Czesław P. Kłak[1]

WYKONYWANIE KARY POZBAWIENIA WOLNOŚCI W CZASIE EPIDEMII COVID-19

EXECUTION OF IMPRISONMENT DURING THE COVID-19 EPIDEMIC

Received: 27.05.2022 Accepted: 18.07.2022 Published: 30.09.2022
DOI: 10.5604/01.3001.0015.9668
Original article
Source of funding — based on author's own research

Streszczenie

W artykule przedstawiono analizę rozwiązań dotyczących wykonywania kary pozbawienia wolności w okresie stanu zagrożenia epidemicznego lub stanu epidemii ogłoszonego z powodu COVID-19 – przerwy w wykonaniu kary pozbawienia wolności, umieszczenia skazanego w odpowiednim zakładzie leczniczym oraz „zdalnego" procedowania sądu penitencjarnego. Rozwiązania te obecnie obowiązują, przy czym postuluje się pozostawienie „na stałe" możliwości odbywania posiedzeń w formie „zdalnej" przez sąd w postępowaniu wykonawczym.

Słowa kluczowe: skazany, sąd penitencjarny, przerwa w wykonaniu kary pozbawienia wolności, stan zagrożenia epidemicznego, stan epidemii, COVID-19.

[1] Dr hab. prof. UP Czesław P. Kłak, Instytut Prawa i Ekonomii Uniwersytetu Pedagogicznego im. KEN w Krakowie, prokurator Prokuratury Regionalnej w Rzeszowie, zastępca Dyrektora Krajowej Szkoły Sądownictwa i Prokuratury kierujący Ośrodkiem Aplikacji Prokuratorskiej, członek Trybunału Stanu, członek Rady Legislacyjnej przy Prezesie Rady Ministrów, ORCID: 000-0002-2886-4770.

[*] Autor składa podziękowania Panu gen. Jackowi Kitlińskiemu, Dyrektorowi Generalnemu Służby Więziennej oraz Pani płk. Elżbiecie Krakowskiej, Dyrektorowi Biura Dyrektora Generalnego Służby Więziennej, za pomoc w uzyskaniu danych statystycznych niezbędnych do napisania artykułu.

Summary

The article presents an analysis of the relationships related to the execution of a custodial sentence in the period of an epidemic threat or state of epidemie announced due to COVID-19 – a break in the execution of a custodial sentence, placing a convict in an appropriate treatment facility and ”remote” treatment penitentiary court. These solutions have been in force until now, but it is postulated that the court will not be able to hold meetings in executive proceedings in a ”remote” form ”permanently”.

Keywords: convicted person, penitentiary court, interruption in the execution of a prison sentence, state of epidemic threat, state of epidemic, COVID-19.

Introduction

The Act of 2 March 2020 on Special Measures regarding Prevention, Counteraction and Combating COVID-19, Other Contagious Diseases and Crisis Situations Related[2] (hereinafter: the COVID-19 Act) introduced solutions relating to the execution of custodial sentence "during a state of epidemic threat or a state of epidemic declared due to COVID-19", i.e. the institution of an interruption (Article 14c), the institution of the execution of the sentence by placing the convicted person in an appropriate medical facility (Article 14d) and the possibility of holding a penitentiary court session with the use of technical devices enabling it to be carried out remotely with simultaneous video and audio transmission (Article 14f). The regulations in question entered into force on 31 March 2020 and still applies (June 2022), as the state of epidemic threat, declared by the Regulation of the Minister of Health of 12 May 2022 on the declaration of a state of epidemic threat on the territory of the Republic of Poland (§ 1), is in force[3]. Prior to this, a state of epidemic was in place, declared by a Regulation of the Minister of Health of 20 March 2020 on the declaration of a state of epidemic in the territory of the Republic of Poland[4] (§ 1), which was lifted by a Regulation of the Minister of Health of 12 May 2022 on the lifting of a state of epidemic in the territory of the Republic of Poland[5]. Both states were declared in connection with SARS-CoV-2 virus infections.

The main purpose of the publication is to analyse the regulations still in force, laid down in

[2] Dz. U. z 2021 r. poz. 2095, ze zm.
[3] Dz. U. poz. 1028.
[4] Dz. U. poz. 491
[5] Dz. U. poz. 1027.

Articles 14c, 14d and 14f of the COVID-19 Act, in order to clarify their essence, nature, *ratio legis*, and finally to provide an answer to the question, whether the introduced measure of a special (exceptional) nature can and should stay permanently in force, once the state of epidemic threat has been lifted? In the author's opinion, the answer to the question thus formulated should be affirmative.

The institution of an interruption, as referred to in Article 14c of the COVID-19 Act, expressly concerns the "*execution of a custodial sentence*" and therefore there can be no doubt that it is related to the process of execution of a custodial sentence. Article 14d(1) of the COVID-19 Act concerns "*the execution of the sentence in the form of placement of the convicted person in an appropriate medical facility*", which refers to a custodial sentence (Article 14d(2) of the COVID-19 Act). The Supreme Court's jurisprudence leaves no doubt as to the fact that Article 14d of the COVID-19 Act regulates the "execution of a custodial sentence"[6]. "Remote" court proceedings, regulated in Article 14f of the aforementioned Act, concern the "penitentiary court", i.e. the body of executive proceedings within the meaning of Article 2(2) of the Act of 6 June 1997 – Executive Penal Code[7] (hereinafter: k.k.w.) and regulates the participation of an "imprisoned convicted person" in such a session. Therefore, there can be no doubt that this institution – which is procedural in nature – applies to the decisions concerning the execution of the custodial sentence and, more specifically, the mode of rendering such decisions by the penitentiary court, including the forum in which the court hears the case ("remote" hearing).

In view of the above, the opinion that the institutions referred to have no relevance for "execution of a custodial sentence", as they are "new legislative developments", cannot be shared. They are, undoubtedly, "new legislative developments", which is primarily due to the fact that they came into force at the time of the struggle against the COVID-19 threat, and their scope of regulation is of a specific (special) nature, determined by epidemic conditions, but the above circumstances do not have the effect that Articles 14c, 14d and 14f of the COVID-19 ACT show no connection with the "execution of a custodial sentence".

The connection results from the literal wording of the provisions referred to, from the reference to the provisions of the Executive Penal Code (Articles 14c(8) and 14d(5) of the COVID-19 Act) – concerning the execution of a custodial sentence, from their *ratio legis*, from the wording of Art. 14e of the cited Act (application of Article 14d of the COVID-19 Act to convicted persons in respect of whom the penalties and coercive measures specified in Article

[6] Wyrok SN z 19.04.2021 r., I KK 92/20, LEX nr 3232169.
[7] Dz. U. z 2022 r. poz. 53, ze zm.

243(2) of the Code of Criminal Procedure are "executed"), as well as from the nature of the legal institutions regulated in these provisions. That nature shows a close and inseparable relationship with penitentiary isolation, associated with the "execution of a custodial sentence". For the sake of completeness of the discussion, it should be pointed out that Chapter 10 of the Executive Penal Code – entitled "The penalty of imprisonment" – is dedicated to "execution of a custodial sentence"[8]. This chapter governs the institution of an interruption in the execution of a custodial sentence (Section 10 of Chapter 10 of the Executive Penal Code), while the placement of a convicted person in an appropriate medical facility refers to the "execution of the sentence" with the appropriate implementation of Article 260 § 2 of the Act of 6 June 1997 – Code of Criminal Procedure[9] (hereinafter: k.p.k.), and this provision is clearly related to the "execution" of isolation in therapeutic conditions. Hence, there can be no doubt as to the "executive" nature of the institutions referred to in Articles 14c and 14d of the COVID-19 Act.

Due to the essence and nature of the measures adopted in the COVID-19 Act, they should be seen as complementary to the solutions known to the executive penal law, without modifying them in any respect. Those are measures in place in addition to those provided by the Executive Penal Code. At the same time, they are not obligatory in nature, which means that the legislator did not exclude the possibility of applying the institutions regulated in the Executive Penal Code, nor did he impose the exclusive application of the measures stipulated in the COVID-19 Act. In this sense, they are subsidiary, auxiliary, and their application is optional. They therefore complement the legal system by defining the conditions for their use, and the legislator did not choose to exclude the application of the provisions of the Executive Penal Code during the state of epidemic threat or state of epidemic.

As indicated in the Explanatory Memorandum to the Government Bill on Special Measures regarding Prevention, Counteraction and Combating COVID-19, Other Contagious Diseases and Crisis Situations Related – draft of 1 March 2020[10] (hereinafter: Explanatory Memorandum to the COVID-19 Act) – "In connection with the threat of the spread of SARS CoV-2 virus infections, it is necessary to introduce specific solutions, enabling measures to be taken to minimise the risk to public health that are complementary to the basic regulations provided, in particular, in the Act of 5 December 2008 on Preventing and Combating Human Infections and Infectious Diseases (Dz. U. – Journal of Laws – of 2019, item 1239, as amended)". As highlighted in this Explanatory Memorandum, "A new coronavirus named SARS-CoV-2 is

[8] S. Lelental, Kodeks karny wykonawczy. Komentarz, Warszawa 2010, s. 309.
[9] Dz. U. z 2021 r. poz. 534, ze zm.
[10] Druk sejmowy nr 265, publikacja na stronie www.sejm.gov.pl, dostęp: 15.06.2022 r.

a virus capable of causing respiratory distress syndrome, and the resulting disease is referred to as COVID-19" (p. 1). Taking into account the character of the threat of contracting the SARS-CoV-2 virus, the scale of this threat (pandemic), as well as the urgency of introducing modifications to the legal system, including those necessary to neutralise the sources of infection and cut the pathways of the disease's spread (as aptly pointed out in the above-mentioned Explanatory Memorandum, p. 1), the legislator decided to introduce in the COVID-19 Act measures whose goal, in his assessment, was to fulfil the aforementioned objective. This also applies to the provisions governing the execution of a custodial sentence. The measures provided for in Articles 14c, 14d and 14f of that Act are intended to restrict contact between convicts and other persons, thus minimising the risk of the spread of the SARS-CoV-2 virus, including its spread in prison incarceration.

