



Rights of persons deprived of their liberty in the times of the coronavirus

POLAND

In view of the state of epidemic announced in Poland, the Foundation wishes to draw attention to the situation of persons who have been deprived of their liberty, who are currently incarcerated in penitentiary facilities. From media reports as well as information provided to the Foundation by prisoners and their families, the conditions of detention in the times of COVID-19 are extremely difficult.¹

In Poland there are a total of 172 prisons, pre-trial detention facilities and external wards,² in which, according to the statistical data presented by the Prison Service, as at 27 March 2020 there actually was a total of 74 581 detainees.³ The prison population therefore amounted to 91.33% in total. Owing to this circumstance, the possible necessity of relocation is very difficult. Moreover, as at 31 December 2019 there were 3319 (4.52%) prisoners above 60 years of age.⁴ As part of the actions of the Central Board of the Prison Service and the Ministry of Justice,⁵ practically all⁶ the penitentiary facilities have introduced certain restrictions as regards the rights of prisoners in connection with the coronavirus pandemic. There is no doubt that the emergency situation in the country gives grounds for the implementation of temporary changes to the individual rights and freedoms of the general public, including persons deprived of their liberty. It is worth remembering, however, that even in conditions of penitentiary isolation, the restrictions imposed must meet the proportionality test and be respectful of human dignity.

In this context mention needs to be made about the guidelines recently issued by the WHO⁷ and the CPT⁸ regarding persons deprived of their liberty. It is stressed in the recommendations of international organisations that: “Any restrictive measure taken vis-à-vis persons

1 Communiqué of the Prison Service of 19 March 2020, <https://www.sw.gov.pl/aktualnosc/centralny-zarzad-slugby-wieziennej-ograniczenie-odwiedzin-we-wszystkich-zakladach-karnych> (access: 2 April 2020).

2 Pursuant to the Information provided on the official website of the Prison Service, <https://sw.gov.pl/sitemap>, (access: 3 April 2020).

3 Central Board of the Prison Service, Information on the population in penitentiary facilities on 27 March 2020.

4 Ministry of Justice, Central Board of the Prison Service, Annual Statistical Information for 2019, Warsaw 2020.

5 See Communiqués of the Prison Service: <https://sw.gov.pl/aktualnosc/Kominikat%2018.03.2020>, <https://sw.gov.pl/aktualnosc/centralny-zarzad-slugby-wieziennej-komunikat%2017.03.20>, <https://sw.gov.pl/aktualnosc/centralny-zarzad-slugby-wieziennej-kom-16-03> (access: 2 April 2020).

6 Except for the External Ward in Bydgoszcz.

7 Temporary guidelines concerning preparedness, prevention and control of COVID-19 in prisons and other places of detention, http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1 (access: 3 April 2020).

8 Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, <https://rm.coe.int/16809cfa4b>, (access: 3 April 2020).

deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures.”⁹ It should also be remembered that protecting the detained persons’ health also contributes to ensuring the safety of the employees and officers of the Prison Service and persons with whom prisoners could get in contact with once they are released from detention.

SPECIFIC RESTRICTIONS

Among the rights and freedoms of persons deprived of their liberty the following should be indicated:

- # the right to the protection of private life;
- # freedom of religion;
- # the right to a trial;
- # the right of defence.

These changes took on the form of the restriction or suspension of:

Restriction	Percent of facilities
the granting of visitations to prisoners;	100
the employment of prisoners outside the penitentiary facility;	94.15
the holding of masses and provision of religious services;	80.70
the conducting of activities of a mass nature;	16.37
contacts between prisoners, the closing of residential cells and suspension of walks in penitentiary facilities of a semi-open or open character;	2.33
the granting of passes;	2.33
the entry to the facility of persons providing services to prisoners, who are not employed in the facility – other than procedural matters;	1.75
the possibility to receive parcels;	1.75

⁹ Translation into Polish: http://www.hfhr.pl/wp-content/uploads/2020/03/CoE-Statement_PL.pdf, (access: 3 April 2020).

Restriction	Percent of facilities
the implementation of penitentiary interactions conducted or co-conducted by persons from the outside; the implementation of penitentiary interactions conducted outside the facility;	1.16
the accepting of payments intended for prisoners only in non-cash form;	1.16
the performance of procedural activities in the premises of the correctional facility; including visits by defence counsel, attorneys-in-fact, notaries, court curators, attorneys-in-fact before the ECHR.	1.16

WHAT IN RETURN?

In order to compensate for the introduced restrictions 124 facilities (72% of the total) declared the taking of actions such as expanding the possibility of maintaining contact with families via telephone or internet communication. In some prisons and pre-trial detention facilities specific solutions have been indicated – additional conversations via Skype, additional telephone conversations or the extension of their duration. Due to the lack of the possibility to participate in religious services in several facilities masses are broadcast through the PA system. In one prison an additional bath time has been introduced for prisoners, in two of them the time when hot water will be available has been extended. Another facility reduced the limitations of the possibility to watch television programmes during the pandemic. It is also worth mentioning that those incarcerated in 15 penitentiary facilities have been invited to participate in the sewing of safety face masks (8.72%).

DURATION

Pursuant to the regulations contained in the Executive Penal Code (hereinafter: EPC), the director of a penitentiary facility has the right to introduce restrictions for a period of up to 7 days. This period may be extended only with the consent of a penitentiary judge. The duration of the restrictions related to the pandemic differs between the facilities. Most frequently the restrictions have been introduced for a period of 14 days, subject to the reservation that they may be extended based on Art. 247 § 2 EPC – restrictions have been introduced or extended to such a period of time in 70 facilities. In more than 50% of the prisons and pre-trial detention facilities the orders introducing restrictions will cease to apply before the end of the second week of April. At the same time, the fact that in eleven facilities the restrictions will continue to apply until they are revoked, and that in twelve the duration of the applicability of the restrictions has not been provided, may give rise to concerns.

LEGAL GROUNDS

The above-mentioned restrictions are being implemented on an ongoing basis by way of orders issued by directors of penitentiary facilities. The legal grounds applied by the authorities for the said restrictions are the provisions of Art. 13 sec. 1, sec. 2 point 2 and sec. 3 of the Prison Service Act in conjunction with Art. 247 § 1 and 2 of the Executive Penal Code in conjunction with § 1 of the Ordinance of the Minister of Health on the announcement of the state of epidemic in the territory of Poland. Suspensions and restrictions of the rights of imprisoned persons are approved by penitentiary judges of district courts. The Prison Service has also informed that potential extensions of the periods for which the restrictions will apply will be introduced pursuant to Art. 247 § 2 of the Executive Penal Code. The orders highlight that the directors of penitentiary facilities are guided by the instructions of the State Sanitary Inspector “in consideration of the announcement of the state of epidemic in the territory of Poland and due to the necessity of taking precautionary actions to neutralise the sources of infection and to stop the spread of the contagious disease caused by the COVID-19 virus and the occurrence of confirmed COVID-19 (SARS-CoV-2) cases in cities”. 77 out of 172 penitentiary facilities have failed to provide the legal grounds for the introduced restrictions regarding the rights of imprisoned persons.



This study was prepared following the analysis of communiqués published by the Prison Service on the official websites of specific penitentiary facilities. Detailed information from all 172 prisons, pre-trial detention facilities and external wards are presented in Table 1. The Helsinki Foundation for Human Rights will analyse and monitor the situation of persons deprived of their liberty on an ongoing basis.

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