

COUNTRY FACTSHEET

Sentence Adjustment Mechanisms in Europe
Procedural Barriers & National Contexts

POLAND

December 2024

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1. Introduction

From 2016, political leadership with a heavy penal populist approach and rhetoric took charge of the penitentiary system in Poland. The prevalence of penal populism since has had a stark impact on sentence adjustment mechanisms in the country.

Hostile Government measures have sought to repress civil society's criticism of sentence adjustment mechanisms through various intimidation tactics. Between 2015 and 2023, civil society in Poland faced an increasing number of hostile actions from the Government.¹ The Government significantly diminished the value of public consultations by disregarding any critical feedback from civil society and legal scholars. Moreover, the Ministry of Justice threatened civil lawsuits against authors of critical opinions on proposed legal reforms² and sought to undermine the credibility of academic institutions and non-governmental organisations by labelling them as 'defenders of criminals' in response to their vocal criticism of amendments to the parole system.³

This is accompanied by penal populist rhetoric in Polish media.⁴ In recent years, media coverage of cases where individuals on conditional release commit serious crimes has intensified and received extensive attention in Polish media. This widespread reporting can create heightened scrutiny and may impact the willingness of authorities to approve conditional release applications.⁵

Not only have sentence adjustment mechanisms been merely *influenced* by the rise of penal populism, it has become a central *medium* through which the Government and Penitentiary Administration both 1) manage prison overcrowding, and 2) reinforce their penal populist agenda. This dual function is facilitated by the structural design of these mechanisms, which position the Penitentiary Administration as the primary gatekeeper of successful applications. Applications initiated by the Penitentiary Administration overwhelmingly receive favourable decisions from the courts, a trend that underscores their decisive influence in shaping outcomes, as illustrated below. The rate at which the Penitentiary Administration submits applications for conditional release is closely linked to the prevailing political climate. When the Government prioritises easing prison overcrowding, submission rates increase significantly. Conversely, during periods when the focus shifts to a 'tough on crime' stance aligned with penal populist rhetoric, the rate of applications declines sharply.

A dramatic decline in applications lodged by the Prison Service can be observed after 2016, when political leadership favouring penal populism took charge of the penitentiary system. It is also clear that penal populist rhetoric has had an influence on the courts responsible for conditional early release decisions.

There was a marked increase in conditional release applications from prison directors during periods focused on reducing prison overcrowding. Conditional release, sentence

¹ Ploszka A., Shrinking Space for Civil Society: A Case Study of Poland, European Public Law, Volume 26, Issue 4 (2020) p. 941 – 960.

² Newsweek Polska, Ministerstwo Sprawiedliwości pozywa profesorów UJ. Zarzuca im kłamstwo, 15.06.2019.

³ Poland, Ministry of Justice, Front obrony przestępców chce zatrzymać reformę Kodeksu karnego.

⁴ Krajewski K., O wpływie ustawodawstwa karnego na politykę karną, Archiwum Kryminologii, 2019, no. 2, p. 41-80.

⁵ Krajewski K., O wpływie ustawodawstwa karnego na politykę karną, Archiwum Kryminologii, 2019, no. 2, p. 41-80.

interruptions, and conversion of custodial sentences to electronic surveillance have become tools for managing penitentiary overcrowding. This is firstly implied by the Regulation of the Minister of Justice on procedures for dealing with overcrowding,⁶ which requires penitentiary courts to take “other actions aimed at exercising the court's powers under the provisions of the Executive Penal Code”. Secondly, it is supported by the data illustrated in Table I and Table II below, which shows a peak in applications for conditional early release aligning with periods of the highest overcrowding in Polish prisons. Scholarly literature also points out that how authorities apply early conditional release has a substantial impact on prison population levels.⁷

Data from the Prison Service⁸ indicates that support from the penitentiary administration significantly enhances a convict’s chances of obtaining conditional early release. In 2023, applications submitted on behalf of convicts serving sentences in a program-based system had a 96% approval rate, compared to a 93% success rate for those in the regular system. Importantly, prison directors were twice as likely to submit applications for convicts in the program-based system (1,123 applications) than for those in the regular system (525 applications).⁹

In contrast, applications for conditional early release submitted by convicts, defence lawyers, prosecutors, and probation officers showed a markedly lower success rate. Among convicts in the program-based system, only 21% of these applications were approved, compared to 14% for those in the regular system.¹⁰ Furthermore, unlike applications from prison directors, the distribution of self-initiated applications was almost equal between the two groups, with a slight preference toward those serving in the regular system.

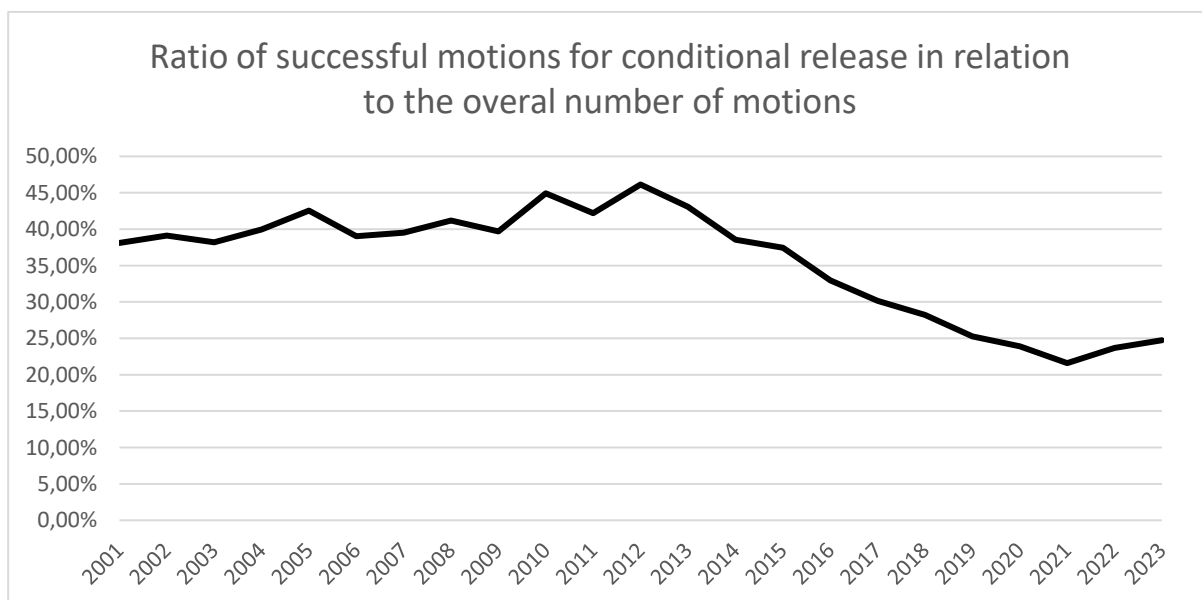


Table I: Ratio of successful motions for conditional release in relation to the overall number of motions

⁶ Regulation of the Minister of Justice of 9 December 2022 on the procedure to be followed by the competent authorities in the event that the number of inmates in penal institutions or detention centres exceeds the total capacity of these institutions nationwide, Journal of Laws, item 2690.

