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Dealing with "dangerous" life-sentence inmates around the world and in Poland: Theoretical and practical problems

Postępowanie z więźniami „niebezpiecznymi" odbywającymi karę dożywotniego pozbawienia wolności na świecie i w Polsce. Problemy teoretyczne i praktyczne

Abstract: Perpetrators of murder sentenced to life imprisonment are usually considered dangerous because of the crime they committed. The prison administration classifies many of them as "dangerous" prisoners and places them under higher security, in line with "supermax prisons". This is an interesting research topic since supermax conditions raise legitimate controversies, not only among researchers. The article presents an analysis of previous research on prisoners placed in supermaxes, the practice of dealing with dangerous prisoners in Poland and the results of research conducted on a group of 98 life-sentence prisoners classified as dangerous between 1995 and 2014.

Keywords: perpetrators of murder, life-sentenced, dangerous, supermax, criteria for decision

Abstrakt: Sprawcy zabójstw skazani na karę dożywotniego pozbawienia wolności są zazwyczaj uznawani za niebezpiecznych ze względu na popełnioną zbrodnię. Administracja więzienna klasyfikuje wielu z nich jako więźniów „niebezpiecznych" i umieszcza ich w warunkach podwyższonego bezpieczeństwa, typu „supermax prison". Jest to interesujący temat badawczy, a warunki supermax budzą uzasadnione kontrowersje nie tylko wśród badaczy.
W artykule przedstawiam wyniki analizy dotychczasowych badań dotyczących więźniów umieszczanych w zakładach typu supermax, praktykę postępowania z więźniami „niebezpiecznymi" w Polsce oraz wyniki badań przeprowadzonych na grupie 98 więźniów skazanych na karę dożywotniego pozbawienia wolności zakwalifikowanych do kategorii niebezpiecznych w latach 1995–2014.

Słowa kluczowe: sprawcy zabójstw, skazani na dożywocie, niebezpieczni, supermax, kryteria decyzji

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Introduction

Murderers sentenced to life imprisonment are considered dangerous because of the crime they committed and the length of their sentence. The prison administration in Poland classifies many of them as "dangerous" ("D") prisoners and places them under higher security and control, similar to that of supermax prisons, understood as a prison with the levels of highest security and solitary confinement.

There is no single term to describe the conditions of a supermax prison, and some words can be misleading. This diverse terminology is due to different cultural or national conditions, and the terms can be treated as synonyms – in fact, they describe the same phenomenon. It pertains to a special regime of solitary confinement (isolation from the prison community) to ensure maximum security; these are special security units for prisoners classified as dangerous. It is not about the regime of high-security prisons, i.e. the harshest type of prison in the prison system or a stage of serving a sentence for convicts staying in such conditions.

In Poland and elsewhere it is sometimes assumed that because they have committed aggravated murder, convicts have nothing to lose whilst serving their life sentence (Porporino 1990: 35; Cunningham, Sorensen 2006: 686; Liebling 2014: 263; Niełaczna 2014a: 31, 135; Sorensen, Reidy 2019: 56). Life imprisonment is an indefinite sentence, and the current practice of carrying it out in Poland shows that no matter how a convict acts in isolation, they will not earn parole or clemency.

The results of previous studies discussed herein, as well as those I have conducted, contradict this stereotypical statement. Life inmates do not pose a proportionately greater threat to prison staff than other inmates serving designated long-term sentences, and many years into their sentences they cease to threaten public safety, as they stabilise their relationships with the community (Mauer, King, Young 2004; Cunningham, Sorensen 2006: 701; Sorensen, Reidy 2019).

There is also no single satisfactory definition of "dangerous offender" or "dangerous prisoner". "Danger" is a complex concept, and people can pose a threat to order or security in many ways. There is no direct causal relationship between lifers[1] and the danger or threat from them. On the contrary, most of them adapt to the prison routine satisfactorily over time (Maghan 1996: 2, 9), which helps them maintain or regain their self-esteem (Richards 2015: 178; Styles 2019: 27). They usually come to terms with the need to live in prison, and they find constructive ways to cope with time and isolation through self-improvement, personal development, religious practice and stronger contact with family members or the outside world (Schinkel 2014: 578; Kazemian, Travis 2015: 368; Crewe, Hulley, Wright 2019).

In Poland, it has long been observed that "D" prisoners make up a negligible percentage of the prison population. According to the December 2021 monthly statistics (BIS.0332.16.2021.MM), they accounted for less than 0.02% of the total prison population, whilst the average number of "D" prisoners in Polish prisons remains at 150 inmates per year (compared to an average of 70,000 incarcerated persons).

[1] The term is found in professional literature (Liem, Richardson 2014; Warr 2020).

In the case of lifers, the serious nature of the crimes they have committed and the indefiniteness of the end of their sentence makes their behaviour difficult to predict, both for the prison service and the general public (Drake 2011: 380). Therefore, some of them are placed in a supermax unit, often for a long period.

In this article, part 1 presents a literature review of previous research on the topic, part 2 discusses the origins and practice of dealing with "D" prisoners in Poland and part 3 is about life-sentenced prisoners who have been classified as dangerous. I present the results of my own file research of 290 lifers in Poland, one in three of whom were qualified as "D" between 1995 and 2014. Thus, the detailed analysis concerns a group of 98 subjects. The main research questions were as follows:

1) What do the statistics show about the phenomenon? What proportion of the 290 life inmates were classified as "D"?
2) What were the grounds for qualification during pretrial detention versus during life imprisonment?
3) How have this qualification (its verification) and the resulting trends in the reaction of the prison service and the behavioural tendencies of life prisoners changed over time? Do they give less reason for qualification?
4) How much time was spent in the supermax unit?

