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Theoretical framework for an analysis of the recent criminal law reforms in Poland

Teoretyczne ramy analizy ostatnich reform prawa karnego w Polsce

Abstract: In the article, I analyse certain aspects of recent criminal law reforms in Poland from the perspective of criminal punishment being a complex legal and social institution of a processual nature. It is intended to enable a critical examination of the punitiveness of the penal system, which can hardly be explained by its effectiveness or even by penal populism. In the study I use the following methods: historical legal, comparative legal, formal logical, dialectical, analytical, synthetical and inductive/deductive. The synthesis and triangulation of the methods follow the principles of culturally integrated social and legal studies (Królikowska, Utrat-Milecki 2010b).

Keywords: punishment as a legal and social institution, processual nature of punishment, the potentiality of punishment, enforceability of punishment, full enforceability of punishment, completion of punishment, penal denial

Abstrakt: W artykule analizuję wybrane aspekty ostatnich reform prawa karnego w Polsce z perspektywy kary kryminalnej jako złożonej prawnej i społecznej instytucji o procesualnej naturze. Ma to umożliwić krytyczne badania punitowności systemu karnego, której nie da się wystarczająco wyjaśnić badaniami efektywności czy nawet zjawiskiem tzw. penalnego populizmu. W studium posługuję się następującymi metodami: historyczno-prawną, prawno-porównawczą, logiczno-formalną, dialektyczną oraz analizami i syntezami z wykorzystaniem indukcji i dedukcji. Synteza i triangulacja metod została przeprowadzona według zasad przyjętych dla społecznych i prawnych badań integralnokulturowych (Królikowska, Utrat-Milecki 2010b).

Słowa kluczowe: kara jako prawna i społeczna instytucja, procesualna natura kary, potencjalność kary, aktualizacja kary, pełna aktualizacja kary, zakończenie kary, negacjonizm penalny

Introduction

The Penal Code, the Code of Penal Procedure and the Code of Executive Penal Law of Poland were adopted in 1997 and have already been amended hundreds of times (J.o.L. of 1997 No. 88, item 553; J.o.L. of 1997 No. 89, item 555; J.o.L. of 1997 No. 90, item 557). The most recent criminal code reform of 2022 alone, most of which entered into force on 1 October 2023, amended the criminal code in more than 250 places (J.o.L. of 2022, item 2600). These codes were first introduced in order to implement the new constitutional principle of a democratic state ruled by laws that was adopted in the amendment to the Constitution of December 1989. The systemic changes introduced at that time significantly impacted the development of the protection of the rights of convicted persons (Szymanowski 1996: 20–30).

Earlier, until 1970, a very modern criminal code from 1932 was in force in Poland, containing many innovations from the sociological school of penal law, such as the dominance of individual prevention in punishment and post-penal security measures (deleted after World War II) and a synthetic description of crimes. Until 1970, the Code of Penal Procedure of 1928, whose original provisions were based on German and French tradition, was also in force in Poland (parts of criminal law concerning juveniles were in force until 1983). However, the provisions of executive proceedings were not codified until the adoption of the Executive Penal Code of 1969. Requests for their codification were reported in Poland as early as the 1930s; it was also associated with requests for judicial supervision over the execution of prison sentences, formulated in the doctrine of criminal law much earlier (Śliwowski 1965: 1–108; Kalisz 2010: 65–76). In 1970 the Penal Code of 1969 (substantive criminal law) entered into force in Poland, which limited the links with the sociological school of penal law (a greater role of general prevention and the deletion of standard post-penal measures). It provided special provisions for the protection of the authoritarian system of the communist state, including social property. At the same time, apart from the penalty of imprisonment and the fine, as a separate, independent penalty, the code introduced the penalty of unpaid work in the local community for the benefit of that community. The penalty of a community service order was already part of the Penal Code of 1932 and the Act of 1920, but only as a substitute for a fine, not an independent penalty (Utrat-Milecki 2016: 100–106). In 1970, a new Code of Criminal Procedure entered into force to protect the interests of the authoritarian state. In 1970, for the first time, the Executive Penal Code was instituted, containing the most important statutory provisions for regulating the execution of penalties. This code, following the Romanesque (French and Italian) model, contained the institution of a penitentiary court competent in matters of executing penalties, including parole from prison. Both earlier criminal codes, from 1932 and 1969, were amended much less frequently than the three criminal codes from 1997, which is also important. This fact indicates a major change in the legal culture, now associated with a clear tendency where constant change in criminal legislation is the only constant (Filar

2011). This changeability of the law is nevertheless not a demand of the doctrine; the doctrine had to come to terms with this state of affairs as determined by politics. This problem of rapid changes in substantial, procedural and executive criminal law concerns the legal culture beyond Poland as well and has a significant impact on the criminal policy being pursued (Filar 2014; Rogacka-Rzewnicka 2021: 219–333). A large part of the numerous amendments to the criminal codes of 1997 and other acts containing criminal law provisions in the last 25 years have led to a more punitive criminal system in terms of the scale of criminalisation and the repressive nature of its solutions. This was supposed to translate into efficient administration of justice (Koredczuk 2020). The increase in penalties and rules defining the statutory standards of administration and the execution of penalties particularly involved violent crimes, sexual crimes, economic crimes and traffic crimes (Filar 2009). In addition, as part of strengthening the protective function of criminal law after 2005, post-penal protective measures – previously considered inappropriate for the rule of law – were reintroduced in Poland, in particular against so-called paedophilic criminals. At the beginning of the 21st century, the possibility of settling a case without a trial – based on agreements with the prosecutor or at the request of the accused person at the trial – and the institution of a crown witness were widely introduced into criminal proceedings. In 2003, the Executive Penal Code introduced a category of so-called dangerous prisoners. Since 2007, electronic monitoring has been gradually introduced, in particular stationary monitoring, as a modern form of executing the penalty of imprisonment (Przesławski 2020).

Assumptions of the 2015 managerial reform, in particular with regard to suspended penalties

In 2015, the most comprehensive amendment to the Penal Code (of substantial criminal law) since 1997 was adopted.¹ Its main objective was to limit the discretion of judges in the scope of imposing suspended prison sentences (Zoll 2013; Zawłocki 2016). The imposition of a suspended prison sentence in Poland was not, as a rule, based on a criminological prognosis. The courts often did not treat the suspended sentence as a response to the characteristics of the perpetrator and the criminological prognosis, but rather imposed it as a result of the conviction that imprisonment would be too serious a punishment for the perpetrator of a given crime. Therefore, they applied a specific interpretation of the principles of imposing a penalty, but not an assessment of its legitimacy in terms of the advisability of executing a penalty using this institution for individual and preventive reasons.

