

Policy on the application of conditional early release in Poland for the years 2014–2023

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Abstract

Conditional early release from the remainder of a prison sentence is a key institution in the regulation of the penitentiary population. The subject of this study is an analysis of the policy on the use of conditional early release from the remainder of the prison sentence between 2014 and 2023. The title institution has been assessed from the perspective of the number of convicts serving custodial sentences, the initiative of the bodies entitled to submit applications on this subject, and changes in the number of successful and unsuccessful applications. The analysis confirmed a clear decrease not only in the number of successful applications, but also in the interest of convicts in the title institution itself. It can be assumed that this is due to the nature of the penal and penitentiary policies implemented in recent years, i.e., the actual tightening of the repressive and isolation functions of imprisonment. This observation is confirmed by the numerous amendments to the penal codification tightening, *inter alia*, the grounds for applying for conditional early release from the remainder of the prison sentence.

Keywords: conditional release, custodial sentence, penal policy, convict, prison governor, prison population.

The subject of this article is an analysis of the policy of applying conditional early release for the years 2014–2023. It was assumed that the last decade would be a sufficient period for a reliable assessment of the functioning of the said institution. The policy of applying

conditional early release during the period under study will be evaluated from the perspective of the number of convicts serving prison sentences, the initiatives of the bodies authorized to submit applications, and the changes in the number of applications considered both positively and negatively. Such a multidimensional analysis will constitute the basis for formulating *de lege lata* and *de lege ferenda* conclusions regarding the titular institution.

Table 1. Average number of convicts per year

2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
71,221	68,529	65,421	66,292	65,684	65,291	61,075	61,648	63,264	66,835

Source: Own study based on statistical data from Służba Więzienna, *Statystyka*, <https://sw.gov.pl/strona/Statystyka> (accessed: 12.08.2024).

Table 1 contains statistical data on the number of convicts (of both genders) from 2014 to 2023. It should be clearly emphasized that this data does not include those temporarily detained or punished. The institution of conditional early release from the remainder of the prison sentence does not apply to persons temporarily detained or punished for minor offences; so, from the point of view of the issues discussed in this study, this group is irrelevant. Analysis of the table leads to the conclusion that the number of convicts was highest in 2014 and amounted to 71,221. In 2015, we see a decrease in this number to 68,529 convicts. In the following years, i.e., 2016–2019, the number remained at a similar level, around 65,000 convicts. The visible decrease in the number of convicts, although not as spectacular as expected, can be linked to the amendment to the criminal law that came into force on 1 July 2015.¹ The justification for the draft act referred to the instability of criminal legislation and, consequently, the lack of a consistent criminal policy pursued by the prosecutor's office and courts,² as well as the mismatch between penal policy

¹ Act of 20 February 2015 on Amending the Penal Code and Certain Other Acts, Journal of Laws of 2015, item 396.

² Justification for the Government Bill Amending the Penal Code and Certain Other Acts, print no. 2393, p. 8.

against the actual crime threat and social expectations.³ Moreover, the defective structure of imposed penalties and the low level of effectiveness of probation, often applied in isolation from the actual criminological prognosis of the perpetrator, created an image of Polish penal policy that placed Poland among the top European countries in terms of the percentage of the population covered by the supervision of probation services and the percentage of the population deprived of liberty.⁴

The remedy for the above problems was a change in the scope of penalties, prioritizing the penalty of fine and the penalty of restriction of liberty over the penalty of imprisonment, including the penalty of imprisonment with conditional suspension of its execution.⁵

A significant decrease in the number of convicts was recorded in 2020 compared to 2014. This number dropped from 71,221 to 61,075, a reduction of 10,146 convicts. A similar trend continued in 2021. In this case, the reason for the observed decline in the number of prisoners is most likely the outbreak of the COVID-19 pandemic, which caused not only chaos in social life in Poland, but also the need to introduce legislative changes, also within the broadly understood criminal law. On 31 March 2020, the Act Amending the Act on Special Solutions Related to the Prevention, Counteracting, and Combating of COVID-19 and Other Infectious Diseases and Crisis Situations Caused by Them and Certain Other Acts entered into force,⁶ which introduced, among others, changes to Article 431a of the Executive Penal Code, consisting of extending the application of electronic monitoring to perpetrators sentenced to imprisonment for up to one year and six months.⁷

³ *Ibid.*, p. 131.

⁴ *Ibid.*, p. 111.

⁵ Hence, the institution of conditional suspension of the execution of the sentence was at the heart of the proposed changes aimed at improving the effectiveness of penal policy.

⁶ Act of 31 March 2020 Amending the Act on Special Solutions Related to the Prevention, Counteracting, and Combating of COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them, as well as Some Other Acts, *Journal of Laws of 2020*, item 695.