To answer these questions, I conducted a quantitative analysis of the prison files of 290 life prisoners. Then, through a qualitative analysis of the 98 of them classified as "D", I tried to respond the following research questions:

1) How "dangerous" were some of the prisoners (the severity of their offences and the conflictual nature of their relationships with prison staff or other inmates)?
2) Was there (non)uniformity of the criteria for qualifying for "D", and how did it look?
3) Was there (non)convergence of the criteria for verifying the "D" status of those staying in the supermax unit the longest?

The main thesis is that not all life-sentenced prisoners are dangerous or that their "dangerousness" may lessen over time, although this is not taken into consideration in decisions about their classification. In other words, "dangerous" prisoners (also those sentenced to the most severe punishment) are more of a bureaucratic phenomenon than a reality.

1. "D" prisoners in light of research findings

An analysis of previous research indicates that researchers have focussed on eight areas: the definition and purpose of the supermax prison, the community of "D" prisoners, the nature of segregation, the criteria and conditions of isolation, the

rules for managing "D" prisoners, the negative effects of solitary confinement and law-and-order concerns. The following is a synthesis of the analysis.

1.1. One definition, different goals and profiles of prisoners

The analysis of the literature shows that the supermax units in different countries have similar origins. Most prison administrations experienced an increase in the prison population due to a rise in violent crime, inmate violence and prison escapes (Ross 2013: 178–180). New categories of serious criminals, especially from organised crime groups and perpetrators of violent acts, have appeared in prisons.

In addition, these units have been uniformly defined as free-standing facilities or segregated units within a prison that, through a far-reaching restriction and security system, provide for the safe management (including control) of inmates who are found to be violent or seriously disorderly whilst in prison (Riveland 1999a: 191; 1999b: 6; Kurki, Morris 2001: 388; Pizarro, Stenius, Pratt 2006: 249). Therefore, the supermaxes use the latest architectural and technological advances in security to monitor their behaviour (Pizarro, Narag 2008: 24). This includes separating them from the general population housed in regular security units.

At the same time, the researchers found that the purpose of supermaxes and their community are not universal (Riveland 1999: 4). As originally conceived, the purpose of the units was to ensure security and order in prisons (Kurki, Morris 2001: 391). However, the diverse community of detainees in supermaxes gave rise to other goals, which increased over time and depended on local practices. As further goals of supermaxes, researchers have identified holding the "worst of the worst" inmates, incapacitating the most "incorrigible", reducing institutional violence, deterring those inmates who contemplate acts of violence or disorder whilst in prison and "storing" difficult-to-manage though not necessarily dangerous inmates (Toch 2001: 386; Briggs, Sundt, Castellano 2003: 1345; Mears 2006: 5; Pizarro, Narag 2008: 24; Haney 2018: 366). In other words, the idea was to incapacitate certain categories of criminals or prisoners in order to minimise the risk of error by the prison service in dealing with them in the regular units.

1.2. Diversity of "D" prisoners

Studies on supermax units show that the inmates placed in them, compared to the general prison population, are younger, serve longer sentences, are more likely to be convicted of violent crimes and are more likely to commit serious offences whilst incarcerated (Lovell et al. 2000: 34; Rhodes 2004: 59; Ross 2007: 63; Pizarro, Narag 2008: 27). At the same time, the research shows that not only dangerous and violent prisoners, who pose a real and immediate threat to order and prison security, are placed in supermaxes, but so are other types of convicts:

- those who are troublesome to manage, fractious, prone to insubordination and rioting or antagonistic to the prison service – in other words, "trou-

blemakers" (King, McDermott 1990: 458; O'Keefe 2008: 124; O'Donnell 2015: 107)
- those who are very difficult to detain under regular unit conditions and, for various reasons, cause chronic problems in terms of order and security (Pizarro Stenius, Pratt 2006: 249; Scharff Smith 2009: 5)
- those who participate in prison or gang subculture (Kurki, Morris 2001: 389; Haney 2003: 150; Browne, Cambier 2011: 46; O'Donnell 2015: 107)
- those who have been placed under protective supervision and have difficulty coping with prison life (Riveland 1999b: 1; Lovell et al. 2000: 34; Mears, Reisig 2006: 36)
- those suffering from mental illness who are placed in supermax units due to a lack of other suitable placements (Riveland 1999b: 6; Briggs, Sundt, Castellano 2003: 1343; Kupers 2008: 1010; O'Keefe 2008: 125).

Thus, a triad of properties appears in the diverse characteristics of "D" prisoners: difficult, dangerous and disruptive. The heterogeneous profile of this category indicates that not everyone presents the same management problem (Lovell et al. 2000: 37).

1.3. Administrative segregation

The analysis of the literature indicates that the qualification for category "D" is administrative segregation (Pizarro, Stenius, Pratt 2006: 251; O'Donnell 2015: 105), meaning that the decision-making process is discretionary (prison authorities have a wide margin of discretion) and relating to the due process standard (Maghan 1996: 8; O'Keefe 2008: 125), as opposed to criminal and disciplinary segregation (Scharff Smith 2009: 5; Steiner, Cain 2016: 170). In some countries, prisoners are not informed of the reason for their "D" classification, and there are limited opportunities for reassessment or transfer back into the general prison community (Browne, Cambier 2011: 47). In addition, administrative segregation is usually indefinite and can be prolonged in the case of prisoners deemed a security risk (Arrigo, Bullock 2008: 627; Browne, Cambier 2011: 47; King 2011).