The specific measures put in place – determined by the epidemic threat – must also exhibit effectiveness, so as to ensure an appropriate (adequate) response to the public problem in question (in this case, related to the development of the epidemic). At the same time, their introduction must be motivated by the recognition that the existing legislation does not create optimal conditions for such a response, and the legal system must therefore be supplemented with new legislation that achieves this objective, or the existing legislation must be amended to adapt it to the changed reality. In doing so, the legislator must be aware that when responding to a given situation – by introducing into the legal system new legal solutions that are of a specific nature – they may be forced to amend or supplement those solutions, depending on the development of the situation subject to regulations. Its dynamic nature, the changing picture, or the projected shift in the nature of the threat, etc., will certainly speak for an assessment of the measures introduced, including their completeness and effectiveness. As a result, it may be necessary to introduce solutions that were not even originally postulated, but in the changing situation appear to be fully justified. There may also be a need to modify the solutions adopted to make them adequate to current and changing realities.

As noted in the Explanatory Memorandum to the COVID-19 Act, it defines "in particular the principles and procedures for preventing and combating the infection and spread of a contagious disease in humans caused by the SARS-CoV-2 virus, including the principles and procedures for taking anti-epidemic and preventive measures to neutralise the sources of infection and cut the pathways of spreading the disease, the tasks of public administration bodies in the scope of preventing and combating the disease, the rights and obligations of recipients, healthcare providers and persons residing in the territory of the Republic of Poland in the area of prevention and combating the disease, as well as the principles of reimbursement

of the costs of the implementation of tasks related to counteracting COVID-19, in particular the procedure for financing healthcare services for persons suspected of having contracted or who contracted the disease in order to ensure that such persons have proper access to diagnostics and treatment" (p. 1), and at the same time provides that "the proposed regulations address all situations in which the threat of epidemic and spread of infectious diseases in humans is increasing and introduce the necessary mechanisms of action" (p. 1).

In the original wording of the COVID-19 Act, there were no provisions on penitentiary issues, including the execution of a custodial sentence. As a result of the amendment - by the Act of 31 March 2020 amending the Act on Special Measures regarding Prevention, Counteraction and Combating COVID-19, Other Contagious Diseases and Crisis Situations Related[11] (hereinafter: the Amendment of 31 March 2020 to the COVID-19 Act) – Article 14c, Article 14d and Article 14f (Article 1(13)), among others, were added. Thus, the legislator has extended the scope of the regulation under the COVID-19 Act to include provisions relating to the execution of a custodial sentence. As already observed, these provisions have been in force since 31 March 2020 (Article 101 of the Amendment of 31 March 2020 to the COVID-19 Act). Subsequent amendments to it did not introduce any changes with regard to Articles 14c, 14d and 14f. The implication is that the legislator did not find justification for any modification of the provisions governing the matter referred to therein. As of 12 February 2021, a new Article 14ea was added to the COVID-19 Act, which sets forth, among others, that during a state of epidemic threat or a state of epidemic declared due to COVID-19, an imprisoned person is subject to an interview (medical history) and physical examinations before his or her release from prison, and before his or her transport only if, in the assessment of the medical staff, the state of health of the imprisoned person so requires or the imprisoned person reports health problems (paragraph 3). This provision refers to the "execution of a custodial sentence" as well, as it concerns the examination of an imprisoned person, imposing an obligation to carry out such an examination (as is evident from the use of the phrase "an imprisoned person shall be subject to") and defining its scope by specifying in which case it is required. The provision discussed was introduced by Article 3 of the Act of 21 January 2021 amending the Act on the Prison Service, the Act on Prevention and Combating Human Infections and Infectious Diseases, Act on Special Measures regarding Prevention, Counteraction and Combating COVID-19, Other Contagious Diseases and Crisis Situations Related[12]. Notably, the legislator did not choose to introduce solutions that would govern a specific regime for the "service of

[11] Dz. U. poz. 568, ze zm.
[12] Dz. U. poz. 180

a custodial sentence" by convicted persons infected with the SARS-CoV-2 virus, including an imposition of certain obligations on them.

Articles 14c, 14d and 14f relate to an epidemic situation due to COVID-19, and the lifting of a state of epidemic threat or a state of epidemic declared because of COVID-19 will render them inapplicable. They are, as such, periodic (temporary) in nature. In other words, the validity of a state of epidemic threat or a state of epidemic declared due to COVID-19 is a condition (prerequisite) for the application of the provisions discussed, i.e. they are not applicable without the prior declaration of a state of epidemic threat or a state of epidemic, which must be related – solely and exclusively – to COVID-19. Other epidemic emergencies, determining the declaration of a state of epidemic threat or a state of epidemic, do not warrant the application of the indicated provisions. This excludes resorting to *analogia legis*, as the COVID-19 Act is not applicable to risks other than those arising from the spread of the SARS-CoV-2 virus, and therefore the special provisions set forth in this statute cannot be applied to other case of epidemic, however equally, or even more dangerous.

The absence of provisions in the original version of the COVID-19 Act on the issue of the execution of a custodial sentence cannot be held against the legislator. Although the project proponent (the Council of Ministers) noted in the Explanatory Memorandum to the Bill of 1 March 2020, that "the proposed regulations address all situations in which the threat of epidemic and spread of infectious diseases in humans is increasing and introduce the necessary mechanisms of action" (p. 1), nevertheless, it was only the development of the COVID-19 threat and, in particular, the emergence of SARS-CoV-2 infections in Poland that necessitated a more comprehensive analysis of the current legal status in the context of introducing significant changes in terms of counteracting the spread of SARS-CoV-2. Also, it is not insignificant that already after the law had taken effect, there were some public reports concerning a disruption of the penitentiary system in Italy caused by riots (protests by inmates), which allegedly occurred – according to up-to-date information as of 10 March 2020 – in 27 penitentiary facilities across the country[13]. In turn, according to further news coverage – dated 18 March 2020 – riots were said to have broken out in 40 penitentiary facilities in Italy[14]. According to a statement from the Italian Ministry of Justice, "The protests concerned the state of emergency due to the coronavirus, as well as the special measures taken by the authorities to reduce the risk of infection and protect those who live and work in prisons"[15]. These developments

[13] https://infosecurity24.pl/koronawirus-i-zamieszki-atakuja-wloskie-wiezienia, dostęp: 23.05.2022 r.
[14] https://www.liberties.eu/pl/news/wlochy-wiezienia-koronawirus/18951, dostęp: 23.05.2022 r.
[15] https://www.rp.pl/Koronawirus-2019-nCoV/200309345-Wirus-we-Wloszech-zamieszki- w-wiezieniach-Sa-

prompted the Italian government to introduce legislative changes in the area of executive penal law, including the introduction of the possibility for inmates to leave prison units (including the extension of house arrest for inmates suffering from health issues) and the possibility for inmates on day releases to stay overnight in their place of residence – no obligation to return to the prison unit overnight. The adopted arrangements were intended to reduce the number of people incarcerated within the penitentiary system, allowing inmates who met the conditions for doing so to leave the penitentiary facilities, with epidemic conditions supporting this solution. In this way, an attempt was made to reduce possible contacts between inmates and the resulting risk of spreading SARS-CoV-2. They were therefore not only meant to reduce the risk of further outbreaks of inmate riots (protests), but also to allow inmates with health problems to stay at home (house arrest), or to reduce the number of convicted persons staying in penitentiary units (no obligation to return from furlough), which in turn was meant to minimise the risk of the outbreak and spread of the SARS-CoV-2 virus in penitentiary units.

Given the dynamics associated with the spread of the SARS-CoV-2 virus in Poland, as well as third-state (Italian) experience, it should be acknowledged that the need to introduce measures which, in the period of the state of epidemic threat or the state of epidemic declared due to COVID-19, would make it possible to decide, on a case-by-case basis, on the convicted person's leaving the penitentiary unit on account of the need to limit or eliminate the development of the epidemic (which is to be served by an interruption in the execution of the custodial sentence, referred to in Art. 14c(1) of the COVID-19 Act) or a decision on the execution of the custodial sentence in the form of placement of the convicted person in an appropriate medical facility, which refers to the case when the reduction or elimination of the risk of the convicted person infecting another person is not possible as part of the measures taken in the prison (Article 14d(1) u.COVID-19). Although the statement of reasons for these changes is very brief[16] (which should be viewed in an extremely unfavourable light), and does not provide a precise elaboration for the legislative motives underlying the introduction of these measures, nevertheless, the analysis of individual provisions (Articles 14c, 14d and 14f of the COVID-19), in combination with the general presentation of the justification for these changes, makes it possible to determine their *ratio legis*. The above assessment is not undermined by the fact that, in presenting the objectives and the need for the enactment of the Amendment to the

ofiary.html, dostęp: 15.06.2022 r.

[16] Uzasadnienie rządowego projektu ustawy o zmianie ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych oraz niektórych innych ustawy - projekt z dnia 26 marca 2020 r., druk sejmowy nr 299, s. 10, p. 2.14, publikacja na stronie www.sejm.gov.pl, dostęp: 15.06.2022 r

COVID-19 Act[17], no mention was made whatsoever of the fact that it also deals with issues relating to the execution of custodial sentences, with focus instead on economic matters. Indeed, the main intention of this amendment was to create specific solutions to counteract the negative economic effects of the spread of COVID-19[18]. The pursuit of this goal does not contradict the *ratio legis* of the solutions relating to the execution of a custodial sentence, since their rationale is part of the broadly understood preventive measures to minimise the spread of COVID-19, which is what this law should serve[19]. It is therefore reasonable that the statute introduced necessary regulations – Articles 14c, 14d and 14f, which are in line with the essence of combating the infection and spread of the infectious disease in humans caused by the SARS-CoV-2 virus[20].