¹ The reform was introduced by the Act of 20 February 2015 (J.o.L. of 2015, item 396), in force since 1 July 2015 (hereinafter referred to as the 2015 reform).

This way of treating suspended sentences has been maintained in Poland since at least the introduction of the institution in the Penal Code of 1932 (Melezini 2013: 300–305).

Such treatment of suspended prison sentences has been criticised in criminology for years (Skupiński 2009a; Góralski 2020: 45–47). As it was argued, convicts in many cases – in particular from pathological environments – do not regard suspended sentences as penalties (Radzinowicz 1935: 579; Wróblewski, Świda 1939: 480–483). It was also pointed out that more severe suspended prison sentences were administered than the courts would have imposed if the sentence of imprisonment were to be enforced. This was done to condemn the act and to warn the public, symbolically expressed by the severity of the suspended sentence. Such a practice was supported even in the 21st century in the judicial decisions of the Supreme Court (II AKa 217/00 2001; WA 19/06 2006). The more severe suspended sentence was reinstated in the case of a subsequent conviction, sometimes only a third or additional one. It led to extended prison stays of such persons beyond the considerations of justice or criminological arguments (Zoll 2013: 30).

With the introduction of the 2015 reform, in the amended Article 69 of the Penal Code there remained the possibility of suspending a prison sentence only to a limited extent and only for sentences no longer than one year (previously it was traditionally possible in the case of a prison sentence of up to two years). This amendment also removed entirely from Article 69 of the Penal Code the possibility to impose suspended fines and community service as penalties, despite the fact that prior to the reform the courts used them in only about 1% of all convictions (Skupiński 2009a: 20–21). This in turn means that the suspension of a fine or community service order could be justified as part of the general assumptions of the penal policy, which can be deduced from the Polish Penal Code. It was consistent with the principles of individualising the penalty, the economy of the penalty and introducing alternative forms of responding to crime, including the possibility for the court to withhold punishment in some cases (Ornowska 2014).

In order to reduce the population of prisons, the 2015 amendment introduced mixed penalties (Article 37b of the Penal Code), with the possibility of imposing them even on the perpetrators of crimes punishable by imprisonment from one to ten years. The new mixed penalty consists of execution in the first place of shorter imprisonment of up to three or six months instead of the basic imprisonment provided for the crime. Then, as part of a mixed penalty, the convict performs socially useful work (for up to a maximum of two years). As a rule, in accordance with Article 35 of the Penal Code, this is from 20 to 40 hours a month of unpaid work for the benefit of the local community. This construction of the punishment, which is primarily focussed on retaliation and is supplemented with possible further significance for social rehabilitation, is debatable in regards to its penological consistency (Utrat-Milecki 2022b: 255–257). The initial period of isolation is usually the most difficult time in prison, and the length of stay limits the possibility of positively influencing the prisoner. Only after this very negative experience will

the phase of unpaid work in the community take place, which, assuming that it is well organised, can potentially have a positive psychosocial impact on the convicted person. This construction of a mixed penalty cannot be said to be based on the idea of social rehabilitation or the goal of incapacitation. In fact, before the reform courts were likely to impose a suspended sentence in cases where they would now impose a mixed sentence. Nationwide, mixed sentence convictions in the first years after the reform did not exceed 1.5% of all convictions (Melezini 2019: 128–131; Melezini 2020: 137–138). Similarly, the introduction of the possibility to impose fines or community service as penalties for crimes punishable by six months to eight years (Article 37a of the Penal Code) may concern cases in which the court would have ordered a suspended prison sentence prior to the reform.

As a result of the 2015 reform, there was a significant change in the breakdown of penalties imposed. In the first years after the reform, the number of suspended prison sentences decreased markedly, from about 50% or even 60% of all convictions before the reform to about 20%. On the other hand, the number of fines imposed increased from about 20% to about 35%. The number of community service orders imposed also more than doubled, from about 10% to nearly 30% (Melezini 2020: 137). On the other hand, this reform did not lead to similar changes in the use of absolute deprivation of liberty, for which the opposite phenomenon occurred. Among the penalties imposed, the imposition of absolute imprisonment increased from around 10% before the 2015 reform to nearly 20% afterwards (Melezini 2019: 128; Melezini 2020: 137). This did not lead to an increase in the population in prisons, as at the same time Poland recorded a decrease in most categories of registered crimes and criminal cases dealt with by the courts (Melezini 2019: 126–127). In addition, the reintroduction in 2016 of stationary electronic supervision at the place of residence as a form of executing a sentence of imprisonment had some impact on keeping the number of inmates in Polish prisons under control (it could be applied to sentences of up to one year of imprisonment, and since 2020, those up to 18 months [Article 43la(1) of the Executive Penal Code]).²

Thanks to the restoration in 2016 of house arrest, at the beginning of 2023 over 7,000 people were serving a prison sentence outside of prison, under stationary electronic supervision in their homes. The capacity of the electronic surveillance system was expanded in 2023 from 8,000 to 10,000. It is very important that the court imposes a penalty of imprisonment, and that the possibility of executing it using house arrest under electronic supervision is adjudicated by the penitentiary court at the request of the convict, defence counsel, prison manager, probation officer or public prosecutor (Article 431c of the Executive Penal Code). The decision of the penitentiary court on house arrest should, as a rule, be based on the criteria related to the rules of executing, and not administrating the sentence. In addition, from 1 January 2023, the Executive Penal Code allows this method of executing

² Cf. Article 43c para. 1 of the Executive Penal Code, in the wording established by the Act of 11 March 2016 (J.o.L. of 2016, item 428).

a prison sentence of up to four months to be imposed on the basis of a decision of the penitentiary commission responsible for determining the rules of serving a sentence in a penitentiary institution, without the participation of a penitentiary court if the case is undisputed (J.o.L. of 2022, item 1855: Art. 43 *lla*). The penitentiary court, and in less serious cases the penitentiary commission, should assess, after verifying that house arrest is technically feasible and in accordance with the criteria for serving a sentence of imprisonment, whether or not there are any special characteristics of the perpetrator which would cause house arrest to not meet the purpose of the penalty (Article 43 *la*, section 2 of the Executive Penal Code).