⁷ Szymanowski T., *Polityka karna w Polsce współczesnej w świetle przepisów prawa i danych empirycznych* [in:] Marek A. (editor), *System prawa karnego. Zagadnienia ogólne*, vol. I, Warszawa 2010.

⁸ Poland, Prison Service, Annual statistics for 2023.

⁹ Poland, Prison Service, Annual statistics for 2023.

¹⁰ Poland, Prison Service, Annual statistics for 2023.

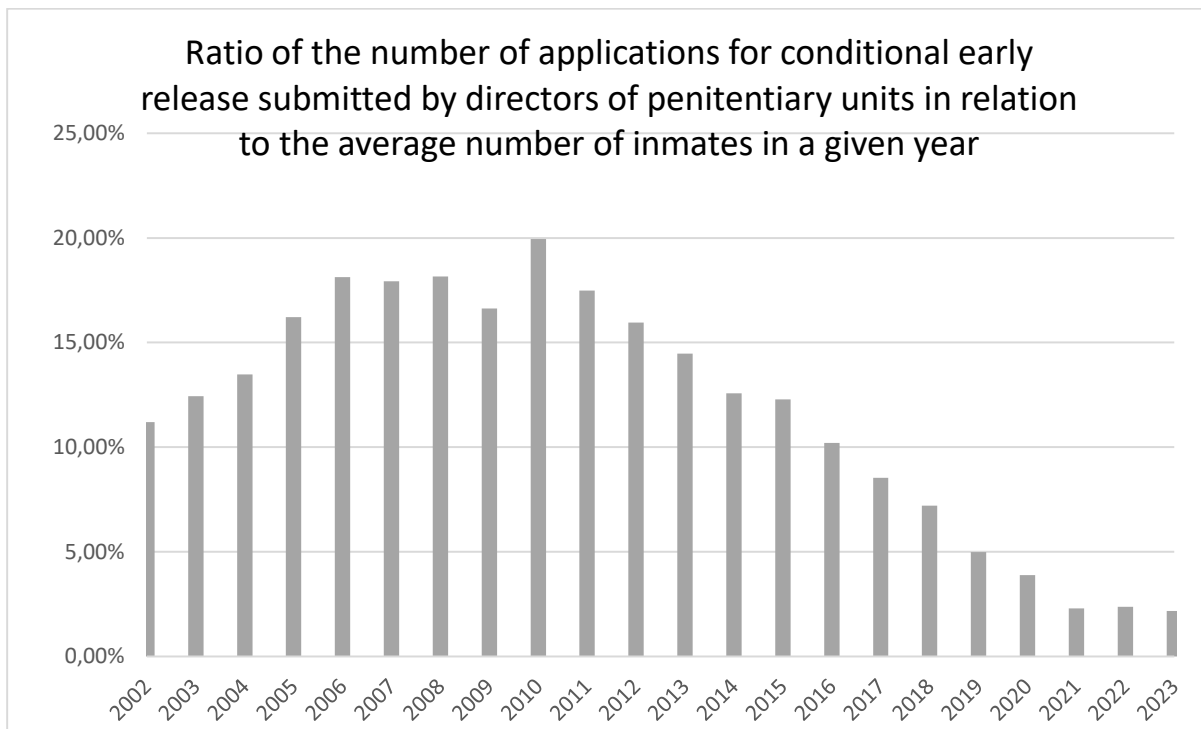


Table II: Ratio of the number of applications for conditional early release submitted by directors of penitentiary units in relation to the average number of inmates

The use of conditional release as a strategy to reduce prison overcrowding has been supported by international bodies. Significant impetus came from European Court of Human Rights rulings in *Norbert Sikorski v. Poland*¹¹ and *Orchowski v. Poland*¹², where the ECtHR identified overcrowding in Polish prisons as a systemic issue. In its response, the Polish Government cited data on the number of conditionally released inmates and the use of electronic monitoring as part of its efforts to implement these rulings. The Committee for the Prevention of Torture also urged¹³ Polish authorities to intensify efforts against overcrowding, recommending adherence to the Council of Europe’s guidelines on prison population reduction and conditional release (Rec (99) 22 and Rec (2003) 22).

During the COVID-19 pandemic, sentence interruptions and electronic monitoring were further utilised to manage the prison population. Episodic provisions were introduced to relax the criteria for obtaining sentence interruptions, allowing them during the pandemic even without special circumstances involving the convict or their family, provided a positive criminological prognosis was established. Courts could extend these interruptions for additional periods. The maximum sentence duration eligible for electronic surveillance was also temporarily increased, enabling more inmates to serve their sentences outside prison facilities.¹⁴

2. Overview of Poland’s Penal and Prison System

Poland’s penal and penitentiary system, as of 2024, comprises 171 facilities, including 39 remand centres, 64 prisons, and 68 external divisions linked to specific institutions. These

¹¹ ECtHR, *Norbert Sikorski v. Poland*, 17599/05, 22.10.2009.

¹² ECtHR, *Orchowski v. Poland*, 17885/04, 22.10.2009.

¹³ Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 15 October 2004.

¹⁴ Rojek-Socha P., Coronavirus will increase electronic surveillance - MoJ proposes changes, pravo.pl.

facilities collectively provide 83,098 places, of which 80,491 are for residential use. This capacity marks a significant increase from 2004, when the system could accommodate 69,573 individuals. The highest recorded capacity was in 2014, with 87,742 places. Despite modernisation efforts, many facilities—built during the Polish People’s Republic or earlier—struggle with substandard conditions, including a national living standard of just 3 m² per inmate, among the lowest in Europe.