1.4. Unclear eligibility and verification criteria for "D"

Studies have shown that no criteria for the qualification and verification of "D" prisoners are specified (Pizarro, Stenius, Pratt 2006: 253; O'Keefe 2008: 125; Pizarro, Narag 2008: 26) or that the reasons for declaring prisoners dangerous "are so vague and ephemeral that they cannot be articulated" (O'Donnell 2015: 108). There is also a lack of clarity on what is required for convicts to be transferred from a supermax unit to a regular unit. Qualifying for category "D" is thus a "state of endless duration: it is a lock without a key" (Korn 1988: 13).

Researchers also found that a prisoner's risk assessment tended to depend on the length of their sentence, any changes in their behaviour, changes in their physical and mental state and their willingness to relinquish their gang affiliation

(Kurki, Morris 2001: 388). Thus, the criteria do not fit into the scientific model of risk assessment, as most of them are static and some are based on the convict's declaration or communicated stance.

1.5. Management principles

The research revealed two models for managing "D" prisoners: dispersion and concentration. Supermax units implement the latter model (DiIulio 1990; Riveland 1999b: 1; Briggs, Sundt, Castellano 2003: 1342). Studies have shown that it is more costly, but not necessarily effective when it comes to reducing violence among the prison population (Mears 2006: 49; Mears, Reisig 2006: 45). There are alternative ways to ensure order and security in a prison, such as dispersing "troublesome" prisoners throughout the prison system, which allows the workload to be evenly distributed among all staff (the first model) (Mears, Reisig 2006: 48; Pizarro, Stenius, Pratt 2006: 250; O'Keefe 2008: 124); increasing and specialising staff training (Mears, Castro 2006: 421); or providing "D" inmates with a clear prospect of transfer to a regular unit, which motivates them to behave well and abandon antagonistic strategies (Coyle 2019: 274).

It is noted that the concentration model is a manifestation of the new penology, which is not concerned with responsibility, culpability, moral sensitivity or individual diagnosis or intervention, but with techniques for identifying, classifying and managing groups of offenders sorted by the level of perceived threat (Feeley, Simon 1992: 466; Pizarro, Narag 2008: 25). In the new penology, as in other areas of crime control, the language and technology of risk management strive to make prisons safe (Zedner 2007: 265; Drake 2011: 375). However, they do not necessarily work well in practice when dealing with an individual case.

1.6. Living conditions – isolation equals seclusion

The results of the study confirm that supermax incarceration is characterised by being in solitary confinement for 22.5 to 24 hours a day in a sterile environment, which means radically limited sensory stimuli and mobility and being under constant high-tech supervision. In addition, direct contact with staff or outsiders is severely limited, and most verbal communication is done through intercom systems. A stay in a supermax also means a lack of access to correctional, educational and religious programmes (Riveland 1999b; Kurki, Morris 2001: 388–390; Pizarro, Stenius, Pratt 2006: 249; Lovell, Johnson, Cain 2007: 633; Scharff Smith 2009: 5; UNODC 2016: 14). This is a typical regime of lockdown and seclusion, and the living conditions include 24-hour lighting, no windows, no opportunities for physical exercise and especially outdoor recreation, limited interpersonal contact, no reading materials or other relevant activities and limited corrective/

therapeutic interactions (Rhodes 2004: 23; O'Keefe 2008: 125; Browne, Cambier 2011: 46; Haney 2018: 366).

Such conditions reinforce the psychological burden and stigma. According to the researchers, they cause effects similar to victimisation. Ian O'Donnell recalls Roy D. King and Kathleen McDermott's concept described in *The State of Our Prisons*, who applied the term "depth" for "the degree to which an inmate is embedded in the security and control systems of the prison", whilst "weight" refers to "the degree to which relationships, rights and privileges, standards and conditions affect him" (O'Donnell 2015: 114).

1.7. Negative effects of isolation

Most studies provide unequivocal evidence of the negative impact of supermax conditions and defend the thesis that they inflict varying degrees of psychological pain and emotional trauma on the prisoners housed there (Haney 2003: 149). Findings on the psychological effects of being in isolation have been consistent. They show a wide range of common negative psychological reactions from inmates: depression, despair, anxiety, rage, claustrophobia, hallucinations, impulse control problems, impaired thinking, concentration and memory and PTSD-like symptoms (Scott, Gendreau 1969: 337; Suedfeld et al. 1982: 336; Grassian 1983: 1451; Grassian, Friedman 1986: 63; Korn 1988: 14; Kamel, Kerness 2003: 3; Haney 2018: 365; 2020: 252). Empirical studies also indicate that supermax prisons cause or exacerbate existing mental illness in prisoners (Pizarro, Stenius 2004: 255–257; Kupers 2006; Mears, Reisig 2006: 36). Few researchers have found that the solitary confinement regime has little effect on the psychological functioning of "D" prisoners (Chadick et al. 2018: 110; Labrecque, Smith 2019: 1452; Labrecque et al. 2021: 2).

1.8. Controversy over human rights

Most researchers have found that placement in supermaxes raises serious ethical and legal concerns, primarily because it limits opportunities for prisoners to participate in corrective interactions (education, vocational training and therapy) that can help improve behaviour (Toch 2001: 385; Pfeiffer 2004; Vasiliades 2005: 98; Mears, Castro 2006: 399; Richards 2015: 15; Reiter Sexton, Sumner 2018: 108; Labrecque, Smith 2019: 1453).

The qualitative research based on the ethnographic method and interviews is convincing. Firsthand accounts reveal that "D" prisoners are arbitrarily placed in maximum security prisons with few procedural safeguards, and the conditions they face may encourage further acts of violence or exacerbate their mental disorders or illnesses (Mears et al. 2013: 591).