Despite some controversies caused by its detailed regulations, the 2015 reform has made it possible, in the unanimous opinion of the doctrine, to rationalise the penal policy in a certain way. However, the change in penal policy and this rationalisation of it did not take place through liberalising, but through modifying the proportions of sanctions imposed. This led mainly to the intensification of repressions as part of non-custodial sentences, with a simultaneous increase in the percentage of absolute imprisonment sentences, and the maintenance of a relatively high imprisonment rate for Poland (about 190 people per 100,000 inhabitants).³

The 2015 reform also provides for an expanded, comprehensive application of post-penal protective measures against a relatively wide category of perpetrators of violent and sexual crimes (J.o.L. of 2015, item 396: Art. 93a–99; J.o.L. of 2022, item 1086; J.o.L. of 2022, item 2600). This reform, incorporated into the Penal Code, modified rules from the emergency act of 2013 that had been adopted on an *ad hoc* basis (J.o.L. of 2014, item 24; Dawidziuk, Nowakowska 2020).

Comprehensive punitive reforms of 2019 and 2022

In 2019, the Ministry of Justice initiated a criminal law reform, the official goal of which was to strengthen protection against particularly dangerous criminals (Konarska-Wrzosek 2020). Before its publication, the President referred the draft amendment to the Constitutional Court in 2019, which ruled in 2020 that the amendment's procedure grossly violated the standards of the rule of law. Therefore, this amendment did not enter into force. It should be emphasised that the rapid pace of work on the 2019 amendment, carried out in violation of the procedure, was paradoxically justified by the need to quickly protect the public from dangerous crimes, the number of which, according to the statistics at that time, had shown

³ As of 31 December 2014 (the last year before the reform), there were a total of 77,321 people in prisons, including 6,238 remand prisoners, 70,125 convicts and 1,008 people sentenced to imprisonment for up to one month under the Code of Petty Offences (Melezini 2019: 134). As of 26 May 2023, there were a total of 78,035 people in prisons, including 8,468 remand prisoners, 68,709 convicts and 812 people imprisoned for up to one month under the Code of Petty Offences (Cf. www.sw.gov.pl 31.05.2023).

a strongly decreasing trend for years (with the exception of economic crime). For illustration, the police statistics for crimes identified in 2001 and 2021 in ten basic categories are compared in Table 1.

Table 1. Number of selected crimes in 2001 and 2021 according to police statistics (Statystyka n.d.)

Type of crime	Year 2001	Year 2021
Murder	1,325	625
Rape	2,399	1,081
Assault and battery	14,369	2,450
Robbery/theft	49,862	4,089
Burglary/theft	325,696 (1999 – 369,235*)	71,625
Car theft	59,458 (1999 – 71,543*)	8,383
Stealing someone else’s things	314,820	109,768
Damage to health	16,968	8,226
Traffic crimes	138,817	70,727
Economic crimes	103,521	224,775

Source: Own elaboration.

Trends in the number of detected crimes influenced the similar dynamics of convictions in that period (cf. Melezini 2019: 128–131). After this failure, the Ministry of Justice continued working to increase penalties for particularly dangerous crimes. As a result, a broad reform of the system of penalties was adopted in 2022, seriously increasing criminal liability for many crimes, in particular those committed with the use of violence, sexual and economic crimes (bribes) and those against road safety (J.o.L. of 2022, item 2600). Most of the amended provisions of the Penal Code are to enter into force on 1 October 2023.

The 2022 criminal law reform modified the rules of the judicial imposition of penalties and punitive measures (additional penalties) provided for in Article 53 of the Penal Code (Bogacki, Olęzarek 2023). Article 53 § 1 of the Penal Code, which concerns the general conditions for imposing a penalty, in the version before the reform of 2022 provided for the principle of judges’ freedom in imposing penalties within the limits of the statutes. It stipulates that the punishment cannot exceed the degree of guilt. It draws attention to the proportionality of the punishment to the degree of social harm of the act. It obliges the judge to take into account the preventive and educational goals that the punishment is to achieve in relation to the convicted person, as well as the need to develop legal awareness among the population. In the criticism of the principles of judicial imposition of a penalty under Article 53 of the Penal Code, it has been emphasised for many years that the lack of a leading directive may contribute to discrepancies in the court’s con-

sideration of individual criteria for imposing a penalty (Maćior 2005). The 2022 amendment retained the general structure of the basic principles of imposing penalties and penal measures contained in Article 53 of the Penal Code, including a formally significant limitation of the penalty imposed according to the degree of the perpetrator's guilt. However, it has introduced some significant modifications that are worth paying attention to, concerning three issues.

First of all, this provision obliges the court to take into account aggravating and mitigating circumstances indicated by the new Article 53 §§ 2a and 2b of the Penal Code when imposing a penalty. The amendment introduced in Article 53 §§ 2a and 2b of the Penal Code is an open catalogue (using the phrase "in particular") of those circumstances which the court is obliged to consider aggravating and those which it should consider mitigating. Therefore, this should be reflected in writing in the judicial imposition of a penalty. Nevertheless, until now, the recognition of a given circumstance as aggravating or mitigating has been at the judge's discretion and only limited by the statutes. Particularly important from the perspective of criminal policy is the current wording of Article 53 of the Penal Code, that the court should accept *ex officio* a previous criminal record for an intentional or unintentional crime as an aggravating circumstance. Similarly, it should be considered important that the fact of committing a crime under the influence of stimulants must always be an aggravating circumstance if this condition contributed to the commission of the crime or increased its effects. The fact that an attack concerned a particularly vulnerable victim (a disabled person, elderly person or child) or that a crime was associated with particular anguish or was committed with a motivation deserving special condemnation shall always be an aggravating circumstance. On the side of mitigating circumstances, attention is drawn to crimes committed under the influence of anger, fear or agitation justified by the circumstances of the event, crimes committed in response to an emergency or committed with a significant contribution of the aggrieved party. Moreover, Article 53 § 2b of the Penal Code includes reconciling with the aggrieved party, taking action to prevent damage or harm resulting from the crime and repairing or compensating for the damage as mitigating circumstances, which all were previously part of the Code as significant factors in the imposition of a penalty. The circumstances indicated in the amended Article 53 of the Penal Code as aggravating or mitigating circumstances are, in principle, not aggravating or mitigating circumstances if they fall within the characteristics of a given type of crime, unless they are particularly intense (Article 53 § 2c of the Penal Code). This is an important reservation provided for in the amended Article 53 of the Penal Code because the Penal Code is gradually becoming more and more casuistic and many circumstances of a crime are already bases for distinguishing qualified or privileged types of crime. In particular, many qualified types of crimes were introduced to the code, including as part of the last reform of 2022, in order to significantly increase criminal liability even at the statute level, thus limiting the discretion of judges in terms of imposing penalties for a given subtype of crime (Bogacki, Olęzarek 2023).

