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DISCIPLINARY RESPONSIBILITY OF CONVICTS SERVING A SENTENCE OF IMPRISONMENT

As J. Śliwowski correctly observes, "Life in a prison is a social life, too, although in specific conditions, and therefore is also subject to the scrutiny of social rules".[1] Consequently, a convict who lives in a specific community such as a prison is supposed to abide by orders and interdictions that are stipulated in these rules and are in force there. A culpable breaching of the orders and prohibitions provided for in a statute, a regulation, or other acts of law issued on the basis of a statute, or an order imposed in the prison or a work place constitutes an infringement (art. 142 § 1 of the Penal Executory Code, PEC) and results in a disciplinary responsibility. According to T. Szymanowski,[2] not following instructions of a supervisor may constitute a basis for charging a convicted person with an infringement, as long as these instructions are supported by rules that the convict is obligated to observe.

Committing an infringement results in the prisoner serving one of the following disciplinary penalties:

- a reprimand,
- divestiture of all or some outstanding rewards or mitigations, or suspension of their going into effect, for a period of up to three months,
- divestiture of the right to participate in some cultural and educational or sport activities, with the exception of access to books and press, for a period of up to three months,
- divestiture of the right to receive food in parcels, for a period of up to three months,

[1] J. Śliwowski, *Prawo i polityka penitencjarna* [Law and penitentiary policy], Warszawa 1982, p. 189.

[2] T. Szymanowski, (in:) T. Szymanowski, Z. Świda, *Kodeks karny wykonawczy. Komentarz* [Penal executory code, commentary], Warszawa 1998, p. 330.

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- divestiture or limitation of the possibility to purchase food or tobacco products, for a period of up to three months,
- meetings with visiting persons only is such a way that makes impossible a direct contact with a visiting person, for a period of up to three months,
- lowering the convicts' part of compensation for work, by no more than 25%, for a period of up to three months,
- solitary confinement for a period of up to 28 days.[3]

The catalogue of disciplinary penalties has been arranged in accordance with an abstract degree of severity: from the mildest to the most severe punishment, which the solitary confinement undoubtedly is. One should note that the legislator makes the latter punishment an exceptional one. It can be adjudicated towards a convict who has committed an infringement that gravely breaches the law and order in a prison (art. 143 § 3 of PEC). Notably, the Human Rights Committee has concluded that the penalty of solitary confinement, if longer that one month, breaks the prisoner's right to proper treatment.[4] The European Committee for the Prevention of Torture is of the opinion that isolation of a prisoner is detrimental to his mental state and in some circumstances can amount to inhumane and degrading treatment or punishment, and hence it advises to take steps to eliminate the penalty of solitary confinement.[5]

In discussing questions concerning disciplinary responsibility of convicted persons serving a sentence of imprisonment, one should remember that disciplinary penalties are inflicted on people who are serving a sentence that deprives them or, as A. Peyrefitte accurately notes,[6] suspends their

[3] Such disciplinary penalties as divestiture of the possibility to receive food parcels, for a period of up to three months, divestiture or limitation on the possibility to purchase food or tobacco products, for a period of up to three months, solitary confinement of up to 28 days are not inflicted on pregnant or breastfeeding women, or women who are taking custody of their own child in a family shelter home.

[4] G. B. Szczygieł, *Kara dyscyplinarna umieszczenia w celi izolacyjnej a standardy międzynarodowe* (in:) *Aktualne problemy prawa karnego, kryminologii i penitencjarystyki. Księga ofiarowana Profesorowi Stefanowi Lelentalowi w 45. roku pracy naukowej i dydaktycznej* [Disciplinary penalty of solitary confinement and international standards, (in:) Current problems of criminal law, criminology and penitentiary science. A book offered to Profesor Stefan Lelental on the 45th anniversary of his academic and didactic work], Łódź 2004, p. 257.

[5] See: G. B. Szczygieł, *Społeczna readaptacja skazanych w polskim systemie penitencjarnym* [Social re-adaptation of convicted persons in the Polish penitentiary system], Białystok 2002, p. 51–52.

