

“PENITENTIARY HOPE” OR THE HOPE OF A PRISONER IN POLISH PENITENTIARY POLICY IN THE PERSPECTIVE OF LEGISLATIVE POSTULATES FOR THE INTRODUCTION OF UNCONDITIONAL LIFE IMPRISONMENT

Mateusz Tomczyk, Ph.D.

Department of Criminal Proceeding, Faculty of Law and Administration
at the University of Szczecin

e-mail: mateusz.tomczyk@usz.edu.pl; <https://orcid.org/0000-0002-6053-478X>

Summary. This article presents the issue of the so-called hope and psychological well-being of convicts sentenced to long-term and life imprisonment. The role and significance of “hope” and “psychological well-being” in the plane of preventive and educational goals of life imprisonment are analyzed. On this ground, the question regarding the function of life imprisonment is being asked, because today this punishment is not identified only with its elimination function as part of general prevention. It is also attributed with educational and corrective role. However, in this matter, hope has a fundamental meaning and every person sentenced for life imprisonment is entitled to it. This is the reason why in the Polish legal system the validity of the unconditional life imprisonment is questioned, as this penalty would mean that the convicted person is deprived of the right to seek early conditional release from the rest of his imprisonment.

Key words: life imprisonment, convict, penitentiary hope

INTRODUCTION

Friedrich Hölderlin in *Hyperion* states: “What would life be without hope? A spark breaking away from the burning coal and extinguishing immediately.” This almost two hundred-year-old quote by one of the German poets still does not lose its relevance, and is most adequate to the current situation, which we can find in the framework of Polish punishment policy. Recently, quite extensive changes of criminal law have been carried out in Poland. Particularly controversial and interesting from the point of view of this article are those changes that are aimed at tightening criminal sanctions. This is done by raising the minimal and maximal limits of penalties for individual types of offenses. The introduction of the so-called unconditional life imprisonment (which

would consist in depriving the convicted person of the possibility of applying for conditional early release from the punishment) has also been proposed.¹

When it comes to the matter outlined above, Polish researchers, experts on the subject, as well as the Commissioner for Human Rights have already spoken. Of course their opinions are critical. They refer, inter alia, to the case law of the European Court of Human Rights (ECtHR), the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention),² including the provision of Art. 3 of the Convention, Council of Europe Recommendations Rec2003(22), 2003(23), and 2006(2) on matters of protection of human rights, including issues of conditional release, serving life imprisonment, and the provisions of the Polish Constitution. In the opinion of both judicial and scientific circles, arguments are maintained that these changes are a manifestation of the state's penal policy towards the individual. They increase the degree of penalty of the Penal Code with respect to the current legal status.³ The amendment to the Penal Code is characterized by excessive penalty and repression.⁴

It is interesting, however, that in many statements, both scientific and those more journalistic in the press, references were made to the value of prisoner's "hope." This – as indicated – is a value attributed to man [Nielączna 2019, 4]. Due to the inherent connection with human dignity, it requires respect and protection. The proposed changes deprive the convict of such hope.⁵

Therefore, at this point it is appropriate to ask the fundamental question that bothers us under this article: why the prisoner's "hope" is so important from the point of view of punishment policy, and in particular from the point of view of the purposes of punishment that can be achieved by it. The dispute to date, which has been provoked by legislative proposals in criminal law, is based precisely on the need to provide convicts with such hope. What is the purpose of this hope, and at the same time what is its main function? After all, these issues have been raised in part in the jurisprudence of the ECtHR and in the science of law. However, at this point, due to the current political situation, it seems justified to speak on this matter in the plane of philosophical or psychological considerations. They are the ones that fulfil the axiological and

¹ Act amending the act – Penal Code and some other acts, form No. 3451.

² Journal of Laws of 1993, No. 61, item 284.

³ Opinion of the Office of Studies and Analyzes of the Supreme Court of Poland on the act amending the act – Penal Code and some other acts of 26 April 2019, ref. No. BSA II–021–112/19; Opinion of the Krakow Institute of Criminal Law Foundation of 20 May 2019 on the act amending the act – Penal Code and some other acts passed by the Sejm of the Republic of Poland at the 81st sitting on 16 May 2019, form No. 1184.