2. "D" prisoners in Poland

2.1. Genesis

The distinction of categories of prisoners first referred to as "dangerous" and then as "posing a serious social threat or a serious threat to the security of the prison" (Journal of Laws of 2003 No. 142, item 1380) has a long history and stems more from the needs of practice than from political trends (Machel 2009). The distinction of this category proved necessary for practical reasons (to ensure safety in prisons) and due to significant restrictions on prisoners' rights and freedoms (their treatment had to be regulated in separate legal provisions).

As early as 1931, a decree of the Minister of Justice on prison regulations introduced classification criteria that excluded certain categories of convicts from the progressive system, which consisted of dividing the time of imprisonment into several stages, whilst easing the conditions of imprisonment as the convict shows improvement (Journal of Laws of 1931 No. 71, item 577). The exclusion was based on the recognition that certain categories of criminals are unreformable, and consequently it is necessary to apply elimination-deterrence safeguards (Ziembiński 1973: 148). Institutions of the strictest rigour were intended for this category of inmates – isolation prisons – to which were sent: 1) professional criminals, 2) criminals with addictions, 3) repeat offenders and 4) disciplined inmates, for whom the developmental and correctional rules of regular prisons were unsuccessful and whose impact on the other inmates was harmful.

Subsequently, the local practices of individual prisons, in accordance with code principles of individualisation and security, divided the diverse prison population into different categories of offenders. This generic identification and segregation allowed better management of the prisoner community. Long before the introduction of the first Executive Penal Code in 1969, the prison system had dealt with detainees or convicts who posed a threat to order or the safety of others, and for whom the educational and correctional principles of regular prisons were ineffective.

The Rules and Regulations for the Execution of Imprisonment (Journal of Laws of the Minister of Justice of 1966 No. 2, item 12), in effect since 1966, introduced three stages of rigour of punishment, that is, ways of carrying out punishment under certain conditions of isolation, which limited the rights and freedoms of prisoners to varying degrees (Merz 1968: 32–33). The rigours (essential, restricted and mitigated) differed in their severity and the extent of the rights, freedom of movement around the prison and communication with the outside world they granted to prisoners. Prisoners who were classified as "D" by the penitentiary commission – although not in the current sense of that status – were placed in strict rigour, i.e. under conditions of increased supervision and security.

The first Polish Executive Penal Code of 1969 did not contain any provisions for "D" prisoners. However, in the 1970s, the prison system began to develop an

internal practice for dealing with "D" prisoners (e.g. it mandated that lists of prisoners administratively classified in this category be maintained and that individual plans for "de-escalation" of these prisoners be developed) (Misztal 2000: 41). An unpublished 1974 Order of the Minister of Justice on the Protection and Defence of Prisons and Remand Prisons regulated the technical safeguards that a prison for "D" inmates should meet, and directed that officers take special precautions when dealing with this category of inmates (Order of the Minister of Justice 1974).

Procedures and criteria for qualifying and dealing with "D" prisoners were standardised in 1978 in *Guidelines for the Treatment of Prisoners and Temporary Detainees Dangerous to Order and Security*[2] (Information Bulletin 1978; Brożyna-Kowal 2012: 5). The category "D" included those prisoners who, due to pronounced antisocial attitudes or particularly aggressive behaviour, posed a significant threat to order and security in the prison. Specifically, these included convicts who committed or were suspected of committing a serious crime, attempted or carried out a prison escape or had such an intention, disrupted order in the prison, displayed an aggressive attitude towards officers or other inmates, activated or reinforced negative manifestations of prison subculture among inmates or committed a serious crime during their current or a previous stay in confinement.

Their living conditions and handling were subject to security and strict isolation. According to the *Guidelines*, qualification for category "D" was not to last longer than was justified by the particular threat to order and security the prisoner may have presented. Thus, it was a transitional status, albeit indefinite, not least because "D" prisoners had to be subjected to appropriate developmental efforts aimed at removing the causes that put them in this category.

As a result of the Ombudsman's intervention, in late 1988 the prison authorities amended the *Guidelines* and made the prerequisites for category "D" eligibility more specific. The amendment to the Executive Penal Code dated 12 July 1995 required that specific categories of convicts be placed in a closed-type penitentiary, under special conditions that ensure the protection of society and the security of the facility (Godyla, Bogunia 2013). This concerned convicts who showed a significant degree of depravity or danger to society, or who were convicted of a crime committed in an organised criminal group.

However, it was not until the 1997 Executive Penal Code, which was the first universally binding law to regulate the treatment of this category of inmates, that special supermax units were established in Polish prisons. The main reason for their creation was a new group of prisoners that emerged during the Polish transition from a totalitarian to a democratic system: members of organised crime groups (Knap 2007; Machel 2008).

At the beginning of the 21st century, the prison service created these units and developed rules for dealing with "D" prisoners through its own efforts, without

[2] This was a secret document issued by the Central Board of Prisons and sent to all penitentiary units, with instructions to carry out the tasks specified therein.

more specific guidelines. It was not until 10 years later, in 2010, that the Central Board of the Prison Service (CZSW) issued instructions on the principles of organising and conditions for conducting penitentiary interventions with this special category of prisoners (Instruction 2010). However, this document was not preceded by consultation between the central authorities and the experienced officers working in prisons with an exchange of experiences and comments. Even after it was issued, the CZSW did not offer support or clarification of the wording contained therein, nor training to prepare for service in a supermax unit. Line officers and prison governors had to develop a standard for dealing with lifers with "D" status, including risk assessment criteria, which were also eligibility and vetting criteria. The prison system took a shortcut: dealing with "D" prisoners turned out to be a systemic error and a violation of human rights.