As a rule, also in practice, most if not all of the mitigating and aggravating circumstances indicated in the amendment could be (and were in practice) previously treated by courts as significant aggravating or mitigating circumstances. With the amendments, however, it is a statutory obligation of the court to take them into account, as defined by law. This precludes omitting them from the reasons for the penalty or, for example, assigning a given circumstance a different nature from that provided for in the Act, owing to the specifics of the case. For example, it is currently formally disallowed to assume that if someone has previously had a conflict with criminal law, owing to the specific circumstances of the case, this will not affect the imposition of a penalty as an aggravating circumstance. In this respect, the statutory principle of individualising punishment has been limited, which may lead to accurate decisions in typical cases, but is unnecessary in others. By distinguishing aggravating and mitigating circumstances, the legislature wanted to indicate those aspects of punishment in which the degree of condemnation of the perpetrator should be taken into account. Thus, in the entirety of the editorial and content-based changes of Article 53 of the Penal Code, a strengthening of the imperative (retributive) thinking about punishment can be seen. Generally, criminological considerations regarding the impact of punishment on crime prevention are not at the forefront of this reform.

The nature of these amendments to Article 53 of the Penal Code, which strengthens the imperative (retributive) rationalisation of the judicial imposition of a penalty, is also linked in the amended Article 53 of the Penal Code with the second fundamental amendment. It is an indication of the general prevention defined as the social impact of punishment being a priority of criminal policy. This expression refers to the tradition of the Penal Code of 1969 and to the classic idea of deterrence. The justifications for the amendments claimed that the previous approach to general prevention as positive prevention (raising the legal awareness of society) was unrealistic and did not take into account the real functions of criminal punishment in terms of deterring potential perpetrators. The problem is that for many reasons indicated in criminological studies, the nature of many acts and the characteristics of their perpetrators mean that the deterrent effect from increasing the punishment for committing such acts is relatively small, if any. On the other hand, the very threat of punishment and its being determined by the seriousness of the violation may in fact affect the general public, particularly if its recipients are properly socialised. The threat of a penalty proportional to a specific crime ratio has an informative function and warns citizens against committing a crime, which means that it undoubtedly has a preventive function as part of general prevention. However, in most cases, the mere increase of penalties for certain types of crimes, in particular against life and health or sexual freedom, does not have a major impact on potential perpetrators. Committing this kind of crime is not subject to the calculation assumed by the legislature when radically increasing the penalties. On the other hand, in the case of other crimes, particularly traffic crimes or those committed for profit, it may be particularly important to create a justified belief among the population

that they are likely to be caught and punished, and not to make penalties more severe (Christie 1991: 35–38; Kleck, Sever 2018: 316–318, 324 ff). It is noted in the literature that “[d]evising sensible deterrence-based crime policies also requires much better knowledge of the determinants of sanction risk perception” (Appeal, Nagin 2011: 430). The return to the deterrent function of punishment as one of the main reasons for imposing punishment, in connection with a clear emphasis on the retributive function of punishment – demonstrated by the catalogue of mitigating and aggravating circumstances – indicates the repressive direction of changes in criminal policy. The code scale of the measure of the proportionality of criminal liability has been gradually more strictly defined over the years, and it was comprehensively regulated by the reform of 2022 in the amended Article 53 of the Penal Code and Article 37 of the Penal Code, providing for a more severe scale of imprisonment from 1 month to 30 years instead of 1 month to 15 years.

The third important amendment to Article 53 of the Penal Code introduced by the reform of 2022 concerns removing the educational purpose of the penalty’s impact on the perpetrator from the principles of sentencing. The justification of this amendment indicated that prevention can also be achieved through education, and so exposing the educational impact on the perpetrator in Article 53 of the Penal Code as the purpose of the punishment, apart from prevention, is not justified. However, there is no doubt that the wording of this provision indicates the priority of neutralising the perpetrator through intimidation or physical incapacitation in the case of imprisonment, as propounded by some researchers, thereby limiting the role of education as a premise for imposing punishment and treating social rehabilitation as generally less important in crime prevention (Kaczor 2007). It should be mentioned that the reform of 2022 did not change the provision of Article 54 § 1 of the Penal Code, according to which, when imposing a penalty on a juvenile or a young offender (a person up to 21 years of age at the time of committing the act), the court is primarily guided by the need to educate the perpetrator. At the same time, in the case of the most serious crimes of murder, Article 10 § 2a of the Penal Code (added by the 2022 reform) enables the court to impose a penalty of imprisonment of up to 20 years on a juvenile over 14 years of age (amended Article 10 § 3 of the Penal Code). Before the 2022 reform of the penal code, a juvenile aged 14 could, in such a case, be placed in a closed correctional facility for no more than seven years in a procedure before a family and guardianship court, as they would always have to be released unconditionally from the correctional institution when they reach 21 years of age.

In Poland, there is no problem of murders committed by 14-year-old perpetrators. Thus, the amendment to Article 10 § 2a of the Penal Code, and similarly the amendment to Article 53 of the Penal Code, are not justified by penal policy understood as crime prevention. As a side note, it should be added that education/resocialisation are still important goals for the execution of a community service order (Article 53 of the Executive Penal Code) or deprivation of liberty (imprisonment) (Article 67 of the Executive Penal Code). In addition to the awareness among

prison service and probation officers of the importance of this educational impact of punishment on convicted persons, we probably owe this to international and European legal recommendations on prison and probation, whilst the analogical international standards do not have a similar impact on sentencing.

Gradation of the most severe penalties in the Penal Code of 1997

In the general part of the Penal Code of 1997 (Article 32 of the Penal Code), there were three separate sentences of imprisonment: a standard sentence from 1 month to 15 years of imprisonment, an independent sentence of 25 years of imprisonment and life imprisonment – in practice imposed in the case of especially heinous murders. The penalty of 25 years of imprisonment was introduced into the Penal Code of 1969, following criticism of the life sentence provided for in the Penal Code of 1932. It was supposed to be the maximum criminal punishment apart from life imprisonment (Wilk 2010: 138–151). Ultimately, however, although the life sentence was abolished in that code, the death penalty was formally retained as an extraordinary penalty. After the moratorium on the death penalty in 1988, the maximum penalty in Poland for several years was 25 years of imprisonment. This state of affairs was criticised, and the life sentence was therefore reinstated by the 1995 amendment to the Penal Code; the new Penal Code of 1997 recognised it as the maximum penalty without indicating in the regulations that it was formally extraordinary. In the first years, the courts only occasionally imposed life imprisonment, treating it as extraordinary, but gradually they got used to it and began to use it much more often (Wilk 2010: 135).