⁷ In the Justification for the Government Bill Amending the Act on Special Solutions Related to the Prevention, Counteracting, and Combating of COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them, as well as Some Other Acts,

The last two years covered by the analysis show a slight increase in the number of convicts, namely in 2022 to 63,264 convicts, and in 2023—to 66,835 convicts.

Table 2 contains statistics on the number of conditional releases for the years 2014–2023. This table includes information on the number of applications that were positively assessed and the number of applications that were negatively assessed, while also considering entities initiating enforcement proceedings regarding conditional early release from the remainder of the prison sentence. At the end of the table, you will also find information related to proceedings initiated by the court *ex officio*. According to the wording of Article 19 of the Executive Penal Code, the court shall rule at the request of the prosecutor, the convicted person or their defence counsel, and *ex officio*, and if the law so provides—at the request of other persons.⁸

Even a cursory analysis of the presented statistical data leads to the alarming conclusion that, over the last ten years, the number of conditional releases in Polish penitentiary units has drastically decreased. In 2014, there were 16,183 applications considered positively, by 2023, this number dropped to only 5,019, while the number of convicts staying in penitentiary units remained relatively stable (Table 1). This means that, compared to 2014, more than 11,000 inmates did not take advantage of the benefit of conditional early release. Less than 8% of prisoners were granted conditional release. This means a decrease to less than a third compared to 2014. From year to year, there has been a systematic decline in the number of applications for conditional release considered by the penitentiary court.

it was emphasized that this amendment aims to “reduce the epidemiological threat in Polish penitentiary units, rationally regulate the prison population and create better conditions for conducting a controlled process of resocialization, social and professional readaptation for approximately 20,000 convicts, by subjecting them to electronic monitoring, monitoring the behaviour of convicts in freedom, and in particular the implementation of the obligations imposed by the court, which initiate a very important process of improvement and teach self-control, while serving a sentence in the electronic monitoring system.”

⁸ Act of 6 June 1996, the Executive Penal Code, Journal of Laws of 2024, item 706.

Table 2. Conditional releases

Specification	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Total	41,958	39,733	34,692	31,771	30,296	28,026	25,767	23,028	22,012	20,299
Approved applications	16,183	14,873	11,431	9,584	8,554	7,087	6,158	4,973	5,209	5,019
Prison director	9,402	8,673	6,791	5,700	4,680	3,309	2,543	1,541	1,609	1,573
Prosecutor or court	5	4	2	1	2	2	4	1	1	4
Professional probation officer	3	3	7	2	8	7	9	6	6	5
The convict, defence attorney or representative	6,773	6,193	4,631	3,881	3,864	3,769	3,602	3,425	3,593	3,437
Denied applications	25,774	24,853	23,258	22,186	21,737	20,938	19,609	18,055	16,803	15,274
Prison director	527	519	504	603	659	410	209	97	108	78
Prosecutor or court	0	1	0	1	0	0	1	0	1	1
Professional probation officer	10	8	8	6	9	11	6	4	6	2
The convict, defence attorney or representative	25,237	24,325	22,746	21,576	21,069	20,517	19,393	17,954	16,688	15,193
Conditional release <i>ex officio</i>	1	7	3	1	5	1	0	0	0	6

Source: Own study based on statistical data from Służba Więzienna, *Statystyka*, <https://sw.gov.pl/strona/Statystyka> (accessed: 12.08.2024).

As already mentioned, in 2014 the penitentiary courts granted conditional early release from the remaining portion of the prison sentence 16,183 times. A year later this number dropped by 1,310 convicts and amounted to 14,873. The year 2016 brought an even greater decline, down by 3,442 inmates. In the following years, these numbers were as follows: 2017—9,584 positive applications, 2018—8,554 positive applications (a decrease of over 50% compared to 2014), 2019—7,087 positive applications, 2020—6,158 positive applications, 2021—4,973 positive applications. In 2021—over the last ten years—the situation was the worst, as the number fell by 11,210. The last two years covered by the study saw minimal increases in conditional releases, with the number rising to 5,209 in 2022 and 5,019 positively considered applications in 2023.