[6] A. Peyrefitte, *Wymiar sprawiedliwości. Między ideałem a rzeczywistością* [The administration of justice: between ideal and reality], Warszawa 1987, p. 58.

freedom, which is a value second only to human life. Disciplinary penalties affect various areas of prison life, deteriorate the conditions of the sentence, and limit the liberties of the convicted person, thus aggravating the pain of the sentence of imprisonment. However, we cannot forget that the purpose of serving a sentence of imprisonment is to raise in the convict a will to cooperate in shaping his socially desired attitudes, and especially a sense of responsibility and a need to observe the legal order (art. 67 § 1 of PEC). The legislator has not included penalties or rewards in the catalogue of means to influence convicted persons, a fact that, according to Z. Hołda,[7] testifies that disciplinary penalties are not preferred from the standpoint of the aims of serving a sentence of imprisonment. One cannot, however, depreciate the educational aspect of punishing and rewarding in influencing the behavior of convicts.[8]

Before the main part of the discussion, one should note that the disciplinary procedure concerning persons serving a sentence of imprisonment has been stipulated in the detailed part of the PEC which covers the penalty of imprisonment. In particular we can point to chapter 9, titled "disciplinary penalties". Articles 142–149 of the PEC are dual in nature, as they include material law provisions and procedural provisions. One should note that these provisions have been modified and substantially enlarged by the revision of the PEC of 2003.[9] The substantiation of the presidential draft of the statute that revised the PEC states that the goal of the proposed revision was to include the principles of administering and serving disciplinary penalties, which affect the convicted person's legal situation, in the code and not in the regulation on serving a sentence of imprisonment, where they had been included before.[10] The procedural regulations have been significantly expanded in comparison with the previous PEC of 1969.[11]

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[7] Z. Hołda, (in) Z. Hołda, K. Postulski, *Kodeks karny wykonawczy. Komentarz* [Penal executory code: a commentary], Gdańsk 2005, p. 483.

[8] A special role of punishing and rewarding in the process of penitentiary influence is indicated by P. Wierzbicki, *Indywidualizacja penitencjarna w Polsce* [Penitentiary individualization in Poland], Warszawa 1976, p. 135.

[9] Ustawa z dnia 24 lipca 2003 r. o zmianie ustawy – kodeks karny wykonawczy oraz niektórych innych ustaw [Statue of 24 July 2003 of an amendment to the penal executory code and some other statutes], Dziennik Ustaw [Journal of Laws] 2003, No. 142, item 1380.

[10] Uzasadnienie przedstawionego przez Prezydenta Rzeczypospolitej Polskiej projektu ustawy o zmianie ustawy – Kodeks karny wykonawczy oraz niektórych innych ustaw [The substantiation of the draft by the President of the Republic of Poland of the statute of amendment to the statute of the penal executory code and some other statutes], issue 183, Sejm IV Kadencji [Polish Parliament of the 4th term], www.orka.sejm.gov.pl, p. 75.

[11] T. Szymanowski, (in:) T. Szymanowski, Z. Świda, op. cit., p. 333.

What deserves attention here is the definition of an infringement. The doctrine unanimously states that infringement of orders and prohibitions may consist both in commission and omission.[12]

In defining an infringement, the legislator has used the term "culpable breach of orders and prohibitions", and hence, similarly to the Penal Code, assumed guilt – based responsibility. In the light of article 9 of the Penal code, as Z. Hołda noted,[13] breaching prohibitions or orders that results in disciplinary responsibility may be an act committed in a willing or unwilling fashion. One should note the opinion of S. Lelental[14] who claims that "even though the regulation in question does not directly stipulate that it is limited to a willful act, this should be our assumption. The essence of an infringement, as a breach of orders and bans is that the perpetrator must have a will to commit such an act, which precludes disciplinary responsibility for infringements committed unwillingly. Apparently it is possible to assume that the convicted person has foreseen that his behavior may breach a certain prohibition but has expected to avoid it. On the ground of the Penal Code one should note the unintentionality clause (art. 8 of the Penal Code): "...a misdemeanor can also be committed unintentionally, if a statute provides for it"). Due to this provision, it is worth considering whether the phrase "culpable breach of orders and prohibitions" in art. 142 § 1 of the Penal Code should be replaced with "willful breach of prohibitions and orders". One should note that in a situation where the infringement also meets the prerequisites of a crime, the prisoner is subject to disciplinary responsibility regardless of his criminal responsibility.[15] The authorities of a penitentiary institution are obligated to inform law enforcement of such an act. If the infringement meets the prerequisites of a misdemeanor, the convicted person is subject to disciplinary authority. In the case that the misdemeanor has been committed outside of the penitentiary institution, the convicted person is subject to disciplinary responsibility regardless of his responsibility for the misdemeanor (art. 146 § 1 kkw).

