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**STRENGTHS AND DRAWBACKS OF LONG-TERM
PENALTIES – CONSIDERATIONS IN CONNECTION WITH
THE REMOVAL OF THE PENALTY OF 25 YEARS’
IMPRISONMENT FROM THE PENAL CODE**

Received on: 30/03/2023 Approved on: 22/08/2023 Published on: 30/06/2023

DOI: 10.5604/01.3001.0053.8646

Original paper

Source of funding - the author’s research.

Abstract

In 2022, another attempt at a comprehensive amendment of the Penal Code was submitted to the Sejm. One of the changes proposed was the elimination of the penalty of 25 years’ imprisonment and its replacement with a term prison sentence carrying an upper limit lengthened from 15 to 30 years. This draft is an opportunity to conduct an in-depth analysis of the sentence of 25 years’ imprisonment, paying particular attention to its strengths and drawbacks. It also constitutes an opportunity for a comprehensive assessment of long-term incarceration from the perspective of the function of criminal punishment and the principle of proportionality, which is a new element in Polish literature in this field. The author hypothesises that neither retaining the penalty of 25 years’ imprisonment nor extending the term to 30 years would be the correct solution from the point of view of the functions and principles of criminal law. He then strives to prove this hypothesis, using research methods adopted in jurisprudence: formal and

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dogmatic analysis of legal provisions, as well as a critical review of literature and judgements.

The research confirmed the hypothesis. In the author's opinion, long-term imprisonment may be negatively assessed from the perspective of the constitutional principle of proportionality. Instead of voicing demands for an increase in punitive criminal law through the introduction of more repressive penalties, it is worth considering taking steps in the opposite direction, aiming to alleviate penal repression and focus on effective resocialisation. According to the author, the article may contribute to the discussion on changes in criminal policy, thus furthering the development of criminal law and criminal enforcement law.

Keywords: criminal law, criminal punishment, penalty of 25 years imprisonment, term imprisonment, amendment, punitiveness

1. Introduction

The penalty of 25 years' imprisonment is a sanction that has always stirred up strong emotions. It is criticised because of its severity, eliminative (and thus not really humanitarian) nature, being against the idea of resocialization² and lacking flexibility due to its "focal" character. Although this penalty was introduced into the Polish penal law already in 1970, recently representatives of the state authorities have been striving to eradicate it from the penal law system. The first failed attempts at repealing this penalty were made in the early 21st century³. The Act of 13 June 2019 also proved unsuccessful as it was ultimately declared unconstitutional⁴ before the President's sign-off. The Act stipulated for the 25 years' imprisonment to be somewhat replaced by a fixed-term custodial sentence with an upper limit increased from 15 to 30 years. It is noteworthy at this point that the reason the above act was declared as defying the Polish Constitution (Article 7 in conjunction with Article 112) was not repealing the 25 years' imprisonment or other amendments to substantive provisions (including the catalogue of penalties) allowed for by the Penal Code, but rather breach of legislative procedure, namely ignoring a procedure relevant for amending acts

² J. Korecki, *Kara 25 lat pozbawienia wolności w Polsce*, Warszawa 1988, s. 17.

³ M. Melezini, *Wybrane problemy nowego podejścia do filozofii karania w świetle ustawy z 13 czerwca 2019 r.*, „*Ius Novum*” 2020, nr 2, s. 49-50.

⁴ Wyrok TK z 14.07.2020 r., Kp 1/19, LEX nr 3028994.

constituting codes referred to in Chapter 4 Section II of the Standing Orders of the Sejm⁵.

The idea to repeal the 25 years' imprisonment and to extend the so-called fixed-term custodial sentence came back in the draft amendments to the Penal Code now pending in the Ministry of Justice⁶. It became reality with Article 1 (2 and 5) of the Act Amending the Penal Code and Certain Other Acts of 7 July 2022⁷. The amendment took effect on 1 October 2023⁸. Since that day, there have only been two custodial penalties in the Polish penal law system in the strict sense, i.e., imprisonment ranging from 1 month to 30 years and life imprisonment. Obviously, military detention (which is imposed on soldiers only) remains in the military part of the Penal Code (Article 322 of the Penal Code). However, it can be viewed as a kind of imprisonment since its enforcement provisions are applied *mutatis mutandis* (Article 322 (1) of the Penal Code).

This paper aims to find whether the postulate to repeal 25 years' imprisonment was legitimate and whether replacing it with a longer fixed-term custodial sentence is the right thing to do in view of penal policy and the penal law. It is also a good idea to make a hypothesis which holds that neither retaining the 25 years' imprisonment nor extending the fixed-term custodial sentence to 30 years is the correct solution given the above-mentioned functions and rules. Such a long-term sentence may not be duly functional in terms of prevention, both individually and on a general scale.

Noteworthy is that deliberation on the 25 years' imprisonment requires presenting the benefits and drawbacks of long-term penalties which are, in fact, the most severe in general. Hence, the remarks on 25 years' imprisonment are largely applicable to life imprisonment or the longest possible (15 to 30 years) fixed-term custodial sentences, and this publication in fact aims to present the advantages and disadvantages of the most severe penalties.

In order to address the above question and to verify or rebut the hypothesis, it is necessary to refer to the grounds for sentencing to 25 years' imprisonment. This penalty has obviously always been an alternative to a fixed-term custodial

⁵ *Ibidem*.

⁶ Biuro Komunikacji i Promocji Ministerstwa Sprawiedliwości, *Reforma Kodeksu karnego – bezpieczeństwo Polaków*, <https://www.gov.pl/web/sprawiedliwosc/reforma-kodeksu-karnego-bezpieczenstwo-dla-polakow>, dostęp: 15.02.2022.

⁷ Dz.U. z 2022 r. poz. 2600; dalej: nowela lipcowa.

⁸ Art. 5 ustawy z dnia 26 stycznia 2023 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw (Dz.U. z 2023 r. poz. 403).

sentence or to fixed-term and life imprisonment. To this aim, the most recent judicial decisions and literature will be reviewed. Furthermore, legislative materials will be used to present arguments of the advocates of repealing 25 years' imprisonment.

2. 25 years' imprisonment - the essence and conditions of sentencing

The penalty of 25 years' imprisonment came into the Polish law as a principal penalty as the Penal Code of 1969 took effect⁹. Under Article 30 (3) of the 1969 Penal Code, the penalty in question could be imposed for a crime carrying death penalty and in other cases provided by statute. In the present Penal Code of 1997¹⁰, the penalty of 25 years' imprisonment entered a catalogue of penalties as a sanction separate from the so-called fixed-term custodial sentence (Article 32 (4) of the Penal Code). It could be imposed only in a dozen or so gravest crimes¹¹.

In the former state of law which did not provide for life imprisonment and the death penalty was administered in exceptional cases, the penalty of 25 years was to facilitate choosing a fair sanction for the gravest crimes whenever 15 years' penalty could be considered too lenient¹². It was applied in place of life imprisonment which was absent from the penal law of the Polish People's Republic since it was viewed as violating the rules of socialist humanism and conflicting with the idea of resocialization¹³. The 25 years' penalty was to reduce the frequency of death penalties, hence R. Zawłocki called it *de lege praevia* or a "safety valve"¹⁴. Taking into account that Article 30 (2) of the 1969 Penal Code

⁹ Ustawa z dnia 19 kwietnia 1969 r. – Kodeks karny (Dz.U. z 1969 r. Nr 13, poz. 94); dalej: d.k.k.

¹⁰ Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny (Dz.U. z 2021 r. poz. 2345, ze zm.); dalej: k.k.

¹¹ M. Melezini, *Wokół propozycji zmiany górnej granicy kary pozbawienia wolności oraz rezygnacji z kary 25 lat pozbawienia wolności*, „Ius Novum” 2022, nr 3, s. 10.

¹² L. Hochberg, *Zawołowane dożywocie*, „Nowe Prawo” 1956, nr 7-8, s. 158; J. Korecki, *op. cit.*, s. 17; Lachowski, *Zasady wymierzania kar 25 lat oraz dożywotniego pozbawienia wolności*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006, s. 29; M. Melezini, *Wokół...*, s. 8.

¹³ J. Lachowski, *Zmiany...*, s. 176.

¹⁴ K. Buchała, *Niektóre problemy wymiaru kar najsurowszych*, „Państwo i Prawo” 1976, nr 11, s. 42; R. Zawłocki, *Przeciw karze dożywotniego pozbawienia wolności w polskim prawie*

referred to death penalty as the principal extraordinary penalty, and Article 30 (3) of the 1969 Penal Code allowed the penalty of 25 years' imprisonment instead, it could probably be claimed that the penalty of 25 years' imprisonment was also extraordinary under the 1969 Penal Code¹⁵.

It was noted in the explanatory statements to the current Penal Code that the penalty of 25 years' imprisonment should reduce the number of instances where life imprisonment, a substitute for death penalty, was imposed¹⁶. Behind its introduction was a negative assessment of life imprisonment, both from humanitarian and practical perspective¹⁷. The idea of a human having to spend their entire life in isolation had numerous opponents because it contradicted the principle of humanitarianism¹⁸. This is why in practise life imprisonment often turned into fixed-term imprisonment as there was an option of conditional early release¹⁹. The penalty of 25 years' imprisonment is therefore referred to by some judicial authors as "life imprisonment in disguise", a substitute for life imprisonment²⁰. Under the Penal Code of 1997, the penalty in question could also be treated as an extraordinary sanction. It was because the penalty was so "rigid that it was impossible to adapt it to the perpetrator's individual traits and circumstances"²¹.

The penalty in question was, in a way, a makeshift of a principal penalty mainly for those perpetrators whose degree of culpability (limited by young age, for instance) did not allow to sentence for life as such a penalty would be too severe (Article 53 (1) of the Penal Code). For numerous perpetrators, particularly the

karnym, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1996, z. 2, s. 109; M. Melezini, *Wokół...*, s. 8.

¹⁵ Odmienne J. Lachowski, *Zmiany...*, s. 178.

¹⁶ *Nowe kodeksy karne – z 1997 r. z uzasadnieniami*, red. I. Fredrich-Michalska, B. Stachurska-Marcińczak, Warszawa 1997, s. 142; M. Melezini, *Wokół...*, s. 8-9.

¹⁷ J. Bednarzak, *W sprawie wymiaru kary za najbardziej groźne zabójstwa*, „Nowe Prawo” 1977, nr 5, s. 704; J. Lachowski, *Zmiany w zakresie kary 25 lat pozbawienia wolności na gruncie Kodeksu karnego z 1997 r. oraz próba ich oceny*, „Studia Iuridica” 2022, nr 93, s. 175; M. Melezini, *Wokół...*, s. 8.

¹⁸ M. Melezini, *Wokół...*, s. 8.

¹⁹ *Ibidem*.

²⁰ J. Korecki, *op. cit.*, s. 16, 43. Por. też P. Stępiak, „*Habit diabła*” czyli o funkcjach i celach najdłuższych kar pozbawienia wolności polemicznie, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 27.

²¹ J. Lachowski, *Zmiany...*, s. 179.

older ones, it actually equalled life imprisonment²² and the literature accents²³ that it (“fully”, as J. Śliwowski puts it²⁴) performs the function of life sentence. It was also brought up that, in practise, enforcing 25 years’ imprisonment does not notably differ from the enforcement of life imprisonment²⁵. As J. Lachowski notes, the penalty in question faces almost the same criticism as life imprisonment, which will be elaborated on²⁶ later.