As of August 31, 2024, the prison population stood at 70,827 inmates, occupying 85.97% of total capacity. This figure includes 61,743 convicted individuals (3,146 women), 8,137 pre-trial detainees (528 women), and 947 detained for misdemeanours (99 women). Most inmates are adults (98.6%), with notable subgroups such as 935 males and 51 females under 21 years old, and 3,445 inmates over 60. The elderly inmate population has tripled since 2004. Foreign inmates accounted for 3.6% of the prison population, a significant rise from 0.64% in 2009. Currently, 1,317 inmates are in open-type prisons, 33,475 in closed, and 26,839 in semi-open facilities.

The sentencing structure reveals that the average prison term (excluding life imprisonment) was 44.92 months in 2023, with a median of 24 months. Presently, 575 inmates (17 women) are serving life sentences. Programs for rehabilitation are available, with 28,628 inmates serving sentences under the ordinary system, 28,924 under programmed impact, and 4,950 under therapeutic systems. However, 172 inmates, deemed a serious threat to society or prison security, serve sentences under special conditions in closed-type prisons.

The system’s turnover rate is high, with 96,825 admissions and 94,108 releases in 2023, resulting in a turnover ratio of 2.5. The variation rate in the inmate population was 3.51% in 2023, a notable shift from 2004 and 2014, which saw lower and negative variation rates, respectively.

The most recent available data on the number of convictions by Polish courts is from 2020.¹⁵ In that year, Polish courts issued 251 369 convictions, with the vast majority—245 717—being delivered by district courts. In contrast, regional courts, which handle more serious offenses, issued 5 652 convictions. Out of 251 369 convictions, 33,4% were fines (without other penalties), 29,4% were restrictions on liberty, and 90,524 convictions (36% of the total) resulted in prison sentences. For 41,947 of these sentences (46,4%), execution was suspended.

ECtHR Judgments against Poland

Poland's penitentiary system has faced scrutiny from the European Court of Human Rights due to issues such as overcrowding (e.g., *Orchowski v. Poland*), inadequate healthcare (*Kudła v. Poland*), poor treatment of disabled and vulnerable inmates (*D.G. v. Poland*), and failure to address sexual violence within prisons (*M.C. v. Poland*).

Fair Trial Guarantees

Domestic law in Poland upholds fair trial requirements under Article 45 of the Constitution, which aligns closely with Article 6 of the European Convention on Human Rights by guaranteeing the right to a fair, public hearing by a competent, independent, and impartial court without undue delay. The Supreme Court has clarified that “case” in Article 45 encompasses both the main subject of proceedings and incidental issues affecting

¹⁵ Poland, Ministry of Justice, Skazania prawomocne z oskarzenia publicznego - dorośli - wg rodzajów przestępstw i wymiaru kary w l.2008-2020.

fundamental rights. This interpretation extends to matters before penitentiary courts. Similarly, the Constitutional Tribunal has affirmed that the right to a court applies to any situation where rights are at issue.

Despite these protections, Polish law only grants prisoners the right to apply for conditional early release, not a guaranteed release after serving a portion of their sentence. This distinction means that Articles 5(1) and 5(4) of the ECHR, which cover the right to liberty and specific procedural protections for those deprived of liberty, do not fully apply to sentence adjustment mechanisms in Poland. Article 5 protections would only be triggered if a subjective right to release after a set period were established, which Polish law does not provide. Additionally, a constitutional complaint filed in 2021 challenged the exclusion of conditional early release cases from the Act on the Complaint on the Lengthiness of Proceedings, which aims to ensure timely judicial review. However, this complaint remains unresolved, reflecting the limited application of procedural safeguards to sentence adjustment mechanisms.

3. Overview of Poland's Sentence Adjustment Mechanisms

Poland's legal framework for sentence adjustment and reduction provides for the following mechanisms:

- conditional early release;
- conversion of imprisonment to home detention under electronic monitoring;
- temporary interruption in the execution of the prison sentence;
- temporary release from prison to allow the prisoner to arrange housing or employment for post-release life.

These mechanisms are governed by the Penal Code and Executive Penal Code.

Conditional early release is the most widely used adjustment mechanism, followed by electronic monitoring for short-term sentences.

a. Institutional Architecture

The institutional structure for implementing sentence adjustments comprises penitentiary courts, penitentiary commissions, and prison administration:

- **Penitentiary Courts:** These courts, often sections within circuit courts, are responsible for decisions on conditional release, sentence interruptions, and electronic monitoring applications.
- **Penitentiary Commissions:** Created by the 2023 amendments to the Executive Penal Code, these commissions address simpler applications, such as conversion to electronic monitoring for shorter sentences.
- **Prison Administration:** Prison directors play a role in initiating applications and providing opinions on inmates' behaviour and suitability for adjustment mechanisms.

b. Players in the System

The following parties are involved in Poland's sentence adjustment system:

- **Judges:** Responsible for assessing applications and issuing decisions.

- **Prison Directors:** Provide criminological evaluations and may initiate applications.
- **Probation Officers:** Prepare reports on inmates' social and behavioural conditions and supervise released individuals.
- **Prosecutors:** Represent the state and may challenge decisions granting adjustments.
- **Defence Lawyers:** Advocate for inmates' applications and represent them in legal proceedings.

c. Criteria for Granting Sentence Adjustment

Conditional Early Release

A court can grant conditional early release when a prisoner's attitude, personal circumstances, the nature of the crime, and behaviour during their sentence suggest that they will abide by the law and not commit new offenses after release.

- **Eligibility:** Prisoners may apply after serving:
 - Half of their sentence.
 - Fifteen years for 25-year sentences.
 - Thirty years for life sentences.
 - Recidivists and multiple recidivists face stricter thresholds, requiring two-thirds or three-quarters of their sentence to be served, respectively. Stricter requirements apply to repeat offenders under so-called 'basic recidivism'. A convicted offender in this category may be eligible only after serving two-thirds of their sentence. Under the Penal Code, "basic recidivism" applies when a person convicted of an intentional crime has served at least six months of imprisonment and, within five years of release, commits a similar intentional crime. Similar crimes are defined as those that target the same legally protected interest (e.g., public safety) or involve violence, threats, or financial gain. Even stricter limitations apply to convicts classified as multiple recidivists. This includes individuals who have previously served a sentence under conditions of "basic recidivism" or as convicts outlined in Article 64a of the Penal Code¹⁶, have served a cumulative one year in prison, and subsequently, within five years, committed another serious crime, such as one involving life or health, rape, robbery, burglary, or property offenses involving violence or threats. For such convicts, the Code mandates serving at least three-quarters of their sentence before conditional release can be considered. Moreover, the requirement to serve $\frac{3}{4}$ of the sentence is envisaged by the Penal Code with regard to convicts against whom a final decision has been issued stating that they unlawfully obstructed the execution of the sentence of deprivation of liberty. Under the Executive Penal Code, an order for obstructing the execution of a sentence of imprisonment may be issued by the court if the convicted person, with the intention of obstructing the execution of a sentence of imprisonment, fled, hid, took action to escape or hide.