2.2. Dealing with "D" prisoners – a systemic error in the Polish prison system

After Poland lost the Piechowicz (Submission No. 20071/07) and Horych (Submission No. 13621/08) cases before the European Court of Human Rights (ECtHR) in 2012, the central authorities again contacted the governors of prisons, sending them Instruction No. 15/10, the cover letter of which stated that they should familiarise themselves with the ECtHR judgments, that the commissions deciding on "D" status should particularly carefully analyse and justify their decisions to maintain it and that they should abandon the schematic duplication of justifications.

The order included wording that was relevant but enigmatic, limiting the adoption of uniform, evidence-based criteria for estimating the risk for each "D" qualifier, which is, after all, a key element in justifying the qualification decision. The prison service was left to its own devices. The CZSW – equipped with a staff of experienced professionals, a pool of knowledge and a mission towards "its people" and society – has not equipped prison officers with either specific guidelines or tools for assessing a prisoner's "dangerousness".

This is the main reason that for 26 years, since the first visit of the Committee for the Prevention of Torture in Poland in 1996, despite the good work observed at the supermax units, Poland has failed to meet international standards. Following the pilot cases of Piechowicz and Horych it lost more cases filed by "D" prisoners, and in several others it reached settlements, admitting human rights violations (ECHR 1608/08 2013; ECHR 13421/03 2013; ECHR 8384/08 2015; ECHR 54511/112016). Life prisoners also won their cases.

Criticism from both review bodies, which decided that the handling of "D" classification was a systemic problem, concerned the automatic extension of status not being based on a fair assessment of the prisoner's individual circumstances and behaviour, but instead amounting to the routine repetition of the same facts and arguments in the prison administrators' decisions, whilst in fact the justification

should have become increasingly more detailed over time. Each time and in each decision to maintain the status, it should have been possible to determine whether the authorities had made another assessment that considered any changes in the circumstances, the prisoner's situation or their behaviour (Horych v. Poland §84 and §92–93). Indeed, there had to be a real, direct link between the granting of "D" status and the prisoner's actual behaviour. Otherwise, the procedure for verifying "D" status was a mere formality (Glowacki v. Poland §96). A qualitative analysis of the files of the 98 lifers classified as "D" during pretrial detention confirms this arbitrary practice.

2.3. The "D" prisoner according to the law

Category "D" is a special status defined in the current 1997 Executive Penal Code (Articles 88a and 212a §1) that relates to the specific behaviour of a convict prior to their imprisonment (committing a serious crime) or presented during it, or during a previous stay in prison if the convict is a repeat offender. The behaviour is supposed to be characterised by a high degree of social harm and threat to the safety of others. The eligibility criteria indicate the type and manner in which the prisoner committed the crime or offence as well as their personal characteristics and conditions. Separation from the general population is justified by two considerations – penitentiary and protective – emphasised in modern penitentiary systems (Postulski 2014: Art. 88 thesis 20). The penitentiary aspect requires that the corrective influence be adjusted to the personality of the "D" prisoner, taking into account the restrictive conditions in which they are held, whilst the protective aspect requires that this convict be handled in a way that maintains the necessary order and guarantees safety.

There must be a balance between these aspects (Machel 2003: 220), which is very difficult in practice (Kalisz 2017; Szczygieł 2002: 117). Describing her research on the treatment of category "D" qualifiers in Poland, Maria Niełaczna used the metaphor of a "man in an aquarium" (Niełaczna 2014a: 454 et seq.; 2014b). The analogy of the aquarium allows us to understand and almost experience what the change from a natural environment to an unnatural environment for humans is all about. Restricting with transparent walls, the aquarium limits one's space and subjects one to easy control; the aquatic environment slows down impulsive or unpredictable movement and neutralises, or at least weakens, potential outbursts of a "dangerous" person. At the same time, this artificial, hermetic environment leads to harmful and hard-to-measure effects. Without oxygen, the brain dies. Aspects of our functioning die along with it. In the case of "D" prisoners, the oxygen is the minimal amount of autonomy (which alleviates feelings of powerlessness), a real impact on status verification and, above all, contact with others. In other words, the oxygen is the space in which a person can meet their basic needs. Meanwhile, placement in a supermax unit implies a heightened degree of restraint and control

and almost complete social isolation, referred to in the literature as "high-security" (Mears 2006; Ross 2013; Richards 2015: 16; Coyle 2019), "solitary confinement" (Suedfeld et al. 1982; Grassian, Friedman 1986; Pizarro, Stenius, Pratt 2006; Arrigo, Bullock 2008; O'Keefe 2008; Scharff Smith 2009; Haney 2018) or "the hole" (Barak-Glantz 1983; Kurki, Morris 2001: 397; Toch 2001: 385; Ross 2007).

Despite the good living conditions provided in these units, despite the efforts of prison staff working on the front lines with this difficult category of prisoners and despite innovative interaction programmes aimed at controlling aggression, there is no model to achieve the main goals behind applying extraordinary status: to reduce the "serious threat" to a level that is manageable under the conditions of a regular unit and to reduce the risk that a prisoner will repeat the security-threatening behaviour in prison.

3. "D" prisoners in my own research

3.1. Research sample

The research sample was selected in a purposive manner (Babbie 2013: 212; Prior 2009: 154; Vito, Kunselman, Tewksbury 2014: 123): it included all those ultimately sentenced to life imprisonment, from its institution in 1995 after the political transformation in Poland to the end of 2011. These were the first 15 years when the justice system, including the prison system, was learning how and for whom to justify the ruling and continuation of indefinite isolation, as well as how to deal with this special category of convicts. The research sample included a total of 290 life inmates held in Polish prisons until the end of 2014. All of them had committed at least one murder, and a significant number of them did so as part of an organised group or with firearms.

