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The Conditions and Procedure for the Admission of Children of Incarcerated Mothers to Mother-and-Baby Units at Prisons in Poland

The issue of dealing with incarcerated women is a specific problem connected with the nature of the penitentiary, and it is determined primarily by psychological and biological gender conditioning. Women endure imprisonment much worse than men and have more difficulties in adjusting to the isolation of prison. To make matters worse, imprisoned mothers tend to be concerned about the future and fate of their children.

On the one hand, the punishment assigned to pregnant women and mothers cannot be rendered meaningless. On the other hand, the rule of law and humanitarian considerations should be brought to the fore – for example, a strict definition of the situation of pregnant women and nursing mothers should be provided. For particular solutions, consideration should be given to professional opinions on the influence that the course of foetal development (and the living conditions and experiences of a woman during pregnancy) have on the later physical and mental health of the child.¹ Pregnancy, childbirth and the postnatal period, during which the mother's care of the child are crucial, are subject to a variety of legal solutions in many areas, including criminal law.²

In Poland there are 156 penitentiary units, of which 21 can house female prisoners. It should be emphasized that the vast majority of these (up to 15) are in fact prisons for men which also have separate branches for convicted women. Women are mainly held in four prisons, located in Czersk, Grudziadz, Krzywaniec and Lubańcu.³ In the whole of Poland, there are two prisons for women who are held in custody with their children. In

1 J. Niedworok, *Matki więźniarki i ich dzieci w zakładach penitencjarnych. Zagadnienia podstawowe*, Wrocław 1988, p. 66.

2 J. Mazurkiewicz, J. Niedworok, *Ochrona macierzyństwa w polskim prawie karnym*, "Państwo i Prawo" 1975, no. 10, pp. 75–76.

3 Zarządzenie nr 55/13 Dyrektora Generalnego Służby Więziennej z dnia 20 grudnia 2013 r. w sprawie określenia przeznaczenia zakładów karnych i aresztów śledczych, http://www.bip.sw.gov.pl/SiteCollectionDocuments/CZSW/aktyprawne/zarzadzenie_w_sprawie_przeznaczenia_zk_i_as.pdf [access: 23.01.2014].

prison No. 1 in Grudziadz there is a maternity ward and a mother-and-baby unit (MBU) for children under 10 months of age, while women and children up to the age of three are held in the prison in Krzywaniac.⁴

Polish law provides for preferential treatment of pregnant women who are in custody. This results directly or indirectly from the regulations that govern the serving of a prison sentence. The leading provision in this matter that shapes the standard treatment for pregnant women, is Article 87 § 3 of the Executive Penal Code, which stipulates that a pregnant woman shall be provided specialist care.⁵

Other provisions (Article 87 § 4 and § 5 of the Executive Penal Code) apply to mothers who are deprived of their liberty. They are designed to enable women to exercise constant and direct child care. This goal is achieved by creating mother-and-baby units, which are located at the prisons in which women are held.⁶

The laws grant not only special status to incarcerated pregnant women, but also provides them with special conditions after they have given birth. It is expressly stated that the women are given an opportunity to be together with their children.⁷ Pregnant women or nursing mothers should be given opportunities for constant exercise, guaranteed direct care of their child, and ensured constant specialist care. At the request of the mother, it is possible for the child to stay in her care, under the guardianship of the prison, until the child is three years old. However, it should be noted that this period may be shortened or extended, in accordance with the opinion of the doctor or psychologist. The final decision in this regard shall be made by the court.⁸ It is worth mentioning that women who could have been assigned to different types of prisons are allowed to reside in mother-and-baby units (this is referred to in Article 69 Executive Penal Code).⁹ This means that a very diverse group of convicted women is housed in the mother-and-baby units.¹⁰

Particular attention should be paid to the issue of women serving prison sentences and in the context of their motherhood. The solutions that have been adopted by the Polish penitentiary model try to ensure that the treatment of women takes into account

4 S. Leleñtal, *Kodeks karny wykonawczy. Komentarz*, Warszawa 2014, p. 395.

5 K. Szczehowicz, *Zasady wykonywania kary pozbawienia wolności i tymczasowego aresztowania wobec kobiet w ciąży*, "Studia Prawno-ustrojowe" 2009, no. 10, pp. 190–191.

6 E. Rekosz, *Analizy. Raporty. Ekspertyzy. Postępowanie z kobietami skazanymi na kary długoterminowe – kilka refleksji na marginesie badań*, no. 2/2009, *SIP*, p. 8.