¹⁶ Article 64a of the Penal Code: If the offender, within 5 years after serving at least 6 months of a custodial sentence imposed for the crime of murder in connection with rape or for an offence against sexual freedom punishable by a custodial sentence of at least 8 years, commits such a crime or such an offence again, the court shall impose the custodial sentence provided for the imputed offence in an amount from the lower limit of the statutory threat increased by half to the upper limit of the statutory threat increased by half.

- **Assessment Criteria:** The primary factor is a positive criminological prognosis. Courts assess:
 - **Behaviour during imprisonment:** Includes compliance with prison rules, participation in educational or rehabilitative programs, and any disciplinary infractions.
 - **Personal qualities and conditions:** Such as social ties, remorse, and efforts towards rehabilitation.
 - **Nature and circumstances of the offence:** The seriousness of the crime and its impact on society.
 - **Likelihood of lawful behaviour upon release:** Evaluated through reports prepared by probation officers and prison administration.
- **Additional Provisions:** Courts may impose conditions on release, such as probationary supervision or specific behavioural requirements.

Conversion to Electronic Monitoring

- **Eligibility:**
 - Sentences up to 18 months.
 - Sentences up to 3 years if less than six months remain.
 - Excluded categories: Repeat offenders, habitual criminals, and those whose criminal activity constitutes a regular source of income.
- **Assessment Criteria:**
 - **Technical Feasibility:** Requires a residence with appropriate conditions for electronic monitoring.
 - **Household Consent:** Co-residents must agree to the arrangement.
 - **Sentencing Goals:** Courts must determine that electronic monitoring aligns with the rehabilitative and punitive aims of the sentence.

Temporary Interruption of Sentence Execution

- **Eligibility:**
 - Mandatory for severe health conditions or mental illnesses that prevent imprisonment.
 - Discretionary for significant personal or family reasons, such as caregiving responsibilities or medical treatment outside the prison system.
- **Assessment Criteria:**
 - **Humanitarian Grounds:** Whether the interruption addresses a critical need.
 - **Practicality:** Consideration of the prisoner's likelihood of complying with legal requirements during the interruption.
- **Extension of Benefits:** Interruptions lasting over one year may lead to conditional early release, provided specific criteria are met.
- Regarding sentence interruption, the law does not stipulate specific rules about the minimum duration of a sentence required to request an interruption. However, it

requires a minimum one-year interval between consecutive interruptions, except in cases of mental illness, serious health issues, or other exceptional circumstances.

Temporary Release for Reintegration

- **Eligibility:**
 - Available for up to 14 days to facilitate post-release planning, such as securing housing or employment.
- **Assessment Criteria:**
 - **Behavioural Record:** Prisoners with positive conduct and adherence to prison rules are more likely to be granted release.
 - **Reintegration Potential:** Evaluated based on the prisoner's readiness to engage in societal and legal norms during the temporary release.

d. Procedure for Applying

Conditional Early Release

The application from the convicted person must provide sufficient justification to be considered by the court. Applications that repeat the same factual arguments, contain language deemed vulgar or offensive, use criminal slang, lack adequate substantiation, or are clearly unfounded may be dismissed by the court without review.

The process for applying for conditional early release in Poland is largely uniform across all prisoners, with some variations depending on sentence length for those reapplying after an initial denial.

- **Initiating Applications:** Applications for conditional early release can be submitted by:
 - The prisoner;
 - The prison director;
 - A probation officer;
 - The prisoner's defence counsel.Each application must include justification, with reports from the prison administration outlining the prisoner's criminological prognosis and behavioural record.
- **Court Review:** The penitentiary court conducts a formal hearing, which includes:
 - **Prosecutor Participation:** A prosecutor attends to represent the state and may contest the application.
 - **Witness and Evidence Presentation:** The court may call witnesses, review behavioural records, and examine expert reports, especially for certain offences requiring psychiatric evaluations.
- **Timelines for Reapplication:**

If denied, prisoners may reapply after six months for sentences under five years or one year for longer sentences. Courts review reapplications independently of prior rulings.

- **Objections:**
If conditional release is granted, the prosecutor can file an objection, delaying enforcement until the appeal is resolved.

Conversion to Electronic Monitoring

- **Initiating Applications:** Applications must include:
 - A written request from the prisoner, their legal representative, or the prison director.
 - Documentation confirming a suitable residence and consent from those they will reside with.
- **Review Process:** Penitentiary courts or commissions assess:
 - The technical feasibility of monitoring.
 - The prisoner's compliance record and likelihood of meeting sentencing goals under supervision.
- **Outcome:**
If granted, prisoners are notified of their monitoring conditions and obligations.

Temporary Interruption of Sentence Execution

- **Initiating Applications:**
Prisoners or their representatives may submit requests, accompanied by supporting evidence such as medical certificates or documentation of family circumstances.
- **Court Review:** The court assesses:
 - The urgency and proportionality of the request.
 - Potential risks of non-compliance during the interruption.
- **Duration:**
Interruptions are granted for the period necessary to address the cited reason and may lead to conditional early release if the interruption lasts over one year.

Temporary Release for Reintegration

- **Initiating Requests:**
Requests are made to the prison director, who evaluates the prisoner's readiness for reintegration.
- **Decision Authority:**
Decisions are based on behavioural records and reintegration planning. Prisoners must demonstrate compliance with rules during release.

e. Time Limits

The Executive Penal Code provides non-binding guidelines for reviewing complaints:

- **Conditional Early Release Decisions:** The law stipulates a 14-day period for reviewing complaints, but this is instructional only, with no penalties for delays.
- **Electronic Supervision:** A 30-day timeline exists for decisions, but research indicates frequent violations, with some cases taking up to five months.
- **Sentence Interruption:** No specific deadlines exist for reviewing complaints about refusals, further contributing to delays.

Since 2017, executive criminal proceedings have been excluded from mechanisms allowing complaints about prolonged proceedings, leaving parties without recourse to address delays or claim compensation for procedural inefficiencies.