The Penal Code of 1997 retained the independent penalty of 25 years of imprisonment (as a rule, the courts could not impose a penalty between 15 and 25 years of imprisonment). The current 2022 reform of the penal code abolished the penalty of 25 years of imprisonment. As part of this reform, the standard custodial sentence set out generally in Article 32 of the Penal Code has been doubled, now ranging from 1 month to 30 years. This may lead to a different calculation of the relative proportionality between the severity of punishment and the offence compared to the previous scale for the sentence of deprivation of liberty from 1 month to 15 years, and to an overall increase in the severity of penalties imposed by the courts. Earlier, the gradual ease of imposing a life sentence also resulted in the more frequent imposition of sentences of 25 years of imprisonment (Wilk 2019: 135–136).

In the Polish Penal Code, individual crimes are subject to flexibly defined criminal sanctions within the range indicated in the special part (Konarska-Wrzošek 2002: 39–45 ff). For example, for ordinary murder (Article 148 § 1 of the Penal Code after the 2022 reform), the penalty is from 10 to 30 years or life imprisonment (before the reform it was from 8 to 15 years, 25 years or life imprisonment). In addition, the reform of 2022 introduced the possibility of imposing a life sentence in special cases

without the right to apply for parole (Article 77 § 3 and § 4 of the Penal Code). This solution does not exclude the possibility of the President pardoning the perpetrator (Articles 560–568 of the Code of Penal Procedure). However, in the light of the principles and restrained practice of pardons in Poland, it seems controversial from the perspective of European standards, which provide hope for every perpetrator.

As a result of the 2022 reform, the threats of punishment for dozens of other crimes have been increased accordingly. From the point of view of criminal policy, it should be noted, as indicated above, that the vast majority of penalties were increased for those categories of crimes that showed a clear downward trend. Therefore, it cannot be said that the increased penalties resulted from the well-known phenomenon of a legislature's response to a wave of crime of a given type or general social disorder, which, for example, can be the result of a war or a serious social or economic crisis (Królikowska 2009).

The crimes for which more severe criminal liability is provided include, in particular, crimes against sexual freedom (Articles 197–203 of the Penal Code), bribes (Article 229–230a of the Penal Code) and robbery (Article 280 of the Penal Code). A register of paedophiles and rapists had already been introduced by the Act of 2016, and in some cases the register is open (Kwieciński 2017: 383–394 ff; J.o.L. of 2022, item 152). Anyone in the world can view the photos and learn the basic data of those convicted in Poland for certain sex crimes on the website of the Ministry of Justice.

The lifetime driving ban has been extended to include those who consumed alcohol or drugs after causing an accident and before being tested for alcohol or drugs – unless there is an exceptional case justified by special circumstances. The amendment, despite criticism, stipulates that if a person driving a car has no less than 1.5 per mille blood alcohol content or 0.75 mg/dm³ in their exhaled breath, such person will lose their vehicle, regardless of whether they have caused a road accident (Articles 178–178a of the Penal Code). It should be noted that in Poland, compared to other European countries, there are relatively many fatal accidents on the roads, and that, as I indicated above, the number of road accidents, including fatal accidents, in the last 20 years has fallen by half. Therefore, in this case as well, it is difficult to talk about a crime wave which could be the basis for far-reaching punitive changes.

Extended criminalisation of the criminal foreground was introduced, particularly the acceptance of a murder order and general preparations for murder (Article 148a of the Penal Code). It should be pointed out that Poland has fewer homicides per capita than most Western European countries, and as indicated above, fewer than half as many homicides per year as 20 years ago, when there were feuds between rival gangs.

It seems impossible that the general reason for the vast majority of the increased statutory penalties for numerous crimes introduced by the reform of 2022 can be related to changes in the structure and dynamics of crime, or to new and previously unknown research on their effectiveness. The changes introduced by the 2022 reform cannot be convincingly explained as a manifestation of classically understood penal populism (Pratt 2007). Unlike at the beginning of the 21st century, crime of the type covered by the 2022 reform is not currently the main topic of election cam-

paigns in Poland. Polish society now clearly feels more secure (Ostaszewski 2014; Szczygieł 2019: 121). Therefore, it is particularly reasonable to attempt to interpret the criminal law reform of 2022 as the expression of a change in the “philosophy of punishment”. This assumes that these changes are motivated by considerations which remain outside the classical current of criminological reflection, but also cannot be reduced to the instrumentalisation of law as in ordinary penal populism (Kojder 2011). This in turn means that theoretical penological analysis may prove more important for the research into them than classic criminological arguments regarding the effectiveness of specific measures of criminal law response, as measured by the impact of repression on the level of future crime or mechanisms of penal populism (Lappi-Seppälä 2012; Snacken, Dumortier 2012).

Penological criticism of the 2022 reform

In my proposed new classification of the theory and criticism of punishment, I distinguished the category of populist punitiveness as grounds for justifying a policy that increases the punitiveness of the penalty system and penal policy (Utrat-Milecki 2010: 33–124). Penal populism is commonly distinguished in the literature, understood as the repressive instrumentalisation of criminal law in the service of politics or in response to certain states of societal awareness (Czapska, Szafrńska, Wójcik 2016). However, in the concept of populist punitiveness, I also distinguish manifestations of it in which the change in penal policy is justified by scientific concepts and even research. There remains a problem that such trends in criminal policy lead to changes in the understanding of the rights of an individual in relation to a social group, and thus affect the understanding of the basic principles of the rule of law. Therefore, it is important to analyse them from the perspective of the “philosophy of punishment” rather than strictly criminological justifications of their effectiveness as a means of preventing future crime (Lernell 1977: 25; Utrat-Milecki 2008). They primarily concern changes in the system of control of the entire society and the rights of all individuals, and not only the issue of combating specific forms of crime (Garland 2002; Melossi 2008).

Structure of criminal punishment and its processual nature

From the perspective of penology, criminal punishment is a general category of a legal and social institution of a processual nature, meaning a series of undertaken operations (Utrat-Milecki 2022a). Punishment as the subject of research is therefore a model of action inscribed in law and official documents, and above all, real human action taken on the basis of the law and professional pragmatics

in response to a crime, as long as the patterns of action which provide for it by law meet the criteria of the general category of criminal punishment. In the penal code and executive criminal law, various organisational forms of punishment can be distinguished. However, not every response to a crime under criminal law is clearly a criminal punishment. From the penological perspective, it is important whether the actual actions taken in response to the crime can be described as punishment or as other reactions of a purely protective, curative, therapeutic or compensatory nature and purpose. This is important because, depending on the nature of a given sanction, its rationalisation and systemic legitimation should differ. Justifications and rationalisations of punishment make sense as long as they refer to an organisational form of action that can be rationally described as punishment. Otherwise, those reactions to crime would require a separate justification appropriate to their nature. This remark applies as much to punishment under consequentialism/utilitarianism as it does to retributive punishment. Unfortunately, these issues are often insufficiently taken into account, even in very serious criminological literature (Hudson 2003: 17–37 ff).