2. Interruption to the Execution of Custodial Sentence. Placement of the Convicted person in an Appropriate Medical Facility

Article 14c(1) of the COVID-19 Act provides for a special, temporal interruption to the execution of a custodial sentence, as aptly pointed out in the Explanatory Memorandum to the government's Bill on the Amendment of the Act on Special Measures regarding Prevention, Counteraction and Combating COVID-19, Other Contagious Diseases and Crisis Situations Related and Certain Other Acts[21]. This is indeed a special break, as the grounds for granting it differ from those forming the basis for granting an interruption under Article 153(1) k.k.w. (obligatory interruption) and Article 153(2) k.k.w. (optional interruption). Thus, the legislator introduced into the Polish legal system a special interruption in the execution of a prison sentence, related solely to the epidemic situation due to COVID-19. It is an exceptional institution, limited to a specific type of threat and related to counteracting its development, as well as used as a last resort – when other measures cannot achieve this goal (argument resulting from Article 14d(1) of the COVID-19 Act). Indisputably, it is temporary in nature – the court grants an interruption for a fixed period of time (Article 14c(1), first sentence of the COVID-

[17] Ibidem, s. 1, pkt 1.
[18] Ibidem.
[19] Ibidem.
[20] Uzasadnienie rządowego projektu ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych – projekt z dnia 1 marca 2020 r., druk sejmowy nr 265, s. 1, publikacja na stronie www.sejm.gov.pl, dostęp: 15.06.2022 r.
[21] Uzasadnienie rządowego projektu ustawy o zmianie ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych oraz niektórych innych ustawy - projekt z dnia 26 marca 2020 r., druk sejmowy nr 299, s. 10, p. 2.14, publikacja na stronie www.sejm.gov.pl, dostęp: 15.06.2022 r.

19 Act), but it may last no longer than until the state of epidemic threat or state of epidemic declared on account of COVID-19 is lifted (Article 14c(3), third sentence of the COVID-19 Act). Upon the date of the competent authorities lifting the state of epidemic emergency or state of epidemic declared on account of COVID-19, which was the premise for granting the convicted person an interruption in serving his or her sentence of imprisonment, the previously granted interruption ceases by operation of law (Article 14c(7), first sentence, of the COVID-19 Act). Thus, this case does not envisage a cancellation of the interruption by the penitentiary court, as the validity of the state of epidemic threat or state of epidemic due to COVID-19 (objective condition) is a decisive factor. The indicated solution is based on the assumption that the period of interruption granted under Article 14c(1) of the COVID-19 Act "*may last no longer than until the lifting of the state of epidemic threat or state of epidemic declared on account of COVID-19*". The statute therefore explicitly states the definitive end of such an interruption, linking it to the current epidemic. Once such a state has been revoked, it is not possible for the interruption to continue and the convicted person is obliged to return to prison within three days of its revocation, unless this is not possible in view of the obligations imposed on him or her under the provisions on the Prevention and Combating of Human Infections and Infectious Diseases (Article 14, paragraph 7, second sentence of COVID-19 Act). The specified time limit is non-negotiable, and may not be extended, but at the same time it is stipulated that in the case of the imposition of obligations on a convicted person enjoying an interruption under the provisions on the Prevention and Combating of Human Infections and Infectious Diseases, his or her return to the penitentiary facility may take place at a later date than that set forth in the Act, i.e. after the expiry of the specified three days. In such a case, the date of return to the penitentiary facility will depend on the termination of the obligations imposed on the convicted person under the above-mentioned provisions, noting that the Act does not regulate this matter unambiguously, i.e. it does not clearly provide at what time the convicted person should – in such a case - return to the penitentiary. Taking into account the *ratio legis* of Article 14c(7) of the COVID-19 Act, as well as its wording, it should be reflected that after the termination of the said obligations preventing the return to the penitentiary facility, the convicted person is required to return to the penitentiary facility within three days. Indeed, this is the fundamental (and only) time limit within which a convicted person is required to return to prison from an interruption that has ceased by operation of the law. The occurrence of circumstances preventing return – due to the imposition of certain obligations of an epidemic nature on the convicted person – has the effect that, firstly, the period during which the convicted person remains outside the penitentiary facility (for epidemic reasons) is extended, although no longer

due to an interruption to the sentence, and, secondly, the time limit referred to in the first sentence of Article 14c(7) of the COVID-19 Act does not start running. The time limit will only run up from the point at which the convicted person is able to fulfil his or her obligation to return to the penitentiary facility, i.e. when no restrictions apply to him or her on account of the obligations imposed under the epidemic legislation. Admittedly, it follows from the literal wording of the first sentence of Article 14c(7) of the COVID-19 Act that the time limit is to be calculated from the "cessation" of the state of epidemic threat or state of epidemic. However, one should not overlook the second sentence of this provision, which indicates that should it be impossible to comply with the obligation to return to the penitentiary facility within the prescribed time limit, in the situation referred to in that provision, the time limit is to be calculated only from the moment when the "obstacle" in the form of epidemic obligations ceases to exist. This is because the exception referred to in the second sentence of Article 14c(7) of the COVID-19 Act does not only relate to the obligation to return to prison itself, but also to the time limit by which this is to take place. Adopting the proposed interpretation will avoid doubts as to when a convicted person is to return from an interruption to their service of a custodial sentence, applied under Article 14c(1) of the COVID-19 Act, in a situation where, once it has "ceased" by law, he or she has not been able to do so because of the epidemic restrictions applicable to him or her.

The interruption of the execution of the custodial sentence referred to in Article 14c(1) of the COVID-19 Act may only be granted during the state of an epidemic threat or a state of epidemic declared on account of COVID-19. This measure not only determines its temporal nature, but also indicates when (in which legal situation) it could be granted. It shows a close correlation with combating the infection and spread of the human infectious disease caused by the SARS-CoV-2 virus. Notably, the Act stipulates that filing an application with the director of a penitentiary to grant a prisoner the interruption in question is subject to an assessment whether the granting of the interruption to a prisoner "may contribute to the reduction or elimination of an epidemic" (Article 14c(2), first sentence of the COVID-19 Act). Thus, the granting of such an interruption was explicitly linked to an assessment relating to the safety of the convicted persons in the facility in question in the context of the COVID-19 threat (argued on the basis of Article 14c(1) and (2), first sentence, of the COVID-19 Act). Accordingly, it is only when the director of the prison establishes that the convicted person's departure from the penitentiary facility will serve to reduce or eliminate the epidemic that it is possible to instigate proceedings (by filing an application) to grant an interruption in the execution of the custodial sentence. Consequently, the interruption referred to in Article 14c(1) of the COVID-19 Act is

designed to eliminate the threat posed by the convicted person in question to other persons with whom he or she comes into contact in the penitentiary facility (including other inmates and prison officers). Although Article 14c(2), first sentence of the COVID-19 Act does not expressly provide for the reduction or elimination of risk of contracting the disease from the convicted person (unlike Article 14d(1), first sentence of the COVID-19 Act), nevertheless, the reduction or elimination of the epidemic referred to in Article 14c(2), first sentence of the COVID-19 Act refers to actions taken within the penitentiary facility. These include - as a last resort - the possibility of applying for an interruption under Article 14c(1) of the COVID-19 Act, which, however, only applies to those cases where it is not possible to reduce or eliminate the risk of epidemic by other means. Since the granting of an interruption to the execution of a custodial sentence leads to the convicted person (temporarily) leaving the penitentiary facility, and this decision – in the opinion of the director of the prison – may contribute to the reduction or elimination of the risk of epidemic, there should be no doubt that its adoption is determined by the risk posed by the person remaining in isolation in the penitentiary facility concerned. At the same time, it is understood that the director of a particular prison is obliged to be guided by an assessment in relation to the specific penitentiary facility in which he or she is obliged to ensure the safety of prisoners and other persons (including Prison Service officers), taking into account the present health status in the facility. In support of this interpretation speaks the fact that reference is also made to Article 14d(1), first sentence of the COVID-19 Act. This provision allows for the possibility of the court ruling on the execution of a custodial sentence by placing the convicted person in an appropriate medical facility if an interruption to the execution of the custodial sentence under Article 14c cannot be granted and the reduction or elimination of the risk of the convicted person infecting another person is not possible as part of the measures taken in the prison. It follows that if the indicated risk is present, the first course of action should be to evaluate whether its reduction or elimination is possible as part of the measures taken within the prison. Only if this is not the case should consideration be given to requesting an interruption as provided under Article 14c of the COVID-19 Act, and where it is not possible (i.e. where the convicted person may not be granted an interruption), the court may order that the custodial sentence be executed by placing the convicted person in an appropriate medical facility. This means that only where an interruption cannot be granted under Article 14c(1) of the COVID-19 Act and it is also not possible to reduce or eliminate the risk of the convicted person infecting another person as part of the measures taken in prison, Article 14d of the Act may be applied. From the perspective of Article 14d(1) of the COVID-19 Act, the conclusion must be drawn that the granting of an interruption in the execution of a custodial sentence under

Article 14c(1) of the COVID-19 Act is associated with the threat posed by the convicted person concerned to the health of others. It is this thread – described by the legislator as the risk of infecting others – that determines the choice of the appropriate response measure, with Article 14d(1) of the COVID-19 Act identifying the purpose of the various solutions – to counteract the risk of the convicted person infecting others.