⁴ Opinion of the Commissioner for Human Right of 20 May 2019 on the act of 16 May 2019 on amending act – Penal Code and some other acts, red. No. II.510.177.2019.

⁵ Ibidem, p. 5; Statement by the Commissioner for Human Rights of 14 February 2019 to the Minister of Justice regarding proposed changes to the Penal Code, p. 4.

teleological content of criminal law. The problem is also more complicated and exciting due to the fact that a weighty argument is being put at stake, which is to fulfil the function of justice of criminal law, and to satisfy the sense of social justice and harm. Arguments are also raised that the perpetrators of the heaviest category of crimes should be simply eliminated from society. The punishment should then achieve its goals mainly in the field of general prevention. These issues will probably always evoke numerous emotions and sometimes even cause extremely different voices in the discussion.

1. PENAL POLICY IN POLAND

In order to illustrate the meaning that can be given to the “hope” of the convict in the perspective of the impact of punishment, it is first necessary to start from the general assumptions of the punishment policy that has been implemented in Poland over the last thirty years. In other words, what transformations did Polish penal law undergo in the plane of the most severe criminal responses towards the individual. Outlining the goals that the most severe punishments should achieve will undoubtedly help to place the prisoner’s “hope” in this complex system of axiological connections and indicate its essential role.

Over the last three decades Poland, as one of the countries of the former bloc of socialist states, has undergone quite significant legislative changes in the sphere of penal law in terms of the most severe criminal responses for crimes. After the change of the political system in Poland, after 1990, until 1997, the old Penal Code, called the Andrejew Code (from the name of its author, Igor Andrejew), designed and adopted in 1969, was in force.⁶ According to Art. 30, para. 2 of this act, the basic punishment of an exceptional nature, provided for the most serious crimes, was the death penalty. There was no life imprisonment. Therefore, it is obvious that the legislator at that time allowed for possible situations in which it could and should prevail over the maximum preventive goal of punishment in the field of general prevention, i.e. the total elimination of an individual from society by killing them. It was assumed that this would guarantee full and maximum protection of society against possible further attacks of this individual on basic, legally protected social goods. The purpose of this was also to ensure effective general prevention by showing how the state deals with persons committing such crimes. On this ground, the rationality and social usefulness of this punishment was stated. Surprisingly, at that time life imprisonment was considered a less humane punishment [Zawłocki 1996, 108–109].

⁶ Journal of Laws No. 13, item 94 as amended.

Nevertheless, it was already in the eighties when more and more accents, outlining tendencies towards the liberalization of the philosophy of the Polish punishment system appeared. From 1988 the state of actual moratorium existed, i.e. the so-called *de facto* abolition. On 21 April 1988, the last death sentence in Poland was carried out on convicted S. Czabański, perpetrator of rape and murder. The main reason for suspending the execution of the death penalty was the obligation introduced at that time to submit to the Council of State (and after 1990 to the President of the Republic of Poland) files of cases in which convictions for the death penalty were passed and in which the Prosecutor General filed a pardon application [Mierzwa and Niewęglowski 2018, 66n.]. Then, in 1995, in the act of 12 July 1995 amending Penal Code, Executive Penal Code and on raising the minimal and maximal limits of fines and interest in criminal law, legally regulated *de iure* abolition appeared in Poland for 5 years – essentially as a sanction of the *status quo*.⁷

The new Penal Code of 6 June 1997⁸ does not provide for the death penalty, and the most severe reaction known to the Polish system was life imprisonment. Criminal policy was based on the need to prioritize libertarian sanctions, and isolation was to be the last resort. Emphasis was placed primarily on the adequacy of punishment to the severity of the act, and on focusing on preventive and educational impact on the perpetrator [Królikowski and Zawłocki 2015, 318]. After 1989, the state of criminal policy was sought, under which penalties were to be imposed according to directives not burdened by the ideological character of the previous system. Hence, criminal penalties began to be given rationalization tasks [Zawłocki 1996, 108].