The body of case law has allowed to work out the rationale for imposing the penalty in question. It is a very positive phenomenon since the legislature has failed to provide any guidelines in the penal statute as regards sentencing to 25 years. This lack of statutory guidance comes in for criticism from V. Konarska-Wrzosek²⁷. The penal law professor is right. Moreover, this case also applies to life imprisonment, which stands out in the penalty catalogue as the most severe punishment. Considerable harshness of such penalties is what justifies limiting the judge's discretionary power by providing in the statute specific conditions to impose them. This would do justice to the principle of certainty of penalties - *nulla poena sine lege*.

The most recent case law (in line with the established case law, obviously) has shown that the 25 years’ imprisonment could be imposed whenever²⁸:

a) the perpetrator has committed a felony of exorbitant social harm²⁹;

²² Por. L. Hochberg, *op. cit.*, s. 159.

²³ M. Melezini, *Wokół...*, s. 10.

²⁴ J. Śliwowski, *Czasowe ramy kary pozbawienia wolności w projekcie kk. PRL na tle przepisów socjalistycznego prawa karnego*, „Państwo i Prawo” 1957, nr 1, s. 124.

²⁵ J. Zagórski, *Kara dożywotniego pozbawienia wolności – aspekty prawnokarne i penitencjarne*, „Państwo i Prawo” 2000, nr 10, s. 86.

²⁶ J. Lachowski, *Zasady...*, s. 29.

²⁷ V. Konarska-Wrzosek, *Długoterminowe kary pozbawienia wolności w systemie polskiego prawa karnego i dyrektywy ich orzekania de lege lata i de lege ferenda*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 138.

²⁸ Podobny zestaw przesłanek opisuje M. Melezini, *Wokół...*, s. 11.

²⁹ Wyrok SA w Katowicach z 13.02.2019 r., II AKa 10/19, LEX nr 2637251; wyrok SA we Wrocławiu z 13.06.2018 r., II AKa 126/18, LEX nr 2522795; wyrok SA w Katowicach z 14.09.2017 r., II AKa 304/17, LEX nr 2414620; wyrok SA w Lublinie z 7.03.2017 r., II AKa 14/17, LEX nr 2279552; wyrok SA w Łodzi z 7.12.2016 r., II AKa 157/16, LEX nr 2278236; wyrok SA we Wrocławiu z 16.06.2016 r., II AKa 139/16, LEX nr 2073872; wyrok SA w Poznaniu z 25.11.2014 r., II AKa 198/14, LEX nr 1602965.

- b) the perpetrator's degree of culpability is high³⁰;
- c) the perpetrator was highly morally corrupted and would be difficult to resocialize³¹;
- d) aggravating circumstances outweigh mitigating circumstances which may not be there at all³²;
- e) the purposes of penalty, especially in terms of general and individual prevention (in particular, isolation), could not be achieved by means of fixed-term custodial sentence (most of the time, by the longest sentence of 15 years)³³.

It is worth considering whether the penalty of 25 years' imprisonment could be imposed on juveniles who have conditional criminal liability under Article 10 (2) of the Penal Code. According to M. Melezini, the judicial authors do not rule out such an option in exceptional cases³⁴. It is not a legitimate claim. Firstly, the eliminative nature of the penalty was in conflict with the rehabilitative treatment which should be inherent in a sanction imposed on a juvenile (Article 54 (1) of the

³⁰ Wyrok SA w Katowicach z 13.02.2019 r., II AKa 10/19, LEX nr 2637251; wyrok SA w Katowicach z 26.10.2018 r., II AKa 295/18, LEX nr 2664736; wyrok SA we Wrocławiu z 13.06.2018 r., II AKa 126/18, LEX nr 2522795; wyrok SA w Łodzi z 7.12.2016 r., II AKa 157/16, LEX nr 2278236; wyrok SA we Wrocławiu z 16.06.2016 r., II AKa 139/16, LEX nr 2073872; wyrok SA w Poznaniu z 25.11.2014 r., II AKa 198/14, LEX nr 1602965.

³¹ Wyrok SA w Katowicach z 13.02.2019 r., II AKa 10/19, LEX nr 2637251; wyrok SA w Krakowie z 30.12.2018 r., II AKa 170/18, LEX nr 2707536; wyrok SA w Warszawie z 17.10.2017 r., II AKa 191/17, LEX nr 2414657; wyrok SA w Katowicach z 14.09.2017 r., II AKa 304/17, LEX nr 2414620; wyrok SA w Gdańsku z 31.05.2017 r., II AKa 135/17, LEX nr 2383357; wyrok SA w Gdańsku z 2.03.2017 r., II AKa 16/17, LEX nr 2310586; wyrok SA we Wrocławiu z 16.06.2016 r., II AKa 139/16, LEX nr 2073872.

³² Wyrok SA w Katowicach z 13.02.2019 r., II AKa 10/19, LEX nr 2637251; wyrok SA w Katowicach z 26.10.2018 r., II AKa 295/18, LEX nr 2664736; wyrok SA we Wrocławiu z 13.06.2018 r., II AKa 126/18, LEX nr 2522795; wyrok SA w Gdańsku z 31.05.2017 r., II AKa 135/17, LEX nr 2383357; wyrok SA w Lublinie z 7.03.2017 r., II AKa 14/17, LEX nr 2279552; wyrok SA w Gdańsku z 2.03.2017 r., II AKa 16/17, LEX nr 2310586; wyrok SA w Łodzi z 7.12.2016 r., II AKa 157/16, LEX nr 2278236; wyrok SA we Wrocławiu z 16.06.2016 r., II AKa 139/16, LEX nr 2073872; wyrok SA w Poznaniu z 25.11.2014 r., II AKa 198/14, LEX nr 1602965.

³³ Wyrok SA w Katowicach z 13.02.2019 r., II AKa 10/19, LEX nr 2637251; wyrok SA w Krakowie z 30.12.2018 r., II AKa 170/18, LEX nr 2707536; wyrok SA w Katowicach z 26.10.2018 r., II AKa 295/18, LEX nr 2664736; wyrok SA w Lublinie z 7.03.2017 r., II AKa 14/17, LEX nr 2279552; wyrok SA w Łodzi z 7.12.2016 r., II AKa 157/16, LEX nr 2278236; wyrok SA w Poznaniu z 25.11.2014 r., II AKa 198/14, LEX nr 1602965.

³⁴ M. Melezini, *Wokół...*, s. 13-14.

Penal Code). Secondly, Article 10 (3) of the Penal Code expressly opposed the claim as it prohibited sentencing a juvenile to a penalty in excess of the 2/3 of the upper limit of statutory penalty range for a crime the perpetrator committed. The penalty of 25 years' imprisonment was a "rigid" one, hence it could not be reduced to 2/3 of an upper limit. As this sanction has always been an alternative to the so-called longest fixed-term custodial sentence (up to 15 years), the harshest possible penalty for a juvenile was *lege praevia* a sentence of 10 years' imprisonment ($2/3 * 15 = 10$). After the entry into force of the July amendment, the content of Article 10 (3) of the Penal Code changes significantly. The regulation no longer applies to juvenile offenders who have been found to commit an act punishable by life imprisonment. With this fact in mind, as well as the elimination of the focal penalty of 25 years' imprisonment, the limits of juvenile responsibility for the most serious felonies will significantly expand. They may even face a maximum penalty of 30 years' imprisonment.

The penalty of 25 years' imprisonment also had an important role in passing aggregate sentence³⁵. Under Article 86 (1a) of the Penal Code, if the total sentence of imprisonment is 25 years or more, where at least one of the sentences to be aggregated is for not less than 10 years, the court may pass an aggregate sentence of 25 years' imprisonment.

Summing up the considerations on the essence of the penalty of 25 years' imprisonment, it should be emphasised that, until repealed, the pertinent penalty had been a measure of penal law response to the gravest felonies where the perpetrator deserved a severe, in fact, an eliminating penalty, albeit not life imprisonment, which is *de lege praevia* the most severe penalty. Thus, the penalty of 25 years had, in fact, the same goal as it used to when it was an alternative to death penalty. The strict sentencing rationale developed in the case law meant that the penalty could apply only for acts that were very highly socially harmful, that were committed by incorrigible perpetrators who were found to have a bad criminological prognosis, when there was a risk of them committing further crimes against material interest protected by law. The penalty was applied in cases where the highest fixed-term penalty, i.e., 15 years' imprisonment, would not have performed the punitive function, and the public sense of justice required severe punishment of the perpetrator of crime. Therefore, one should acknowledge the case made by M. Melezini who claims that, although the 1997 Penal Code did not

³⁵ Tak też M. Melezini, *Wokół...*, s. 9-10.

make the penalty of 25 years' imprisonment an exceptional one, the body of case law made it acquire such a characteristic³⁶.

3. 25 years' imprisonment and its general prevention benefits

At the first glance, the overriding purpose of the penalty of 25 years' imprisonment (as was the case with life imprisonment) was general prevention (deterrence). A view that the threat of severe punishment is an effective tool motivating members of society to refrain from engaging in prohibited behaviour and that it thus shapes pro-social attitudes, was advocated by representatives of the classical and neoclassical schools of penal law³⁷. The theory held that punishment should trigger a deterrent impulse in the collective psyche against committing prohibited acts³⁸. Being aware of the threat of punishment and its severity, the potential perpetrator should abandon their evil intention and behave as the community expects them to³⁹.

A benefit of 25 years' imprisonment, as was the case with life imprisonment and other long-term penalties, may be its potential to deter from committing particularly serious crimes. It should be stressed that this advantage becomes particularly apparent in crimes committed with premeditated intent, such as the so-called "invoice crimes" (Article 277a of the Penal Code). It seems that a perpetrator who contemplates committing this type of crime will, in particular, take into account the balance of gains and losses such an act entails⁴⁰. A greater statutory threat of punishment increases the cost of engaging in criminal behaviour and thus reduces the economic viability of conduct which is contrary to the sanctioned norm⁴¹.

³⁶ M. Melezini, *Wokół...*, s. 10-11. Tak też inni karniści opisywani przez cytowaną autorkę.

³⁷ Zob. przykładowo E. Krzymuski, *System prawa karnego ze stanowiska nauki i trzech kodeksów, obowiązujących w Polsce*, Kraków 1921, s. 184; S. Glaser, *O mocy obowiązującej ustawy karnej pod względem czasu*, Lublin 1921, s. 23.

³⁸ W. Makowski, *Podstawy filozofii prawa karnego, t. 1*, Warszawa 1917, s. 406.

³⁹ W. Mandrysz, *Skazany... na marginalizację! Negatywne skutki odbywania kary pozbawienia wolności*, w: *Peryferie społeczne w teorii i badaniach empirycznych*, red. K. Wódz, D. Nowacka-Kapuścik, G. Libor, Katowice 2016, s. 160.

⁴⁰ M. Grudecki, *Kilka słów o racjonalnym przestępcy w świetle wybranych nowelizacji Kodeksu karnego z lat 2015-2017*, „Przegląd Prawno-Ekonomiczny” 2018, nr 1, s. 209.