One should support the view that if it is not possible to grant the convicted person an interruption to serving his or her custodial sentence under Article 14c(1) of the COVID-19 Act, and the distancing of the convicted person is necessary for epidemic reasons, the law provides for a possibility of changing the form of serving the sentence in the form of placement of the convicted person in an appropriate medical facility[22]. This change of form must be preceded by an assessment of whether, with the measures taken in the prison, it is not possible to reduce or eliminate the risk of the convicted person infecting another person. The application of Article 14d(1) of the COVID-19 Act is therefore a last resort, and the placement of a convicted person in an appropriate medical facility may take place when other legal measures (instruments) fail to counteract the risk of the convicted person infecting others.

In the light of the foregoing remarks, it is important to express the view that the application of Article 14c(1) as well as of Article 14d(1) and (2) of the COVID-19 Act is driven by the need to ensure health in a given penitentiary facility. It is not possible either to order an interruption to the execution of a custodial sentence or to execute a custodial sentence by placing the convicted person in a suitable medical facility, solely because of the risk of that convicted person contracting the disease from another convict or person. The occurrence of SARS-CoV-2 infections in a given penitentiary facility is not in itself a reason for granting an interruption to the execution of a custodial sentence or for applying Article 14d of the COVID-19 Act. The provisions in question do not, therefore, provide grounds for taking decisions on their basis in respect of convicted persons who do not pose a risk to other persons, in a situation where SARS-CoV-2 infections are present in a given penitentiary facility, and there is therefore a risk of the virus spreading. In such a case, the legislator has not foreseen the possibility for a convicted person who does not pose an epidemiological risk – based on Articles 14c and 14d of the COVID-19 Act – to leave the penitentiary facility. Thus, the facility may be abandoned by only those convicted persons who pose a risk of infecting others with the SARS-CoV-2 virus, constituting a source of this risk, i.e. when there is a need to separate them from other convicted persons – pursuant to the applicable provisions. As to the persons involved, the

[22] M. Koralewski, Zmiany w postępowaniach sądowych w związku z epidemią Covid-19, LEX/el 2021, pkt II.3.

application of Articles 14c and 14d of the COVID-19 Act was therefore restricted exclusively to that group of convicted persons. It is a restriction of an individual nature, as it is related to the person's state of health (and the resulting risk to others).

The COVID-19 Act makes it clear that it does not regulate the procedure for dealing with the cases of SARS-CoV-2 infections in a penitentiary facility, including, for example, the transfer of convicts to other facilities. When the need arises – due to the necessity to ensure safety to the convicted person - the transfer will take place on the basis of Article 100(1)(7) k.k.w. Furthermore, the statute does not provide for the possibility of imposing temporary restrictions on the operation of the penitentiary facility, or of imposing obligations or prohibitions with respect to convicted persons and relating to the COVID-19 epidemic. This matter is, in part, governed in Article 247(1) k.k.w. The measure referred to in Article 14c(1) of the COVID-19 Act does not provide for any restriction of the rights of convicted persons based on their state of health, but is intended to allow for a reduction in the rate of convicted population when the continued stay of a convicted person in a penitentiary facility, due to his or her state of health, would pose a risk to other persons, including convicts. It would seem that the legislator has introduced regulations to allow those convicted persons whose health condition may be a source of SARS-CoV-2 transmission to leave the penitentiary facility, while, at the same time, it is not an absolute condition for the application of the interruption referred to in Article 14c(1) of the COVID-19 Act that the convicted person is found to have contracted COVID-19 or to have had contact with a person infected with the SARS-CoV-2 virus. Article 14c(1) of the COVID-19 Act, construed in connection with Article 14d(1) of that Act, provides a basis for ordering an interruption in the execution of a custodial sentence if such a decision contributes to "the containment or elimination of the epidemic" (Article 14c(2) of the COVID-19 Act), and it is therefore possible to order it, for instance, in respect of persons belonging to the so-called "risk group" due to age or health status, including past illnesses, whereby this must be linked to their current state of health and, at the same time, the risk of the SARS-CoV-2 virus transmission in the penitentiary facility concerned. Such persons may need to be isolated from other prisoners, as they may represent a source of risk of spread of the SARS-CoV-2 virus. Of course, in the event of contact with a person infected with the SARS-CoV-2 virus, such a risk is present, and the departure from the penitentiary facility of a convicted person who has had such contact may contribute to the "containment of the epidemic" - due to the elimination of the possibility of his or her contact with other persons, the rationale for granting an interruption to the sentence.

The interruption referred to in Article 14c(1) of the COVID-19 Act may not be enjoyed by

convicted persons referred to in Article 14c(6) of that Act. This applies to: persons convicted of an intentional offence punishable by imprisonment of over 3 years; convicted of an unintentional offence punishable by imprisonment of over 3 years; convicted under the terms of Article 64(1) and (2) or Article 65(1) of the Act of 6 June 1997 – Penal Code (Dz.U. – Journal of Laws – of 2019, item 1950, as amended). The adopted solution does not raise any concerns, as it aptly excluded any such possibility with regard to these groups of convicted persons, due to the nature of the prohibited act they committed (Article 14c(6)(1) of the COVID-19 Act), the type and measure of the penalty imposed (Article 14c(6)(2) of the COVID-19 Act) and the conditions of the offence (Article 14c(6)(3) of the COVID-19 Act). However, in introducing such an exemption, it was necessary to regulate the execution of the custodial sentence for these convicted persons, on account of the risk of those convicted persons infecting others. This also extends to those convicted persons who, during their stay outside prison, are reasonably expected to disobey the law, in particular to commit an offence or to disobey the guidelines, instructions or decisions of the competent authorities related to counteracting COVID-19 or the treatment of SARS-CoV-2 infection. When deciding to keep a convicted person who may pose an epidemic risk to others, and when granting of an interruption is excluded, the director of the prison should be able to determine the conditions of imprisonment of such a convicted person, as well as subjecting the convicted person to interviews (taking of medical history) and physical examinations. Such solutions have not been introduced, and the applicable Executive Penal Code does not explicitly regulate this matter.

The Act provides that the prosecutor's objection to the prison director's request to grant an interruption to the execution of a custodial sentence under Article 14c of the COVID-19 Act necessitates the court to discontinue the proceedings (Article 14c(5) of the COVID-19 Act). The grounds for the prosecutor's objection, nor the form in which he can make his statements, have not been specified. Since the proceedings for interruption of the execution of a custodial sentence are executive proceedings within the meaning of Article 1(2) k.k.w., it must be assumed that the prosecutor may file an objection both in writing and orally (Article 116 k.p.k. in connection with Article 1(2) k.k.w. and Article 14c(8) of the COVID-19 Act), without being obliged to disclose the motives for his statement. The institution of the prosecutor's objection to an application for an interruption to the execution of the sentence under Article 14c of the COVID-19 Act is part of the prosecutor's task of upholding the rule of law (Article 2 of the Act of 28 January 2016 – the Act on the Public Prosecutor's Office[2323]), and the performance of this

[23] Dz. U. z 2021 r. poz. 66, ze zm.

task determines the prosecutor's assessment of whether to object to a given application. The statute should regulate the procedure for dealing with a convicted person who poses an epidemic risk to others and when, as a result of the prosecutor's objection, it is not possible to order an interruption to the execution of the custodial sentence under Article 14c(1) of the COVID-19 Act. In such a case, the application of Article 14d(1) of the COVID-19 Act is not excluded, providing the conditions for the execution of a custodial sentence by placing the convicted person in an appropriate medical facility are met. Remarkably, Article 14d of the COVID-19 Act does not provide for the possibility for the public prosecutor to object to the placement of the convicted person in an appropriate medical facility; he or she may only file an appeal against a decision to that effect (Article 14d(4)).

3. Remote Session of the Penitentiary Court

Article 14f(1) of the COVID-19 Act sets forth that, during a state of epidemic threat or a state of epidemic declared on account of COVID-19, in the event that an imprisoned convicted person attends a session of the penitentiary court, the session may be held by means of technical devices enabling it to be carried out remotely with simultaneous direct video and audio transmission. A representative of the administration of the prison or remand centre takes part in the session at the place where the convicted person is held. The provisions of Article 517ea k.p.k. apply *mutatis mutandis* (Article 14f(2) of the COVID-19 Act). Thus, the code provides for an optional (as implied by the wording "a session... may take place") possibility for the penitentiary court (only that court) to proceed "remotely" ("at a distance"). The statute does not specify prerequisites for the decision to order a "remote" session of the penitentiary court. As such, strictly speaking, it has been left to the penitentiary court to decide on this matter. Article 14f(1) of the COVID-19 Act should, however, be interpreted in connection with Article 22(1) and Article 23 k.k.w. As has been correctly pointed out in the jurisprudence, the formal power of the court to rule in the absence of the convicted person at a session, who, pursuant to Article 22(1) k.k.w., has been duly notified of its time and purpose, should not be abused in those cases where, without having heard the convicted person, it is not possible to establish the facts[24]. On the other hand, it has been reasonably noted in the literature that the possibility of holding a session of the penitentiary court in prison should entail an obligation on the part of the court whenever the participation of the convicted person in the session may be of importance to the

[24] Postanowienie SA w Rzeszowie z 1.08.2013 r., II AKzw 439/13, LEX nr 1362816.

substance of the court's decision – due to the need to hear the convicted person in order to clarify all the circumstance of the case[25]. Therefore, neither should the case be heard under Article 14f(1) of the COVID-19 Act, in a "remote" session, when there is a need for a "stationary" hearing of the convicted person, i.e. whenever it is not possible to establish the facts relevant to the resolution of the case unless this procedure is implemented. This is justified both on the grounds of safeguarding the rights and the need to ensure optimal conditions for the proper hearing of the case.