Unfortunately, these assumptions have become blurred in the practice of applying penal law [Królikowski and Zawłocki 2015, 318]. Studies show that out of all criminal responses, imprisonment has the highest percentage (64% in 2015, 43.30% in 2016, and 41.15% in 2017).⁹ In addition, demands for a return to severe punishment appear at the level of establishment of criminal law. And here an example, which is critical within the presented article, is the proposal to amend the Penal Code, contained in the act of 16 May 2019 amending the act – Penal Code and some other acts. In the provision of Art. 1 point 19 (b) of this act a new provision of Art. 77, para. 3 of the Penal Code was proposed, according to which: “when imposing a life imprisonment on a perpetrator for an act committed by him after a final conviction for another offense to life imprisonment or imprisonment for not less than 20 years, the court may order an interdiction on conditional release,” and provision of Art. 77, para. 4, according to which: “when imposing a life imprisonment, the court may order an interdiction on conditional release of a perpetrator, if the nature and circum-

⁷ Journal of Laws No. 95, item 475.

⁸ Journal of Laws of 2019, item 1950 as amended.

⁹ Judicial statistics of final judgments of adults of the Ministry of Justice for 2013–2017.

stances of the act and personal characteristics of the perpetrator indicate that his remaining at liberty will cause permanent danger to life, health, freedom or sexual freedom of others.”¹⁰ As we read in the justification of the amendment, the presented legislative solution would be applicable to the most dangerous perpetrators who are highly likely to commit a criminal act again. Therefore, justice and preventive reasons speak for not making any modifications at the stage of execution of life imprisonment.¹¹

Nevertheless, bearing in mind the (so far) unchanged wording of Art. 53, para. 1 of the Penal Code, one should take an indisputable position that there is a need, above all, for preventive and educational influence on the convict. According to Art. 53, para. 1 of the Penal Code “the court passes a sentence at its own discretion, within the limits prescribed by law, ensuring that the severity does not exceed the degree of guilt, being aware of the degree of social consequences of the act, and taking into account the preventive and educational objectives that the penalty is to achieve with regard to the perpetrator, as well as the need to develop legal awareness in society.”

Thus, a question arises here how the implementation of the preventive and educational purpose translates into the prospect of depriving man of hope in the event of condemning him to the most severe penalty currently known to the Polish legal system, i.e. life imprisonment. It should be remembered that the purposes of punishment should also be met in relation to those sentenced to life imprisonment [Zagórski 2000, 172]. Therefore, what is the meaning of “hope” of the prisoner in the plane of the need to respect his dignity and humane treatment when serving a life sentence? This question is even more justified due to the fact that the legislator currently postulates the introduction of an unconditional penalty of life imprisonment.

2. WHAT IS HOPE?

Given the above, at this point it should be appropriate to begin with stating what “hope” is and what role it plays in our lives. St. Thomas understood hope through the prism of the characteristics of its subject. In other words, firstly the object of hope is a good, and secondly, this good is future, and thirdly, this good is hard to reach, but nevertheless possible to achieve [Starnawski 2009, 114].

¹⁰ At the date of writing this article, the act amending the act – Penal Code and some other acts, passed by the Sejm of the Republic of Poland at the 82nd sitting on 13 June 2019, was submitted for signature to the President of the Republic of Poland. The president referred the Act to the Constitutional Tribunal on 28 June 2019, <http://www.sejm.gov.pl> [accessed: 12.10.2019].

¹¹ Justification to the government bill amending the act – Penal Code and some other acts, form No. 3451, p. 19.

When referring to the language of psychology, it is worth noting that in this field there are several explanations for what “hope” is. D. Krok, by comparing the concept of psychological definition of hope, refers in this regard to several key research trends. As part of the first, presented by C.R. Snyder, it is indicated that hope can be equated with a positive motivational state. This state is based on interactive action directed at goals and on strategies leading to these goals. Here, hope is considered in two dimensions: in terms of the belief that success will be achieved, and in terms of the belief that success depends on one’s own competences. As D. Krok explains in the framework of the Snyder’s concept, hope includes three components, i.e. 1) goals, 2) strategy, 3) motivation to act – and these form a coherent whole that determines a certain level of hope; these components are permanently connected with each other. In addition, according to Snyder – as D. Krok mentions – the development of hope is woven into the processes of cognitive, emotional and social development [Krok 2013, 157–58].