⁴¹ *Ibidem*.

4. Benefits of 25 years' imprisonment from the perspective of individual preventive function and fairness function

According to R. Zawłocki, the sentence of 25 years of imprisonment did not have the drawbacks of life imprisonment and performed the custodial function well, which made it the best sanction for the most serious crimes⁴². It is emphasized in literature that no measure had so far been found to replace it and be more effective⁴³. With long-term sentences, the convicts, upon release, have already been through their best years of criminal activity and therefore they no longer threaten the legal interest – the sentences interrupt criminal activity⁴⁴. According to P. Stępnia, imposing such penalties is the most natural and effective way of resocialization⁴⁵. Long-term penalties are imposed on perpetrators of the most serious crimes who pose significant danger. They are a social response in the form of a desire to isolate a dangerous perpetrator from legal interest (which also involves a certain amount of retaliation rather than concern for resocialization⁴⁶).

Deterrence is also an element of individual prevention. If an individual experiences a severe punishment and they will sense its harshness, they will consequently fear the penalty will be re-applied should a crime be committed⁴⁷. A potential perpetrator's personal sense of punishment makes the threat of it more realistic.

Furthermore, the penalty of 25 years' imprisonment performed to the greatest extent (apart from life imprisonment) the custodial, even eliminative function, because it deprived convicts of an opportunity to continue committing crimes in open society⁴⁸. As a result, perpetrators no longer posed a threat to legal interest. This effect lingers for very long time, which is supposed to positively affect

⁴² R. Zawłocki, *op. cit.*, s. 120.

⁴³ Por. J. Korecki, *op. cit.*, s. 195.

⁴⁴ J. Korecki, *op. cit.*, s. 64; P. Stępnia, *op. cit.*, s. 29.

⁴⁵ P. Stępnia, *op. cit.*, s. 29.

⁴⁶ H. Machel, *Sens i bezsens długotrwałej izolacji więziennej – opracowanie poświęcone karze 25 lat pozbawienia wolności oraz karze dożywotniego pozbawienia wolności*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 11; L. Wilk, *Kara dożywotniego pozbawienia wolności i problemy jej łagodzenia*, „Państwo i Prawo” 1998, nr 6, s. 21; *Nowe...*, s. 142.

⁴⁷ B. Szamota-Saeki, *Odstraszające działanie kary na sprawcę przestępstwa w świetle badań empirycznych*, „Archiwum Kryminologii” 1995, t. XXI, s. 8.

⁴⁸ W. Mandrysz, *op. cit.*, s. 160.

decline in crime⁴⁹. It is also sometimes claimed that the penalty of 25 years' imprisonment is rehabilitative⁵⁰. According to J. Bednarzak, not only lenient penalties are rehabilitative measures since "rehabilitative considerations may, in a particular case, induce to impose a more severe penalty having a rehabilitative characteristic"⁵¹.

Moreover, it is hard to ignore the justice element of the penalty in question. It can be regarded as a just sanction imposed on the perpetrators of the most serious felonies. After all, it is a sanction that is harsh on the perpetrator in proportion to the committed act. It is also the society's response to a crime which constitutes a violation of the interests of its members⁵². The sentence should be aligned with the society's sense of justice. Too lenient penalty entails a sense of impunity and provides an incentive to trivialize the law⁵³.

To summarize this part of the discussion, it should be said that the custodial and, in fact, even eliminative nature of the penalty of 25 years' imprisonment would be an asset (as is the case with other long-term penalties). However, at the same time, it has to be deemed an important element of individual prevention. It may also appear that the penalty in question plays an important role in terms of medical treatment (a component of the special preventive function). Persons who have committed a crime having a high degree of social harm often suffer from various mental disorders (e.g., related to sexual needs) and require appropriate therapy to allow them, after having served their sentence or in the case of conditional early release, to no longer pose a threat to society due to their condition.

On the other hand, the severity of the sanction at hand is an asset in terms of the penalty's justice function. In general terms, the Polish society is quite punitive⁵⁴ and demands heavy punishments for perpetrators of crimes, particularly the most serious ones. At this point, noteworthy is the Poles' continued ample

⁴⁹ *Ibidem*; H. Wantuła, *Abolicjonizm więzień – podejście racjonalne i humanistyczne*, Kraków 1997, s. 30.

⁵⁰ Tak J. Bednarzak, *Decydująca rola dyrektywy stopnia społecznego niebezpieczeństwa czynu w sądowym wymiarze kary*, „Nowe Prawo” 1974, nr 10, s. 1286.

⁵¹ *Ibidem*.

⁵² J. Makarewicz, *Prawo karne ogólne*, Kraków 1914, s. 239-240.

⁵³ I. Niewiadomska, S. Fel, *Realizacja zasady sprawiedliwości w karaniu przestępców*, „Zeszyty Naukowe KUL” 2016, nr 3, s. 62-63.

⁵⁴ K. Doroszevska, *Punitiveność a populizm penalny – rola emocji w procesie legislacyjnym*, „Eryda” 2017, nr 2, s. 191.

support for the death penalty⁵⁵. A harsh sentence that the 25 years' imprisonment is, comes as (to a degree) a manifestation of justice for the victims of particularly grave crimes, such as manslaughter, aggravated rape or aggravated robbery. Serving such a sentence is the perpetrator's reparation to the society. It is because the offender's act has defied the rules prevailing in society to such an extent that they must suffer harsh consequences.

5. 25 years' imprisonment and its general prevention drawbacks

Deterrence is considered by many to be an ineffective method of crime prevention as the society has grown accustomed to severe penalties or because certain individuals are incapable of feeling fear. That refers to, for example the mentally ill, those with psychopathic or sociopathic tendencies, alcohol addicts or "professional" criminals⁵⁶. It is worth noting that healthy members of society do not commit highly socially harmful crimes not because they are afraid of punishment, but because they accept the prevailing moral and social norms⁵⁷. Thus, the threat of sanction does not determine motivational processes of the perpetrator⁵⁸.

It is emphasised that severe penalties are not an ideal tool to combat social pathology⁵⁹. Even the death penalty was not such a deterrent, let alone the more lenient 25 years' imprisonment⁶⁰. C. Beccaria notes that when a moderate penalty is inevitable and it is administered early, it is a more effective deterrent than severe penalties. That is because, the latter may induce further prohibited acts, often aiming to avoid the harsh punishment⁶¹. Such is also the conclusion of R. Zawłocki. He claims that effective prosecution and inevitable punishment of perpetrators is

⁵⁵ J. Doroszczak, *Kara główna i kara dożywotniego pozbawienia wolności jako jej alternatywa, a prawo do ochrony życia – rozważania dialektyczne na przykładzie prawa polskiego i systemów prawnych innych państw*, (maszynopis rozprawy doktorskiej napisanej pod kierunkiem M. Borskiego), Wyższa Szkoła Humanitas, Sosnowiec 2022, s. 176-179.

⁵⁶ J. Leszczyński, *Z problematyki prewencji ogólnej*, „Palestra” 1974, nr 11, s. 90-91.

⁵⁷ *Ibidem*, s. 91.

⁵⁸ R. Zawłocki, *op. cit.*, s. 114.

⁵⁹ J. Leszczyński, *op. cit.*, s. 91.

⁶⁰ Por. R. Zawłocki, *op. cit.*, s. 114.

⁶¹ C. Beccaria, *O przestępstwach i karach*, tł. E. S. Rappaport, Warszawa 1959, s. 94-95. Zob. też T. Szymanowski, *Nowelizacja prawa karnego po 1998 r. a represyjność polityki karnej w Polsce*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006, s. 174; W. Mandrysz, *op. cit.*, s. 160.

a better way to deter society from committing crimes than very harsh punishment⁶². In addition, as J. Lachowski points out, courts should not aim at and focus on deterrence for general prevention when imposing a sentence of 25 years' imprisonment since general prevention is not the perpetrator-related purpose of punishment and being guided by it contradicts the principle of humanitarianism⁶³.

It seems that those who do not attach much importance to deterrence as an essential element of general prevention are right. If the severity of punishment discouraged people from committing crimes, then societies would long ago have stopped being threatened with murders, rapes, robberies, and even the less socially dangerous but equally serious problem of drunk drivers would disappear. However, that is not the case, as not every offender scrupulously analyses the balance of profits and losses that may ensue after they committed a crime, even a crime carrying the harshest penalties. After all, some offenders follow a distorted set of values⁶⁴. It is not reasonable to assume that they would be deterred by fear of severe punishment. In such cases, what C. Beccaria claimed proves to be true, namely that early crime detection and the efficiency of prosecution is much more likely to discourage offenders from drifting into crime.

6. 25 years' imprisonment and its individual prevention drawbacks

Severe custodial sentences are not the most effective deterrent in individual prevention either. As B. Szamota-Saeki points out, longer isolation is not a sufficiently effective deterrent as it will rather enhance the adverse consequences of placing the defendant in prison⁶⁵. A person who is not susceptible to resocialization interventions applied for 15 years is unlikely to undergo positive changes after longer time served⁶⁶. The position of K. Koźniewski made almost 70 years ago should also be embraced. He noted that if there is a fear an offender who has served 15 years in prison will repeat an act having a significant degree of social harm, they should be provided with medical care, and not be punished any

⁶² R. Zawłocki, *op. cit.*, s. 114. Krytycznie na temat odstrasżającej mocy kar pisze również J. Lachowski, *Zmiany...*, s. 185.

⁶³ J. Lachowski, *Zasady*, s. 31.

⁶⁴ Tak M. Szczepaniec, *Teoria ekonomiczna w prawie karnym*, Warszawa 2012, s. 209.

⁶⁵ B. Szamota-Saeki, *op. cit.*, s. 38.

⁶⁶ M. Melezini, *Wokół...*, s. 10.

longer by prison isolation⁶⁷. If the 15 years' resocialization effort was ineffective, the penitentiary system itself may be ineffective. A sentence of 25 years' imprisonment is more like a security measure than a punishment, as is life imprisonment⁶⁸. The role of these penalties is creating a repository for social waste⁶⁹ (after H. Machel). Long-term isolation, let alone physical or moral oppression, cannot constitute the main purpose of a penalty (which should be resocialisation). They often do not, since conditional early release comes as an option for the pertinent penalty after at least 15 years in prison (Article 78 (3) of the Penal Code)⁷⁰. Moreover, only a few of the offenders who harm the most valuable legal interest pose a threat of repeating their act in the future⁷¹. Punishment which takes as long as 25 years' imprisonment, combined with the subsequent 10 years' period required to expunge the sentence is not, moreover, mere safeguarding social good against a dangerous offender. It is rather their relegation from society, a kind of outcasting the individual, objectifying a human, and therefore an action contrary to the principle of humanitarianism⁷². Anyway, it is what P. Stępniański refers to asking: why bother socially correcting a criminal who is to be permanently isolated from society⁷³?

On the other hand, a resocialized perpetrator is no longer dangerous to the social good, while the one who is only isolated for a long time may remain dangerous⁷⁴. After all, their isolation will eventually end and they will return to

⁶⁷ K. Koźniewski, *Rozmyślenia nad projektem K.K.*, „Prawo i Życie” 1956, nr 9, s. 2.