The possibility of the penitentiary court to hold "remote" proceedings deserves praise, as, on the one hand, it provides the convicted person with the possibility to participate in the court session, while, on the other hand, it eliminates the risk of SARS-CoV-2 transmission associated with the movement of persons and the holding of the court session with their participation. Of course, it also serves to rationalise the Prison Service's forces and resources, as it eliminates the need to convoy a convict to a court session, and allows them to be allocated to other tasks, including those related to combating the threat of the spread of the SARS-CoV-2 virus.

The proper application of the provisions of Article 517ea k.p.k. ensures that the convicted person can make motions and statements (1), as well as read out pleadings at the session, with the guarantee that the fact of reading out will have procedural effects (§ 2). Motions and other statements may only be made orally for the record (Article 517ea(1) of the Code of Criminal Procedure in connection with Article 14f(2) of the COVID-19 Act), which means that the legislator has excluded the possibility of submitting motions and other statements in written form (an exception to the rule provided for in Article 116 k.k.p.)[26]. Reserving exclusively oral form for the submission of motions and other statements does not deny the convicted person the possibility of active participation in the proceedings, as he or she is guaranteed – despite being absent from the court premises – the opportunity to present arguments in support of his or her own assertions and to refer, for example, to the opinion drawn up by the prison administration. Notably, the penitentiary court is obligated to inform the convicted person and his or her defence counsel of the content of all letters received by the court following the filing of the case and, if he or she so requests, to read out the content of these letters (Article 517ea(1) of the Code of Criminal Procedure in connection with Article 14f(2) of the COVID-19 Act). The proper application of Article 517ea(1) of the Code of Criminal Procedure means – in my opinion – that the penitentiary court is also obligated to inform the convicted person and his or

[25] K. Postulski, w: Z. Hołda, K. Postulski, Kodeks karny wykonawczy. Komentarz, Gdańsk 2006, s. 511.
[26] K. Eichstaedt, teza 2 do art. 517ea, w: Kodeks postępowania karnego. Tom II. Komentarz aktualizowany, red. D. Świecki, LEX/el 2022.

her defence counsel of the content of pleadings which form part of the case file, and which are not known to the convicted person and his or her defence counsel. For this purpose, the penitentiary court should determine whether the convicted person and his or her defence counsel are aware of the contents of the various pleadings and, if not, inform them of the contents of the pleadings and, if they so request, read them out. Indeed, it is possible that the individual pleadings – attached to the motion instigating the proceedings – will not be known to the convicted person and his or her defence counsel. "Remote" procedure of the penitentiary court may not deprive the convicted person of the right of defence, including addressing the pleadings on his or her situation. It is beyond doubt that Article 517ea(1) k.p.k. prescribes that the content of "all pleadings" must be communicated, and that this provision, when properly applied, must provide for the distinctive character of the penitentiary court proceedings, as compared to the examination of the case in accelerated proceedings. While, in the case of accelerated proceedings, copies of all documents of evidence submitted to the court are made available to the defendant and his or her defence counsel (Article 517e(1a) in connection with Article 517d(1a) k.p.k.), this regulation does not apply to proceedings before the penitentiary court in the context of "remote" proceedings (Article 14f(1) of the COVID-19 Act). However, reasons pertaining to the safeguarding of rights require that the convicted person and his or her defence counsel must have the opportunity to become familiar with the entirety of the evidence gathered in the case, which will form the grounds for the court's decision. This is how Article 517ea(1) k.p.k. should be construed with regard to the "remote" proceedings of the penitentiary court under Article 14f of the COVID-19 Act. A different interpretation would deprive the convicted person and his or her defence counsel of a genuine opportunity to participate actively in the proceedings, including to address the circumstances arising from the pleadings on case file.

According to the data provided by the Prison Service, "remote" sessions of the penitentiary court became the rule during the first months following the entry into force of Article 14f of the COVID-19. For example, in the period from April to June 2020, a total of 42 "remote" penitentiary court hearings were carried out in penitentiary facilities under the Regional Inspectorate of the Prison Service in Rzeszów, while 131 were carried out in penitentiary facilities under the Regional Inspectorate of the Prison Service in Warsaw. The Prison Service data also shows that convicted persons did not apply for a "stationary" hearing, nor did they complain about the "remote" proceedings of the penitentiary court. As a general rule, no complaints have been recorded regarding the organisation of "remote" sessions by the Prison

Service, in particular the securing of suitable conditions for participation in such a session[27]. Between March and June, a total of 842 "remote" sessions of the penitentiary court took place across Poland, with only one remand centre having had convicts draw attention to the poor quality of the video and audio, which - they felt - made it difficult for them to understand the message formulated by the judge, but no one made a formal complaint. However, one should bear in mind that this was in the early days of the "remote" system, and that prior to this, penitentiary facilities were not prepared for the widespread use of technical devices that would enable a penitentiary court session to be held remotely. The essential point is that, thanks to the introduction of the possibility of "remote" proceedings of the penitentiary court, conditions have been created for hearing the motions of convicted persons and the administration of penitentiary facilities during the most challenging times of the COVID-19 epidemic, while allowing convicts to actively participate in such a session. At the time (April-June 2020), it was unsure how the epidemic would develop, nor how long it would last, and neither were protective vaccinations available. The primary means of protection was the restriction of human contact. Under these circumstances, Article 14f of the COVID-19 Act has fulfilled its role, as there has been no collapse in the operation of the penitentiary justice system, nor has there been any concern on the part of convicted persons due to failure to provide conditions for the hearing of their motions. There was also no disruption to the penitentiary system due to COVID-19 incidents. The reduced possibility of transmission of the SARS-CoV-2 virus in penitentiary facilities, resulting, among other things, from the introduction of the "remote" penitentiary court proceedings, was one of those factors that prevented mass infections in the penitentiary conditions. At present, the "remote" proceedings of the penitentiary court are not so much determined by epidemic contingencies (obviously, the situation of June 2022 is incomparable to that of June 2020), but by the fact that the solution under Article 14f of the COVID-19 Act has proven successful without depriving convicted persons of the possibility to participate in the proceedings. This does not contradict the *ratio legis* of this provision, as a state of epidemic threat is in force and this implies the need for safety measures and the elimination of possible (and therefore potential) sources of infection. Still "remote" proceedings of the penitentiary court are the rule, while there are cases when "stationary" mode is employed, either upon the request of the convicted person or by this decision being made *ex officio*. This applies to those cases in which the court finds the need for a detailed explanation of particular circumstances relevant to how the case is resolved, including those relating to the criminal and social prognosis

[27] Informacja pisemna przekazana autorowi publikacji przez Biuro Dyrektora Generalnego Służby Więziennej.

of the convicted person. They include convicts serving long-term sentences, or repeat offenders. Convicted persons request a "stationary" session – as a rule – in cases where they disagree with the opinion of the prison administration, as well as in cases where there has been a change in their personal and family situation.

4. Summary. Remarks on the Postulated Shape of Law

The measures adopted in Articles 14c, 14d and 14f of the COVID-19 Act most definitely address the issue of the execution of a custodial sentence in relation to the COVID-19 epidemic situation.

As regards the interruption to the execution of the custodial sentence and the ruling on the execution of the custodial sentence through the placement of the convicted person in an appropriate medical facility, it must be stated that those solution show a close relationship with the achievement of goals of the COVID-19 Act. This also applies to remote proceedings of the penitentiary court, as holding a court session "remotely" limits the contact of the convicted person with other persons, reducing, in turn, the risk of the SARS-CoV-2 virus transmission.

All the regulations subject to the study are of special nature, in that they introduce measures different (distinct) from those previously in force. However, the internal coherence of the legal system cannot be called into question, as they establish specific regulations on account of a state of epidemic threat or a COVID-19 epidemic, which apply independently of the solutions in place up to now.

The institution of an interruption to the execution of a sentence of imprisonment referred to in Article 14c(1) of the COVID-19 Act, in view of the wording of Article 14d(1) of that Act, has the aim of limiting the population of convicts serving a custodial sentence in a given penitentiary facility, for epidemic reasons. In this fashion, an instrument was developed to reduce the population in a prison (detention centre) with the purpose of "containment or elimination of an epidemic" (Article 14c(2) of the COVID-19 Act), understood as "reducing or eliminating the risk of a convicted person infecting another person" (Article 14d(1) of the COVID-19 Act). Thereby, the institution of an interruption to the execution of a custodial sentence, within the meaning of Article 14c(1) of the COVID-19 Act, has been given a different character than that of the interruption known from the Executive Penal Code. The purpose of an interruption to a sentence within the meaning of the Executive Penal Code is to eliminate the excessively severe (more severe than typically) effects of imprisonment on the convicted person

or on their families[28]. Although the interruption under the Executive Penal Code is an institution of special character[29], just like the interruption referred to in Article 14c(1) of the COVID-19 Act, the latter is intended to combat the epidemic threat and is justified not only on individual grounds (as in the case of the interruption regulated in the Executive Penal Code), but also by conditions related to the epidemic situation in a given penitentiary facility. It is this situation, combined with individual circumstances, that constitutes grounds for ruling on an "epidemic" interruption. It is not a question of eliminating the effects of a prisoner's imprisonment, which are too severe, but of preventing the spread of an epidemic in the penitentiary facility. A convict who is a source of epidemic risk may be granted an interruption to the service of his or her prison sentence precisely because his or her continued stay in the prison facility may pose an epidemic risk to others. His or her state of health is therefore of relevance, but not because of the need to interrupt the serving of the custodial sentence, as, under the circumstances, his or her continued stay in penitentiary isolation is an undue hardship, but because the convicted person should not have contact with other persons in the penitentiary facility, as this could lead to an aggravation of the epidemic situation. It could be argued that the interruption referred to in Article 14c(1) of the COVID-19 Act, taking into account the wording of Article 14d(1) of that Act, is an instrument for the management of a penitentiary facility during a state of epidemic threat or epidemic of COVID-19, conditional on the need to eliminate the source of the epidemic threat. The legislator felt that it would be better for a convicted person who was a source of risk to others to leave the penitentiary facility and find himself or herself at large than to remain in the facility, which could result in an increase in the number of infections within its walls. Given the risk of an epidemic developing in a closed structure, this assumption is correct, but a measure should have been introduced whereby, for example, the convicted person, upon leaving the penitentiary facility, is obliged to undergo testing for COVID-19, already in the non-custodial setting. Adding the Article 14ea to the COVID-19 Act allows for subjecting the convicted person to testing prior to release from the penitentiary facility, but this is not an absolute obligation and, moreover, the legal situation of a convicted person who has left the facility and is suspected of contracting the SARS-CoV-2 virus is still not regulated. In my opinion, information on such a convicted person departing from the penitentiary facility should be communicated to the competent sanitary inspector, with a parallel requirement that the