Parallel to the concept of Snyder, D. Krok also mentions concepts presented by Trzebiński and Zięba – the followers of Erikson’s theory in Poland. Those Authors discussed the so-called basic hope, which could be reduced to the conviction that the world is orderly and sensible, and that the world is fundamentally favourable to people (the so-called private world theory). In this context, researchers state that basic hope is “a fundamental component of the individual’s overall pattern or rather of the related patterns of «the real world».” This world includes past, current and future events. The degree of hope is determined by the degree and strength of the subjective conviction of man about the sense and positive nature of the real world in which he finds himself. This basic hope, as D. Krok puts it, relates to the basic strength inherent in man (ego). Hope, in the opinion of Snyder, is hope focused on success [ibidem, 158].

As part of the next approach four types of hope are distinguished: 1) passive particular, 2) passive general, 3) active particular, 4) active general. Each of these types focuses on the belief of man that he can achieve his intended, in a certain probability, important future goals. These, of course, can be referred to certain particular as well as more general goals [ibidem].

In addition to the above, in psychology, in relation to hope, it is also possible to find the term “psychological well-being,” which can be understood as a cognitive and emotional assessment of one’s life. Here, it is possible to distinguish further two main approaches in the study of human emotional and mental state, called “psychological well-being,” i.e. hedonistic approach and eudaimonistic approach [ibidem, 159].

As part of the hedonistic approach, psychological well-being is determined by a high level of good, positive emotions, with a low level of negative emotions, as well as a high level of life satisfaction. Here, the discussion is

primarily about what we think about our own lives, as well as what emotions and moods we will experience. However, in the case of the eudaimonistic approach, the key is to refer to the issue of possessing and striving to embrace valuable attributes. However, in this case it means to act according to recognized values, discover important aspects of life, or develop good traits of own personality and character [ibidem].

From the point of view of these considerations, the structure of eudaimonistic well-being explained by D. Krok is particularly interesting. Consisting of – according to D. Krok following Ryff – six dimensions [ibidem, 159–60], respectively listed below, and then discussed in relation to the realities of a prison. To achieve a state of psychological well-being, a person have to:

1) have autonomy guaranteed, i.e. have the ability to follow individually established rules. At this point, however, it should be noted that in the realities of a prison, this autonomy and freedom of conduct are significantly limited, and one can even risk a thesis that they are impossible to achieve by a prisoner. Such a prisoner is subjected to a process of prisonization, in which he is forced to change his way of functioning. Man becomes an element of hierarchical and structurally arranged system of subordination. In such situations a process of depersonalization takes place, which is associated with stigmatization, standardization and degradation of man [Kuč 2015, 216]. This leads to the occurrence of various mental states of prisoners, such as withdrawal, rebellion, conversion, inhibition or fixation [ibidem, 213]. Therefore, in this regard the Prison Service should take all measures to make it possible for the prisoner to achieve a state of at least optimal autonomy and freedom. However, this freedom should not consist in the fact that a prisoner can do what he vividly wants in his free time. Thus, it is necessary to fill this time by offering him possible types of activities. To this end, the so-called penitentiary individualization, consisting in the selection of methods and means of influencing the convict in such a way as to suit his personality and the purpose of the punishment should be introduced [Postulski 2017, 474]. In this aspect, it is worth noting Recommendation Rec2003(23) of the Committee of Ministers to Member States on the Management by Prison Administrations of Life Sentence and other Long-term Prisoners of 20 September 2003. After all, M. Niełacznna states that in the Polish prison system there are no plans for serving long-term imprisonment sentences, as required by the abovementioned Recommendation, although thanks to this it would be possible to show prospects to the convicts and present them with clear requirements for his conduct while serving the sentence [Niełacznna 2019, 11].

2) have the ability to control the environment, i.e. have the ability to deal with the outside world. Studies presented by M. Niełacznna indicate that after about 8–10 years convicts sentenced to life imprisonment arrange their lives in isolation. During this period, they stabilize their behaviour, extinguish their

aggression or other negative emotions. It is only after this period when prisoners undergo the interactions offered to them, including various addiction therapies, and anger management trainings [ibidem, 12].