⁶⁸ R. Zawłocki, *op. cit.*, s. 107; V. Konarska-Wrzosek, *op. cit.*, s. 139-140; P. Góralski, *Problem racjonalnej sankcji za zabójstwo kwalifikowane w polskim prawie karnym*, „Przegląd Prawa i Administracji” 2020, nr CXX/2, s. 49.

⁶⁹ H. Machel, *op. cit.*, s. 9.

⁷⁰ Por. podobnie R. Zawłocki, *op. cit.*, s. 113, 115; D. Sarzała, *Resocjalizacyjny wymiar kary pozbawienia wolności*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006, s. 151.

⁷¹ V. Konarska-Wrzosek, *op. cit.*, s. 139-144.

⁷² Por. R. Zawłocki, *op. cit.*, s. 112; J. Korecki, *op. cit.*, s. 200; J. Warylewski, *Długoterminowe kary pozbawienia wolności – przyczynek do analizy statystycznej, jurydycznej i kryminologicznej*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 183.

⁷³ P. Stępniański, *op. cit.*, s. 24.

⁷⁴ Por. J. Korecki, *op. cit.*, s. 62; R. Opora, *Teoretyczne perspektywy podejścia do przestępców w kontekście długoterminowej izolacji więziennej*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 43; S. Paweła, *Tendencje i dylematy polityki karania sprawców przestępstw o wysokiej społecznej szkodliwości*, w: *Kary*

society, perhaps in an even worse condition than before going to prison. As R. Zawłocki suggests, an offender deprived of liberty for more than 15 years is already lost to society⁷⁵. The longer the deprivation of liberty, the lower the prospect of the inmate's social readaptation after leaving prison⁷⁶. Lack of interaction with the world outside makes it impossible to integrate into it later⁷⁷. As A. Pędziszczak notes, long-term incarceration is the reason for the prisoner's social deformation due to, among other things, the vanishing sense of responsibility for managing one's own life⁷⁸. And yet, the punishment must not make a gap between the convict and the society, but should rather bridge the gap⁷⁹.

The cause of the convict's "loss" to society (their social marginalization and degradation⁸⁰) is, among other things, the inmate's adaptation to a specific way of life in prison. A long stay in prison fosters the development of a negative phenomenon in opposition to resocialization called prisonisation, which is adaptation to imprisonment, where a prisoner lives of a kind of second life⁸¹. This

dlugoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia, red. T. Gardocka, Warszawa 2006, s. 19-20; D. Sarzała, *op. cit.*, s. 169.

⁷⁵ R. Zawłocki, *op. cit.*, s. 118. Bardzo podobnie V. Konarska-Wrzosek, *op. cit.*, s. 137-138.

⁷⁶ H. Machel, *op. cit.*, s. 12; J. Warylewski, *op. cit.*, s. 183; V. Konarska-Wrzosek, *op. cit.*, s. 144.

⁷⁷ J. Warylewski, *op. cit.*, s. 183; D. Sarzała, *op. cit.*, s. 162; A. Kacprzak, *Kara pozbawienia wolności i jej (dys)funkcjonalność. Krytyka polskiej polityki karnej i resocjalizacyjnej*, „Władza Sądzenia” 2016, nr 10, s. 122-123.

⁷⁸ A. Pędziszczak, *Program postępowania ze skazanymi na karę dożywotniego pozbawienia wolności i kary długoterminowej*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006, s. 277. O negatywnych efektach kar pozbawienia wolności pisze także W. Mandrysz, *op. cit.*, s. 163-164.

⁷⁹ D. Sarzała, *op. cit.*, s. 151-152.

⁸⁰ J. Rejman, *Oceny skazanych w wykonywaniu kar długoterminowych*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006, s. 300.

⁸¹ S. Małek, *Prizonizacja w grupie mężczyzn odbywających karę pozbawienia wolności*, „Przegląd Więziennictwa Polskiego” 2009, nr 64-65, s. 135; J. Korecki, *op. cit.*, s. 61; K. Mrozek, *Istota długoterminowej kary pozbawienia wolności oraz jej struktura i dynamika*, „Nowa Kodyfikacja Prawa Karnego” 2011, t. XXVII, s. 239, 241; A. Bałandynowicz, *Psychodegradacja osobowości oraz defaworyzacja, ekskluzja i wykluczenie społeczne recydywistów następstwem nieracjonalnego i relikowego systemu sprawiedliwości karnej opartej na paradygmacie izolacji przestrzennej*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 94-95; A. Kacprzak, *op. cit.*, s. 121.

type of prison socialization carries a risk of morally corrupting prisoners, distorting their personalities (e.g., a reduced sense of responsibility for managing their own lives, a decline in intellectual capacity, a diminished sense of reality), and thus a risk that individuals leaving prisons will be more morally corrupted than before the prison time⁸². With time, inmates, assimilate attitudes, behavioural models and values characteristic of the criminal subculture (the so-called subculture of the gypsies)⁸³, while developing socially unacceptable patterns of satisfying needs⁸⁴. Prison fills their lives to the fullest - they adapt to life in a closed environment with rules other than those in the society⁸⁵. In addition, restricted opportunities to interact with family often lead to the breakdown of the marital bond and the disorganization or even disruption of a family⁸⁶. While serving a 25 years' sentence, the inmate's close ones may die, marriages may break up, and children become independent and start their own families⁸⁷. Side effects of long-term custodial penalties are much worse on third persons (other than the perpetrator)⁸⁸. In turn, the family breakup is a factor which negatively affects the process of the convict's resocialization⁸⁹. Similarly, inmates are adversely affected by the fact that their sexual needs are neglected for a long time, which can entail aggressive (including self-aggressive) or withdrawn behaviour⁹⁰. Long-term inmates suffer from a scarcity of social interaction (positive human touch), and their relations with fellow inmates or supervisors are often based on fear, suspicion and violence⁹¹. Additional causes of stress and the ensuing aggression are prison environmental factors: crowding, sunshine deprivation, an unvaried diet and

⁸² S. Małek, *op. cit.*, s. 136; A. Bałandynowicz, *Psychodegradacja...*, s. 94; A. Kacprzak, *op. cit.*, s. 121; J. Malec, *Kary długoterminowe*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006, s. 70.

⁸³ A. Bałandynowicz, *Psychodegradacja...*, s. 98 i nast.

⁸⁴ S. Małek, *op. cit.*, s. 136; A. Bałandynowicz, *Psychodegradacja...*, s. 94; A. Kacprzak, *op. cit.*, s. 121-122.

⁸⁵ H. Machel, *op. cit.*, s. 13; A. Kacprzak, *op. cit.*, s. 121.

⁸⁶ J. Korecki, *op. cit.*, s. 74; H. Machel, *op. cit.*, s. 12-13; J. Malec, *op. cit.*, s. 70.

⁸⁷ J. Korecki, *op. cit.*, s. 161.

⁸⁸ K. Mrozek, *op. cit.*, s. 237; A. Kacprzak, *op. cit.*, s. 123.

⁸⁹ J. Korecki, *op. cit.*, s. 75; K. Mrozek, *op. cit.*, s. 237.

⁹⁰ H. Machel, *op. cit.*, s. 13; K. Mrozek, *op. cit.*, s. 237-239.

⁹¹ P. Lass, *Neurobiologia i neurochemia przestępców i długotrwałej izolacji więziennej*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 87.

stence⁹². According to R. Zawłocki, irreversible changes can affect the convict's psyche as early as after 5 to 10 years in prison⁹³. During incarceration, deprivation of mental (emotional), physical, social, political, civic and economic needs occurs⁹⁴. It encourages permanent deviations in feelings, memory, thinking and will⁹⁵. In turn, anxiety, frustration, tension and a constant sense of threat caused by long-term custody impair intellectual processes⁹⁶. Mental dysfunctions that the convict suffers can thus be aggravated by prolonged custody⁹⁷. From the perspective of effective resocialization, this fact argues strongly against long-term penalties⁹⁸. A sentence of 25 years' imprisonment, just like other long-term penalties, is not resocializing in nature⁹⁹. The prisonisation effect can obviously occur during medium-term sentences, however, its consequences for the convict will be less severe on account of shorter incarceration.

On the other hand, if a given penalty is considered completely devoid of the resocialization function whatsoever, then it can no longer be viewed as humanitarian. It is because it does not fulfil the most important task in terms of individual prevention, and is basically just an act of oppression and deteriorating the inmate's character. General preventive and isolation functions cannot be the

⁹² P. Lass, *op. cit.*, s. 87. Zob. też A. Baładynowicz, *Psychodegradacja...*, s. 97.

⁹³ R. Zawłocki, *op. cit.*, s. 118. Podobnie J. Korecki, *op. cit.*, s. 70; K. Mrozek, *op. cit.*, s. 238; M. Melezini, *Wokół...*, s. 10. Zob. też J. Raglewska, *Długoterminowa kara pozbawienia wolności – głos w dyskusji*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 300-301.

⁹⁴ A. Kacprzak, *op. cit.*, s. 122. O negatywnych zjawiskach długotrwałego osadzenia pisze także T. J. Flanagan, *THE PAINS OF LONG-TERM IMPRISONMENT. A Comparison of British and American Perspectives*, „The British Journal of Criminology” 1980, no. 2, s. 155-156.

⁹⁵ A. Baładynowicz, *Wykluczenie społeczne recydywistów jako następstwo niesprawiedliwego i nieskutecznego karania, Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006, s. 93; W. Mandrysz, *op. cit.*, s. 164.

⁹⁶ A. Baładynowicz, *Wykluczenie...*, s. 93; J. Rejman, *op. cit.*, s. 300.

⁹⁷ P. Lass, *op. cit.*, s. 89.

⁹⁸ Tak też J. Raglewski, *Głos w dyskusji podczas drugiego dnia konferencji „Długoterminowe kary pozbawienia wolności w teorii i praktyce”, Gdańsk 7-8 kwietnia 2014 roku*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 306; A. Baładynowicz, *Wykluczenie...*, s. 91. Zdaje się, że nieco odmiennie J. Lachowski, *Zasady...*, s. 41.

⁹⁹ M. Melezini, *Wokół...*, s. 10.

essence of long-term punishment¹⁰⁰. Moreover, punishment understood as retaliation cannot be an end in itself¹⁰¹, either. It must at all times strive to fix the individual who has acted against the goods that the society values¹⁰². A just penalty is one which does not rule out an opportunity for personal development of an individual¹⁰³. Article 67 of the Penal Enforcement Code¹⁰⁴ is clear about it. It applies not only to fixed-term custodial sentences, but also to the most severe ones¹⁰⁵: “The enforcement of custodial sentence is aimed at arousing in the convict the will to cooperate in forming the socially desirable attitudes, in particular the sense of responsibility and the need to observe the legal order, and thus to refrain from relapse into crime”¹⁰⁶. The conclusion of R. Zawłocki seems legitimate as well, namely that the essence of punishment cannot be prevention in the sense of long-term custody as this would be punishment for acts uncommitted¹⁰⁷. Specific prevention, and therefore, for instance, social readaptation of the convict is the primary goal of imprisonment¹⁰⁸. That opinion is also shared by G. Arsoshvili who claims that a just adjudication must be for the purpose of the convict’s resocialization as this is what the democratic state of law requires¹⁰⁹. In the modern world, where the principle of humanitarianism is among the determinants of penal

¹⁰⁰ D. Sarzała, *op. cit.*, s. 163.