The next question which has been drawing the attention of representatives of the doctrine is the issue of a catalogue of infringements. An effort to

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[12] S. Lelental, *Kodeks karny wykonawczy. Komentarz* 2. wyd. rozsz. i zaktual. [Penal executory code. A commentary. Second extended and updated edition], Warszawa 2001, p. 358; T. Szymanowski, (in:) T. Szymanowski, Z. Świda, op. cit., p. 330.

[13] Z. Hołda, (in:) Z. Hołda, K. Postulski, op. cit., p 482; T. Szymanowski, (in:) T. Szymanowski, Z. Świda, op. cit., p. 330.

[14] S. Lelental, op. cit., p. 358.

[15] See: Z. Hołda, (in:) Z. Hołda, K. Postulski, op. cit., p. 482.

make one was made during the works on the prison regulations of 1931,[16] on the initiative of one of the co-authors of the regulation, Z. Bugajski,[17] who claimed that a lack of a catalogue of infringement that stipulates appropriate penalties, and hence leaving a large extent of freedom to the prison superintendent, "leads to a situation where, depending on the superintendent's nature and frequently his good or bad mood, the very same offense may result in either a severe or a mild penalty", which in turn has a negative impact on prisoners' psyche and decreases the respect that the prison authorities enjoy among the inmates. Consequently, the prison regulation of 1931 distinguishes three groups of disciplinary offenses, with a separate set of penalties for each.[18] One should note, however, one important question. Although the regulation constitutes an effort to make a catalogue of offenses that are subject to responsibility, the authors appear to not have been fully certain that they have included in it all possible offenses, as the regulation includes a clause which states that all other acts that are not stipulated in the regulation are subjects to penalties listed in the regulation.[19]

The question of making a catalogue of misdemeanors was later addressed, as the substantiation of the PEC indicates,[20] in works on the Penal Executory Code of 1997. Nevertheless, the legislator did not decide to make a catalogue of infringements due to a difficulty in determining all the negative behavior of a convicted person.

Such approach has been criticized by the authors[21] of the commentary to the European Prison Regulations of 1987. The commentary highlights the fact that a lack of catalogue of disciplinary infringements and penalties is

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[16] Rozporządzenie Ministra Sprawiedliwości z dnia 20 czerwca 1931 roku w sprawie regulaminu więziennego [Ordinance of the Minister of Justice of 20 June, 1931 on a prison regulation], Dziennik Ustaw [Journal of Laws], No. 71, item 577.

[17] Z. Bugajski, *Wykład więzienioznawstwa* [A lecture on system of prison], Warszawa 1927, p. 84.

[18] The co-author of the prison regulation, Z. Bugajski proposed to divide disciplinary infringements into four categories and to assign appropriate penalties to each category. See more (in:) J. Śliwowski, op. cit., p. 203.

[19] See more (in:) J. Śliwowski, ibidem, p. 205.

[20] *Uzasadnienie rządowego projektu kodeksu karnego wykonawczego* (in:) *Nowe kodeksy karne – z 1997 roku z uzasadnieniami, kodeks karny, kodeks postępowania karnego, kodeks karny wykonawczy* [Substantiation of the government draft of the penal executory code (in:) New criminal codes of 1997 with substantiations, criminal code, code of criminal procedure, penal executory code] Warszawa 1997, p. 558.

[21] D. Gajdus, B. Gronowska, *Europejskie standardy traktowania więźniów (rekonstrukcja standardów oraz ich znaczenie dla polskiego prawa i praktyki penitencjarnej). Zarys wykładu* [European standards of prisoner treatment (reconstruction of standards and their importance to the Polish law and penitentiary practice. Draft of a lecture, Toruń 1998, p. 141.

a weakness of the Polish legislation. In the opinion of the authors, it is even more surprising that "on the basis of practice one can, with much facility, determine a catalogue of the most typical disciplinary infringements and assign to them adequate penalties".