The empirical material I analysed regarding each of the subjects included justifications for the court sentences, psychological and psychiatric opinions of court experts and prison records documenting the subjects' long-term functioning in isolation. The group of subjects I further analysed, including qualitatively, consisted of 98 lifers classified as "D" prisoners.

3.2. Research methods and tools

The research was both quantitative and qualitative. I used methodological triangulation, which increases the objectivity of the research and allows for a more holistic view of the phenomena under study (Jupp 2006: 179; Silverman 2013: 142; Adams, Khan, Raeside 2014: 100). The main method was content analysis of prison documents (Walliman 2006: 139; Prior 2015; Rennison, Hart 2019: 359).

Documents are the official source of facts and information about processes, which makes it possible to judge their reliability (Salminen, Kauppinen, Lehtovaara 1997: 644; Łobocki 2011: 216–223; Finch, Fafinski 2016: 37, 58). At the same time, they present them unilaterally: they are a subjective image of the reality that is recorded (Given 2008: 839; Prior 2009: 104; Guthrie 2012: 157).

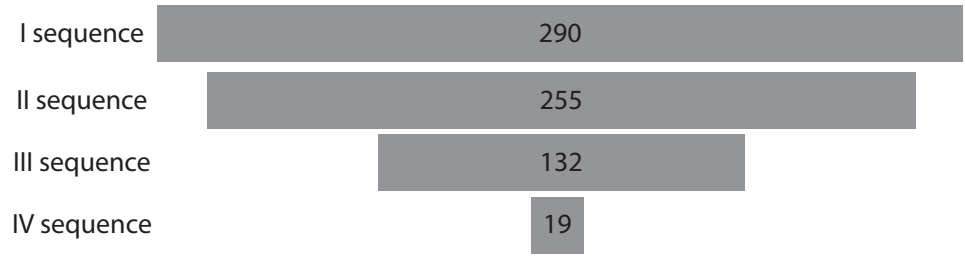
These documents made it possible to collect demographic, criminal and performance data on the subjects in isolation. I used a structured questionnaire to collect them. For coding purposes, I used the software programme SPSS (Jupp 2006: 287; Walliman 2006: 112; Adams, Khan, Raeside 2014: 99, 152; Rennison, Hart 2019: 693). In addition to closed-ended questions, the questionnaire included open-ended questions requiring qualitative data to be extracted from prison records. After identifying the group of 98 "D" classified subjects, I subjected their files to qualitative analysis.

In order to capture the dynamics of the subjects' qualification for category "D" and the trend of how it changed over time, I studied it in five-year periods counting from the date of the final sentence of life imprisonment and separately for the pretrial detention period:

- Pretrial detention period
- Period I: the first 5 years
- Period II: years 5–10
- Period III: years 10–15
- Period IV: beyond 15 years.

The periods specified two issues: firstly, each respondent was at one of these four stages, with the majority having 10 years of their sentence behind them; secondly, some of the questions on the questionnaire required the respondent to mark an answer for each of the periods they went through. I used two types of questions. The first concerned questions about which period something happened in (e.g. qualification for category "D"). The response made it possible to conclude that the fact in question existed or did not exist. The second type of question used the periods to capture a given fact over time. So, in order to determine the dynamics of the "dangerousness" of life prisoners and the system's response, I asked whether a given event occurred in every possible period. As a result, I obtained answers that indicated whether and how the trend of the phenomenon under study had changed over time. For these questions, the answer for the first period always concerned all 290 subjects, whilst the subsequent periods were correspondingly fewer, as there were 255 subjects in Period II, 132 in Period III and 19 in Period IV (Figure 1).

Figure 1. Number of respondents covered by questions from each period



Source: Elaborated by Joanna Klimczak and Maria Niełaczna.

Due to the sequential division counted from the date of the final judgment, the period of pre-trial detention was naturally distinguished. As evidenced by the research, this period is associated with numerous limitations on the subject's functioning, stress caused by isolation, the criminal process and the uncertainty of one's fate – especially in the case of people who are relatively young, lack self-control and face the prospect of a long-term sentence for a crime, such as the respondents (Harvey, Liebling, Maruna 2005; Toman et al. 2015: 512).

4. Research results

What was the average life prisoner like on the date of their pretrial detention for an aggravated murder case? Most of them were young men (the average age was 28 years), without proper social experiences related to education (half of the respondents had primary or incomplete education), professional work (half had not worked before their incarceration) or stable family ties (at least half came from a single-parent family and were themselves single), with a previous criminal record (three quarters) who abused alcohol or drugs (three quarters). The respondents began serving their sentences with poor personal and social capital. All of them had committed at least one murder, and a significant number of them did so as a member of an organised crime group or with firearms.

On the end date of the analysis of prison records, the vast majority of respondents had, on average, served 9 years and 6 months of their sentences, counting from the date of the final judgment; they were therefore at the post-trial stage and waiting for a sentence, and past the phase of "rebellion" and "adaptation" (Nosek-Komorowska 2001: 218; Machel 2003: 208; Kowalczyk-Jamnicka 2017: 232). Half of them were in prison for the first time, whilst the other half were repeat offenders.

4.1. Period of pretrial detention and qualification for category "D"

During pretrial detention, nearly one in three of the 290 respondents was classified as a "D" prisoner (28%). The main basis for such classification was the nature of the crime for which the suspect was being investigated: murder. This was the case for nearly three quarters of those qualified (73.8%). A rare basis for qualification was escape, committing murder or rape of a fellow inmate or assaulting an officer, although such isolated cases did occur (see case descriptions B128, B240, *Prison Killer*).