¹⁰¹ S. Małek, *op. cit.*, s. 115; H. Machel, *op. cit.*, s. 9.

¹⁰² Odmiennie, uznając, że kara 25 lat pozbawienia wolności ma charakter wyłącznie eliminacyjny i może być stosowania wobec sprawców, którzy nie rodzą żadnych nadziei na resocjalizację, twierdzi SA w Białymstoku w wyroku z 14.11.2018 r., II AKa 175/18, LEX nr 2630446. Zob. też wyrok SA w Krakowie z 28.06.2016 r., II AKa 232/15, LEX nr 2079200.

¹⁰³ D. Sarzała, *op. cit.*, s. 164.

¹⁰⁴ Ustawa z 6 czerwca 1997 r. – Kodeks karny wykonawczy (Dz.U. z 2021 r. poz. 53, ze zm.), dalej: k.k.w.

¹⁰⁵ Tak również J. Warylewski, *op. cit.*, s. 186; J. Raglewska, *op. cit.*, s. 300; J. Lachowski, *Zasady...*, s. 29-30; M. Melezini, *Wokół...*, s. 10; G. Szczygieł, *Kary długoterminowe a cele wykonywania kary pozbawienia wolności*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006, s. 224.

¹⁰⁶ Tak też było pod rządami poprzednich ustaw karnych. Zob. J. Korecki, *op. cit.*, s. 61.

¹⁰⁷ R. Zawłocki, *op. cit.*, s. 114.

¹⁰⁸ G. Szczygieł, *op. cit.*, s. 223-225; D. Gajdus, B. Gronowska, *Więżniowie długoterminowi a europejskie standardy ochrony praw człowieka*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006, s. 235.

¹⁰⁹ G. Arsoshvili, *Restoring Justice as a Purpose of Punishment and Its Interrelation with the Resocialization of Criminal*, „Journal of Law” 2021, no. 1, s. 24, 26.

policy¹¹⁰, the words of J. Ochorowicz cannot be fully accepted. He claimed that punishment that does not improve the subject or secure the society becomes a crime itself¹¹¹. Today, such a crime is punishment which purpose is other than to resocialize a convict. Helping to form correct social attitude of the convict therefore plays a primary role in the progressive formation of punishment¹¹².

To summarize this part of the discussion, there is no doubt that the drawbacks of a sentence of 25 years' imprisonment (and, at the same time, of any long-term sentence) are considerable and clearly outweigh the benefits of individual prevention. Particularly evident is the fact that there is no positive impact of this punishment in the area of resocialization. Moreover, its negative impact on the convict practically disqualifies it as a sanction in terms of a rehabilitative function. Every penalty should be a tool for the social readaptation of a convict. It is completely inappropriate for it to play the opposite role. The harshest penalties, unfortunately, do perform such a role. They prompt degeneration of the convict who, while being affected by the prisonisation effect, is practically lost to society.

However, it is difficult to wholly embrace the argument that the harshest penalties should be viewed negatively because the perpetrators who are prone to repeat an act having a high degree of social harm after release should rather be medically treated than punished. It is because long-term custody does not preclude medical treatment. The only problem seems to be that the medical treatment may last shorter than the period of isolation enshrined in the severe penalty. In such cases, security measures, the duration of which is not predetermined (Article 99d (1) of the Penal Code), have an advantage.

7. The drawbacks of 25 years' imprisonment in the light of the function of justice

It is also necessary to consider the role that the sentence of 25 years' imprisonment plays in terms of the justice function. This role must be dominant in order to find any point in the existence of long-term penalties with their rather significant weaknesses in view of the protective function. On the one hand, it is obvious that punishment must be, to some extent, an element of retribution for the

¹¹⁰ G. Arsoshvili, *op. cit.*, s. 30.

¹¹¹ J. Ochorowicz, *Miłość, zbrodnia, wiara i moralność. Kilka studiów z psychologii kryminalnej*, Warszawa 1870, s. 10.

¹¹² M. Szerer, *Karanie a humanizm*, Warszawa 1964, s. 208.

act the perpetrator committed, restoring the social balance the act has upset¹¹³. Society feels a “lust for punishment”, especially for perpetrators of crimes of considerable social harm, which is hard to deny¹¹⁴. Excessively lenient punishment of perpetrators of serious murders may cause indignation in society¹¹⁵. On the other hand, as R. Zawłocki notes, punishment should not arise from giving in to the will of society (emotional lust for revenge)¹¹⁶. It should rather be a tool that is the most effective in combating violations of legal interest (an inevitable, rather than a very severe penalty is such a tool¹¹⁷). A balance must be achieved between the function of justice and individual prevention since the long-term incarceration of an offender does give society a sense of the rule of law, but harms the offenders themselves¹¹⁸. Besides, as the literature points out, the harshness of penalties (which is crucial to implementation of the justice function) is experienced the most by the convicts at the beginning of their sentence, and they become accustomed to it over time¹¹⁹. This means that a short-term sentence can be just as inconvenient as a long-term one.

It is hard not to criticize the sentence of 25 years' imprisonment on account of the gigantic burden it carries for the state budget while its benefits are small. Monthly maintenance of one prisoner is at least PLN 3.000¹²⁰, which, in the case of a full sentence of 25 years' imprisonment, amounts to PLN 900.000. Obviously, the costs rise even higher if the penalty in question is abolished and the maximum term of fixed-term custodial sentence is doubled. On leaving prison, the convict will have great difficulty “making up for” the costs from legal employment as the long-term sentence naturally reduces their earning capacity (ageing, deterioration of health, failure to keep up with developments in particular areas of life)¹²¹.

One may wonder whether the leading role of criminal penalty (especially one as strict as 25 years' imprisonment) in today's world should still be to satisfy

¹¹³ O. Sitarz, *Czynny żal jako instrument polityki kryminalnej i karnej*, „Archiwum Kryminologii” 2009, t. XXXI, s. 160.

¹¹⁴ P. Stępnia, *op. cit.*, s. 25; J. Malec, *op. cit.*, s. 78; D. Sarzała, *op. cit.*, s. 162. Por. też *Nowe...*, s. 142.

¹¹⁵ P. Góralski, *op. cit.*, s. 38.

¹¹⁶ J. Malec, *op. cit.*, s. 79.

¹¹⁷ R. Zawłocki, *op. cit.*, s. 116.

¹¹⁸ Por. R. Opora, *op. cit.*, s. 35; J. Malec, *op. cit.*, s. 71.

¹¹⁹ J. Korecki, *op. cit.*, s. 72.

¹²⁰ A. Kacprzak, *op. cit.*, s. 117.

¹²¹ J. Malec, *op. cit.*, s. 70.

a general human sense of justice. First of all, this requires adopting such an *a priori* approach¹²², which seems extremely difficult. Moreover, there is a high risk that harsh penalties, instead of satisfying the public sense of justice, will become a tool of retaliation, i.e., revenge against the perpetrator, employed by the court which succumbs to the pressure of public opinion.

8. Changes in penalty system under the July amendment

As already mentioned, the penalty of 25 years' imprisonment was pointed out to have defects, i.e., considerable severity (which even verges on conflict with the principle of humanitarianism)¹²³, and incompatibility with the idea of resocialization (manifestation of little faith in the process of resocialization)¹²⁴. Its eliminative or even retaliatory nature would be emphasized¹²⁵. It was brought up that, in fact, it is no more lenient than life imprisonment¹²⁶. Furthermore, the sentence in question was discredited for ignoring the aims of general and specific prevention to a higher degree than 15 years' imprisonment¹²⁷. There was also considerable criticism of the "rigidity" of this penalty and the fact that it was "[...] contrary to the required continuity of imprisonment"¹²⁸. This rigidity was considered something artificial, incomprehensible and anti-humanistic¹²⁹. This concern was also valid in light of the principle of judicial discretion¹³⁰. On the foregoing grounds, the legislature decided to remove the sanction from the catalogue of criminal penalties. A comprehensive amendment to the Penal Code of July 2022 eliminated the penalty of 25 years' imprisonment. At the same time, the legislature raised the upper limit of fixed-term custodial sentence from 15 to

¹²² K. Jadach, *Wymiar sprawiedliwości w kontekście zakładanych funkcji kary*, „Studia Edukacyjne” 2013, nr 24, s. 183.

¹²³ K. Koźniewski (*Rozmyślenia...*, s. 2) nazywa ją wręcz karą straszliwą, nieludzką.

¹²⁴ J. Korecki, *op. cit.*, s. 16; L. Hochberg, *op. cit.*, s. 158-159; H. Machel, *op. cit.*, s. 9.

¹²⁵ J. Korecki, *op. cit.*, s. 16; J. Lachowski, *Zasady...*, s. 33.

¹²⁶ J. Śliwowski, *op. cit.*, s. 126.

¹²⁷ L. Hochberg, *op. cit.*, s. 159; K. Koźniewski, *op. cit.*, s. 2.

¹²⁸ J. Śliwowski, *op. cit.*, s. 126; V. Konarska-Wrzosek, *op. cit.*, s. 138; L. Tyszkiewicz, *Problematyka kar najsurowszych*, „Prokuratura i Prawo” 2006, nr 12, s. 9.

¹²⁹ J. Śliwowski, *op. cit.*, s. 126.

¹³⁰ *Ibidem*, s. 126-127.

30 years, and left life imprisonment as a sanction which eliminates a certain category of dangerous offenders from society¹³¹.

In the explanatory statement to the bill, abolition of the penalty of 25 years' imprisonment came on the following grounds¹³²:

- a) "rigidity" ("focality") of the pertinent penalty, which prevents the court from mitigating the extent of the penal law severity;
- b) an excessive gap between the upper limit of the fixed-term custodial sentence and the sentence in question. This may be conducive to imposing an unjust sanction which does not correspond the degree of culpability and social harm of the act, especially in the case of criminal complicity whenever: "[...] the principle of the so-called internal justice of the sentence requires varying the penalties imposed on the accomplices, but the difference should not exceed several years. Meanwhile, in the current state of the law in such a case it is possible, for example, to impose on three accomplices either a sentence of imprisonment of identical length, or vary the sentences among them (15 years, 25 years, and life imprisonment)¹³³".

Abolition of the 25 years' imprisonment to expand the limits of fixed-term custodial sentence up to 30 years is in line with the trend of a rising criminal repression¹³⁴. The drafters alone are quite outspoken about their willingness to enhance the punitiveness of the penal law¹³⁵. On the other hand, they note that the postulated change does not automatically translate into higher repressiveness of punishment. After all, *de lege ferenda*, courts will be able to pass sentences of 20 years' imprisonment in situations where they would currently have to impose 25 years' imprisonment (it is because, for reasons of justice, the maximum fixed-term sentence would be too lenient¹³⁶). This argument is not entirely accurate as the pertinent relationship works the other way as well in that the courts will be able to impose a sentence of 20 years' imprisonment in situations where they would

¹³¹ Uzasadnienie projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, druk sejmowy nr 2024,

<https://orka.sejm.gov.pl/Druki9ka.nsf/0/2851BC6F8739C593C12587F10042EF6E/%24File/2024.pdf> s. 4, dostęp: 23.03.2022.