In presenting a positive opinion of the legislator's approach, which is supported by representatives of the doctrine,[22] one has to note, along with B. Stańdo-Kawecka,[23] that making a catalogue of infringements would undoubtedly be advisable due to a guarantee role of law. Certainly, such effort can be made on the basis of the catalogue of duties[24] that has been defined in art. 116 § 1 of the PEC and of the catalogue of prohibitions that has been defined in art. 116 of the PEC. Nevertheless, such an effort is bound to encounter some difficulties which are bound to lead to its failure. In defining, in art. 116 of the PEC, the duties of the convicted person, the legislator has included a general clause which states that "the convicted person has a duty to observe regulations that stipulate the principles and process of serving the penalty, the order that is in force in the penal institution, and to follow instructions of supervisors and other authorized personnel". This clause is followed by a list of duties, preceded by the phrase "in particular". Consequently, the legislator has not defined a closed catalogue of duties, whereas only the catalogue of prohibitions is a closed one. Thus, in using the catalogue of duties and orders one can at most make a catalogue of the most serious infringements.

One ought to highlight the fact that the authors of the commentary to the European Prison Rules of 1987 have noted that it is possible to make a catalogue of the most typical infringements. Therefore, the remaining question is what should be done with non-typical ones.

J. Śliwowski,[25] who was an avid supporter of Z. Bugajski's concept of making a catalogue of infringements and who expressed his positive opinion on the effort to do so in the regulation of the penalty of imprisonment of 1931, by saying that "this is a very unusual tendency, not seen so far in foreign penitentiary legislation. (...) In this case we see not only the application of a certain principle of *nulla poena (dicisplinaria) sine lege*, but also *nullum delictum (disciplinare) sine lege*, and yet also with a tendency of the

[22] S. Pawela, *Kodeks karny wykonawczy. Praktyczny komentarz* [Penal executory code. A practical commentary], Warszawa 1999, p. 325; Z. Hołda, (in:) Z. Hołda, K. Postulski, op. cit., p. 481.

[23] B. Stańdo-Kawecka, *Prawne podstawy resocjalizacji* [Legal grounds for reeducation], Kraków 2000, p. 160.

[24] See: Z. Hołda, (in:) Z. Hołda, K. Postulski, op. cit., p. 482; S. Pawela, op. cit., p. 325.

[25] J. Śliwowski, op. cit., p. 203–204.

legislator to measure disciplinary responsibility according to the importance of the committed act", observed that "the use in the prison regulation of the *nullum delictum sine lege* principle is not fully possible."

One should highlight the fact that the legislator puts an accent on one infringement, self-mutilation. According to art. 119 of the PEC, the convicted person who commits self-mutilation or causes a health disorder, in order to force a certain decision or conduct of an executive body, or to avoid his duties, is subject to a disciplinary responsibility.

The convicted person is responsible for infringements committed both in the penitentiary institution and outside of it, whether he is outside with permission (e.g. works outside of the penitentiary institution or has been granted a leave) or without it (e.g. when he has not returned from a leave).

What is important is the fact that committing an infringement does not always lead to the convicted person's responsibility. A disciplinary process, as Z. Hołda highlights,[26] is based on the principle of opportunism. This means that disciplinary penalties are inflicted by the superintendent of a penitentiary institution by his own decision or upon a written request of the convicted person's supervisor. Art. 72 § 2 of the PEC defines the term supervisor as officials and employees of the penitentiary institution in which the convicted person is serving his sentence. Supervisors of a convicted person also include persons who, in the scope of their duties, manage the convicted person's work or other activities.

The very nature of a disciplinary process indicates that, if it concerns an infringement, it is an internal process conducted within a penitentiary institution. The PEC provides for two types of subjects who have the authority to inflict a disciplinary penalty: the superintendent of a penitentiary institution and a person authorized by the superintendent.

According to art. 144 § 1 of the PEC, the superintendent has the authority to inflict any disciplinary penalty provided for in the statutory catalogue, while the subject authorized by the superintendent may only inflict penalties of a lower degree of severity, that is:

- a reprimand,
- divestiture of all or some outstanding rewards or mitigations, or suspension of their going into effect, for a period of up to three months,
- divestiture of the right to participate in some cultural and educational or sport activities, with the exception of access to books and press, for a period of up to three months.

[26] Z. Hołda, (in:) Z. Hołda, K. Postulski, op. cit., p. 483.