Table 1. Basis for qualifying for category "D" during pretrial detention

	N	%
Suspicion of committing a crime with a very high degree of social harm	59	73.8
Escape from the Police convoy	3	3.8
Prison escape	2	2.5
Rape of another prisoner	1	1.3
Murder of another prisoner	2	2.5
Assault on an officer	1	1.3
Other / Multiple of the above	12	15.0
Total	80	100.0

Source: Own elaboration.

In the case of 21 subjects, the "D" status was lifted during pretrial detention. On average, they stayed in a supermax for 919 days (2 years and 6 months). The shortest period was 77 days, whilst the longest was 3,719 days, or 10 years, due to a complicated legal process. In most cases, this status continued throughout the subjects' detention. In the case of 59 of the 80 subjects, the penitentiary commission maintained the "D" status after the final verdict. The average total duration of this status was 6 years. The shortest period was 354 days, and the longest was 15 years and 6 months.

The status given during pretrial detention was most often reaffirmed in Period I of life imprisonment (38 respondents). In Period II, the "D" status was lifted for another 13 subjects. Eight prisoners remained in the supermax unit until the end of the ongoing study.

Two respondents classified as "D" for the murder of a prisoner during pretrial detention committed the crime whilst serving another sentence. Thus, the very basis for their qualification did not arise during a period of detention, but during a prior sentence. Both cases provide unique insights into the genesis of crimes in isolation. We can assume that they would not have occurred if not for conditioning – the pressure of subcultural rules – and the failure of prison staff to recognise the "banal evil" in the form of daily conflicts between and incompatible personalities of fellow inmates.

Case B128, Prison killer

> On the date of the murder, the inmate was 25 years old and was serving a six-year sentence for robbery and battery. At school, he was truant, repeated years, caused educational problems and started smoking, drinking alcohol and taking drugs at an early age. He had been using amphetamines and marijuana for about eight years. He has an abnormal personality conditioned by long-term psychoactive substance use and psychosocial stress. Under the influence of psychoactive substances, he became aggressive and experienced lowered mood states and social anxiety. Prison staff found him to have dissocial and adaptive disorders. In addition, the respondent was bound to the rules of the criminal subculture, from which he deviated, without giving reasons or circumstances. He has been disciplined several times because of his aggressive behaviour. He was also under the care of psychiatrists and taking sedatives. At the end of serving a sentence, he was promoted to a semi-open facility and then demoted due to his deteriorating behaviour. As a result of his dissocial and adaptive disorders, he was placed in a prison hospital setting. A month after his demotion, whilst in a hospital cell, he killed a fellow inmate by smashing his head with a stool. He claimed that he had killed "because of nerves", "because he has evil in him". The subject was classified as "D", and after a two-year trial he was sentenced to life imprisonment.

Case B240, Prison killer

> He was 25 years old at the time of the murder. He had been in conflict with the law since childhood. He committed his first killing at age 13; it was revenge against the perpetrator of his sister's rape and murder. Forensic experts consistently described him as a psychopath. He was serving a sentence in the therapeutic system for murder and robbery. In total, he has spent 12 years in prison. He was highly depraved, with little receptivity to corrective and therapeutic interactions. He disobeyed prison rules, repeatedly harmed himself and caused conflicts with fellow inmates. He belonged to the prison subculture and considered himself a Satanist. At the end of serving a sentence, the respondent jointly smothered a fellow inmate in his cell with a pillow. The motive for the crime was a desire for self-justice: revenge for denunciation and for the victim's religious beliefs. After a year-long trial, he was sentenced to life imprisonment. He was an unpredictable and erratic case. These characteristics appeared in subsequent decisions to extend his qualification as a "D" prisoner.

4.2. Period of life imprisonment and "D" qualification

The pretrial detention data shows that aggravated killers and "future" life prisoners are automatically perceived as a threat to prison security and society. Data from the period of imprisonment shows that the automatic assumption that they are dangerous is inaccurate, although understandable given how the prison system handles "difficult" prisoners with limited conditions and resources.

With the passage of time and adaptation to prison conditions, the subjects stopped committing risky acts – there was a dramatic decrease in the number of

those qualifying for "D" status. Twenty-six prisoners qualified in Period I, seven in Period II and two in Period III. Two subjects were qualified in both Period I and Period II. The declining trend is illustrated in Table 2.

Table 2. Percentages of respondents classified as "D"

	Per cent
Pretrial detention	28
Period I (N = 290)	9
Period II (N = 255)	3
Period III (N = 132)	1.5
Period IV (N = 19)	None
The percentages do not add up to 100 because they refer to the number of subjects in each period.	

Source: Own elaboration.

Regardless of the period, a total of 33 prisoners (11%) out of the 290 subjects presented reasons during their life sentence to be classified as "D". The basis for qualification is not as clear-cut as in the pretrial detention period (Table 3).

Whilst the most common reason was the serious nature of their crime, which allowed officers to qualify a respondent for category "D" even for a lesser threat or simple insubordination – as was the case for 16 prisoners – other fairly common justifications were violence against a fellow inmate or an escape attempt (10 respondents). Three respondents were categorised for collective protest, whilst three others were categorised for assaulting an officer. In addition to the aforementioned two convicts classified as "D" in two different periods, two others were classified twice during a single period. In the case of two of them, the basis for the second qualification to "D" during life imprisonment was an escape attempt. For the others, it was the nature of the crime they committed and assaulting an officer.[3]

Table 3. Basis for categorising respondents as "D" during life imprisonment

	N
Committing a crime with a very high degree of social harm	16
Escape from the convoy	1
Prison escape	4
Violence against another prisoner	5
Collective gathering	3
Assault on an officer	3
Other / Multiple of the above	1
Total	33

Source: Own elaboration.