¹³² *Ibidem*.

¹³³ *Ibidem*. Argument ten podaje także L. Tyszkiewicz, *op. cit.*, s. 9. O istnieniu luki prawnej w tym względzie pisze aprobująco J. Lachowski, *Zmiany...*, s. 174, 182.

¹³⁴ M. Melezini, *Wybrane...*, s. 48, 53.

¹³⁵ Uzasadnienie, *op. cit.*, s. 1-4.

¹³⁶ *Ibidem*.

currently have to go for 15 years (as a sentence of 25 years' imprisonment would be too harsh for the same reasons).

The postulated change in question receives acclaim from certain circles as it improves the flexibility of the penal law response¹³⁷. The drafters alone note that it is the judges to have come forward with such a change as they complained they could not adjudicate within the 15 and 25 years' span¹³⁸. This has also long been postulated by the legal authors¹³⁹. For instance, V. Konarska-Wrzosek takes notice of narrowing the time span between the most severe fixed-term custodial sentence of 15 years and 25 years whenever passing the 15 years' sentence seems too lenient an option¹⁴⁰. Unfortunately, the drafters have not accepted her second proposal, that is, formulating specific directives for passing long-term sentences¹⁴¹. In turn, according to J. Lachowski, the impossibility of imposing a just, adequate penalty, with a range of sentences of 15 to 25 years of imprisonment made the "life imprisonment" even unconstitutional (contradiction with the principle of a democratic state of law and the exercise of judicial power by common courts)¹⁴². In a similar vein, J. Kluza notes that "the existing system of penalties provided for in Article 32 of the Penal Code has been irrational and caused an unreasonable disproportion between a fixed-term imprisonment and a sentence of 25 years'

¹³⁷ Opinia Ogólnopolskiego Związku Zawodowego Kuratorów Sądowych, OZZKS/3/IX/2021,

<https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525811.pdf>, s. 1-2, dostęp: 23.03.2022; Uwagi Laboratorium Wolności Religijnej dot. projektu ustawy o zmianie ustawy Kodeks karny oraz niektórych innych ustaw,

<https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525989.pdf>, s. 1, dostęp: 23.03.2022; Opinia Prezesa Sądu Okręgowego w Szczecinie, Adm-023-42/21,

<https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument542707.pdf>, s. 1-2, dostęp: 23.03.2022; Stenogram z posiedzenia Sejmu IX z 03.03.2022 r.,

http://orka2.sejm.gov.pl/StenoInter9.nsf/0/E91548C925FF00F5C12588000075D330/%24File/50_b_ksiadzka.pdf, s. 177, dostęp: 23.03.2022.

¹³⁸ Odniesienie się wnioskodawcy do uwag zgłoszonych w ramach konsultacji do projektu ustawy o zmianie ustawy Kodeks karny oraz niektórych innych ustaw z dnia 16 września 2021 r., UD 281.

¹³⁹ Zob. S. Paweła, *Tendencje...*, s. 16.

¹⁴⁰ V. Konarska-Wrzosek, *op. cit.*, s. 145.

¹⁴¹ V. Konarska-Wrzosek, *op. cit.*, s. 145. Postulat dyrektyw podnosi też J. Warylewski, *Długoterminowe...*, s. 193.

¹⁴² J. Lachowski, *Zmiany...*, s. 183.

imprisonment. This often caused a problem with the internal justice of the sentence¹⁴³”.

The case made above may receive some support as the span between the most severe sentences, i.e., 15 years' imprisonment – 25 years' imprisonment – life imprisonment, made it indeed difficult to pass a just sanction (corresponding to the degree of culpability and the social harm of the act) in borderline cases. The change in place which lengthened, or in fact, doubled the existing fixed-term custodial sentence, is a solution to the problem.

Furthermore, the drafters note the following: “[...] the existence of two penalties, 25 years' imprisonment and life imprisonment, in a situation where they are alike, should be viewed negatively¹⁴⁴”. Identical arguments which favour the postulated change were presented in the attempt to amend the Penal Code of 2019 (which was declared unconstitutional) as well as in the 2001 act vetoed by the President of the Republic of Poland, and on each occasion the long-term penalties are discussed¹⁴⁵. The concerns largely overlap with the legal authors' criticism of the penalty in question, and they are legitimate. The penalty of 25 years' imprisonment basically duplicated the functions of life imprisonment. It had basically the same benefits and drawbacks. Nevertheless, the same observations can be made about the extended sentence of imprisonment (formerly known as fixed-term imprisonment), ranging from 15 to 30 years. The sentence of 20 years' imprisonment alone can be equated to life imprisonment. In this case, the drafters did nothing to solve the problem they outlined.

One should wonder whether the draft, despite its authors' assurance to the contrary, highlights the danger that J. Korecki wrote about almost 35 years ago. His words are worth quoting *in extenso*: “[...] introducing the option of imposing sentences ranging from 15 to 25 years [the amendment allowed for sentencing up to as much as 30 years – MG] would, on the one hand, weaken the elements of social impact, and, on the other hand, could induce, in the future, the expansion of a pool of cases carrying this sanction, and, as a result, an expansion in the range of sentences passed which exceed 15 years of imprisonment¹⁴⁶”. In fact, an identical conclusion is voiced in an opinion on the draft by the Centre for Research,

¹⁴³ J. Kluza, *Nowy wymiar kary 30 lat pozbawienia wolności*, „Prokuratura i Prawo” 2023, nr 2, s. 68, 80.

¹⁴⁴ Odniesienie się..., *op. cit.*

¹⁴⁵ M. Melezini, *Wybrane...*, s. 49-52.

¹⁴⁶ J. Korecki, *op. cit.*, s. 195. Podobnie V. Konarska-Wrzosek, *op. cit.*, s. 139; M. Melezini, *Wokół...*, s. 14-15.

Studies and Legislation of the National Bar Council of Attorneys-at-Law. The opinion concerns the risk of destroying the existing structure of custodial penalties as the extraordinary character of 25 years of imprisonment is lost, which may translate into more frequent imposition of the penalty¹⁴⁷. The Centre also takes notice of the proposed disproportionate increase of the upper threshold of imprisonment precisely to 25 years for many types of prohibited acts¹⁴⁸. Other entities which give opinion on the draft also note that ostensibly, the amendment in question enables better harmonisation of the size of the criminal sanction (in line with the sentencing directives), however, when combined with the increase in the upper threshold of the sentence for many types of prohibited acts, it invites an unreasonable rise in repressiveness of the penal law¹⁴⁹. Such concerns were also voiced during previous attempts to abolish the 25 years' prison sentence and extend the fixed-term custodial sentence¹⁵⁰. It is also M. Melezini that explicitly addresses the aggravated repressiveness of the law ensuing the abolition of the pertinent penalty and the lengthening, as she criticises the legislature's decision¹⁵¹.

However, a more severe criminal response of the penal law is welcome in certain circles¹⁵². The question is whether the legislature should give in to these

¹⁴⁷ Opinia Ośrodka Badań, Studiów i Legislacji Krajowej Rady Radców Prawnych w sprawie projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw z dnia 16 września 2021 r., <https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525808.pdf>, s. 6, dostęp: 23.03.2022.

¹⁴⁸ *Ibidem*.

¹⁴⁹ Opinia Zespołu ds. Prawa Karnego Stowarzyszenia Sędziów Polskich IUSTITIA dotycząca projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw z dnia 16 września 2021 r., <https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525810.pdf>, s. 6, dostęp: 23.03.2022; Uwagi Biura Rzecznika Praw Obywatelskich do projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, <https://legislacja.rcl.gov.pl/docs//2/12351306/12815618/12815621/dokument525804.pdf>, s. 4, dostęp: 23.03.2022; J. Lachowski, *Zmiany...*, s. 185.

¹⁵⁰ M. Melezini, *Wybrane...*, s. 50-52.

¹⁵¹ M. Melezini, *Wokół...*, s. 20-21.

¹⁵² Uwagi Laboratorium, *op. cit.*, s. 1.

circles' opinions and follow penal populism instead of rational penal policy. In a democratic state of law, something like this should not happen.

9. The author's stance on the most severe penalties (instead of conclusions)

The July amendment is kind of a revolution as regards custodial sentences in the Polish penal law. A ninety-years' tradition (that M. Melezini refers to as inviolable principle) of the maximum duration of the fixed-term custodial sentence being 15 years has been broken¹⁵³. Another break with the legislative tradition is the addition of a possible sentence of 30 years' imprisonment, unknown before, to the catalogue of penalties, while retaining life imprisonment¹⁵⁴. The penalty of 25 years' imprisonment, which had been a part of the catalogue for over 50 years, was also removed. This decision should rather be welcome as there are numerous arguments in favour of it.

First of all, it is possible to confirm the hypothesis in place that the sentence of 25 years of imprisonment did not adequately fulfil its preventive function, both from individual and general perspective. It was only a kind of retaliation, and after all, in a democratic state under the rule of law, a criminal sanction should not be treated as revenge. Unfortunately, these statements should be applied to any long-term punishment. In the conditions of the Polish prison system, such penalties are inhumane. They can permanently affect the central nervous system of prisoners, which is an affront to human dignity¹⁵⁵.

The penalty of 25 years' imprisonment cumulated all the negative effects of punishment in the form of imprisonment¹⁵⁶. Did its application, as well as imposing long-term penalties *in genere*, meet the requirements of the constitutional principle of proportionality (Article 31(3) of the Constitution of the Republic of Poland), i.e., was it an effective and least onerous tool for the

¹⁵³ M. Melezini, *Wokół...*, s. 7-8.

¹⁵⁴ J. Lachowski, *Zmiany...*, s. 184-185. Choć nie jest to nowość w Europie. Zob. nt. państw, w których możliwe jest orzeczenie kary 30 lat pozbawienia wolności – J. Kluza, *op. cit.*, s. 79-80.

¹⁵⁵ Por. J. Korecki, *op. cit.*, s. 117; K. Mrozek, *op. cit.*, s. 243-244; A. Baładynowicz, *Psychodegradacja...*, s. 96-97; A. Baładynowicz, *Wykluczenie...*, s. 93.

¹⁵⁶ K. Mrozek, *op. cit.*, s. 244; G. Szczygieł, *op. cit.*, s. 221. O negatywnych skutkach długotrwałego pozbawienia wolności dla rozwoju człowieka piszą: A. Baładynowicz, *Psychodegradacja...*, s. 91-93; D. Sarzała, *op. cit.*, s. 161.

legislature to attain its goal, and did the benefits outweigh the costs that mainly burdened the convict?¹⁵⁷ Undeniably, the process of sentencing must also meet the requirements of the principle of proportionality¹⁵⁸. Whether a penalty is effective (principle of utility) should be evaluated in the context of its ability to meet its objectives in terms of all its functions¹⁵⁹. In examining whether the necessity requirement has been met, it is to be found if the same effect (meeting the penalty's objectives in terms of all its functions) can be achieved by another instrument, e.g., a lighter penalty¹⁶⁰.