[28] Postanowienie SA w Krakowie z 8.06.2017 r., II AKzw 515/17, LEX nr 2521588; postanowienie SA w Krakowie z 9.09.2014 r., II AKzw 1008/14, LEX nr 1616022.
[29] Postanowienie SA w Krakowie z 14.01.2016 r., II AKzw 1136/15, LEX nr 2052698; postanowienie SA w Lublinie z 11.01.2012 r., II AKzw 1397/11, LEX nr 1210840.

convicted person be tested for COVID-19.

The interruption to the execution of a custodial sentence referred to in Article 14c(1) of the COVID-19 Act cannot be compared to the institution of an optional postponement of executing the sentence referred to in Article 151(2) k.k.w. In accordance with the wording of that provision, the court may postpone the execution of a custodial sentence for up to one year if the number of inmates in prisons or remand centres exceeds the overall capacity of these facilities nationwide (so-called postponement due to overcrowding)[30]. This is because the interruption relates to the sentence that is being served, and the postponement referred to in Article 151(2) k.k.w – a penalty which has not yet commenced to be executed. Moreover, the aforementioned postponement is predicated exclusively by objective considerations, independent of the convicted person, and is not in any way related to his or her state of health, whereas the interruption regulated in the COVID-19 Act refers to individual circumstances and the resulting necessity to isolate the convicted person from other persons, obviously by taking into account also other facts relating to the status of the epidemic in the penitentiary facility. It is not, therefore, the case that this institution is only motivated by objective considerations, as is in the case of postponement of the execution of the sentence pursuant to Article 151(2) k.k.w. The interruption in terms of Article 14c(1) and (2) of the COVID-19 Act is determined by epidemiological reasons. It can, as such, be deemed "epidemic". It is also of a sanitary nature, serving to contain or eliminate the epidemic threat, which is inextricably linked with taking adequate sanitary actions. It should be noted that Article 14d(1) of the aforementioned Act uses the term of "actions taken in prison". These actions are, in fact, sanitary measures to contain or eliminate the epidemic. Importantly, if it is feasible to ensure the safety of convicted persons and others within the prison facility as part of these actions, there is no justification for the institution of an "epidemic" interruption to be applied. This is not only because it is an optional institution, but because it can only be used if it "can contribute to the containment or elimination of an epidemic", meaning that taking appropriate sanitary measures will suffice to achieve this objective and it will not be necessary (justified) to resort to Article 14c(1) of the COVID-19 Act.

I do not share the view that one can distinguish – with regard to the institution of an "epidemic" interruption – the utilitarian and evaluative rationale for its application[31]. The

[30] G. Wiciński, Postępowania incydentalne związane z wykonaniem kary pozbawienia wolności w programie probacji, Łódź 2012, s. 134-147.
[31] A. Ornowska, Dozór elektroniczny w czasach epidemii koronawirusa i regulacji tzw. tarczy antykryzysowej oraz możliwość przerwy w wykonaniu kary pozbawienia wolności, LEX/el 2020, pkt 2.2.2. i 2.2.3.

former, according to the author of this view, is related to the fact that the institution is meant to contribute to the containment or elimination of the epidemic. The latter, on the other hand, is related to a positive criminological prognosis. First of all, both prerequisites are evaluative in nature, as explicitly stated by the Act. The director of the prison may make an application under Article 14c(1) of the COVID-19 Act if "in his or her judgement the granting of an interruption to the convict may contribute to the containment or elimination of the epidemic". It is therefore unhelpful to emphasise the evaluative nature of the criminological prognosis and overlook the fact that the submission of the application by the director of the prison itself must be preceded by an epidemic assessment, in consequence being evaluative in nature. Secondly, the rationale behind the epidemic assessment cannot be defined as utilitarian alone. Such an understanding of the rationale for granting an "epidemic" interruption impoverishes its meaning. The interruption is not only supposed to be "useful" but also – or rather, primarily – show respect for human dignity and humanitarianism. To see the purpose of introducing this institution alone, without comprehending its essence and its limitations arising from the fact that it concerns a human being, gives it a purely "objective" character, and eliminates individual elements. And yet, this institution applies to a specific convicted person, on account of his or her health conditions, assessed in conjunction with the epidemic situation in the penitentiary facility. If the legislator had exclusively been guided by utilitarianism, a general solution would have been established, providing for (temporary) exemption from serving sentences for specific groups of convicts (e.g. persons over 60, sick persons, etc.), rather than requiring for an individual assessment to be made. The premise in question must therefore be understood in a different manner than the proposed construction, and its proper reading dictates that it has a "humanitarian and utilitarian" character, which excludes the instrumental treatment of the individual and requires that the convicted person be seen as a subject of freedoms and rights, falling under the protection of Article 30 of the Constitution of the Republic of Poland of 2 April 1997[32] (hereinafter: the Constitution of the Republic of Poland).

The "epidemic" interruption should remain in the Polish legal system. The State should be prepared for an epidemic, and this includes ensuring that the penitentiary system functions in a manner that eliminates or reduces the development of an epidemic. It cannot be ruled out that the SARS-CoV-2 virus will still pose a universal threat to human life and health, or that another virus posing such a threat will evolve in some time. The experience of the COVID-19 epidemic should serve to prepare for any situation of widespread epidemic risk.

[32] Dz. U. Nr 78, poz. 483, ze zm.

The measure set forth in Article 14f of the COVID-19 Act ("remote" proceedings of the penitentiary court) should be considered a sound solution. Setting up legal grounds for the holding of a penitentiary court session by use of technical devices enabling it to be carried out remotely with simultaneous direct video and audio transmission is reasonable, and does not violate the rights of the convicted person. Indeed, the law provides adequate conditions for the active participation of the convicted person in such a hearing, as is expressly stated in Article 517ea(1) of the Code of Criminal Procedure in connection with Article 14f(2) of the COVID-19 Act. It should therefore be emphasised that a "remote" session of the penitentiary court does not deny the convicted person the right to participate in judicial proceedings, as it does not exclude his or her participation in such proceedings, guaranteeing the possibility of procedural activity. It should also be noted that in the jurisprudence of the European Court of Human Rights in Strasbourg it has been recognised[33] that, in principle, the participation of the defendant in judicial proceedings by video conference does not violate Article 6(1) and (3) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR)[34]. At the same time, it has been consistently acknowledged in Strasbourg jurisprudence that the safeguards arising directly and indirectly from Article 6 ECHR do not apply, inter alia, to proceedings for the resumption of criminal proceedings and proceedings for conditional early release[35]. In other words, procedural safeguards must be enjoyed as long as the merits of the charge made in a criminal case are not conclusively resolved, i.e. as long as the proceedings concerning the merits of the charge continue, Article 6 ECHR applies[36]. At the execution proceedings stage, the validity of the "criminal charge" is not examined, thus, there is no problem of proving the defendant's guilt and addressing his or her line of defence. It is not a proceeding in a "criminal case" within the meaning of Article 6(1) of the ECHR, as it has been concluded with a final and non-appealable judgement. If, therefore, under the proceedings subject to the safeguards of Article 6 ECHR, it is not excluded to proceed "remotely" – by means of a video conference, then it is also possible at the stage of executive proceedings, which are not subject to those safeguards, especially if the same procedural safeguards are provided as for the hearing of a "criminal charge". It is reasonable to consider the possibility of introducing such a solution into the Executive Penal Code – with regard to penitentiary court

[33] Zob. szerzej: Cz. Kłak, Rozprawa „odmiejscowiona" w polskim procesie karnym a Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, „Gentes et Nationes" 2012, nr 2, s. 119-132.
[34] Dz. U. z 1993 r. Nr 61, poz. 284, ze zm.
[35] Zob. szerzej: C. Nowak, Prawo do rzetelnego procesu sądowego w świetle EKPC i orzecznictwa ETPC, w: Rzetelny proces karny, pod red. P. Wilińskiego, Warszawa 2009, s. 100.
[36] P. Hofmański, A. Wróbel, w: Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, t. I, Komentarz do art. 1-18, pod red. L. Garlickiego, Warszawa 2010 s. 278.