3) have conditions for personal development, consisting in developing skills, potential and talent. Education and the opportunity to develop various skills should be a permanent element of imprisonment. In this place it is worth to mention the case of convicts who undertook studies at the University of Technology and Humanities in Radom. M. Niełacznna described a case of three inmates who were allowed to acquire higher education. Initially, they received education in a closed prison, and after 2 years of study, they were promoted to a semi-open prison, and allowed to participate in laboratory classes at the University [ibidem, 13].

4) have positive relationships with other people, i.e. achieve satisfaction from close contact with other people. Here, undoubtedly, with the passage of time, prisoners willing to rehabilitate can achieve such satisfaction through positive contacts with the prison staff themselves, who in some respects play the role of people praising them for proper behaviour. Relationships with inmates are also important, and the Prison Administration cannot be indifferent to any conflicts or tensions. For convicts who have been serving a prison sentence for a longer period of time, it is also important to contact people from outside the prison, such as at workplaces or schools they could attend. An important role in the lives of prisoners is played by family and loved ones, because they are the ones, to a greater extent, who keep the hope for a “better life,” assuming that the family is not dysfunctional. According to the research of M. Niełacznna, only 4% of prisoners sentenced to long-term imprisonment have no family or social bonds. The rest of them form a partnership, start their own family, or participate in the life of the original family [ibidem].

5) set life goals, i.e. set the meaning of life, life tasks. Undoubtedly, such a goal may be the prospect of returning to freedom, dreams of leading a stable and prosperous life after leaving the prison. Of course, as part of isolation, minor, particularistic tasks, set by the prison administration or tasks in the field of own development, are also important. Promotions to other types of penal institutions (semi-open) are also regarded as particularistic goals.

6) accept oneself by developing a positive attitude towards oneself, which is also associated with the need for self-respect. In this case, it seems that the Prison Administration is facing the most difficult task. Often the attitudes of convicts, their life situations are characterized by mediocrity. As stated by M. Niełacznna, many convicts on the date of adjudication – according to the opinions of expert psychiatrists and psychologists – can be found exceptionally demoralized, with even zero chance of social rehabilitation [ibidem, 14]. It seems that this may be accompanied by various states of self-assessment, on the one hand going towards excessive self-criticism, low self-assessment and

self-confidence, and on the other hand, this assessment may manifest itself in the absence of any self-criticism and self-conduct. The Prison Administration, educators and psychologists face an extremely difficult task to change the personality of these people. It is also crucial here to inculcate the appropriate self-control mechanism in the prisoners. However, as M. Niełacznna points out, in Poland no research is conducted on the effectiveness of corrective interactions in the perspective of changing the personality of convicts sentenced to life imprisonment [ibidem, 15]. Nevertheless, in order to make appropriate changes to the personality of convicts, it is necessary to provide them with insight into their own personality, attitude and behaviour. It is therefore necessary to teach these convicts to assess themselves properly. This assessment, however, must be balanced, i.e. both critical (especially in the context of the crime committed), as well as positive, so that the prisoner does not feel a sense of worthlessness by excessive criticism.

In the summary it is worth adding that hope is always accompanied by the awareness of lack of something. This is also associated with the fear of losing a good, the fear of not being able to achieve what one wants. W. Starnawski indicates that this fear is a permanent component of hope, but it does not obscure it. Hope dominates. It contains this conviction, or even certainty, that our chosen good is achievable, despite the obstacles. W. Starnawski calls this a kind of “optimism,” which, however, should be distinguished from ordinary prediction, because hope is not based on calculating probability. Hope “derives its certainty «from elsewhere» – but from where, that is the question” [Starnawski 2009, 115].

3. HOPE IN THE PERSPECTIVE OF LIFE IMPRISONMENT

Given the above, it can be stated that *de facto* “hope” – associated with “psychological well-being” – is for the prisoners a force that allows them to survive the consciousness of existence in isolation for decades or even for life. Of course, as scientific research shows, for individual prisoners – bearing in mind the process of social rehabilitation – the awareness of the need to lead a stable life after leaving the prison may develop to varying degrees. The process of becoming aware of the evil caused by the crime may also occur to varying degrees. It is possible that there will be such convicts who will be quite reluctant to go through the process of adaptation to the proper and normal functioning in society, or they will deny their own crime and thus dismissively approach the question of compliance with social norms and respect for social goods. However, this does not give grounds to deprive them of hope. The prospect that the convicted person will someday have the opportunity to return to freedom is an extremely important factor motivating him to cooperate in order to voluntarily go through the process of social rehabilitation.