As to the analysis of criminal punishment as a general legal and social institution, I refer to the concept of the structure of criminal punishment. As Leszek Lernell writes:

In science, structure is understood as a system of diverse and interconnected elements of a given phenomenon (a section of social reality) and their mutual connection with the whole system. Creating the structure of a phenomenon is a thought process, a method for a deeper examination of reality, a separate area of it. The structure and the empirical reality do not coincide. We create it mentally in the image and likeness of reality. This reality, or rather a fragment of it, is decomposed into elements in thought, then reassembled in order to better grasp the meaning of the examined fragment of reality, to understand it better and deeper. The structure is then a mental reconstruction that reconstructs from the elements given to us from observation, in experience, a logical arrangement relating each of these elements to the whole, thanks to which both the whole and its elements become more meaningful to us, and acquire meaning. (Lernell 1977: 28)

The Polish Penal Code does not contain a definition of criminal punishment (nor a definition of guilt). Based on the analysis of the literature from the penological perspective, it can be concluded that criminal punishment, i.e. a punishment for an offence, is an intentional condemnation pronounced by the court on behalf of the political authority, expressed by a legally defined unpleasantness of the perpetrator of a crime. Therefore, apart from the classic elements indicated in the definition by Anthony Flew (1972), it also contains an indication of the element of condemnation, which is important for the administration of criminal justice, as its expressive function, related to morality based on the catalogue of human rights. This aspect of criminal punishment was more widely presented in the Anglo-Saxon literature by Noel Feinberg (1984–1985; 2006).

In his considerations on the structure of criminal punishment, Leszek Lernell distinguishes the internal structure of punishment, by which he understands “the arrangement of its diverse and at the same time interconnected elements (or their sets)” (Lernell 1977: 29). By the external elements of the structure of criminal punishment, Lernell means “linking this system of elements with another whole, which is a crime, together with its elements. Criminal punishment means punishment for a crime” (Lernell 1977: 29).

As can be seen, Leszek Lernell’s distinction between the elements of criminal punishment and its internal and external structure aptly highlights the fundamental and constitutive relationship between criminal punishment and crime (Flew 1972). Anthony Flew rightly pointed out that punishment is a concept found in culture and not created for the needs of criminal law, which is especially important when punishment is considered in the context of legitimising the sociopolitical order.

Leszek Lernell’s theoretical approach makes it possible to more clearly capture the categorial separation of the internal elements of criminal punishment, which is essential for the process of executing punishment, especially in penitentiaries. It enables penology to refer to the processual aspect of punishment itself, analysed as an internally coherent system of orders, prohibitions and influences on the person being punished, regardless of its causally necessary connection with a separate external structure, i.e. a crime. The approach to this issue introduced by Leszek Lernell in his exposition on penology makes it possible to clearly outline the difference between punishment in the course of its administration and a penalty in the course of its execution. Therefore, it constitutes a good theoretical framework for the processual analysis of the phenomenon and institution of criminal punishment (Utrat-Milecki 2018).

At the stage of administering a punishment, it is particularly important to compare the findings regarding the internal structure of the penalty with its external structure, which, apart from the criminological aspect, is also related to the legitimacy of power and social order (Henham 2012). The rightness of a given penalty will be co-determined by its cohesion and adequacy, not only in relation to the elements of the internal structure of the penalty, which are considered from the criminological perspective to be important for the prevention of future crimes. First of all, its relationship to the external structure, i.e. to the crime, will be important both *in abstracto* and *in concreto*. A reference to the external structure of punishment constitutes an element of rationalisation of its ruling as to the extent and, to some degree, the choice of its organisational form.

At the stage of executing a penalty, the elements related to the external structure of punishment become a completely independent and static variable (they are not subject to any modifications, as they are determined by the court in a final judgment). Both the subjective and objective circumstances of the crime are in the past. Therefore, the rationalisation of the execution of the penalty should shift to an analysis of the internal structure of the execution of the previously imposed penalty. The announcement of the penalty takes into account the external structure, whilst

the execution serves not only to make more credible the sentence's declaration of condemnation to the society, but also to implement the individual and preventive function of punishment for the future.

It should be noted with regard to the execution of a penalty that if a court imposes imprisonment, then in principle only this deprivation of freedom of movement should be the penalty. Any aggravation of the conditions of serving a sentence for reasons other than the safety and proper functioning of the prison, and thus particularly aggravation in order to increase the severity of the punishment, is a violation of the relevant standards of international law. In the case of Poland, it would be a direct violation of European prison rules⁴ (Machel 2003: 273–275). In this context, doubts may be raised, for example, by the excessive formal requirements provided for in Article 89 § 2 of the Executive Penal Code for the transfer of life prisoners from a closed facility to a semi-open facility (15 years) or an open facility (20 years). There may be situations where a stay in a closed prison, particularly because of the need to protect the public, may be justified for even much longer. However, the assessment of this issue is related only to the internal structure of the penalty. Therefore, the decision should be made by the penitentiary court, and not by the legislature or the trial criminal court. Similar doubts in the Polish penal system are raised by including among the substantive conditions for conditional release specified in Article 77 of the Penal Code static elements related to the circumstances of the crime (Utrat-Milecki 2022a: 195–204). Meanwhile, both from the theoretical perspective and the relevant European recommendations, these should be primarily dynamic, individualised preventive considerations (protection of society and social rehabilitation), i.e. those that may be subject to change in the course of the execution of the penalty. The *ratio legis* for conditional release is not only humanitarianism, but above all increasing the effectiveness of punishment. According to the principle formulated by Jeremy Bentham, it is more important for the prevention of crime to present to the public a penalty that shows the court's attitude to the crime (sentence) rather than a penalty that is fully carried out, as its execution is necessary only to some extent in order to authenticate the condemnation contained in the sentence. According to Jeremy Bentham's utilitarian principle of frugality, the punishment in execution can be appropriately modified to reduce the overall costs of the penal system whilst achieving the same or even better effects in terms of crime prevention in future (Utrat-Milecki 2006: 167–204). Jeremy Bentham himself did not want conditional release because he was afraid of manipulation by convicts pretending to improve, but today it should be prevented by a proper personal identification diagnosis possible in a prison. This is important, particularly because modern conditional release, well organised thanks to the supervision of a probation officer, may increase the chances of socially reintegrating the convict. Similar arguments derived from the principle of the economy of punishment may also justify replacing punishment

⁴ Cf. Rule 102.2 of the European Prison Rules (Rec 2006)2-rev: "Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment".

with compensation, as well as various forms of restorative justice, such as in cases of relatively less serious crimes. Meanwhile, changes in the penal policy in Poland, basically throughout the entire period that the 1997 codes were valid, led to a reduction in the number of conditional releases. This led to the conclusion that the legislature was trying to limit sentencing to imprisonment as much as possible, but once someone goes to prison, it becomes increasingly difficult for them to get out of prison early (Skupiński 2009: 31b: 2–313).