hearings – on a permanent basis. It allows the Prison Service to save forces and resources, as there is no need to escort the convicted person to the penitentiary court session held at the court premises, and provides the penitentiary court with the possibility to hear the case without convicted person's direct participation in such a session (at the court premises), while guaranteeing him or her the opportunity to present to the court statements and motions, as well as the arguments in support of them. Certainly, it can be used in times other than during a state of epidemic threat or a state of epidemic, as it is not only supported by arguments of an epidemiological nature, but also by praxeological considerations related to the improvement of the operation of the penitentiary justice system. It is not necessary for the convicted person to always have direct contact with the penitentiary court, manifested by attendance at a court session at the court premises or at the facility where he or she is detained (Article 23(3) k.k.w.). In the case of the "remote proceedings", the convicted person can present his or her statements and motions, as well as the arguments in support of them, by means of devices that allow the penitentiary court session to be conducted remotely with simultaneous direct video and audio transmission, thus fulfilling his or her right to be heard by the court. Article 6 of the ECHR establishes the right to an oral procedure, where it is necessary to ensure that the defendant has the right to be heard in his or her case with the opportunity to, inter alia, present evidence in his or her defence[37]. Since this right is ensured – through "remote" participation in the penitentiary court session and the possibility of submitting statements and motions – it must be concluded that safeguards coinciding with those that should be available to the defendant "in a criminal case" within the meaning of Article 6 of the ECHR have been provided at the executive proceedings stage. In this respect, the minimum standard under Article 6 of the ECHR has been, therefore attained, even though the executive proceedings do not fall within the scope of this provision. For the same reasons, there can be no violation of the principles of a fair trial under Article 45 of the Constitution of the Republic of Poland. The convicted person is ensured the possibility of personal contact with the court (albeit by means of "technical devices"), the penitentiary court does not, therefore, decide the case without the participation of the convicted person (in his or her absence, by default) and without knowing his or her position, which can be presented personally by the convicted person himself. Personal encounter between the court and the source, and the evidence – the essence of the principle of direct examination of evidence by the judge[38] – is therefore ensured. Indeed, the penitentiary court does not rule on the basis

[37] Ibidem, s. 357.
[38] Zob. szerzej: S. Waltoś, P. Hofmański, Proces karny. Zarys systemu, Warszawa 2016, s. 267 i n.; H. Paluszkiewicz, w: K. Dudka, K. Paluszkiewicz, Postępowanie karne, Warszawa 2016, s. 167.

of the statements made by the convicted person in writing or communicated by the Prison Service officers, but has the opportunity to hear them in person and potentially to ask questions to the convicted person, as well as to take statements from him or her, etc. In consequence, there is no "indirectness" in this respect, understood as the penitentiary court learning of the convicted person's communicated position without being able to hear his or her own statement[39]. According to the principle of direct examination of evidence by the judge, the court should hear the defendant, which corresponds to some extent to the formulated principle of oral form of the trial[40]. Assuming that the implementation of the principle of direct examination of evidence by the judge is also indispensable at the stage of executive proceedings, it should be concluded that, since this hearing of the convicted person can take place not only at the court's premises, but also when the court is proceeding "remotely", since in both cases the court learns the statement of the convicted person himself or herself, the aforementioned assumption is fulfilled. It should, at the same time, be emphasised that the principle of direct examination of evidence by the judge under the Code of Criminal Procedure is subject to numerous and varying limitations, and is therefore not of an absolute nature[41]. It is also essential that in the executive proceedings regulated by the Executive Penal Code, there is no mention of mandatory participation of the convicted person in the court session. If an imprisoned convict wishes to participate in a hearing in which he or she is entitled to participate under the Executive Penal Code, then the court must ensure his or her participation in those proceedings and order that he be brought in[42]. However, it may order that the convict be heard by the court under whose jurisdiction the convict is detained (Article 23(2) k.k.w.), which is an exception to the principle of direct examination of evidence by the judge expressly provided for by the statute. Therefore, the Executive Penal Code cannot be regarded as grounds for the absolute character of the principle of direct examination of evidence by the judge, and, at the same time, entails the impermissibility of holding a penitentiary court session "remotely". However, even if this were the case, the legislator may introduce a special solution, as it did in the Code of Criminal Procedure – in Article 517b(2a) k.p.k. In the Polish legal system, there are more far-reaching solutions, e.g. allowing for the adjudication of guilt and penalty at a session without the participation of the parties, which is the case in penal order proceedings (Article 500(4) k.p.k.)[43]. From this perspective, considering the fact that the participation of the convicted

[39] Zob. ibidem.
[40] S. Waltoś, P. Hofmański, op. cit., s. 269.
[41] S. Waltoś, P. Hofmański, op. cit., s. 270-273.
[42] I. Zgoliński, w: Kodeks karny wykonawczy. Komentarz, red. J. Lachowski, Warszawa 2018, s. 109.
[43] Zob. szerzej: Cz. Kłak, Postępowanie nakazowe w polskim procesie karnym a ochrona praw człowieka,

person in the session of the penitentiary court is never obligatory and that his or her rights are exercised by allowing him or her to participate in such a session, it cannot be assumed that "remote proceedings" are inadmissible, since it is a form which allows him or her to communicate with the court in the context of the session, without "intermediaries", while maintaining the requirement that the proceedings be oral, and the executive proceedings take place after the final and non-appealable adjudication of guilt and the punishment, so, inevitably, the hearing of evidence within its scope is of a limited nature and does not concern the attribution of criminal liability.

It should be noted that the Constitutional Tribunal, in its judgement of 22.03.2017, SK 13/14[44], found that from the point of view of the constitutional standards of a fair, due and public (within the meaning of Article 45(1) of the Constitution of the Republic of Poland) hearing of a case by a court, the personal participation in a session of the person whose rights or obligations are subject to scrutiny of the court should be regarded as a rule, supplying it with a remark that adjudication "in the absence" of a party is therefore an exception which should not be applied extensively by the legislator. The Court also found that the principle of participation in court sessions is functionally linked to the obligation for the court to inform the party of the date and subject matter of the hearing, and to give the party an opportunity to be heard. These safeguards should be provided for by law regardless of whether the rule of procedure confer the right to attend on the legal representative in litigation (defence counsel), or whether the court has the power to summon or have a party brought before it to have it heard or questioned. Such solutions do not *per se* constitute the implementation of the constitutional directive of personal participation of the person to whom the court's decision refers to. Obviously, the right to attend a court session and the right to be heard by the court are not of an absolute nature, and thus may be subject to statutory limitations, however, in each case, any possible exclusion of these procedural safeguards must meet the formal and matter-related prerequisites, set forth in the Article 31(3) of the Constitution of the Republic of Poland, concerning the admissibility of establishing limitations on the enjoyment of constitutional freedoms and rights, including the prerequisite of proportionality, and this is assessed by the Court in each and every case. The hearing of the case "remotely" (at a "remote" hearing) guarantees the convicted person's "presence" at such a hearing and the opportunity to be heard. The participation of the convicted person is of a "personal" nature, except that the communication with the court takes place by means of devices enabling it to be carried out

Warszawa 2008.

[44] OTK ZU 2017/A, poz. 19.

"remotely" – with simultaneous direct video and audio transmission. The exception of adjudicating "in the absence" does not therefore arise, nor is such an arrangement banned by the Constitution. As such, since the opportunity to participate in the court session is provided and the convicted person can be heard by the court, "remoteness" is merely a form of holding a session with the participation of the convicted person, which guarantees him or her the opportunity of actively taking part in the course of the proceedings.

A "remote" session of the penitentiary court is therefore not an exception admissible under the Polish Constitution to the principle of "personal" participation of the person whose freedoms and rights are decided by the court, but falls within the framework of this principle, which encompasses not only "stationary" participation (at the court's premises), but also "remote" participation ("remotely" with simultaneous transmission of images and sound), as in both cases the person takes part in the court proceedings – they are conducted with his or her participation.

In the judgement referred to above, the Constitutional Court also acknowledged that the constitutional axiology, including the principles of protecting the citizens' confidence in the state and care for the public sense of fairness of the public authorities' decisions, supports, on the other hand, that court rulings defining the scope of freedom to enjoy personal liberty, and in particular decisions on deprivation of that liberty, should not be made in the absence of the person concerned. Article 14f of the COVID-19 Act does not stand in conflict to the constitutional values and principles discussed. The penitentiary court proceeding under this provision does not rule "in the absence" of the convicted person, its decision is therefore not of a default nature.

The measure laid down in Article 14f of the COVID-19 Act should not only apply during the period referred to in this provision (state of epidemic threat or state of epidemic due to COVID-19), but become a solution familiar to the Executive Penal Code with regard to the proceedings before the penitentiary court that it regulates. "Remote proceedings" are, in fact, not exclusively linked to the specific conditions that exist during the period of an epidemic threat or a state of epidemic. The decision on whether to resort to "remote proceedings" or the traditional mode of holding the hearing at the court's premises, or possibly at the prison where the convicted person is detained, should be left to the discretion of the penitentiary court. In the case referred to in Article 43le(1) of the Code of Criminal Procedure (adjudication on the motion of a convicted person for permission to serve a sentence of imprisonment under the electronic monitoring system who is already serving a sentence of imprisonment in prison), the legislator assumed that the session of the penitentiary court takes place in the prison where the convicted person is detained. Again, there should be an option to hold the session "remotely",

not only during a state of epidemic threat or an epidemic, as is currently the case.

In the light of the above, it seems justified to postulate that the Executive Penal Code be amended and supplemented with the following provision:

„Article 23a(1) If the court proceedings concern an imprisoned convicted person, the session of the penitentiary court may be held with the use of technical devices enabling it to be carried out remotely with simultaneous direct video and audio transmission. A representative of the administration of the prison or remand centre, and a defence counsel, if one has been appointed, shall take part in the session at the place where the convicted person is held. The convicted person shall be given reasonable time and conditions to speak directly with his or her defence counsel before the court session.

§ 2. The provisions of Article 517ea of the Act of 6 June 1997 – Code of Criminal Procedure shall apply accordingly".