This is due to the fact that it is unacceptable to assume in advance that such a convict, serving a life sentence, will never change. A general and absolutely negative criminological forecast cannot be made in advance [Wilk 2008, 19; Szumski 1996, 17]. Therefore, to ensure the correct process of social rehabilitation, hope should be guaranteed to every prisoner, in order to create for him the conditions for optimal and reasonably justified psychological well-being described above. Only in this way can socially desirable attitudes be inculcated in him, and return to freedom will become permissible.

However, at this point many of the supporters of the elimination and safety approach to the function of punishment would probably ask a fairly short, but relevant and substantive question, what is the point of guarantying hope and psychological well-being for life convicts, when this punishment was imposed on them for a cruel crime? Shouldn't they be eliminated from society in this way and shouldn't society be protected against them?

When answering the above questions, first it is necessary to refer to the dignity of each person. After all, as natural and inalienable, it should be immanently identified with the fact that man is a thinking being, capable of feelings, emotions and empathy. Man is first and foremost a subject, not an object. This philosophy, as an expression of natural rights, is already firmly rooted in international law, as in Art. 3 of the Convention, according to which no one can be subjected to torture or to inhuman or degrading treatment or punishment. On the basis of the language interpretation of Art. 2 of the Convention, it is concluded that depriving a person of hope and psychological well-being should be considered inhuman. If hope is something human, it will be inhuman to take it away. It is human to have hope and therefore it is part of the essence of humanitarianism. Similar approach was adopted by the international community in the International Covenant on Civil and Political Rights signed in New York on 16 December 1966,¹² which states in Art. 7 that no one can be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The refinement of this is included in Art. 10 of the Covenant, according to which all persons deprived of their liberty will be treated with humanity and with respect for the inherent dignity of the human person.

The ECtHR has repeatedly expressed its opinion on the prisoner's hope in its jurisprudence. As M. Niełaczná states: "the Tribunal has indicated that in the light of Art. 3 of the Convention, a person sentenced to life imprisonment has the right to know from the beginning of serving the sentence what he must do in order to have his early release considered in a specific period of time, and in particular, after how many years the legitimacy of further sentence will be assessed and on what conditions the assessment will take place" [Niełaczná 2019, 3]. For example, in the recent judgment in the case of Marcello Viola

¹² Journal of Laws of 1977, No. 38, item 167.

v. Italy of 13 June 2019, No. 77633/16, the ECtHR stated that the irreducible punishment of life imprisonment violated Art. 3 of the Convention. Another example of the ECtHR’s judgment upholding this line is the judgment in the case of *Petukhov v. Ukraine* of 12 March 2019, No. 41216/13, and many others.

The above-mentioned solutions in the field of human rights have been transferred to the Polish legal system, and are faithfully repeated in such provisions as Art. 30 or Art. 41 para. 4 of the Polish Constitution. The Penal Code itself is an emanation of the philosophy that punishment should be shaped predominantly in order to educate and improve the convict. The purpose of punishment is to prevent a return to crime (for example in Art. 53, para. 1 of the Penal Code). In this respect it is also necessary to take humanitarianism into account, which is found in the provisions of Art. 3 of the Penal Code, according to which penalties and other measures provided for in this Code are applied taking into account the principles of humanitarianism, in particular with respect for human dignity.

The guarantee of hope and optimal psychological well-being makes these goals realistic for the convict and takes into account the need to respect the principles of humanitarianism. Hope and psychological well-being may contribute to increasing discipline in the convict, motivate him to take positive actions, which may also lead to the elimination of the conviction of his impunity. Hope and psychological well-being will provide a fertile ground for developing a sense of responsibility from an earlier act, which is the reason behind serving the life imprisonment. Depriving the convict of hope can therefore be called a state of inhumane hopelessness [Wilk 2008, 11].