[3] These assaults did not involve injury to officers; they included attempted beatings and dousing with soup.

The average duration of the "D" status of the study sample during life sentences (excluding the pretrial detention period) was 2 years and 6 months (the shortest 77 days and the longest 12 years).

4.3. Qualitative analysis – verification criteria with "D"

The analysis of the 98 files of "D" prisoners regarding the status verification criteria was inconclusive. The prison service took into account the length of stay in a supermax and the prisoner's declaration that they would act in accordance with the law, in a way that does not pose a threat to the order and security of the prison. The criteria are based more on the intuition and experience of officers than a sound analysis of risk assessment. This is understandable in view of the fact that the verification criteria – unlike the eligibility criteria – are not defined by law and that the prison service does not use any risk assessment tool. Verification appears to be a gentleman's agreement between a prisoner who has suffered living under supermax conditions and those who have the power to continue it.

A detailed qualitative analysis of the files of 39 convicts who had been in a supermax for more than five years (including the period of pretrial detention and life sentences) confirmed the general trend. The verification criteria are

- a significant period spent on the unit
- the convict's declaration of appropriate behaviour
- an observable change in the prisoner's attitude towards staff or improvement in their behaviour within a given period (no disciplinary punishments).

A rare criterion for evaluation was the positive effect of penitentiary interventions, with mostly non-accredited correctional programmes involving convicts' independent work (reading books, modelling, board games, programmes or working with a psychologist) or anti-stress courses (concentration training or breathing exercises).

Meanwhile, the logic of dealing with this category of convicts and the principles governing the execution of sentences dictate that the criteria for verification should be specified, in particular, taking into account the changing circumstances or facts that indicate a likelihood of threatening behaviour on the part of the convict, as well as the circumstances that argue against continued detention in the supermax unit. Verification of "D" status should clearly indicate what steps need to be taken to allow the prisoner in question to leave the supermax; it should to provide clear criteria for evaluating changes. The review of the eligibility decision should be part of a positive process aimed at solving the prisoner's problems and allowing them to (re)integrate with the rest of the prison population.

Conclusions

The results of both previous studies and the current research show that "dangerous" prisoners are more of a bureaucratic phenomenon than a real one. Most of those classified as "D" do not pose a real and immediate threat to human life or the safety of the prison. The number of prisoners qualified and the duration of this status are the result of discretionary decisions taken by the prison administration in the name of prevention – the only valid reason for which is the nature and gravity of the crime (the circumstances of the act or the violent manner of the perpetrator). This reason is static and becomes obsolete with the passage of time and interventions. Despite this, a significant portion of the study group stayed in a supermax for more than five years (39 subjects).

The prison service has not developed a uniform, empirical method for measuring risk, despite Poland's successive losses before the Strasbourg Court in the cases of "D" prisoners. Among the respondents, decisions to qualify, extend or verify status were rarely supported by concrete facts about the convict's behaviour or the effects of interventions. The criteria used by the prison administration rarely referred to the criteria developed in the jurisprudence of international courts or the results of scientific research (risk assessment of criminal behaviour).

The qualification of prisoners for "D" status in Poland has for years concerned a small part of the prison community (0.02%) and of the life prisoners under study (30%), and as a rule concerns the initial period of their isolation, although a significant portion of the study group have been in solitary confinement for longer than five years (40%).

The results show that over time, a significant minority of convicts warrant placement in a supermax unit. The few convicts who try to escape or attack officers are both prisoners with adaptation problems and those with a pro-crime mindset – their world is one of fighting, whether on the street, in pre-imprisonment or in prison. A qualitative analysis of the prisoners' records allows us to conclude that the basis for their qualification as "D" prisoners is their criminal and antisocial past, which has cast a shadow over their entire lives. It raises concerns about the future behaviour of the subjects in isolation, though it should be noted that it is associated with their disturbed personality and unwillingness or inability to change. Therefore, those who are actually a threat are exceptions due to their recalcitrance and hostility, whilst the majority of those analysed have a "difficult character" but do not pose a serious threat to the safety of other people or the prison.

The criteria for verifying "D" status are ambiguous and heterogeneous. It is not uncommon for them to rely on prisoners' declarations that they will do the right thing, and the legitimacy of the decision is hidden behind the scenes in undocumented negotiations between officers and the prisoner. The justifications of the prison service's decisions contain rather vague and brief wording (Kalisz 2017: 183), which was criticised by the ECtHR in the cases of Polish "D" prisoners as a manifestation of arbitrariness.

In conclusion, the supermax units and the separation of the category of "D" prisoners are necessary. It is the way the prison system, which has limited resources, deals with those who deviate "from the norm", whether because of the real threat they pose, because of mental illness or because of their tendency to have trouble with the law.

"D" classification, meaning solitary confinement and extremely restrictive segregation of convicts, has been used in prisons since their inception. Prisoners are placed in more restrictive conditions for a variety of reasons, but in almost all cases the goal is to increase control over them (Arrigo, Bullock 2008: 622). The situation is similar in Poland, where it has not been possible to develop a system designed for lifers that is adapted to their individual situation. Instead, all or many of them are automatically deemed "dangerous" or in need of increased scrutiny. An automatic approach is a mistake, because with the passage of time they will be able to apply for parole, whilst many of them will much earlier adapt to the rules of coexistence in the prison community, develop their personal and social potential and abandon the antagonistic strategy of adapting to prison isolation. The problematic ones are in need of more curative and therapeutic interventions than "D" qualification and administrative segregation.

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