7 K. Szczehowicz, *op. cit.*, pp. 193–194.

8 M. Ciosek, *Psychologia sądowa i penitencjarna*, Warszawa 2001, p. 196.

9 According to Article 69 of the Act of 6 June 1997 Executive Penal Code (Dz.U. no. 90 item 557). Imprisonment is carried out in separate prisons: prisons for juveniles, for first time offenders, for repeat offenders and those sentenced to military custody.

10 J. Lachowski, in *Kodeks karny wykonawczy. Komentarz*, ed. J. Lachowski, Warszawa 2015, p. 379.

the specificity of their personality. According to H. Machel,¹¹ these actions are beneficial from the point of view of social rehabilitation. Convicted women who give birth in prisons have the opportunity to take constant care of their children in the mother-and-baby units. This solution is particularly beneficial for rehabilitation and, perhaps more importantly, fulfills the need of motherhood.

According to Article 87 § 4 of the Executive Penal Code, the Polish penitentiary system organizes mother-and-baby units, which are located at the indicated prisons.¹² Pursuant to Article 87 § 4 of the Executive Penal Code,¹³ a Regulation of the Minister of Justice was issued on the procedures for the admission of children of incarcerated mothers to mother-and-baby units. The Executive Penal Code and this Regulation are the only regulations in the Polish penitentiary system which determine the execution of a prison sentence in relation to men and women. It is particularly noteworthy that the organization and operation of mother-and-baby-units, in accordance with Article 87 § 4 of the Executive Penal Code, does not apply Article 69 of the same Code, which covers the enforcement of sentences in certain types of prison. Therefore, as Z Hołda writes,¹⁴ it does not matter whether a woman is a convicted juvenile, a repeat offender or a first-time offender. All of these different women have to be housed in a prison equipped with a mother-and-baby unit.

The admission of mother and child to a mother-and-baby unit is governed by the Regulation of the Ministry of Justice of 17 September 2003, which covers the admission of incarcerated mothers to mother-and-baby units at particular prisons and specifies the detailed rules for the organization and operation of these facilities.¹⁵

According to the regulation, a mother in custody taking permanent and direct care of her child is housed in a mother-and-baby unit at a prison, called a 'home' in both Prison no. 1 in Grudziadz and the Correctional Facility in Krzywaniac. These units have 61 places at their disposal. As is pointed out by Dybalska,¹⁶ only 40% of these places are being used by mothers with children, and according to her this number is sufficient.

11 H. Machel, *Sens i bezsens resocjalizacji penitencjarnej – casus polski. Studium penitencjarno-pedagogiczne*, Kraków 2006, p. 133.

12 T. Kalisz, *Populacja kobiet osadzonych w polskich jednostkach penitencjarnych*, in L. Boguni (red.), NPKP, vol. XX, Wrocław 2006, p. 265.

13 Ustawa z dnia 6 czerwca 1997r. Kodeks karny wykonawczy (Dz.U. no. 90 item 557).

14 Z. Hołda in Z. Hołda, K. Postulski, *Kodeks karny wykonawczy. Komentarz*, Gdańsk 2005, p. 361.

15 Rozporządzenie Ministra Sprawiedliwości z dnia 17 września 2003 r. w sprawie trybu przyjmowania matek pozbawionych wolności do domów dla matki i dziecka przy wskazanych zakładach karnych oraz szczegółowych zasad organizowania i działania tych placówek (Dz.U. no. 175 item 1709).

16 I. Dybalska, *Polski model wykonywania kary pozbawienia wolności wobec kobiet, matek dzieci do lat trzech*, in *Kobieta w więzieniu – polski system penitencjarny wobec kobiet w latach 1998–2008*, ed. I. Dybalska, Warszawa 2009, p. 43.

The admission of a mother and child to the unit is conducted on the basis of a written application, which the mother submits to the director of the prison in which the mother-and-baby unit is located (§ 3.1). The mother who is applying has an obligation to attach a copy of the child's abridged birth certificate (§ 3.2). Once the mother has made the request, the prison director should notify the relevant guardianship court. For a woman to be temporarily detained in a mother-and-baby unit, the consent of the body responsible for her detainment is required (§ 3.3).¹⁷ It should be noted, however, that the prison director is not bound by the consent of the guardianship court, in the sense that the director may refuse to house the mother together with the child, if health or educational reasons, confirmed by the opinion of a psychologist or doctor, speak for the separation of the child from the mother.¹⁸