What can easily be noted is that inflicting more severe penalties is in the scope of responsibilities of the superintendent, while less severe penalties, although resulting in negative material consequences for the convicted person (e.g. divestiture of the right to receive food parcels for a period of up to 3 months)[27] may be inflicted by a person authorized by the superintendent. This results from acceptance of the superintendent's role as the subject who holds full powers in the area of security, order and discipline in the penitentiary institution.[28]

Notably, before a disciplinary penalty of solitary confinement is effected, an opinion of a doctor or a psychologist is required. S. Pawela proposes that opinion of psychologists and psychiatrists ought to be sought prior to inflicting disciplinary penalties on convicted persons who deviate from the psychological norm, at the same time noting that punishment as an educational factor can and should be used in the re-education of these convicted persons.[29]

Participation of a penitentiary judge in a disciplinary process is evident, among others, in granting permission to place a convicted person is solitary confinement for a period exceeding 14 days. According to T. Szymanowski, the aim of such a regulation is an "attentive control" of the penalty of solitary confinement and, simultaneously, the legislator's stress on the requirement that the average length of the penalty of solitary confinement extend from one to fourteen days, while the more severe penalty of solitary confinement (between 14 and 28 days) be inflicted only in exceptional situations upon permission of the penitentiary judge.[30]

In this respect, T. Szymanowski rightly states that the scope of competence in inflicting disciplinary penalties ought to contribute to a more effective use of disciplinary penalties, and thus to greater impact of the more severe penalties.[31]

According to J. Śliwowski,[32] and earlier to Z. Bugajski, "The problem of disciplinary penalties is among the most important ones, because regulations pertaining to order restrain the convicted persons in all aspects of life, deprive him of all his personality and, depending on circumstances, especially on the superintendent who is deciding of the penalty, shape his

[27] Ibidem, p. 331.
[28] S. Pawela, op. cit., p. 329.
[29] Ibidem, p. 326.
[30] T. Szymanowski, (in:) T. Szymanowski, Z. Świda, op. cit., p. 335.
[31] Ibidem, p. 332.
[32] J. Śliwowski, op. cit., p. 189.

fate is various ways. Due to the specific nature of the disciplinary judgment, it is reasonable to put it in the hands of a team, especially in the case of more serious infringements, as it is easy to make a mistake of being either too harsh or unreasonably lenient".

It appears that these reservations are not justified, considering the provisions on disciplinary process in the PEC. A justification ought to indicate that the legislator has introduced directives on the scope of penalty, both general and detailed. In the doctrine,[33] general directives on the scope of disciplinary penalty, as stipulated in art. 145 § 1 of the PEC, include the degree of guilt and the principle of individualization, as well as educational goals to be reached by the penalty with respect to the convicted person. The detailed directives, on the other hand, include the type and circumstances of the act, the attitude of the convicted person towards the committed infringement, his record, personality, health, and educational goals, all listed in the same article of the PEC. Considering that in stipulating these circumstances the legislator used the term "in particular", it appears that these circumstances are particularly important, but they do not exclude others. In this context, one should also note the role of the penitentiary judge in the disciplinary process, and specifically his authority stipulated in art. 148 § 1 of the PEC and in regulations on penitentiary oversight. These questions will be the topic of discussion in the remaining part of this paper.

Art. 145 § 2–4 of the PEC stipulates the phases of disciplinary process, which is described as an explanatory proceeding, and requires that before a disciplinary penalty is inflicted the accused person ought to be listened to and that he ought to hear the opinion of his educator. If necessary, the accused person should also hear the opinion of the subject requesting his punishment as well as of other persons and witnesses. For educational reasons the infringement case can be heard in the presence of other prison mates, which may bring measurable preventive and educational results. T. Szymanowski pays particular attention to the preventive aspect, saying that an open hearing in the presence of other prisoners may significantly influence their legal awareness and make evident that very often infringement of regulations becomes known to the authorities of the penitentiary institution. Consequently, this may prove the effectiveness of law and deter potential future infringements.[34]

As Z. Hołda accurately points out, in a disciplinary proces the prisoner has the right to a defense, both material and formal. This consists in

[33] S. Lelental, op. cit., p. 363; Z. Hołda, (in:) Z. Hołda, K. Postulski, op. cit., p. 487.