4. Substance of Sentence Adjustment Decisions

A study published in 2019¹⁷ examined the factors most frequently considered by courts when assessing applications for conditional early release. The findings indicate that the convict's behaviour within the penitentiary unit was the most commonly evaluated factor, appearing in 35% of the cases analysed. The second most frequently considered element was the inmate's general attitude. Courts also assessed other factors such as the convict's conduct outside the penitentiary during sentence serving (12.1%), including behaviour during leaves, work performance in non-restricted settings, and sentence compliance under the electronic supervision system. Additionally, personal circumstances (13.6%), lifestyle prior to incarceration (4.4%), criminal record (1.6%), personal traits (4.2%), physical and mental health (0.5%), and drug addiction (5.7%) were also reviewed. The study's authors highlighted a notable gap in the analysis, as courts did not typically consider prior convictions and previously applied probationary measures as part of their assessments.

For applications to serve a sentence under the electronic supervision system, the 2014 study¹⁸ revealed that technical limitations were the primary reason for denial, accounting for 29.5% of refusals. These limitations included issues like lack of mobile coverage, absence of electricity, and inadequate proximity to facilities such as toilets (toilet was too far from the place in which the surveillance device was installed). Another frequent reason for refusal (18.9%) was the court's assessment that serving a sentence under electronic supervision would not fulfil the sentencing objectives. This rationale was occasionally linked to the convict's degree of moral corruption (5%), with the courts citing multiple prior convictions, failure of previous custodial sentences, ineffectiveness of prior imprisonments, and negative personal traits or lifestyle as supporting factors.

a. Over-reliance on templates, compromising individualised review

In Polish courts, decisions on sentence adjustments, such as conditional release, sentence interruption, and electronic monitoring, are intended to reflect the specific circumstances of individual prisoners. However, there is a documented tendency for courts to rely on pre-

¹⁷ Nikołajew J., Burdziak K., Jankowski M., Kowalewska-Lukuć M., Diagnostyka sądowo-kryminalna w orzekaniu i wykonywaniu warunkowego przedterminowego zwolnienia w teorii i praktyce sądowej – raport z badania, *Prawo w Działaniu*. T. 39 (2019), s. 9-68

¹⁸ Jankowski M., Momot M., Wykonywanie kary pozbawienia wolności w systemie dozoru elektronicznego. Sprawozdanie z badania aktowego, „*Prawo w Działaniu*. Sprawy Karne” 2015/22, p. 36–40.

prepared templates with little or no modification, which compromises the individualised nature of these decisions. For example, in eight conditional release decisions issued by a judge of the Circuit Court in Jelenia Góra on June 30, 2016¹⁹, the decisions varied only in the convict's personal details and the description of their sentence, with similar obligations imposed on each convict during their probation. Each conditionally released prisoner was required to secure employment, refrain from alcohol and drug abuse, and avoid individuals with negative social influence. Some were additionally required to provide for their children, presumably those with a maintenance obligation.

The justification for granting conditional early release in each order was nearly identical. Each referenced the fact that the convict met the formal requirements for release, cited the relevant legal provision, and emphasised the importance of a positive criminological prognosis. According to the court, this prognosis primarily considered the convict's behaviour post-offense and during the sentence. The court reviewed the convict's personal file and the penitentiary administration's opinion, noting rewards or punishments received, relations with staff and fellow inmates, participation in prison subculture, and whether the convict expressed remorse for the offense. Finally, the court noted the end date of the convict's sentence and stated that the imposed obligations were meant to "consolidate positive changes in the convict's attitude."

In contrast, decisions denying conditional early release were more individualised. For instance, an analysis of refusal decisions from the Circuit Court in Słupsk on December 3, 2015²⁰, shows a higher degree of specificity. These decisions cited the convict's behaviour in prison, interactions with staff, engagement in rehabilitation programs, conduct during leaves, substance use, the circumstances of the crime, and the convict's prior criminal record, offering a more tailored assessment of each convict's case.

b. Quality of the Law and Legal Uncertainty

The application of conditional early release has been a topic of significant legal discussion, particularly concerning the balance between rehabilitation and general prevention in eligibility determinations. The debate on general prevention was resolved by the Supreme Court in case I KZP 2/17, which clarified some aspects of its application. However, other areas of uncertainty and limitations in judicial discretion continue to generate criticism, as outlined below.

i. Ambiguity in Criminological Prognosis

One of the most debated aspects of conditional early release is the level of certainty required for a positive criminological prognosis—confidence that the convicted person will obey the law and refrain from further criminal activity:

¹⁹ Poland, Circuit Court, Jelenia Góra, IV Kow 701/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 615/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 601/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 603/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 631/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 595/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 593/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 557/16, 30.06.2016.

²⁰ Poland, Circuit Court, Słupsk, III Kow 1674/15, 3.12.2015; Poland, Circuit Court, Słupsk, III Kow 1787/15, 3.12.2015; Poland, Circuit Court, Słupsk, III Kow 1644/15, 3.12.2015; Poland, Circuit Court, Słupsk, III Kow 1769/15, 3.12.2015; Poland, Circuit Court, Słupsk, III Kow 1858/15, 3.12.2015.

- **Terminological Discrepancies:** The Penal Code uses different terms to describe the certainty required for probationary measures. Conditional early release requires “persuasion” of lawfulness, whereas conditional discontinuance of criminal proceedings uses the term “assumption.” This linguistic distinction has been interpreted as requiring a higher degree of certainty, or “near certainty,” for conditional early release, as courts feel compelled to “guarantee” the prisoner’s future compliance. Critics argue that this interpretation creates an unnecessarily conservative standard, leading to unwarranted denials of release.
- **Proposed Revisions:** Some scholars advocate returning to a standard of “presumption” for positive behaviour, a less stringent requirement that was in place before the enactment of the 1997 Penal Code. They argue this approach aligns better with the rehabilitative goals of conditional early release.

ii. Ambiguity in Legal Terminology

Several terms within the Penal Code related to conditional early release remain ambiguous, leading to inconsistencies in interpretation:

- **‘Legal Order’:** This term lacks a precise definition in the Penal Code but is generally understood to include family, civil, and administrative law. Legal violations in these areas do not always constitute crimes or misdemeanours, creating uncertainty about what qualifies as a breach of the legal order. Some commentators suggest removing or clarifying the term to improve consistency.
- **‘Circumstances of the Commission of the Offense’:** Courts often limit their consideration of this term to the factual elements of the crime, neglecting broader contextual factors such as the gravity or social impact of the offence. Legal scholars argue for a more expansive interpretation that includes these dimensions.
- **‘Personal Conditions’:** This term is also unclear, with debates over whether it includes material and financial circumstances. In other sections of the Penal Code, personal conditions are treated separately from property and income status, suggesting these may not be relevant in the context of conditional early release.