When comparing the statistical data presented above with the data included in the table concerning entities initiating enforcement proceedings regarding conditional early release from the remainder of the prison sentence, it should be categorically stated that proceedings initiated at the request of the prison director and at the request of the convicted person, defence counsel or his attorney are clearly in the majority. Interestingly, in the years 2014–2018, the majority of positively considered applications were submitted by the prison director (so-called “requests”). For example, in 2014, penitentiary courts positively considered 9,402 applications for conditional early release submitted by the prison director and 6,773 applications submitted by the convicted person, his defence counsel or his attorney. This trend, as already mentioned, continued until 2018. This phenomenon should be assessed positively, because the prison director, as the body responsible for the enforcement proceedings, has the most extensive knowledge in the field of the criminological prognosis of an inmate. A change in this area occurred in 2019, when positive decisions began to be dominated by proceedings initiated at the request of the convicted person, his or her defence counsel or attorney. In 2019, with a noticeable overall downward trend in the number of conditional releases, 3,309 applications prepared by the prison director were positively considered. As regards applications submitted by the convicted person or entities representing him, referred to in Article 8 of the Executive Penal Code, in 2019 they were accepted by the penitentiary courts 3,769 times. Only in 2019 were these values generally quite balanced. Since 2020,

we have observed a predominance of positive applications submitted by the convicted person, their defence attorney or representative over applications submitted by the prison director. Table 2 shows that in 2020, the so-called “requests” were included only 2,543 times, in 2021—1,541 times, and in 2023—only 1,573 times. These figures are alarming when we compare them with data from 2014, because the number of “requests” was reduced by 7,829 proceedings in 2023.

As regards applications submitted by the convicted person, his defence counsel or attorney, there were 3,602 positive decisions in 2020; 3,425 in 2021; 3,593 in 2022; and 3,437 in 2023.

In the analysed period, applications submitted by the prosecutor (25 accepted applications) and by the professional probation officer (56 accepted applications) were of marginal importance. This therefore confirms the thesis regarding the incidental involvement of the aforementioned bodies in the process of initiating proceedings on conditional early release from the remainder of the deprivation of liberty.

The statistical data regarding the number of applications for conditional release rejected by the penitentiary court differ. In this case, the applications submitted by the convicted person, his defence counsel or representative are clearly in the majority. Interestingly, this number is quite high throughout the research period, but there is a noticeable downward trend, which, compared to 2014, amounts to as many as 10,044 proceedings in 2023. However, the number of applications submitted by the prison director that were rejected has dropped drastically, from 527 applications in 2014 to 78 applications in 2023, which undoubtedly deserves recognition. The prosecutor’s initiative in the analysed scope has resulted in the issuance of a decision refusing conditional early release from the remainder of the prison sentence only five times during the period under review. In the case of a professional probation officer, negative decisions have been issued only 70 times over the last ten years.

Conditional early release from the remainder of a prison sentence is a key institution in the regulation of the prison population. Analysis of statistical data confirms a clear decline, not only in the number of approved applications, but also in the interest in the institution in question among convicts. This situation primarily results from the nature of penal and penitentiary policy, a remnant of recent years, i.e., the actual

tightening of the repressive function and the isolating penalty of restriction of liberty. This direction is confirmed by numerous changes in the penal codification, which, among other things, tighten the grounds for applying the institution of conditional early release from the remainder of the prison sentence.

Table 2 shows that in 2023, only 20,299 applications for conditional early release from the remainder of the prison sentence were submitted, which, compared to 2014, confirms a decrease in these proceedings by more than half (2014—41,958 applications). The answer to the question regarding the reasons for the decline in interest in conditional release among convicts over the last ten years may be the development of the electronic monitoring system. The legislator, through subsequent amendments in the area of electronic supervision, has made both institutions competitive. Nevertheless, this competitiveness is limited by the length of the sentence entitling the convicted person to benefit from the solution referred to in Article 431a of the Executive Penal Code.

The visible decline in the activity of prison directors in initiating proceedings on conditional early release may reflect a fear of the potential liability of this body of enforcement proceedings in the event of an unfavourable course of the probation period, despite the persistence of the risk of a relapse into criminal activity. It should be remembered, however, that among the entities referred to in Article 19 of the Penal Code that have the legitimacy to initiate the solution in question, it is the prison director, acting with the assistance of specialist officers of the Prison Service, who has the most reliable knowledge about the behaviour of the convict during his stay in prison, and therefore is best positioned to assess the criminological prognosis.

Changes to parole policy are needed. The analysis of statistical data confirmed, on the one hand, the reluctance of the courts to impose conditional release, and on the other hand, a decline in interest in the said institution. Nevertheless, it should be remembered that “in principle, each penalty should be carried out in its entirety, because it was imposed as necessary to have an appropriate impact on the attitude of the convicted person. However, if the penitentiary measures were successful before the end of the sentence and the part of the sentence still to be served would only serve to consolidate the already formed, proper attitudes of

the convict, then there is no reason to further isolate such a convict from society. The fact that a practically resocialized person remains in prison for too long, among other prisoners, may lead to the results of this process being wasted.”⁹

References

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