Therefore, hope falls under the content of Art. 67, para. 1 of the Executive Penal Code, according to which serving life imprisonment is intended to evoke in the convict the will to cooperate in shaping his socially desirable attitudes, in particular the sense of responsibility and the need to comply with the legal order and thus refrain from returning to crime. In this respect, the Polish legislator does not limit itself to just “forcing” the attitude required by law and social norms on the convicts. The legislator goes a step further and its intention is for the socially desirable attitude to stem from the free will of the convicts, from their own desire. Moreover, in the provision of Art. 67, para. 1 of the Executive Penal Code, the legislator limits the scope of normalization of the issue of imprisonment to individual prevention. In this matter, the preventive and educational goal, the so-called special prevention, is important [Postulski 2017, 472].

On the other hand, while trying to address the argument that life imprisonment should serve primarily as means of general prevention, it is worth emphasizing, following R. Zawłocki, that nowadays, punishment does not have to be severe, supposedly to deter society. As R. Zawłocki states, the punishment

no longer has to be severe, and in particular it does not have to be more severe than what the punishment of the perpetrator would require without basing the punishment on general preventive rationalization [Zawłocki 1996, 114].

It is also worth paying attention to the disciplinary role of hope and psychological well-being for convicts serving life imprisonment. As bluntly stated by the president of the Regional Court in Szczecin, M. Stronczyski, “convict sentenced to absolute life imprisonment knows that whatever would happen, he will not leave the prison walls. As a consequence, he can, for example kill again, because he doesn’t care anymore.” In this respect, there is a sense of impunity for those sentenced to unconditional life imprisonment. This argument is undoubtedly significant from the point of view of Art. 73, para. 1 of the Executive Penal Code, according to which in the penal institution discipline and order are maintained in order to ensure security and implementation of the tasks of imprisonment, including protection of society against crime. A person without hope, without perspective may not intend to adapt to the current order, and even commit another crime. How would the prison administration deal with such “desperate executioners”? Could constant isolation from the rest of the inmates, in a place of absolute separation in isolation rooms, would be a solution for many long years. This way of serving the sentence can in no way be considered justified. A rational punishment policy is strongly opposed to such methods of long-term inhibition of prisoners. It is even mandatory to at least try to work with prisoners, offering them a better future. The view that such individuals should only be isolated in the spirit of the need for general prevention cannot be accepted. It should be remembered once again that a person is a subject and that objective treatment of prisoners is unacceptable [Zawłocki 1996, 114; Zoll 1992, 369]. As L. Wilk said, “taking into account penitentiary and psychological aspects, it is worth to emphasize the disciplinary function of the possibility of early release and the fact that depriving a person of one of the most human feelings – hope, creates a situation of «an animal in a cage», whose aggressiveness and desperation can only be inhibited” [Wilk 2008, 19].

CONCLUSION

To recapitulate, it should be stated that hope and psychological well-being of prisoners, serving especially the longest sentences, including life imprisonment, are indispensable and essential elements that fit into the essence of modern philosophy of punishment. I believe that it is impossible to sentence a person to life imprisonment and inform him in advance that he will not be able to leave the prison. Such an “entry” at the very beginning of serving the sentence will be devastating for convicts. Regardless of how serious were the crimes they have committed, to which extent the sentence of life imprisonment is

to fulfil its role in the scope of general prevention and protection of society against the perpetrator, everyone should be guaranteed at least a minimum of opportunities to be able to rehabilitate themselves for the crime against the state. And eventually, the purpose of this is, for example, to ensure discipline as part of preventing that person from committing another crime in the prison.

Only hope and optimal psychological well-being will provide a fertile ground for the convicts serving life imprisonment to have the possibility and will to rehabilitate and change. Otherwise, rehabilitation is an ineffective process, for which, however, someone – that is society – must bear the costs. If the educational and corrective strategies for convicts sentenced even for the most serious crimes are already being adopted, then let these strategies bring the desired results. C. Beccaria defined life imprisonment as “life slavery replacing the death penalty” [Zawłocki 1996, 106]. Unconditional life imprisonment without a shadow of hope for a convict to return to freedom is therefore an organized and long process of killing him.