[34] T. Szymanowski, (in:) T. Szymanowski, Z. Świda, op. cit., p. 334.

defending against accusations and presenting own reasoning, as well as the possibility to use the assistance of a counsel. Just as Z. Hołda does, one should underline the fact that the prisoner has the right to provide explanations, but may also refuse to provide them, taking advantage of his right to remain silent and his right to abstain from self-accusation.[35]

One should also note that is some cases the opinion of a doctor is immensely important in considering the effects of some penalties on the health of a prisoner. This is particularly important in the case of solitary confinement and the following penalties:

- divestiture of the right to receive food in parcels, for a period of up to three months,
- divestiture or limitation on the possibility to purchase food or tobacco products, for a period of up to three months.

The requirement to consult a doctor before inflicting the two above penalties does not concern all prisoners, but only the group which, for health-related reasons, is on a diet, or to those prisoners who, for health-related reasons, have been allowed to purchase additional food products or to receive larger food parcels (art. 145 § 4 of the PEC). After consulting a doctor, the superintendent of the penitentiary institution may decide to postpone the execution of the above-mentioned penalties.

Breaching the rules of conduct stipulated in art. 145 of the PEC may result in certain consequences, including the following, most important ones:

- the possibility of a prisoner to appeal against the penalty on the correct grounds that it is inconsistent with the law (art. 7 § 1 of the PEC),
- postponing the execution of the disciplinary penalty by the penitentiary judge, in accordance with art. 148 § 1 of the PEC, due to the need to clarify the circumstances leading to the adjudication of the penalty,
- annulment of the penalty by the penitentiary judge, in accordance with art. 148 § 1 of the PEC due to its groundlessness,
- the penitentiary judge returning the case to the superintendent of the penitentiary institution, in accordance with art. 148 § 1 of the PEC, for the purpose of a reconsideration.

S. Lelenthal[36] correctly observes that the lack of procedure for stopping the execution of a disciplinary penalty by the judge for a time required to clarify the circumstances leading to its adjudication, as well as annulling the penalty due to its groundlessness, or to return it to the superintendent for reconsideration, raises doubts about the practicality of this provision of law.

[35] Z. Hołda, (in:) Z. Hołda, K. Postulski, op. cit., p. 488.

[36] S. Lelental, op. cit., p. 259.

One should also point at the authority of a penitentiary judge in the area of penitentiary oversight because these provisions are also applied in disciplinary process. In the scope of penitentiary oversight, a penitentiary judge (art. 32 of the PEC) monitors and verifies correctness of proper adjudication of penitentiary penalties and their use as a means of penitentiary influence.[37] In exercising his penitentiary oversight authority, the judge annules those decisions of the penitentiary institution supervisor that contradict the law.

The Superintendent General and the district superintendent of the Prison Service also have the authority to annul a penitentiary institution superintendent's decision when it contradicts the law.

A disciplinary process must be conducted in accordance with the principle of adversarial process and the rule of law. In a situation where the prisoner bears both disciplinary and criminal responsibility for a crime he has committed or an offense that he is responsible for, there is a dangerous possibility that the findings of the disciplinary process may be used in the criminal process.[38]

A decision on inflicting a disciplinary penalty should include a precise definition of the infringement committed by the prisoner. It has to be made in writing and delivered to the prisoner for his information (art. 144 § 3, 4). If educational concerns justify it, the decision is also distributed to other prisoners or other persons, e.g. the prisoner's relatives.[39] This is another example of strengthening the preventive, affirmative and motivational role of a disciplinary process.

Similarly, a decision on annulling, remission, postponement, changing, suspension, or discontinuance of a disciplinary penalty and on renouncing from a disciplinary penalty, must be made in writing. The prisoner absolutely must be informed of any of these decisions; they may also be distributed to other prisoners or other persons, if it is desired for educational reasons.

The principle of legal unity of act is binding in a disciplinary process. In accordance with art. 146 § 1 of the PEC, one infringement results in only one disciplinary penalty. In the case that a prisoner has committed more than one infringement before he is punished for any of them, one can talk about

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[37] § 2 pkt 12 Rozporządzenia Ministra Sprawiedliwości z dnia 26 sierpnia 2003 r. w sprawie sposobu, zakresu i trybu sprawowania nadzoru penitencjarnego [§ 2 item 12 of the Ordinance of the Minister of Justice of 26 August, 2003 on a method, scope, and procedure of conducting penitentiary oversight], Dzienik Ustaw [Journal of Laws], No. 152, item 1496.