The penalty discussed in this article had more drawbacks than benefits, with the latter not outweighing the former. It is mainly on account of its weakness in the implementation of the individual and preventive function that it did not constitute an effective punishment tool (failure to meet the utility requirement). It can also be reasonably doubted whether the objectives of punishment could not have been achieved by more lenient penalties, such as 15 years' imprisonment (failure to fulfil the requirement of necessity). It also seems that the burden of punishment mentioned in the above paragraphs that the convict bears, as well as the adverse effects on society which are due from prolonged incarceration (it has been shown that a perpetrator leaving prison after such a long sentence is "lost" to society) outweighed the gains in terms of just punishment of the perpetrator of a highly socially harmful act and their isolation from legal interest. It is a serious allegation from the perspective of the principle of proportionality in the strict sense.

The above arguments allow a conclusion that both the retention of the sentence of 25 years' imprisonment and its abolition in order to extend the upper limit of the fixed-term custodial sentence from 15 to 30 years may violate the principle of proportionality under Article 31(3) of the Constitution of the Republic of Poland. This thesis is not to be deemed unfounded in view of what K. Wojtyczek points out: "the excessive punitive nature of a penal statute may represent grounds to declare it unconstitutional"¹⁶¹. This view should be fully accepted. After all, under Article 31(3) of the Constitution of the Republic of Poland, limitations of freedoms and rights must not violate their essence. It is the case of the most severe

¹⁵⁷ Por. K. Wojtyczek, *Zasada proporcjonalności jako granica prawa karania*, „Czasopismo Prawa Karnego i Nauk Penalnych” 1999, z. 2, s. 33-34.

¹⁵⁸ Por. G. Arsoshvili, *op. cit.*, s. 25.

¹⁵⁹ Por. podobnie *ibidem*, s. 35.

¹⁶⁰ Por. *ibidem*, s. 38.

¹⁶¹ K. Wojtyczek, *ibidem*, s. 39.

penalties. It is extremely difficult to prove that such is the public interest, and the interest should be given primacy.

It is therefore worth calling for shorter prison sentences instead of long-term sentences, with an emphasis on effective resocialization of convicts. It would be advisable to start a debate on whether to completely remove from the catalogue not only the sentence of 25 years' imprisonment, but also life imprisonment, while not extending the possible fixed-term custodial sentence (extension to 30 years and elimination of the sentences of 25 years and life imprisonment has been postulated, e.g. by P. Góralski¹⁶²). It is because, a convict should not be kept in prison longer than is necessary to achieve the resocialization objectives¹⁶³. A maximum of 15 years seems to be sufficient to achieve this objective. However, one should be aware of how controversial this thesis is, especially given the potential need to administer a just penalty on, for instance, war criminals¹⁶⁴. However, long-term sentences do more harm than good, and the most effective duration of imprisonment given the perspective of resocialization is between 5 months and 6 years¹⁶⁵. At some point, the impact of punishment on the convict makes no more sense and it becomes harmful instead of useful, as numerous studies show¹⁶⁶.

There will obviously be dissenting voices which will bring up the purely eliminative nature of the 25 years' sentence passed with respect to incorrigible offenders who cannot be resocialized¹⁶⁷. It is because, in practice, this penalty has been imposed almost exclusively on the perpetrators of manslaughter¹⁶⁸. There is only a question though, whether we should share such a view and maintain inhumane long-term sentences for such a precarious statement. Do incorrigible perpetrators exist at all? ¹⁶⁹ And isn't it tacit acceptance of the thesis of C. Lombroso who claims that humans have an innate tendency to commit

¹⁶² P. Góralski, *op. cit.*, s. 43. Bardzo podobnie też L. Tyszkiewicz, *op. cit.*, s. 10-11.

¹⁶³ Por. J. Korecki, *op. cit.*, s. 64-65.

¹⁶⁴ Por. P. Góralski, *op. cit.*, s. 44-45.

¹⁶⁵ B. Wróblewski, *Zarys polityki karnej*, Wilno 1928, s. 35.

¹⁶⁶ K. Mrozek, *op. cit.*, s. 236.

¹⁶⁷ P. Stępnia, *op. cit.*, s. 23, 25; *Nowe...*, s. 142.

¹⁶⁸ J. Warylewski, *op. cit.*, s. 191.

¹⁶⁹ W. Zalewski, *Przestępca „niepoprawny” – jako problem polityki kryminalnej*, Gdańsk 2015, s. 385 i nast.

crimes¹⁷⁰ and must therefore be eliminated? Research shows that the future improvement of virtually every convict cannot be ruled out¹⁷¹. Is it therefore worth accepting the words of P. Stępniański who wonders why improve a human who should be eliminated from society¹⁷²? Is *de facto* civil death (long-term punishment) more humane than biological death (capital punishment)? And furthermore, don't incorrigible perpetrators have some measures dedicated to them under the Act on Dealing with Persons with Mental Disorders who Pose a Threat to the Life, Health or Sexual Freedom of Others of 22 November 2013, as well as the code-based security measures¹⁷³?

It seems that some of the above questions can be answered in the negative. After all, it is impossible to assume in advance that there are incorrigible perpetrators who need only to be isolated (or, in fact, eliminated) instead of being given assistance in returning to society, e.g., through necessary medical treatment. Moreover, there are tools in penal law dedicated to such offenders, such as the aforementioned security measures or measures under the Beasts Act. Penalties, on the other hand, must not serve only to eliminate individuals, without working towards their improvement.

It is worth emphasising again that eliminating the 25 years' sentence and the extension of the upper limit of the fixed-term custodial sentence to 30 years may step up the repressive character of the penal law. In cases where, until the reform, there was an alternative of a so-called fixed-term custodial sentence and a sentence of 25 years' imprisonment (compound sanctions), the courts chose to impose this focal sentence only in specific cases where the above-mentioned prerequisites developed by the case law were met. Whenever it was doubted if the prerequisites were met, the courts chose to impose the so-called fixed-term sentence of the longest duration (15 years). Nowadays, with the range of 15-25 (or even 15-30 years), they may much more often opt for a sanction more severe than 15 years of imprisonment, e.g., 18 or 20 years.

The above outlined punitiveness of the penal law after the July amendment related to the repeal of 25 years' imprisonment is also evident in aggregate

¹⁷⁰ Por. J. Raglewski, *op. cit.*, s. 308.

¹⁷¹ G. Szczygieł, *op. cit.*, s. 224.

¹⁷² P. Stępniański, *op. cit.*, s. 25.

¹⁷³ Dz.U. z 2021 r. poz. 1638; dalej: ustawa o bestiach. Por. W. Zalewski, P. Petasz, B. Kędzierski, *Problematyka sprawcy niebezpiecznego – uwag kilka*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015, s. 63 i nast.; V. Konarska-Wrzosek, *op. cit.*, s. 141-144; P. Góralski, *op. cit.*, s. 43-44.

sentences. Until the repeal of the sanction in question, it was the maximum possible penalty in the case of two consecutive custodial sentences the total of which was 25 years or more, and at least one of which was not less than 10 years (Article 86 (1a) of the Penal Code). Currently, in such a situation, it is possible to impose a sentence more severe than 25 years of imprisonment, i.e., a maximum of 30 years. Let the next reform of the penal law spark further debate on the rationale of long-lasting punishment. It may be a vain hope, however, as it is strived to make the penal law as punitive as possible. At the same time, an old principle is neglected which holds that it is not the severity of punishment, but its inevitability that constitutes the best tool to deter from committing crimes. A draconian penal repression has no effect on curbing crime¹⁷⁴. It is also worth noting that the punitive trend in penal policy is very costly and at the same time ineffective. It is because, non-custodial sentences yield better results as the example of the Scandinavian countries confirms¹⁷⁵. Perhaps it is better to strive for the social reintegration of a convict by providing support instead of depriving them of access to socio-economic resources for many years, thus leading to their degradation¹⁷⁶?

The answer to this question is not easy, especially as the shape of penal policy the society expects is a contentious issue (although the crime rate in Poland is on a steady decrease)¹⁷⁷.

¹⁷⁴ J. Malec, *op. cit.*, s. 78.

¹⁷⁵ A. Kacprzak, *op. cit.*, s. 113. Por. też S. Paweła, *op. cit.*, s. 20-21.

¹⁷⁶ A. Kacprzak, *op. cit.*, s. 114. Podobnie postulując politykę kryminalną opartą o kary pośrednie i kary wolnościowe – A. Baładynowicz, *Wykluczenie...*, s. 88.

¹⁷⁷ A. Kacprzak, *op. cit.*, s. 117; M. Melezini, *Wokół...*, s. 22; J. Lachowski, *Zmiany...*, s. 175.

Bibliografia

Literatura

Arsoshvili G., *Restoring Justice as a Purpose of Punishment and Its Interrelation with the Resocialization of Criminal*, „Journal of Law” 2021, no. 1.

Bałandynowicz A., *Wykluczenie społeczne recydywistów jako następstwo niesprawiedliwego i nieskutecznego karania, Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.

Bałandynowicz A., *Psychodegradacja osobowości oraz defaworyzacja, ekskluzja i wykluczenie społeczne recydywistów następstwem nieracjonalnego i relikтового systemu sprawiedliwości karnej opartej na paradygmacie izolacji przestrzennej*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Beccaria C., *O przestępstwach i karach*, tł. E.S. Rappaport, Warszawa 1959.

Bednarzak J., *W sprawie wymiaru kary za najbardziej groźne zabójstwa*, „Nowe Prawo” 1977, nr 5.

Buchała K., *Niektóre problemy wymiaru kar najsurowszych*, „Państwo i Prawo” 1976, nr 11.

Doroszczak J., *Kara główna i kara dożywotniego pozbawienia wolności jako jej alternatywa, a prawo do ochrony życia – rozważania dialektyczne na przykładzie prawa polskiego i systemów prawnych innych państw*, (maszynopis rozprawy doktorskiej napisanej pod kierunkiem M. Borskiego), Wyższa Szkoła Humanitas, Sosnowiec 2022.

Doroszewska K., *Punitive a populizm penalny – rola emocji w procesie legislacyjnym*, „Eryda” 2017, nr 2.

Flanagan T.J., *THE PAINS OF LONG-TERM IMPRISONMENT. A Comparison of British and American Perspectives*, „The British Journal of Criminology” 1980, no. 2.

Gajdus D., Gronowska B., *Więżniowie długoterminowi a europejskie standardy ochrony praw człowieka*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.

Glaser S., *O mocy obowiązującej ustawy karnej pod względem czasu*, Lublin 1921.

Góralski P., *Problem racjonalnej sankcji za zabójstwo kwalifikowane w polskim prawie karnym*, „Przegląd Prawa i Administracji” 2020, nr CXX/2.

Grudecki M., *Kilka słów o racjonalnym przestępcy w świetle wybranych nowelizacji Kodeksu karnego z lat 2015-2017*, „Przegląd Prawno-Ekonomiczny” 2018, nr 1.

Hochberg L., *Zawołowane dożywocie*, „Nowe Prawo” 1956, nr 7-8.

Jadach K., *Wymiar sprawiedliwości w kontekście zakładanych funkcji kary*, „Studia Edukacyjne” 2013, nr 24.

Kacprzak A., *Kara pozbawienia wolności i jej (dys)funkcjonalność. Krytyka polskiej polityki karnej i resocjalizacyjnej*, „Władza Sądzenia” 2016, nr 10.