The concept and structure of criminal punishment and its organisational forms

In penology, it is emphasised that the institution of criminal punishment may manifest itself in various organisational forms (Utrat-Milecki 2022a: 222–227). There are penalties that consist of constraints of liberty and a special type of which are the so-called detention penalties, involving deprivation of free movement. These restrictions are accompanied by a number of positive obligations related to the need to comply with the regulations of a closed unit, the conditions of conduct specified by the court when restricting freedom and the need to undertake certain activities or abandon certain other activities. Other forms of punishment relate to the issue of property – in this respect, the most important is the fine. It is surprising that now, as a result of the 2022 reform, there is a return to an institution that is not inherently a criminal penalty institution: repressive confiscation, specifically the confiscation of a vehicle in the event of a serious traffic accident. The 1997 Penal Code originally only recognised the confiscation of the instruments and the fruits of a crime because after 1989, extended, purely repressive confiscation was considered incompatible with the rule of law. In 20th-century Poland, the confiscation of a car in connection with a misdemeanour was practiced in the 1980s during martial law. At that time, a car was subject to forfeiture as a tool of a misdemeanour if it was found to have been used to transport, for example, magazines or leaflets promoting freedom and democracy.

Positive and negative elements and active and passive aspects of criminal punishment

Leszek Lernell further distinguishes positive and negative elements in his analysis of punishment. The positive element of punishment is the extraordinary coercion (violence) used by the prevailing social forces (the people representing these forces) in relation to an individual being punished – the ontological aspect of punishment.

This coercion consists in imposing on them the obligation to behave in a certain way (Lernell 1977: 29; Utrat-Milecki: 2014). Measures of direct coercion may also be used to implement the positive element of punishment, especially against prisoners.

The negative elements of punishment, as Leszek Lernell points out, are the various types of deprivation that have been well described in the literature in the field of penitentiary and prison sociology (Matthews 2009). Deprivation is the taking away of certain goods or property, of freedom of movement or of the agency to take certain actions or choose one's place of residence. Therefore, it is a feature not only of imprisonment, but also of other organisational forms of criminal punishment. It describes the deprivation of certain socially important goods. Also, the negative elements of punishment are the ontic aspect of punishment, so they refer to the description of criminal punishment and not to its rationalisation (Lernell 1977: 29).

In many instances, the negative and positive elements of criminal punishment are related to each other like the obverse and reverse sides of a coin: they are two sides of the same phenomenon and of the social institution of criminal punishment.

In the course of study, the active and passive aspects of criminal punishment have also been clearly distinguished (Lernell 1977: 21; Walker 1991: 3; Hudson 2003: 2). The deprivations experienced in the course of applying criminal punishment can be analysed from the perspective of a system which, under certain rules, forcibly deprives a person subjected to the punishment of something – the active aspect of punishment. It is also important, and sometimes more important, to study punishment from the passive aspect of these deprivations being experienced by the convicted person. In this research, there is also room for the use of psychological and pedagogical methods. Similarly, from the active and passive side, one can analyse the positive aspects of punishment, i.e. the obligations imposed on the convict (Ross, Richards 2003; Utrat-Milecki 2022a: 171–173).

According to Leszek Lernell, the active and passive aspects of criminal punishment make it possible to scientifically analyse it; one might add, free from direct ethical evaluation. The examination may concern the formal aspects of punishment. It may also cover the actions of entities involved in the punishment process. It can examine the perception of the punishment process at each stage by the person subjected to the punishment. This means that aspects of criminal punishment understood in this way may be subject to scientific analysis from the perspective of legal, sociological, psychosocial, psychological, criminological and pedagogical knowledge. According to Leszek Lernell, the integral link between the internal structure of a punishment and its external structure, i.e. the crime, makes it impossible to disregard in sentencing the evaluation of harms and wrongs of the offence, and thus moral issues in the course of analysing just punishment. A particularly negative assessment of the classified behaviour, to which the punishment responds by expressing condemnation, is the essence of recognising an act as a crime. Thus, the statement in the doctrine of criminal law that it speaks “with a distinctively moral voice” is not found in other branches of law (von Hirsch, Simester 2011: 4).

This state of affairs – linking the punishment with the moral condemnation of the crime – means that the analysis of criminal punishment, regardless of being based in the above-mentioned sciences, begins from a philosophical and ethical standpoint (Lernell 1977: 25). The dominance of such a moralising, philosophical approach to criminal law and criminal policy may pose problems. This may lead to subordinating not only the imposition of the penalty, but also the course of the execution of a criminal penalty to criteria based to a large extent on the external structure of the penalty. In such a case, when designing the execution of a criminal penalty, the issues of its processuality, extension in time and division into specific interdependents – yet still categorially separate stages – are not duly taken into account. In this way, the impact of the scientific analysis of criminal punishment on determining an effective way to execute it is significantly reduced. It seems that in particular the last reform of criminal law in Poland in 2022 is based on the idea of linking criminal punishment, primarily unilaterally, mainly with the external structure of punishment, i.e. crime. Such thinking sets back the development of criminal law, limiting the influence of the social sciences, including criminology, on criminal policy.

Positive general prevention versus deterrence and the concept of penal denial

Condemnation as a constitutive element of the concept of criminal punishment is associated with the expressive function of punishment (Feinberg 1984–1985; 2006). From this perspective, the task (function) of punishment is to adequately communicate to citizens what values are important in society, which legitimises the legal and social system and prevents crime to some degree. Criminal punishment does this through a criminal trial, a kind of ritual condemnation of acts detrimental to the rights and goods protected by law. This condemnation is made credible to the general public (general prevention) by afflicting the punishment on the perpetrator. Earlier, this aspect of criminal punishment was pointed out by Anselm Feuerbach whilst referring to Kant's theory and Jeremy Bentham's utilitarian theory of punishment in the early 19th century (Lernell 1977: 112–118; Utrat-Milecki 2016; 2022a: 189–191). Criminal punishment is intended to prevent anomie whilst creating the foundations of a liberal democratic social community. Today, the social and communicative significance of criminal punishment, in relation to the dialogue between society and the perpetrator, is highlighted in the Anglo-Saxon legal literature by Anthony Duff, for example (Duff 2001). The general preventive function of punishment derives from emphasising the importance of condemnation in punishment perhaps even more than the possible moral message to the offender. First of all, it concerns the prevention of anomie, i.e. integrating prevention (*Integrative Prävention*). It is also referred to as general positive prevention.