iii. Removal of ‘Way of Life Before the Crime’ as a Criterion

The 2012 legislative amendments to the Penal Code removed the consideration of the convict’s way of life before committing the crime as a factor for determining eligibility for conditional early release. This change has been criticised for:

- **Narrowing the Assessment:** Previously, courts could consider the convict’s broader background and social integration, offering a more comprehensive view of their likelihood to comply with the legal order.
- **Potential for Rehabilitation Oversight:** Without this factor, courts may overlook aspects of the convict’s past that are relevant to their rehabilitation efforts.

iv. Challenges for Electronic Monitoring

Electronic monitoring as an alternative to imprisonment has specific eligibility requirements, including the absence of factors that would prevent the monitoring from achieving sentencing goals. Critics have raised concerns about this requirement:

- **Conflicts with the Principle of Ultima Ratio:** Legal commentators argue that if a court determines during initial proceedings that imprisonment is unnecessary, it is contradictory for the same court to later deem electronic monitoring as sufficient to meet sentencing objectives.
- **Unclear Guidelines:** The ambiguity surrounding what constitutes 'factors preventing the achievement of goals' leads to inconsistent application of this provision in practice.

5. Recall

In Poland, the revocation of conditional early release is managed by the penitentiary court and is governed by strict legal provisions requiring revocation in certain circumstances. These provisions, however, present procedural barriers and raise constitutional concerns regarding fairness and judicial discretion.

a. Mandatory Revocation Requirements

The court is legally required to revoke conditional early release if:

1. **New Crimes During Probation:** The convicted person commits an intentional crime during the probation period that results in an unsuspended custodial sentence.
2. **Repeated Behaviour in Domestic Violence Cases:** A person convicted of violent or threatening behaviour toward a close person or minor residing with them repeats such behaviour during the probation period.

Revocation may also occur if the individual grossly violates the law or fails to fulfil court-imposed obligations. In cases of non-compliance with obligations, revocation becomes mandatory if the probation officer has issued a written warning to the individual, unless there are exceptional circumstances justifying leniency.

b. Constitutional Concerns with Mandatory Revocation

The mandatory nature of revocation decisions limits judicial discretion, which has raised constitutional concerns. Similar mandatory revocation provisions for suspended sentences were deemed unconstitutional by Poland's Constitutional Tribunal. The Tribunal emphasised the need for courts to have the flexibility to consider special circumstances on a case-by-case basis. The automatic revocation of conditional early release could similarly be viewed as inconsistent with the right to a fair trial under Article 45 of the Constitution, as it restricts the judiciary's ability to exercise discretion.

c. Revocation of Other Sentence Adjustments

The Executive Penal Code outlines conditions under which the penitentiary court may revoke other forms of sentence adjustments:

- Sentence Interruption: Revocation is permitted if:
 - The reason for granting the interruption ceases to exist.
 - The convicted person misuses the interruption for purposes unrelated to its original intent.
 - The individual grossly violates the law during the interruption.
- Electronic Supervision: Revocation is mandatory in cases such as:
 - Evading the installation of supervision equipment.
 - Committing a new offence.
 - Failing to meet obligations associated with electronic monitoring.

Courts retain some flexibility in electronic supervision cases, allowing them to avoid revocation if special circumstances justify leniency.

d. Procedural Aspects of Revocation Hearings

Revocation proceedings involve several participants and procedural considerations:

1. Participants: The convicted person, their defence counsel, the probation officer, and the public prosecutor (whose attendance is mandatory) may participate in hearings.
2. Physical Presence: If the convicted person is detained, the court has the discretion to determine whether their physical presence at a second-instance hearing is necessary.
3. Immediate Enforcement: Revocation orders are immediately enforceable unless the court grants a suspension.
4. Appeals: Convicted persons may appeal revocation orders, though the immediate enforceability of such orders can limit the practical effectiveness of appeals.

6. Statistics

a. Conditional Early Release

According to data from the Prison Service, in 2023, penitentiary courts received 20 299 applications for conditional early release,²¹ representing 26.7% of the prison population. Of these, 1 651 applications were submitted by prison directors (5 by prosecutors or courts, 7 by court-appointed probation officers). The remaining 18 630 applications were filed by the convicts themselves, their defence lawyers, or representatives. The majority of these applications—81%—were rejected. In contrast, applications submitted by prison directors were overwhelmingly successful, with 95% being approved.²²

Overall, in 2023, penitentiary courts released 5 019 convicts on conditional early release (24,72% of all applications).²³ A historical analysis reveals a **steady decline** in the number of conditional release approvals. In 2004, there were 53 357 applications, with 21 314 resulting

²¹ Poland, Prison Service, Annual statistical report for the year 2023.

²² Own calculation based on: Polish Prison Service, Annual statistical report for the year 2023.

²³ Poland, Prison Service, Annual statistical report for the year 2023.

in conditional release (26,56%).²⁴ By 2014, the number of applications had dropped to 41 958, with 16,183 approved (20,49%).²⁵

Another noticeable trend is the **significant decrease** in the **submission** of applications for conditional release by **prison directors**. In 2004, prison directors submitted 10 815 (13,48% of the prison population at that time)²⁶, while in 2010 the directors submitted 16 525 of such applications (19,94%).²⁷ In 2014, it was 9 929 (12,57%).²⁸ In 2023, however, only 1 651 applications were submitted by prison directors, accounting for just 2,16% of average the prison population.²⁹

The Prison Service does not provide information on the probationary measures imposed on convicts who are conditionally released, nor does it publish data on the types of crimes committed by these individuals. However, a 2012 study³⁰ by the Institute of Justice indicated that, when granting conditional release, courts imposed specific obligations on convicts in at least 98.5% of cases. Nearly all released individuals were placed under the supervision of a court-appointed probation officer. The most commonly imposed obligations included:

- engaging in employment, education, or vocational training,
- refraining from alcohol abuse or the use of drugs.

According to the study, this set of obligations applied to at least 32% of conditionally released convicts. Other frequently imposed measures included prohibiting association with certain environments or being in specific places (20%), adhering to legal order (15,4%), and requiring permission from a probation officer before changing residence (9,9%).