As Sitnik rightly points out,¹⁹ the guardianship court's decision in this regard shall be issued under the provisions of the Family Code. Article 109 of the Family Code makes it possible for the guardianship court to approve the placement and stay of a child in a mother-and-baby unit. The prison director, after taking the decision of the guardianship court into consideration, has to decide whether or not to refer the convicted mother with her child to the unit. The legal situation of each child is unique. The District Court, in particular, takes into account how the prisoner coped with previous parental responsibilities – if she had other children, the lifestyle of the prisoner before her arrest, and above all, the caring capacity of the mother or both parents.²⁰

Pursuant to § 3.5 of the Regulation, in order for the baby to be housed in the mother-and-baby unit, the father's consent is required, if he has parental authority. In the absence of such consent, or if it is impossible to obtain, the guardianship court decides the issue. Upon the approval of the guardianship court, the mother with the child are accepted into the mother-and-baby unit. However, if there is special justification, the mother and child can be admitted to the unit at the time of submitting the written request and remain in it until the approval of the guardianship court (§ 3.6).

It should also be noted that despite prior approval from the guardianship court, such decisions are – pursuant to Article 34 Executive Penal Code – subject to review by a penitentiary judge. In addition, court decisions can also be appealed by the prisoner on the basis of Article 7 of the Executive Penal Code and are also subject to control under Article 78 § 2 of the Executive Penal Code. Decisions on sending a convicted woman and child to a mother-and-baby unit, and on their residence there, are not decisions

17 Rozporządzenie Ministra Sprawiedliwości z dnia 17 września 2003 r., *op. cit.*

18 K. Postulski, *Kodeks karny wykonawczy. Komentarz*, Warszawa 2012, p. 405.

19 K. Sitnik, *Uwagi dotyczące wykonywania kary pozbawienia wolności w przywiezionych Domach dla Matki i Dziecka*, in NKPK, vol. XXVIII, ed. T. Kalisz, Wrocław 2012, pp. 236–241.

20 H. Reczek, *Oddziaływania wychowawcze w Domu dla Matki i Dziecka przy Zakładzie Karnym nr 1 w Grudziądzu*, in *Kobieta w więzieniu...*, *op. cit.*, p. 227.

which refer a convict to the appropriate type of prison, and so in connection with the circumstances mentioned earlier, these decisions do not pertain to the prison committee.²¹

If a female prisoner gives birth, the mother and child's admission to the mother-and-baby-unit is regulated by § 3 of the Regulation. The mother should submit an application to the prison director together with a copy of the child's abridged birth certificate (§ 4). The transfer of the child into the unit is arranged – in consultation with the director of the prison – by people who actually supervise the child, or by the childcare institution into which the child was placed (§ 5).²²

It should be emphasized that children who were born in the prison hospital, or have been brought to the mother-and-baby unit at the mother's request are not stigmatized by this fact in the documentation. This concerns the child's personal documentation such as their birth certificate or baptism certificate. In addition, no mention is made of the child being in prison in the medical documentation. However, in the child's health booklet there is a stamp, for example, of the mother-and-baby unit in Grudziadz, ul. Wybickiego 10/22, but this address does not stigmatize the child because the name of the home – 'the House of the Virgin and Child' – reminds one of the many existing care institutions in Poland.²³

There is a rule that a mother who is allowed a temporary release from prison, leaves the prison with the child (§ 6.1). However, there is an exception to this rule, regulated in § 6.2. When there is sufficient justification, the prison director can – at the request of the mother – agree that the mother can leave her child at the mother-and-baby unit during the time when the mother is granted the temporary release. If a mother should fail to return to the prison (§ 6.3), then the director of the prison is obliged to notify the guardianship court. This provision also applies if the mother should fail to return to prison without her child (§ 6.4).

If the mother is unable to exercise constant and immediate care for her child, then that child is put under the care of nurses and carers (§ 6.5). In situations where the physician or psychologist give an opinion in writing to the effect that for health or behavioural reasons it is necessary to separate the child from the mother, or to extend or shorten the period of the child's stay in the unit, the prison director is obliged to notify the guardianship court together with the attached opinion (§ 7). When it is necessary for the child to leave the unit before the mother is released from prison, the prison helps the mother to return the child to the care of her family or to place the child in a care facility located near the prison (§ 8).

21 K. Sitnik, *Odmienności w wykonywaniu kary pozbawienia wolności wobec kobiet w obowiązującym ustawodawstwie polskim*, "Acta Erazmiana" 2011, pp. 297–298.