Possible deterrence from committing crimes is the desired effect of the function (purpose) of criminal punishment, which is to develop a legal awareness among the population, and not a direct constitutive element of it. This is important because positive general prevention naturally relates to the seriousness of the crime, to the “moral” overtones of the crime, guilt and damage. Positive general prevention assumes that social awareness is developed through the process of punishment (application of criminal punishment) in a manner that is desirable from the perspective of principles decoded from constitutional standards and human rights. Only from this perspective can the preventive impact of criminal punishment on members of society be considered. Penalties are a deterrent, but the measurement of the deterrent effect that justifies increasing penalties is difficult to measure, even if it often justifies punitive policy (Apel, Nagin 2011; Kleck, Sever 2018). This is why positive prevention as a function of punishment, related to its constitutive features, should not be confused with the idea of general negative prevention, i.e. the function of deterring the general public from crime through especially harsh punishment.

A separate issue is a situation when the legislature sees the need to protect against perpetrators and this need cannot be met by means of a criminal penalty, understood as presented above. Repressive measures that do not meet the scientific criteria for the description of a criminal punishment may then be used in response to the crime. The departure from the model of criminal punishment allows for a more effective response to a crime and more adequate protection of society against the perpetrator in the future (Ramsay 2011). I place penological trends that justify such repressive actions in the category of penal denial (Utrat-Milecki 2022b: 286–378). In similar situations, the legislature is tempted to break the integral bond that must exist between the internal and external structures of criminal punishment. Such responses require a different justification to those provided to rationalise criminal punishment, regardless of whether we seek a more utilitarian or retributive justification for punishment. Therefore, it is important to treat these measures of criminal law reaction separately from the general category of the legal and social institution of punishment and to study their theoretical justification separately. This separate theoretical justification is especially necessary to justify the isolation of perpetrators (deprivation of liberty), which can no longer be rationalised by reference to the classical understanding of criminal punishment. It can take place through the use of criminal law institutions consciously defined as means other than punishment (in particular, therapeutic and protective post-penal measures). A person treated with these kinds of measures is no longer officially being punished. They are not being sentenced to these measures for the crime, but rather to protect society from serious risks posed by a given person. The use of these measures is not directly associated with condemnation of the past criminal behaviour of the person who is deprived of liberty. A post-penal sanction is applied based on a specific assessment of the threat that the perpetrator may pose to society owing to their characteristics. In a slightly different way, the link between the response to a crime and the crime itself (its negative assessment)

may be broken, even if the letter of the law still defines the means of criminal law reaction as punishment. This may be the case with long-term confinement for repeat offenders, e.g. in the USA under “three strikes” laws. This is a means of “cleaning” society of people who are considered undesirable (recidivists), rather than a punishment for the crimes they have committed. In the case of multi-recidivists, Paul Robinson believes that one cannot appeal to the rationalisation of punishment when applying the rule of “three strikes and you’re out” because it is, according to Robinson, simply “preventive detention” and the evaluation of the risk that justifies it should be *de lege desiderata* decided by civil courts – as is the case when placing in closed psychiatric institutions people who are dangerous due to mental illness (Robinson 2010: 129). The literature’s omission of the fact that rationalisations of punishment have value so long as they refer to the institution of criminal punishment with specific characteristics leads to many misunderstandings (Matravers 2011; Utrat-Milecki 2022a: 60–227).

Punishment as a kind of human action in time and place

In the case of the punishment process, such behaviour as announcing a sentence or taking actions strictly defined by law to execute a punishment are conventional legal actions. They are elements of the entire punishment process, i.e. criminal punishment in its processual sense. Operational activities are factual activities that are not conventionally defined in the regulations so as to associate them with a penalty. However, performing them in a specific context (e.g. serving a prison sentence) makes them an element of the entire punishment process. In the case of criminal punishment, we are talking about conventional legal actions and the operational actions related to them, which together form the punishment. Jointly, we can define both of these types of activities as carriers of the punishment process. This is the active side of punishment. The study of the impact of these activities determining the existence of punishment on the punished person is already the study of the passive side of punishment. The passive side of punishment is generally a reflection of the punishment in the consciousness of the punished person, and indirectly also includes the study of the endogenous effects of the punishment on the future behaviour of the individual being punished. It affects their capacity for social reintegration, for example, and primarily their ability to refrain from recidivism. Mutual relations between the active and passive sides of punishment are subject to examination. To a large extent, they concern the degree to which and under which conditions a given organisational form of punishment can be effective as a method of crime prevention in relation to specific convicts. Whether the given conventional and factual actions are part of the punishment process is determined by their semantic relationship, including the formal and legal relationship, and the cause-and-effect relationship with the process of punishing the

perpetrator. Criminal punishment understood as a set of conventional human activities and related operational activities taking place on the basis of the law and within its limits should be perceived as a dynamic, processual phenomenon. Accordingly, just as we talk about the stadial forms of crime (punishable preparation, attempt and execution), so in penology we can talk about the stadial forms of criminal punishment. In the case of criminal punishment, it is proposed in penology to distinguish as its stadial forms the stage of the potentiality of the punishment, the enforceability of the punishment, its full enforceability and its completion (Utrat-Milecki, 2018). The potentiality of punishment begins with the individualised impact of the threat of punishment on a specific individual, i.e. in the formal sense, from the bringing of charges. A number of consequences of this state can have similar effects on a person as punishment. For this reason, studies on punishment include, among other things, the issue of pre-trial detention, which is the most drastic manifestation of the potentiality of punishment (Morgenstern 2016). The enforceability of a penalty in the penological sense is the validation of the judgment, whilst the full enforceability consists in the process of completely executing the penalty. The mere validation of a judgment cannot be equated with the process of punishment. Moreover, the punishment is sometimes carried out even long after the judgment or is never formally carried out. In the formal sense, a penalty may be completed after the conviction has been erased, and in the social sense after the positive social reintegration of the convicted person. In the case of serious crimes, more and more often, the full completion of the punishment's impact on the individual is not foreseen, so it is becoming increasingly permanently stigmatising or even eliminating. The punitive changes do not concern only Poland or Central Europe (Archives of Criminology 2022), which justifies the attempt to build a theoretical framework for an analysis of this phenomenon.

Summary

The analysis of criminal law reforms in Poland from the perspective of criminal punishment as a complex legal and social institution of a processual nature is intended to present the concept of a critical examination of the punitiveness of the penal system. That critical approach is intended to help researchers and specialists in the field of criminal policy to deal with penal reforms and penal practices; thus, the analysis is not only for researchers but also for practising lawyers.

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