Kluza J., *Nowy wymiar kary 30 lat pozbawienia wolności*, „Prokuratura i Prawo” 2023, nr 2.

Konarska-Wrzosek V., *Długoterminowe kary pozbawienia wolności w systemie polskiego prawa karnego i dyrektywy ich orzekania de lege lata i de lege ferenda*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Korecki J., *Kara 25 lat pozbawienia wolności w Polsce*, Warszawa 1988.
Koźniewski K., *Rozmyślenia nad projektem K.K.*, „Prawo i Życie” 1956, nr 9.

Krzymuski E., *System prawa karnego ze stanowiska nauki i trzech kodeksów, obowiązujących w Polsce*, Kraków 1921.

Lachowski J., *Zasady wymierzania kar 25 lat oraz dożywotniego pozbawienia wolności*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.

Lachowski J., *Zmiany w zakresie kary 25 lat pozbawienia wolności na gruncie Kodeksu karnego z 1997 r. oraz próba ich oceny*, „Studia Iuridica” 2022, nr 93.

Lass P., *Neurobiologia i neurochemia przestępców i długotrwałej izolacji więziennej*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Leszczyński J., *Z problematyki prewencji ogólnej*, „Palestra” 1974, nr 11.

Machel H., *Sens i bezsens długotrwałej izolacji więziennej – opracowanie poświęcone karze 25 lat pozbawienia wolności oraz karze dożywotniego pozbawienia wolności*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Makarewicz J., *Prawo karne ogólne*, Kraków 1914.

Makowski W., *Podstawy filozofii prawa karnego, t. 1*, Warszawa 1917.
Malec J., *Kary długoterminowe*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.
Małek S., *Prizonizacja w grupie mężczyzn odbywających karę pozbawienia wolności*, „Przegląd Więziennictwa Polskiego” 2009, nr 64-65.

Mandrysz W., *Skazany... na marginalizację! Negatywne skutki odbywania kary pozbawienia wolności*, w: *Peryferie społeczne w teorii i badaniach empirycznych*, red. K. Wódz, D. Nowacka-Kapuścik, G. Libor, Katowice 2016.

Melezini M., *Wokół propozycji zmiany górnej granicy kary pozbawienia wolności oraz rezygnacji z kary 25 lat pozbawienia wolności*, „Ius Novum” 2022, nr 3.

Melezini M., *Wybrane problemy nowego podejścia do filozofii karania w świetle ustawy z 13 czerwca 2019 r.*, „Ius Novum” 2020, nr 2.

Mrozek K., *Istota długoterminowej kary pozbawienia wolności oraz jej struktura i dynamika*, „Nowa Kodyfikacja Prawa Karnego” 2011, t. XXVII.

Niewiadomska I., Fel S., *Realizacja zasady sprawiedliwości w karaniu przestępców*, „Zeszyty Naukowe KUL” 2016.

Ochorowicz J., *Miłość, zbrodnia, wiara i moralność. Kilka studiów z psychologii kryminalnej*, Warszawa 1870.

Opora R., *Teoretyczne perspektywy podejścia do przestępców w kontekście długoterminowej izolacji więziennej*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Nowe kodeksy karne – z 1997 r. z uzasadnieniami, red. I. Fredrich-Michalska, B. Stachurska-Marcińczak, Warszawa 1997.

Pawela S., *Tendencje i dylematy polityki karania sprawców przestępstw o wysokiej społecznej szkodliwości*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.
Pędziszczak A., *Program postępowania ze skazanymi na karę dożywotniego pozbawienia wolności i kary długoterminowe*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.

Raglewska J., *Długoterminowa kara pozbawienia wolności – głos w dyskusji*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Raglewski J., *Głos w dyskusji podczas drugiego dnia konferencji „Długoterminowe kary pozbawienia wolności w teorii i praktyce”*, Gdańsk 7-8 kwietnia 2014 roku, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Rejman J., *Oceny skazanych w wykonywaniu kar długoterminowych*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.

Sarzała D., *Resocjalizacyjny wymiar kary pozbawienia wolności*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.

Sitarz O., *Czynny żal jako instrument polityki kryminalnej i karnej*, „Archiwum Kryminologii” 2009, t. XXXI.

Stępniać P., *„Habit diabła” czyli o funkcjach i celach najdłuższych kar pozbawienia wolności polemicznie*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Szamota-Saeki B., *Odstraszające działanie kary na sprawcę przestępstwa w świetle badań empirycznych*, „Archiwum Kryminologii” 1995, t. XXI.

Szczepaniec M., *Teoria ekonomiczna w prawie karnym*, Warszawa 2012.
Szczygieł G., *Kary długoterminowe a cele wykonywania kary pozbawienia wolności*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.

Szerer M., *Karanie a humanizm*, Warszawa 1964.

Szymanowski T., *Nowelizacja prawa karnego po 1998 r. a represyjność polityki karnej w Polsce*, w: *Kary długoterminowe. Polityka karna, wykonywanie, warunkowe zwolnienia*, red. T. Gardocka, Warszawa 2006.

Śliwowski J., *Czasowe ramy kary pozbawienia wolności w projekcie kk. PRL na tle przepisów socjalistycznego prawa karnego*, „Państwo i Prawo” 1957, nr 1.

Tyszkiewicz L., *Problematyka kar najsurowszych*, „Prokuratura i Prawo” 2006, nr 12.

Wantuła H., *Abolicjonizm więzień – podejście racjonalne i humanistyczne*, Kraków 1997.

Warylewski J., *Długoterminowe kary pozbawienia wolności – przyczynek do analizy statystycznej, jurydycznej i kryminologicznej*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Wojtyczek K., *Zasada proporcjonalności jako granica prawa karania*, „Czasopismo Prawa Karnego i Nauk Penalnych” 1999, z. 2.

Wróblewski B., *Zarys polityki karnej*, Wilno 1928.

Zagórski J., *Kara dożywotniego pozbawienia wolności – aspekty prawnokarne i penitencjarne*, „Państwo i Prawo” 2000, nr 10.

Zalewski W., *Przestępca „niepoprawny” – jako problem polityki kryminalnej*, Gdańsk 2015.

Zalewski W., Petasz P., Kędzierski B., *Problematyka sprawcy niebezpiecznego – uwag kilka*, w: *Długoterminowe kary pozbawienia wolności w teorii i praktyce*, red. W. Zalewski, Gdańsk 2015.

Zawłocki R., *Przeciw karze dożywotniego pozbawienia wolności w polskim prawie karnym*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1996, z. 2.

Źródła prawa

Ustawa z 19 kwietnia 1969 r. – Kodeks karny (Dz.U. z 1969 r. Nr 13, poz. 94).

Ustawa z 6 czerwca 1997 r. – Kodeks karny (Dz.U. z 2021 r. poz. 2345, ze zm.).

Ustawa z 6 czerwca 1997 r. – Kodeks karny wykonawczy (Dz.U. z 2021 r. poz. 53, ze zm.).

Ustawa z 22 listopada 2013 r. o postępowaniu wobec osób z zaburzeniami psychicznymi stwarzających zagrożenie życia, zdrowia lub wolności seksualnej innych osób (Dz.U. z 2021 r. poz. 1638).

Ustawa z dnia 26 stycznia 2023 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw (Dz.U. z 2023 r. poz. 403).

Źródła internetowe

Biuro Komunikacji i Promocji Ministerstwa Sprawiedliwości, *Reforma Kodeksu karnego – bezpieczeństwo Polaków*, <https://www.gov.pl/web/sprawiedliwosc/reforma-kodeksu-karnego-bezpieczenstwo-dla-polakow>, dostęp: 15.02.2022.

Odniesienie się wnioskodawcy do uwag zgłoszonych w ramach konsultacji do projektu ustawy o zmianie ustawy Kodeks karny oraz niektórych innych ustaw z dnia 16 września 2021 r., UD 281.

Opinia Ogólnopolskiego Związku Zawodowego Kuratorów Sądowych, OZZKS/3/IX/2021, <https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525811.pdf>, dostęp: 23.03.2022.

Opinia Ośrodka Badań, Studiów i Legislacji Krajowej Rady Radców Prawnych w sprawie projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw z dnia 16 września 2021 r., <https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525808.pdf>, dostęp: 23.03.2022.

Opinia Prezesa Sądu Okręgowego w Szczecinie, Adm-023-42/21, <https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument542707.pdf>, dostęp: 23.03.2022.

Opinia Zespołu ds. Prawa Karnego Stowarzyszenia Sędziów Polskich IUSTITIA dotycząca projektu ustawy o zmianie ustawy – Kodeks karny oraz

niektórych innych ustaw z dnia 16 września 2021 r., <https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525810.pdf>, dostęp: 23.03.2022

Stenogram z posiedzenia Sejmu IX z 03.03.2022 r., http://orka2.sejm.gov.pl/StenoInter9.nsf/0/E91548C925FF00F5C12588000075D330/%-24File/50_b_ksiazka.pdf, dostęp: 23.03.2022.

Uwagi Biura Rzecznika Praw Obywatelskich do projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw,

<https://legislacja.rcl.gov.pl/docs//2/12351306/12815618/12815621/dokument525804.pdf>, s. 4, dostęp: 23.03.2022.

Uwagi Laboratorium Wolności Religijnej dot. projektu ustawy o zmianie ustawy Kodeks karny oraz niektórych innych ustaw, <https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525989.pdf>, s. 1, dostęp: 23.03.2022.

Uzasadnienie projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, druk sejmowy nr 2024, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/2851BC6F8739C593C12587F10042EF6E/%24File/2024.pdf>, dostęp: 23.03.2022.

Orzecznictwo

Wyrok TK z 14.07.2020 r., Kp 1/19, LEX nr 3028994.

Wyrok SA w Białymstoku z 14.11.2018 r., II AKa 175/18, LEX nr 2630446.

Wyrok SA w Gdańsku z 2.03.2017 r., II AKa 16/17, LEX nr 2310586.

Wyrok SA w Gdańsku z 31.05.2017 r., II AKa 135/17, LEX nr 2383357.

Wyrok SA w Katowicach z 14.09.2017 r., II AKa 304/17, LEX nr 2414620.

Wyrok SA w Katowicach z 26.10.2018 r., II AKa 295/18, LEX nr 2664736.

Wyrok SA w Katowicach z 13.02.2019 r., II AKa 10/19, LEX nr 2637251.

Wyrok SA w Krakowie z 28.06.2016 r., II AKa 232/15, LEX nr 2079200.

Wyrok SA w Krakowie z 30.12.2018 r., II AKa 170/18, LEX nr 2707536.

Wyrok SA w Lublinie z 7.03.2017 r., II AKa 14/17, LEX nr 2279552.

Wyrok SA w Łodzi z 7.12.2016 r., II AKa 157/16, LEX nr 2278236.

Wyrok SA w Poznaniu z 25.11.2014 r., II AKa 198/14, LEX nr 1602965.

Wyrok SA w Warszawie z 17.10.2017 r., II AKa 191/17, LEX nr 2414657.

Wyrok SA we Wrocławiu z 16.06.2016 r., II AKa 139/16, LEX nr 2073872.

Wyrok SA we Wrocławiu z 13.06.2018 r., II AKa 126/18, LEX nr 2522795.