REFERENCES

- Krok, Dariusz. 2013. “Nadzieja jako predyktor wymiarów dobrostanu psychicznego.” *Polskie Forum Psychologiczne* 18, no. 2:157–72.
- Królikowski, Michał, and Robert Zawłocki. 2015. *Prawo karne*. Warszawa: Wydawnictwo C.H. Beck.
- Kuć, Małgorzata. 2015. *Kryminologia*. Warszawa: Wydawnictwo C.H. Beck.
- Mierzwa, Marek, and Krzysztof. Niewęglowski. 2018. “Trend abolicjonistyczny w polskim prawie karnym w XX w.” *Studenckie Zeszyty Naukowe* 38:61–69.
- Nielacznna, Maria. 2019. “Stanowisko i ustalenia badawcze Zespołu badawczego kary dożywotniego pozbawienia wolności przy Katedrze Kryminologii i Polityki Kryminalnej IP-SiR UW.” https://www.rpo.gov.pl/sites/default/files/KDPW_stanowisko%20i%20ustalenia%20badawcze_Nielacznna_Katedra%20Kryminologii%20i%20Polityki%20Karnej%20UW_nowelizacja_2019.pdf [accessed: 12.10.2019].
- Postulski, Kazimierz. 2017. *Kodeks karny wykonawczy. Komentarz*. Warszawa: Wolters Kluwer Polska.
- Starnawski, Witold. 2019. “Matka głupich? Filozoficzne aspekty nadziei.” *Paedagogia Christiana* 24, no. 2:113–23.
- Szumski, Jerzy. 1996. “Problem kary dożywotniego pozbawienia wolności.” *Państwo i Prawo* 1:3–18.
- Wilk, Leszek. 2008. “Kara dożywotniego pozbawienia wolności a instytucja warunkowego zwolnienia i prawa łaski.” *Prokuratura i Prawo* 10:11–23.
- Zagórski, Janusz. 2000. “Wykonanie kary dożywotniego pozbawienia wolności.” *Biuletyn RPO* 42.
- Zawłocki, Robert. 1996. “Przeciw karze dożywotniego pozbawienia wolności w polskim prawie karnym.” *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 2:105–21.
- Zoll, Andrzej. 1992. “Aksjologiczne podstawy prawa karnego.” In *Filozofia prawa a tworzenie i stosowanie prawa*, ed. Bronisław Czech, 301–309. Katowice: Instytut Wymiaru Sprawiedliwości w Katowicach.

„NADZIEJA PENITENCJARNA”, CZYLI O NADZIEI OSADZONEGO W POLSKIEJ
POLITYCE PENITENCJARNEJ W PERSPEKTYWIE LEGISLACYJNYCH
POSTULATÓW WPROWADZENIA BEZWARUNKOWEGO DOŻYWOTNIEGO
POZBAWIENIA WOLNOŚCI

Streszczenie. W niniejszym artykule prezentowane jest zagadnienie tzw. nadziei i dobrostanu psychicznego skazanych na długoterminowe i dożywotnie kary pozbawienia wolności. Analizie poddawana jest rola i znaczenie „nadziei” oraz „dobrostanu psychicznego” skazanych w płaszczyźnie celów zapobiegawczych i wychowawczych kary dożywotniego pozbawienia wolności. Na tym gruncie stawiane jest pytanie odnośnie do funkcji kary dożywotniego pozbawienia, bowiem współcześnie ta kara nie jest utożsamia tylko z jej eliminacyjną funkcją w ramach prewencji ogólnej. Przypisuje się jej także wychowawczą i naprawczą rolę. Tutaj zaś fundamentalne znaczenie ma nadzieja, do której ma prawo każdy dożywotnio skazany. Dlatego też poddawana jest w wątpliwość zasadność obowiązywania w polskim systemie prawnym bezwarunkowej kary dożywotniego pozbawienia wolności, czyli takiej kary, co do której skazany pozbawiony byłby prawa do zabiegania o przedterminowe warunkowe zwolnienie z reszty jej odbywania.

Słowa kluczowe: kara dożywotniego pozbawienia wolności, skazany, nadzieja penitencjarna

Informacje o Autorze: Dr Mateusz Tomczyk – Katedra Postępowania Karnego, Wydział Prawa i Administracji Uniwersytetu Szczecińskiego; e-mail: mateusz.tomczyk@usz.edu.pl; <https://orcid.org/0000-0002-6053-478X>