There is no available official data on the relationship between the period served by convicts prior to conditional early release and the remaining sentence yet to be served. However, the aforementioned study by the Institute of Justice³¹ indicates that in the examined sample of conditionally released convicts, the largest group had between 1 to 2 years left to serve at the time of their release (31.5%). For 23.3% of the convicts, less than one year remained. Comparatively, a relatively significant group (10% of those studied) still had more than 5 years of imprisonment left to serve.

b. Electronic Monitoring

Regarding electronic monitoring, as of June 30, 2024, 6 736 individuals were serving their sentences under this system, utilising 67,36% of the system's 10,000-place capacity.³² However, no official data is publicly available regarding the current number of requests for converting a prison sentence to one served under electronic monitoring. Historical data shows that in 2019, 39 797 requests for electronic monitoring were filed, with 12 427 (31,1%) approved.³³ The rejection in 2019 was at the rate 26,3%. Additionally, a significant number of

²⁴ Poland, Prison Service, Annual statistical report for the year 2004.

²⁵ Poland, Prison Service, Annual statistical report for the year 2014.

²⁶ Poland, Prison Service, Annual statistical report for the year 2004.

²⁷ Poland, Prison Service, Annual statistical report for the year 2010

²⁸ Poland, Prison Service, Annual statistical report for the year 2014.

²⁹ Poland, Prison Service, Annual statistical report for the year 2023.

³⁰ Jankowski M., Momot M., WARUNKOWE PRZEDTERMINOWE ZWOLNIENIE – WYBRANE ASPEKTY PRAKTYKI, Warszawa 2012.

³¹ Jankowski M., Momot M., WARUNKOWE PRZEDTERMINOWE ZWOLNIENIE – WYBRANE ASPEKTY PRAKTYKI, Warszawa 2012.

³² Poland, Prison Service, Zaludnienie w latach 2018-2024.

³³ Przesławski T., Stachowska E., Analiza i oceny funkcjonowania systemu dozoru elektronicznego w Polsce w latach 2018-2019, Warszawa 2021.

proceedings were dismissed (5 152), which suggests possible organisational challenges within the penitentiary courts.³⁴

c. Sentence Interruptions

In 2023, the Prison Service reported that sentence interruptions were granted to 1 394 convicts.³⁵ By August 2024, there were 1 423 convicts benefiting from sentence interruptions. Among them, 985 received interruptions due to mental illness or other serious medical conditions, while 438 were granted interruptions for important family or personal reasons. The Prison Service also noted that among abovementioned group 386 individuals failed to return to prison as scheduled.³⁶

In all of 2023, only one convict was allowed temporary leave from prison to seek housing and employment opportunities before release.³⁷

d. Category-Specific Statistics

The Polish Prison Service publishes limited data on conditionally released individuals. Statistics from 2023 show the breakdown of conditionally released prisoners into different classification groups. According to this data, prison directors most frequently submitted conditional release requests for first-time offenders (1 123 requests) and repeat offenders (525 requests). For requests submitted by prisoners, their defence attorneys, or legal representatives, the numbers were similar for both groups, with 8,995 requests for first-time offenders and 9,546 for repeat offenders³⁸.

The data also shows that of the 5 292 individuals conditionally released from their primary prison sentence, 93% were men. Among this group, there were only 15 convicts under 21 years old, including one female³⁹.

In terms of the electronic monitoring system, the available data details the age and gender of individuals serving sentences under this system. As of August 31, 2024, of the 6,377 individuals in electronic monitoring, 639 were women. The majority of those monitored (65%) were aged between 27 and 46. There were also 159 individuals under 21 years old, 101 individuals aged 67 or older, including 13 people aged at least 77 years old⁴⁰.

In 2023, sentence suspension was applied to 1 394 prisoners, including 95 women. Among the men whose sentences were suspended, six were under the age of 21⁴¹.

7. Procedural Barriers

a. Access to Legal Assistance and Representation

During enforcement proceedings, convicted persons may receive assistance from a defence counsel, who can represent them in critical sessions before the penitentiary court. These

³⁴ Przesławski T., Stachowska E., *Analiza i oceny funkcjonowania systemu dozoru elektronicznego w Polsce w latach 2018-2019*, Warszawa 2021.

³⁵ Poland, Prison Service, Annual statistical report for the year 2023.

³⁶ Poland, Prison Service, Annual statistical report for the year 2023.

³⁷ Poland, Prison Service, Annual statistical report for the year 2023.

³⁸ Poland, Prison Service, Annual statistical report for the year 2023.

³⁹ Poland, Prison Service, Annual statistical report for the year 2023.

⁴⁰ Poland, Prison Service, *Populacja skazanych w SDE wg. wieku i płci*

⁴¹ Poland, Prison Service, Annual statistical report for the year 2023.

sessions include hearings on applications for conditional early release, sentence interruption, or electronic monitoring. Defence counsel may be privately retained, or if the convicted person demonstrates financial hardship, a public defender can be appointed. However, the court may withdraw this appointment if the person's financial circumstances improve, and such decisions are subject to appeal.

The law guarantees attorney-client privilege, allowing convicted persons to communicate privately with their defence counsel during visits or phone calls. Conversations are not subject to surveillance, ensuring confidentiality. However, the practical application of these rights is hindered by procedural constraints and inconsistencies across facilities. For example, a 2023 regulation intended to standardise telephone access to a minimum of once per week has, in practice, become an upper limit in many penitentiary units.

Logistical issues further complicate access to counsel. Defence attorneys report inconsistencies in visitation policies, including long wait times, sudden cancellations, and inadequate private spaces for meetings. These obstacles undermine effective representation, especially as enforcement proceedings require a comprehensive understanding of both the client's circumstances and the procedural context. Moreover, there is a shortage of lawyers who specialise exclusively in enforcement proceedings; most defence counsels in these cases are criminal attorneys who extend their practice into the enforcement phase.

b. Access to Case Files

Convicted persons have certain procedural rights, including access to court files and the ability to make copies. However, they are not allowed to consult the penitentiary administration's personal file, which forms the basis for criminological prognoses regarding their behaviour if released. This restriction limits their ability to challenge or verify assessments used to evaluate their eligibility for adjustments.

c. Evidence

Convicted persons may present evidence, request witnesses or expert evaluations, and raise relevant points. However, these rights are rarely exercised. Enforcement proceedings tend to focus on enforcing sentences rather than fully considering adversarial evidence. For example, cognitive evaluations, such as interviews with probation officers, often take precedence over other forms of evidence.