[38] Z. Hołda, (in:) Z. Hołda, K. Postulski, op. cit., p. 488.

[39] S. Pawela, op. cit., p. 329.

the so-called real coincidence of infringements, and it is necessary to indicate that this case is governed by different principles than a real coincidence of crimes. In a situation of a real coincidence of infringement, only one, the most severe, penalty is adjudicated. To repeat S. Lelental's statement, the adjudication of the most severe penalty has to follow the general and detailed directives, which excludes concerns of repression.[40] According to 146 § 2 of the PEC, an adjudication of another disciplinary penalty may not occur so that it constitutes a direct extension of a penalty of the same type, unless a total period of the inflicted penalties does not exceed the permitted limit of duration of the penalty. Also in this case, concerns of rejecting the oppressive nature of the penalty as a directive of the adjudication of penalty raise to the surface.[41] It is remarkable that provisions of law do not define minimum periods of interruption between consecutive disciplinary penalties of the same kind. The doctrine indicates, for example, a week-long period,[42] but what is the most important in this is the actual practice.[43] The correctness of adjudication of disciplinary penalties should be verified in the framework of the penitentiary oversight even through a periodic analysis of disciplinary policy.[44]

A very important issue for disciplinary responsibility and formal correctness of process in this area is the statute of limitation. According to art. 147 § 1 of the PEC, a disciplinary penalty must not be adjudicated unless the time that has passed since the supervisor gained knowledge of the infringement has not exceeded 14 days, or 30 days in the case of a misdemeanor (limitation of penalty). Also, the execution of a penalty must not commence later than 14 days of its adjudication (limitation on execution of penalty). As court judisprudence rightly highlights, the law in question defines two deadlines to protect the defendant's rights. If the former expires, it is impossible to adjudicate the penalty despite the occurrence of the infringement, while if the latter expires, a correctly adjudicated penalty must not be executed.[45]

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[40] S. Lelental, op. cit., p .364.

[41] Ibidem, p. 364.

[42] T. Szymanowski, (in:) T. Szymanowski, Z. Świda, op. cit. , p. 336.

[43] S. Lelental, op. cit., p. 364.

[44] S. Pawela, op. cit., p. 331.

[45] Postanowienie Sądu Apelacyjnego w Krakowie z dnia 22.01.2004 r., Sygn. akt II AKz 21/04 [Decision by the Appellate Court in Krakow on 22 January, 2004. Signature akt II AKz 21/04] (System Informacji Prawnej Lex – Lex Omega), 34/207, record no. 103966; Postanowienie Sądu Apelacyjnego w Krakowie z dnia 15.06.2004 r., Sygn. akt II AKz 202/04 [Decision by the Appellate Court in Krakow on 15 June, 2004. Signature akt II AKz 202/04] (System Informacji Prawnej Lex – Lex Omega), 34/207, record no. 120304.

One should note that art. 147 § 2 provides for the institution of resting of the flow of time of limitation. Both of the above-mentioned deadlines stop approaching if the prisoner is outside of the penal institution without a permit or if he is undergoing medical treatment due to self-mutilation; they also rest during a period of suspension of a disciplinary penalty.

At the end of the discussion on procedure, one should briefly point at the institution of a specific resumption of a disciplinary process, which traditionally belongs in the category of extraordinary processes. If new facts or evidence that have not been known before are revealed, and they indicate that the convicted person is innocent, the superintendent of the penitentiary institution reverses the disciplinary penalty, declares it as null and void, and makes an appropriate decision to reverse the effects of the penalty (art. 149 of the PEC). The appropriate decision may be made at any time, depending on the circumstances of the case.[46]

A disciplinary process in cases concerning infringements committed by convicted persons serving a sentence of imprisonment most certainly differs from disciplinary processes typical of various professional groups, e.g. academic teachers, members of the legal or medical profession. Most of all this is a result of the nature of the penalty of imprisonment, which extensively interferes in the area of basic liberties of an individual.

[46] Z. Hołda in: Z. Hołda, K. Postulski, op. cit., p. 492.