The above proposal implies that it is optional for the penitentiary court to hold the session "remotely", just as in the current state of the law it is optional for the court to hold the session in the facility where the convicted person is detained (Article 23(3) k.k.w.). In any case, it will be up to the court to decide whether holding such a hearing is justified, including, for example, whether proceeding in this fashion violates the rights of the convicted person. The proposal put forward does not override the solutions contained in Article 23(1) and (3) k.k.w. It is, thus, an additional measure relating to the penitentiary court proceedings. At the same time, it has been stipulated that the convicted person must be provided with reasonable conditions and time to speak directly with his or her defence counsel, which serves the purpose of exercising the right of defence, and that the defence counsel must be present at the convicted person's place of stay, which is an important safeguard for the exercise of that right. The convicted person will be provided with the opportunity to make motions and statements in the course of the hearing, as a result of the application of Article 517ea(1) of the Code of Criminal Procedure *mutatis mutandis*. The introduction of the measure to the Executive Penal Code that the penitentiary court may also adjudicate "remotely" will serve the fulfilment of the convicted persons' right to have his or her case heard without undue delay, as it will provide for the possibility of using technical devices to communicate with the convicted person without the need to organise a hearing at the court premises or in the prison where the convicted person is detained, which will shorten the time of adjudication of the case, enabling the court to hold proceedings in a quick and efficient manner. It should, at this point, be emphasised that the "remote" holding of proceedings by the penitentiary court (as of any court) must not become the rule, it should only be a possibility (of optional nature), and should in each case be predetermined by respect for

the rights of the convicted person (human rights). "Remote" holding of penitentiary court proceedings cannot replace other ways of conducting proceedings – it cannot therefore be the only way of proceeding of such a court, and it should not be resorted to in cases where interpersonal contact between the court and the convicted person is necessary. The penitentiary court should always refrain from conducting the proceedings "remotely" when it has doubts as to the advisability of hearing the case in this way, as well as when the convicted person requests to be allowed to attend the court session at the court premises or at the prison where he or she is being detained, while, at the same time, it is justified by the need to verify – in the course of a "stationary" hearing of the convicted person – material circumstances relevant to the resolution of the case.

Notably, the draft amendment to the Executive Penal Code of 29 October 2021[45] provides for the addition of a provision reading:

„Article 23a. § 1. If the court proceedings concern an imprisoned convicted person, the court session may be held with the use of technical devices enabling it to be carried out remotely with simultaneous direct video and audio transmission. A representative of the administration of the prison or remand centre, a defence counsel, if one has been retained or appointed, and an interpreter, if one has been appointed, shall take part in the session at the place where the convicted person is held.

§ 2. In the event of abstention from holding a court session in the manner referred to in § 1, the president of the court or an authorised judge or penitentiary judge shall issue an order to that effect. The order shall require a statement of reasons.

§ 3. The provisions of Article 517ea of the Code of Criminal Procedure shall apply *mutatis mutandis*."

The legislative proposal put forward undoubtedly refers to the solution set forth in the Article 14f of the COVID-19 Act, but reaches further. This is because it applies to any "court session" and not only to a penitentiary court session and, furthermore, it follows from the wording of the proposed Article 23a(2) k.k.w. that a "remote" session should be the rule, whereas Article 14f expressly provides for optionality in this regard. At the same time, the proposal does not envision that the convicted person should be provided with reasonable time and conditions to speak directly with his or her defence counsel before the court session, which is to be criticised. Such an explicit provision should be included in the statute in order to provide optimal conditions for the convicted person to exercise his or her right of defence during the

[45] Tekst projektu na stronie: https://legislacja.rcl.gov.pl/projekt/12353001 /katalog/12826460#12826460, dostęp: 15.06.2022 r.

executive proceedings.

One should contemplate whether it would not be reasonable to leave in place the solutions set forth in Articles 14c and 14d of the COVID-19 Act for good, i.e. whenever a state of epidemic threat or epidemic is declared, instead of only in connection with SARS-CoV-2 infections. The experience of the struggle against COVID-19 calls for the need to be prepared for other epidemic outbreaks, so that when the risk materialises we do not search for adequate legal solutions, but employ the ones in place within the legal framework. Until the emergence of the COVID-19 epidemic, there were no available solutions in the executive penal law system to properly respond to the rapidly developing epidemic. They had to be introduced, and it had to be done under uncertainty regarding the structure and dynamics of the threat. From today's perspective, it is reasonable to leave in the legal system the "epidemic" interruption, or the institution of the execution of a custodial sentence by placing the convicted person in an appropriate medical facility. These instruments may, in fact, in a situation of increasing epidemic risk, be the last resort to contain or eliminate the epidemic in a given penitentiary facility. My final conclusion is that I believe that comprehensive solutions should be put in place with regard to the functioning of the penitentiary system during a state of epidemic threat and state of epidemic. Appropriate provisions should become part of the Executive Penal Code.

The legislative shortcomings of the analysed measures set forth in the COVID-19 Act should be recognised. For instance, Article 14d(1) uses the phrase "risk of transmission", but does not specify what "transmission" is meant. Of course, it is possible – in the course of legal construction – to establish that this refers to infection with the SARS-CoV-2 virus, but legislative precision requires that this be made express in the law, because otherwise, the reading of the legal text may give rise to doubts as to the objective scope of the regulation in question, which should never be the case. The wording "on the day of the declaration by the competent authority of the cessation of the state of epidemic threat or the state of epidemic" (Article 14c(7)) is also incorrect, as in the current legal state the state of epidemic threat or the state of epidemic is "declared" and "lifted" (art. 46(1) and (2) of the Act of 5 December 2008 on the Prevention and Combating of Human Infections and Infectious Diseases[46]), which means that there is no "declaration by the competent authority of the cessation of the state of epidemic threat or the state of epidemic", but rather that it is "lifted". This is also the nomenclature that the COVID-19 Act should use, as unnecessary terminological chaos is otherwise introduced. However, this does not affect the possibility of determining the date on which an interruption to the execution of a custodial sentence granted under Article 14c of the COVID-19 ceases by operation of the law. A correct interpretation of Article 14c(7) of the COVID-19 Act – taking

clear account of the wording of Article 46(1) and (2) of the Act of 5 December 2008 on the Prevention and Combating of Human Infections and Infectious Diseases – supports the assumption that the "declaration of the cessation of the state of epidemic threat or the state of epidemic" is in fact the lifting of these states on the basis of the discussed provisions of the Act of 5 December 2008 on the Prevention and Combating of Human Infections and Infectious Diseases. The wording "during a state of epidemic threat or an epidemic state declared due to COVID-19" (Articles 14c(1), 14d(1) and 14f(1) of the COVID-19) is also not accurate. In fact, the states discussed were declared "in connection with SARS-CoV-2 infections" and this is the terminology – for the sake of consistency within the legal system – that the COVID-19 Act should use.

Bibliography

Literature

1. Eichstaedt K., w: Kodeks postępowania karnego. Tom II. Komentarz aktualizowany, red. D. Świecki, LEX/el 2022, teza 2 do art. 517ea.
2. Hofmański P., Wróbel A., w: Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, t. I, Komentarz do art. 1-18, pod red. L. Garlickiego, Warszawa 2010.
3. Kłak Cz., Postępowanie nakazowe w polskim procesie karnym a ochrona praw człowieka, Warszawa 2008.

[46] Dz. U. z 2021 r. poz. 2069, ze zm.

4. Kłak Cz., Rozprawa ”odmiejscowiona” w polskim procesie karnym a Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, „Gentes et Nationes” 2012, nr 2.
5. Koralewski M., Zmiany w postępowaniach sądowych w związku z epidemią Covid-19, LEX/el 2021.
6. Lelental S., Kodeks karny wykonawczy. Komentarz, Warszawa 2010.
7. Nowak C., Prawo do rzetelnego procesu sądowego w świetle EKPC i orzecznictwa ETPC, w: Rzetelny proces karny, pod red. P. Wilińskiego, Warszawa 2009.
8. Ornowska A., Dozór elektroniczny w czasach epidemii koronawirusa i regulacji tzw. tarczy antykryzysowej oraz możliwość przerwy w wykonaniu kary pozbawienia wolności, LEX/el 2020, pkt 2.2.2. i 2.2.3.
9. Paluszkiewicz H., w: Dudka K., Paluszkiewicz K., Postępowanie karne, Warszawa 2016,

s. 167.

10. Postulski K., w: Hołda Z., Postulski K., Kodeks karny wykonawczy. Komentarz, Gdańsk 2006.
11. Waltoś S., Hofmański P., Proces karny. Zarys systemu, Warszawa 2016.
12. Wiciński G., Postępowania incydentalne związane z wykonaniem kary pozbawienia wolności w programie probacji, Łódź 2012.
13. Zgoliński I., w: Kodeks karny wykonawczy. Komentarz, red. J. Lachowski, Warszawa 2018.

Jurisprudence

1. Wyrok TK z 22.03.2017 r., SK 13/14, OTK ZU 2017/A, poz. 19.
2. Wyrok SN z 19.04.2021 r., I KK 92/20, LEX nr 3232169.
3. Postanowienie SA w Krakowie z 8.06.2017 r., II AKzw 515/17, LEX nr 2521588.
4. Postanowienie SA w Krakowie z 14.01.2016 r., II AKzw 1136/15, LEX nr 2052698.
5. Postanowienie SA w Krakowie z 9.09.2014 r., II AKzw 1008/14, LEX nr 1616022.
6. Postanowienie SA w Rzeszowie z 1.08.2013 r., II AKzw 439/13, LEX nr 1362816.
7. Postanowienie SA w Lublinie z 11.01.2012 r., II AKzw 1397/11, LEX nr 1210840.