Expert Opinions

In accordance with the Code of Criminal Procedure, convicted persons may request additional expert opinions if they can demonstrate that existing opinions are incomplete or unclear. However, penitentiary courts rarely request expert evaluations. A 2019 study revealed that out of 540 reviewed cases, only six involved court-ordered expert opinions, and just three were specified as psychological or psychiatric evaluations. This limited engagement with expert input reduces the opportunity for a more adversarial and balanced proceeding.

d. Public Access to Proceedings

Conditional release hearings are typically conducted within prisons, as required by the Criminal Executive Code. Since 2020, however, many hearings have been held remotely via video and audio technology—a practice initially introduced during the COVID-19 pandemic and later institutionalised. These hearings are not public, although representatives of civil society organisations have occasionally been permitted to monitor them.

During these sessions, the presence of a public prosecutor is mandatory, alongside the convicted person, their defence counsel (if applicable), and other parties involved in the application. In remote hearings, the convicted person and their defence counsel participate from the prison, while the court proceedings occur elsewhere via video link. Similar remote procedures are used for hearings on sentence interruptions and electronic supervision applications.

e. Time Limits

The Executive Penal Code provides non-binding guidelines for reviewing complaints:

- **Conditional Early Release Decisions:** The law stipulates a 14-day period for reviewing complaints, but this is instructional only, with no penalties for delays.
- **Electronic Supervision:** A 30-day timeline exists for decisions, but research indicates frequent violations, with some cases taking up to five months.
- **Sentence Interruption:** No specific deadlines exist for reviewing complaints about refusals, further contributing to delays.

Since 2017, executive criminal proceedings have been excluded from mechanisms allowing complaints about prolonged proceedings, leaving parties without recourse to address delays or claim compensation for procedural inefficiencies.

f. Access to Appeals

Both convicted persons and public prosecutors may appeal decisions on conditional early release. Convicted persons can only appeal refusals, whereas prosecutors can challenge both approvals and refusals. If applications are initiated by a prison director or probation officer, they may also appeal refusals.

- **Appeal Success Rates:** Research from 2019 showed that appeals against decisions granting release were rare, with only 1.85% of 540 cases involving such appeals. In 2023, prison directors filed 50 appeals against refusals, with only 13 of 40 reviewed appeals succeeding.
- **Other Appeals:** Decisions on electronic supervision or sentence interruptions can also be appealed, but success rates are similarly low. For example, studies indicate only about 4% of complaints in 2011 resulted in favourable outcomes.

The scope of review for the appellate court is defined by the specific grounds of the complaint challenging decisions on conditional early release, sentence interruption, or execution of imprisonment under the electronic monitoring system. Typically, the appellate court is

restricted to the issues raised within the appeal. An exception exists, however, for cases involving an 'absolute appeal defect', where the court must overturn the decision irrespective of the arguments presented. Such defects include serious procedural issues, such as improper court composition or failure to allow the convicted person an opportunity to defend their rights (e.g. by not informing convict's counsel about the date of the hearing). Additionally, the court may also extend its review beyond the appeal's scope if it finds the original decision to be manifestly unjust.

g. Premature Applications and Delays

Defence lawyers frequently submit early applications for conditional release to ensure timely consideration once eligibility is met. However, courts inconsistently handle these applications. Some accept them, while others dismiss them as "premature" if filed before the statutory criteria are fulfilled. This inconsistency particularly affects individuals with shorter sentences, as delays in processing applications can result in prisoners serving nearly their entire term before a decision is reached.

Moreover, procedural delays in conditional release and other enforcement processes cannot be formally challenged, as complaint mechanisms for prolonged proceedings are excluded for executive criminal matters. This leaves applicants without an effective remedy to expedite decisions or address delays.

8. Differential Impact for Marginalised Prisoners

A 2019 study⁴² sheds light on the typical characteristics of conditionally released individuals. The predominant traits included no prior criminal record, serving a sentence in a semi-open or open prison within a program-based system, a sentence of no more than two years, and support from the penitentiary administration in securing release. Conversely, convicts less likely to be granted conditional release often had one or more of the following characteristics: prior convictions under the recidivism provisions of the Penal Code, sentences exceeding seven years, convictions for crimes against sexual freedom, life, or health, or service of their sentences in the regular system.

a. Barriers relating to Socioeconomic standing of prisoners

Neither the conditions for applying for conditional release nor those for sentence interruption directly address the circumstances of the convict post-release. However, socioeconomic factors can be indirectly considered as part of evaluating a convict's positive criminological prognosis. For instance, the Appellate Court in Lublin, when assessing whether the convict's behaviour suggested a positive prognosis, considered their family relationships, the support they received from relatives, and whether they had a stable place to live upon release.⁴³

The requirements differ somewhat for those seeking to serve their sentences under electronic supervision. To qualify, convicts must have a permanent residence, and any adult household

⁴² Nikołajew J., Burdziak K., Jankowski M., Kowalewska-Lukuć M., Diagnostyka sądowo-kryminalna w orzekaniu i wykonywaniu warunkowego przedterminowego zwolnienia w teorii i praktyce sądowej – raport z badania, *Prawo w Działaniu*. T. 39 (2019), s. 9-68.

⁴³ Poland, Appellate Court, Lublin, II AKzW 291/10, 24.04.2010. Similarly: Poland, Appellate Court, Szczecin, II AKzW 819/10, 20.10.2010.

members must consent to electronic supervision in the home. Prior to issuing a decision, the probation officer must assess the convict's family, social, and living conditions.

A 2014 study indicated that probation interviews were conducted in 75% of the cases reviewed, though practices varied widely among courts. As the study's authors observed, some courts made use of probation interviews only sporadically.⁴⁴

b. Lifers

The Penal Code permits courts to impose stricter eligibility conditions for applying for conditional early release for lifers. Although there is no available data on the frequency with which courts exercise this option, in practice, it is generally applied to individuals serving long-term sentences, including life imprisonment.

Life imprisonment was introduced relatively recently into Polish law, in the mid-1990s. Poland's population of those sentenced to life imprisonment currently stands at 574.⁴⁵ Publicly available information indicates that only one woman sentenced to life imprisonment has been conditionally released so far.⁴⁶

⁴⁴ Jankowski M., Momot M., Wykonywanie kary pozbawienia wolności w systemie dozoru elektronicznego. Sprawozdanie z badania aktowego, „Prawo w Działaniu. Sprawy Karne” 2015/22, p. 36–40.

⁴⁵ Poland, Prison Service, Monthly statistics - September 2024 Data includes 24 persons not sentenced to life imprisonment.

⁴⁶ Pawlicka K., She is the first "lifer" in Poland. She was recently released from prison, wp.pl.



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