for parole.

Our research does not provide unequivocal answers to the questions we set out to answer, yet it proves that serving very long sentences should involve planning. The way the women function shows that they themselves largely organise their time in prison, seek work as well as educational, cultural and sports opportunities. The restraint shown by the prison authorities in offering such activities comes from the fact that a life sentence means that working with this category of inmates can always be put off till later. This was evidenced by the vague and general formulation of the goals each of the female inmates had in her individual programme.

The place of detention is another important factor when it comes to quality of life in prison. Penitentiary facilities differ in terms of their architectural arrangements, the conditions of imprisonment, but also in terms of the types of activities offered, the possibility of taking up work and study, and the relations between prison staff and inmates. By observing their attitude today, we can conclude that each woman has put her time in prison to a different use. We don't know what the prison administration and penitentiary court will make of this when the convicts apply for parole. To assess whether the inmates have changed it will not be enough to examine their behaviour and the number of times applications were put in to reward or punish them. We need intensive work with the inmates, in-depth observation and an examination of their personalities, which should be carried out by a qualified psychologist. Yet such opinions are lacking in the penitentiary records of the studied inmates. It is difficult to plan an adequate course of action without assessing the inmates' current deficits and needs.

The studied women each chose a different path for herself. M.R. is succumbing to unconscious degeneration and resignation. She is calculating; she knows how to survive in prison, yet she deeply resents the place. M.O. is the most uncertain and emotionally unstable, one doesn't know what to expect of her, but as long she does not absorb the attention of the prison staff, they show little interest in her. M.Sz. is the 'safest' from the standpoint of the Prison Service; her attitude often evokes surprise that one can be doing so well in prison with a life sentence. One might get the impression that she is acting, but is it possible to pretend for almost 20 years?

Because life imprisonment has no fixed term, it seems rational to treat it as a chance to improve one's life, even if one never leaves the prison walls. This task requires making the inmates feel responsible for every possible area of their lives. Each of the examined women put the opportunities available to her to a different use. The quarter century after which they will be able to apply for a court review of their punishment is a long time, which they, for most part, have not taken full advantage of.

*Justyna Włodarczyk-Madejska*

## **Profiles of Juvenile Offenders Placed in a Youth Care Centre or Youth Correctional Facility by the Court**

The article analyses the profiles of youth offenders with regard to whom courts in 2014 ruled one of the most severe penal measures specified in art. 6 of the Law on juvenile justice of 26 October 1982, i.e. placement in a youth care centre or youth correctional facility. The analysis was carried out using materials collected in the course of research at the National Institute of Justice for the Ministry of Justice within the framework of the project 'Application of educational measures in the form of placement in youth care facilities and of correctional measures by family and youth courts in light of statistical data and court record research'. The research sample consisted of 397 juveniles (319 boys and 78 girls), who had been brought before a court for criminal offenses (demoralisation was indicated only in 75 of the cases). Information was also collected on 60 other juveniles with regard to whom the court had ruled non-isolation education measures or had discontinued proceedings. Due to the sizable disproportion between the two groups, the latter group was only used for comparative purposes at the stage of compiling the final report. It is not discussed in the article.

For the purposes of the study, the notion of 'juvenile profile' was defined using the following variables: sex, age, school level, place of residence, problem behaviour at school and outside school, previous interaction with the system of justice, previously applied education measures and the nature of the offense. This 'profile' was supplemented by a description of the juvenile's environment, including family structure, parents' education and employment status, living conditions and occurring problems. A brief overview of Polish and international literature concerning the risk and protective factors when it comes to youth offenders confirms that it is useful to consider these two elements together.

The aim of the analysis was to find out who were the offenders with regard to whom courts had ruled one of the most severe measures under art. 6 of the Juvenile law. Eight detailed research questions were formulated. Most of them came down to determining whether variables such as sex, age, school level, place of residence, negative behaviour in school or outside of school, previous experiences with juvenile courts and problems in the family had any influence on a higher incidence of offending. One of the questions was related to whether certain risk factors in the subjects' family environment occurred more frequently depending on sex. Correlation between the variables was tested using cross tables and Cramer's V and Phi statistical measures. Also included is a statistical analysis of juvenile delinquency based on the data of the Polish National Police Headquarters and of the Ministry of Justice.