22 Rozporządzenie Ministra Sprawiedliwości z dnia 17 września 2003 r., *op. cit.*

23 H. Reczek in *Kobieta w więzieniu...*, *op. cit.*, p. 231.

In accordance with § 9 of the Regulation, the head of the mother and baby unit is subordinate to the prison director. The unit staff consists of: a pediatrician, psychologist, nurse, educator and dietician.

All rooms in the unit should have similar equipment for the home environment. The unit should consist of rooms such as bedrooms for mothers with children, rooms for nursing and educational classes, facilities for the provision of health services, space for preparing meals, bathrooms and a utility room, rooms for staff, and an infirmary (§ 10).

There is a rule that Prison Service officers who have direct contact with children while working in the unit do not wear official uniforms (§ 11). In the area of the prison (in accordance with § 12.1) which houses women prisoners and their children, the director appoints an educational and care team. This team is an example of another collegiate body, in addition to the penitentiary commission in each prison, which is provided for in Article 77 of Executive Penal Code.²⁴ The tasks of this team should be mainly (based on § 12.2): scheduling classes that focus on parenting, education, and the mothers' rehabilitation and treatment; running care activities with the mothers, which aim to ensure the children's appropriate physical and mental growth; make quarterly assessments of the maternal attitudes of the mothers; and prepare the appropriate social adaptation of mothers and their children by maintaining contact with their families, the social welfare authorities and public childcare institutions.

The composition of this team includes the following members: a director of the unit (who also serves as the team leader), a pediatrician, a psychologist, a nurse and a teacher.

Children who stay with their mother in prison are provided with medical care, from pediatricians or nurses who are employed in health care institutions for persons deprived of liberty (§ 13.1). In situations where a pediatrician or a nurse cannot provide health care for such children, they refer them to an appropriate health care facility (§ 13.2). If sick children require the full-time care of a physician, the pediatrician has an immediate obligation to refer the child to a hospital that can provide the relevant care (§ 13.4).

Children who have been admitted to the mother-and-baby unit can be placed with their mother for a period of time specified by a physician (§ 13.3).

The regulation in § 14 also covers the issue of food standards for children. Meals are prepared in the unit kitchen under the strict supervision of a dietician, taking into account the recommendations of a pediatrician. The selection of products and the number of meals per day is determined by a pediatrician.²⁵ At the pediatrician's request it is possible to exceed the budget when feeding sick children, when justified. Children have food in accordance with standard "L". The Regulation of the Ministry of Justice of 20 October 2011 amended the definition of daily food standards and the kind of diets provided to

24 K. Sitnik, *Odmienności w wykonywaniu kary pozbawienia wolności...*, *op. cit.*, p. 298.

25 Rozporządzenie Ministra Sprawiedliwości z dnia 17 września 2003 r., *op. cit.*

prisoners in correctional facilities and detention centers, and it was determined that the dietary norm "L" is easy to digest, the value of which amounts to a daily rate of 5,70zł.²⁶

The regulations regarding mother-and-baby units also cover a child's personal belongings. According to § 15 of the regulation under consideration, children are entitled to underwear, clothing and footwear appropriate for their needs and age. All the items that can be received for personal use, in accordance with standards, are included in Annex 2 to the Regulation.²⁷

The mother-and-baby unit (in accordance with § 16) shall maintain the following documentation: the child's record book,²⁸ the child's equipment card,²⁹ the child's personal records,³⁰ the protocol record of the educational and care-providing team,³¹ and the child's medical records.³²

The mother-and-baby unit is well-known in Polish legislation. Despite a great deal of criticism, the Executive Penal Code continues to maintain it. The idea of mother-and-

26 Rozporządzenie Ministra Sprawiedliwości z dnia 20 października 2011 r. zmieniającego zarządzenie w sprawie określenia wartości dziennej normy żywienia oraz rodzaju diet wydawanych osobom osadzonym w zakładach karnych i aresztach śledczych (Dz.U. no. 236 item 1402).

27 According to the regulations, children living in mother and baby units are entitled to: 1) per one year of life: four summer jackets, four winter jackets, four-piece śpioszków, two hats, sixty cloth diapers, six shirts, two pairs of tights, two pairs of children's panties, four pairs of children's socks for children, two sweaters, one pair of slippers, one pair of shoes, three washers, two bottles, four teats, one dummy, four pillowcases and blankets for the winter, one pair of gloves; 2) for 2 years of life: one ceratka, six sheets and four pillowcases; 3) for 3 years of life: Two pajamas, one children's jacket, two pairs of shorts, three towels and a winter scarf; 4) on four years of life: two blankets; 5) for 5 years of life: one mattress and one pillow; 6) at seven years of life: one base under a blanket.

28 The child's record book contains the following information: the child's name, date and place of birth, parents' names and their home addresses, names of persons who actually exercise care of the child, date of admission of the child and the reason for the deletion of records, address of the person for whom the child has been transferred, or the address and name of the institution where the child has been transferred. This documentation is the responsibility of the head of the unit.

29 The equipment card contains the following information: the child's name, date of arrival and leaving the facility, underwear, clothing, footwear and other equipment that is owned by the child at the time when it was accepted into the home and obtained at the time of the placement. The documentation is the responsibility of house manager.

30 The child's personal records shall contain: an abridged copy of birth certificate, the court's decision, the registration documents, correspondence on matters child, conclusions and guidance in educational care. The evidence is the responsibility of the house manager.

31 The protocol record of the educational and care-providing team is a dossier containing information on the tasks of the educational and care-providing team. The protocol record is maintained by the head of the house

32 The child's medical records, which are maintained by a pediatrician, are: child's health book, child health card, immunization card, the card feverish card psychomotor development of the child as well as the results of laboratory tests.

baby units in prisons is very controversial. Opponents of the incarceration of pregnant women and mothers with children claim that a child brought up behind bars will have a permanent memory of this experience.³³

The goal is that a child who has reached the age of three should leave the prison, because at that age the child will still be able to forget being in the unit. Such children are sent to their families or to orphanages. Every effort is made to ensure that the child has the opportunity to maintain frequent contact with the mother. If the mother has only a short part of her sentence remaining after the child reaches the age of three, she often applies for parole or pardon. Psychological studies have shown that children who lived in prison until the age of three go on to develop much better than children who reside permanently in an orphanage. Contact between mother and child while she serves a custodial sentence also helps mothers to fulfill their role in bringing up the child. Children have to get used to their mother's authority, which these women probably did not exercise prior to their conviction. The Ombudsman directly observed these prisons, and the observations showed that the units which accommodate children together with their mothers are run very well. Babies and mothers are ensured the best possible living conditions.³⁴

No one claims that the children staying with their mother in prison is the best option. However, it is necessary to bear in mind that no other way of solving this problem which would save the child from the 'abandoned child syndrome' has been proposed.³⁵ The presentation and detailed discussion of all the implications and impact of the mother's imprisonment on the child are beyond the scope of this article. However, the most dangerous of these is the 'abandoned child syndrome' and the threat to the child's personal rights. Among the most dangerous phenomena associated with the imprisonment of a parent, the following are worth particular mention:

- preventing or significantly reducing mother-child relations,
- depriving children of love and maternal care,
- the danger of a convicted mother suddenly losing her authority,
- hiding the actual whereabouts of the mother from the child,
- posture, gestures and behavior in a neighborhood, school and peer environments, which stigmatize children of convicted mothers,
- the general deterioration of the financial situation of children,
- less interest in the children from the father or other guardian,

33 K. Sitnik, *Uwagi dotyczące wykonywania kary pozbawienia wolności w przywieszonych Domach dla Matki i Dziecka*, in *Nowa kodyfikacja prawa karnego*, vol. XXVIII, ed. T. Kalisz, Wrocław 2012, p. 235.

34 E. Wichrowska-Janikowska, *Prawa kobiet w działalności Rzecznika Praw Obywatelskich*, *Materiały Rzecznika Praw Obywatelskich*, no. 30, Warszawa 1996, p. 257.

35 A. Kantor, *Matki i dziecko w izolacji więziennej*, "Forum Penitencjarne" 2009, no. 8(135), p. 15.

- lower levels of children’s self-esteem,
- emotional disorders,
- unfavorable changes in personality,
- the need to be housed an orphanage³⁶.

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³⁶ J. Niedworok, *op. cit.*, pp. 83–84.

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SUMMARY

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The admission of mother and child to the a mother-and-baby unit has a positive effect on both the development of the child as well as the social rehabilitation of the mother. Children in mother-and-baby units are provided the right conditions for development. The mother learns to fulfill her parental responsibilities. In addition, incarcerated women who are in prison with their children want to change for the better, in order to provide their children a better future.

Keywords: convicted women, children, serve a sentence of imprisonment, House of the Mather and Child in prison

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