It was found that the juveniles with regard to whom the most severe measures had been ruled in 2014 were mostly boys who had committed criminal offenses,

mostly property crimes, at the age of 15-16. They were middle school (*gimnazjum*) students, living in cities, causing problems both in school and beyond. More than half had previously come into conflict with the law and had previously been sentenced to different education measures. On average, one in two was growing up in a full family (whether biological, adoptive or reconstructed), in which the income did not exceed the national average. The living conditions of around half of them were average, while the family environment was characterised by various problems, ranging from substance abuse, criminality and prison sentences to domestic violence. Although the studied boys and girls presented a similar picture, a more detailed analysis of certain variables made it possible to bring out significant differences. These differences are visible when it comes to the reasons for launching proceedings before a court, the age at which the offense was committed, the problems caused, previous contacts with the law, as well as the type and frequency of previously applied education measures. The risk factors in the family environments of boys and girls were also largely the same. The only difference was the intensity of their occurrence – decidedly higher in the families of juvenile boys. This means that the boys had grown up in worse living conditions, their parents were less educated were rarely employed. The intensity of problems related to substance abuse, a criminal record and domestic violence in their homes was also higher.

*Małgorzata Dziewanowska*

### **Teenage Mothers in Rehabilitation Centres**

GUS (Polish Central Statistical Office) statistics indicate that around 3.5% of children born in 2014, that is some 13,000 children, were born to teenage mothers. Out of this number, around 50–60 children were born to 13–14-year-olds, which means that the pregnancy had resulted from a criminal offense. These figures are also due to the decreasing age of sexual initiation among youth, a low quality or absence of sexual education in schools, as well as limited access to information and family planning. The current legal framework and circumstances also impact the condition of young women who get pregnant while in the care of rehabilitation centres.

It is difficult to find comprehensive publications devoted to teenage mothers – girls who were placed in a youth care or a juvenile centre due to having committed a criminal offense or because of profound demoralisation – that would discuss both the legal issues and practical solutions applied in different centres. The problem is an important one, however, because it highlights systemic shortcomings when it comes to supporting mothers and babies in such institutions as well as the vast room that is left for violations of children's basic rights, such as the right to be brought up by one's biological parents and to maintain an unbroken emotional bond with them.

The article examines the legal status of teenage mothers and the practical solutions applied at different rehabilitation centres. The aim is to present all the possibilities of helping teenage mothers in the care of youth care centres or juvenile centres, who are going through crisis and require external support, for example in the form of basic legal provisions and solutions regarding the placement and stay of juveniles in rehabilitation centres, the types of rehabilitation measures available or subsequent public help for young women leaving such centres. The Author discusses Polish legal provisions designed to protect motherhood as well as a range of important issues related to juvenile pregnancy, such as school duty or access to medical services. Also discussed are the state's most recently adopted measures to support motherhood, showing a need to provide additional aid for this group of beneficiaries, with particular emphasis on access to benefits for juvenile mothers living in rehabilitation centres. The article also presents practical solutions introduced by the staff at different centres, aiming to fill the gaps in the law when it comes to acknowledging the bond between a biological, though juvenile, mother and her child, which often isn't appreciated enough. The featured examples are drawn from information collected by Po DRUGIE Foundation which helps former residents of rehabilitation centres, as well as from ethnographic research carried out for a current project to set up a care institution for juvenile pregnant women and juvenile women with children, allowing them to continue their rehabilitation beyond a centre.

The article highlights numerous state measures to provide multi-faceted support for motherhood and parenthood in Poland, while at the same time pointing to the systemic discrimination of girls from juvenile centres, who are thoughtlessly deprived of the chance to take responsibility for their children or, if given such a chance, lose the support of the institutions obligated to resocialise them. The Po DRUGIE Foundation project aims to fill these gaps, both in the law, by developing provisions to provide care both for juvenile mothers and their children, and on the ground, by setting up an institution dedicated to this group of recipients.

***Magdalena Grzyb***

### **A Criminal and Political Analysis of the Spanish Gender Violence Law**

The Spanish Comprehensive Protection Measures against Gender Violence of 28 December 2004 (*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*) is considered one of the most advanced and groundbreaking legal acts designed to counter gender violence and is often viewed as a model piece of legislation to be emulated by other countries. The characteristic feature of this law is the introduction of criminal-law protection for women experiencing violence from their partner.

Although the Spanish law has been praised in the international arena, it has definitely elicited mixed feelings in Spain itself. It seems a paradox that one of the few laws passed in recent decades with the full consensus of all political parties instantly became one of the most criticized and subjected to judgment. Even before it entered into force, the law encountered significant criticism from the Spanish judiciary, while its application in practice has earned it further opponents and critics – nearly all of them engaged social stakeholders: feminists, legal theorists, criminologists, and victims of violence themselves. Some of the charges probably do not stem from the faulty operation or application of the law as such, but from the dashed hopes and disappointed expectations, grounded in the naïve belief that the new law would quickly transform society and eradicate gender violence.

The aim of the article is to sum up ten years of the gender violence law in Spain. The first part outlines the origins of LO 1/2004, its historical and political background, including the fall of Franco's dictatorship and the later socialist government whose rule led to increased interest in gender equality and the introduction of measures to counter all instances of discrimination in addition to raising public awareness of violence against women starting in the 1990s.

The second part discusses the content of LO 1/2004 and explains why the Spanish legislators adopted the gender violence framework (instead of the neutral 'domestic violence' model, as referenced in Polish and other national legislations), which recognises that women are disproportionately more prone to certain forms of violence, particularly on the part of relatives and partners, which is due to structural inequality and centuries-old historical discrimination of women. Gender violence is an infringement of human and women's rights and, as such, should be combated. The 'gender violence' approach is also currently the dominant perspective in international human rights discourse and international documents.

The third part discusses controversies that have arisen in connection with the law and examines the main charges put against it. The introduction of LO 1/2004 has raised doubts as to its being consistent with the constitutional principle of equality before the law. The Spanish Constitutional Tribunal decided this issue in favour of the law in 2008. The law might also make the situation of certain victims more complicated, as it imposes very strict and punitive solutions, thus stripping them of subjectivity. The law has moreover encountered strong opposition from the judiciary itself, which wasn't pleased with it from the very beginning. Finally, the Author examines various figures related to gender violence and how they have evolved over the ten years since the law entered into force.

Part four is devoted to the amendment of Spanish criminal law in 2015 to take account of gender violence, and discusses the direction of legislative and criminal/political changes.

The final part consists of a summary and an attempt to provide a comprehensive assessment of the law since it was passed.

*Piotr Chomczyński*

### **Using Visual Materials to Study Social Perceptions of Criminal Offenders: Some Methodological Conclusions From Research on Stigmatisation**

The aim of the article is to present a number of methodological conclusions drawn in the course of research on social stigmatization. The Author discusses the methodology of a social experiment involving the use of photographs as part of open interviews and focus group study. The photographs of people had been selected according to a pre-determined set of criteria and were used to elicit responses shedding light on how the subjects associated a person's physical appearance with an alleged propensity for committing crimes. The use of photographic material made it possible to discover the real views of the subjects – often contrary to those they claimed to hold prior to seeing the visual materials. One may therefore assume that within the strictly controlled conditions of the experiment, iconography played an important role in demystifying stigmatizing behaviour. The goal of the experiment was to determine factors and processes that are normally hidden and which, although natural and part of our observation spectrum, for obvious reasons are subjected to political correctness and usually not voluntarily disclosed. The rules of social co-existence require us to obey certain norms and often to conceal what we really think and act upon. This does not mean that the said factors are insignificant. In my view, they are often decisive and lead to cognitive dissonance whenever our beliefs and actions diverge.

In the case of the said experiment, a discrepancy was observed between the attitudes of the subjects before and after they were confronted with the photographs. They exhibited more spontaneous behaviour and statements, there was also a change in their opinions and they produced all sorts of evidence and examples which in their view supported their newly disclosed ideas. Studies of open interview and focus group techniques lead to the conclusion that visual materials can add to these techniques, making them more 'friendly' and balancing the asymmetrical relationship between subject and researcher while also making it easier to extract information subject to social taboos. In the study under discussion, the photographs were a catalyst in getting the subjects to reveal opinions they had previously largely concealed. Yet it must be borne in mind that the experiment requires a careful selection of appropriate photographs so that the subjects do not form new opinions but only reveal those already held yet not expressed. Otherwise these types of studies will not shed light on existing phenomena but rather create new ones, which leaves an ethical question mark when it comes to their purpose.

It is worth adding that the experiment corresponds to various processes occurring in our world, including various ethnocentric and xenophobic movements, today on the rise. The logic behind the experiment seems universal enough to allow its

application in studying the perception of other social groups at risk of marginalization and stigmatization. I am thinking particularly of the great migrations of today which are changing the ethnic face of Europe.