

# The shape of the prison sentence on Polish lands from the 15th century until the fall of the Duchy of Warsaw

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## Abstract

Former Polish law, in terms of broadly understood prison sentences, provided for several significantly different forms of isolation. These differences were a consequence of the entities to which they could be applied, the method of execution, and the consequences of application (disgraceful or non-disgraceful measure). The place where it was performed also varied—it could be dungeons, fortresses, castles, monasteries, prisons, inns rented for this purpose, or the convict's own home. The penalty of imprisonment, becoming a sanction, clearly accelerated the change from the medieval system of executing penalties, based on corporal punishment, towards modern penal systems, based on isolation, as an independent and dominant penal sanction.

**Keywords:** history of punishment, prison, criminal law.

We encounter the legally defined threat of imprisonment in our country for the first time in 1447, in the Statutes of Casimir IV Jagiellon.<sup>1</sup> Until

<sup>1</sup> The relevant provision stated that anyone who invaded the court and committed rape in this court case would be punished in accordance with the Statute and sentenced to imprisonment (*carceribus*) for 12 weeks. It was sanctioned by the parliamentary constitutions of 1493 and 1496. J. Rafacz, *Dawne polskie prawo karne*, Warszawa 1932, p. 135; J.J. Wąsik, *Kara dożywotniego więzienia w Polsce*, Warszawa 1963, p. 12; S. Lelental,

the 18th century, this punishment was of secondary importance. Former Polish law, in terms of broadly understood prison sentences, provided for several significantly different forms of isolation. These differences were a consequence of the entities to which they could be applied, the method of execution, the consequences of application—a measure causing disgrace or one without anathema—and, above all, the place of execution (which could include dungeons, fortresses, castles, monasteries, prisons, inns rented for this purpose, the convict's own house, etc.). Penalties of this type included: the penalty of the lower tower, the penalty of the upper tower, prison, correctional home, workhouse, as well as slightly different penalties: cage, marten, log, gander, bishop, and house arrest.<sup>2</sup>

The cage was a measure used mainly in cities and less often in villages. In addition to the pain associated with the deprivation of liberty, it also involved a loss of honour. The cage was usually placed next to the town hall, so that everyone could see it clearly. A special inscription was also placed on it, stating the reasons for the sanctions.<sup>3</sup> The sanction ranged from one hour to one week, with one day being the most commonly used duration. The log was a tree trunk split in half with notches into which the arms and legs were inserted and locked with special clasps. This punishment was usually not long and was used for theft or disobedience. Another of the old penalties was the so-called gander—a device used to lock a prisoner by the neck, in a position on all fours. It was used against plebeians for disobedience, insults, and drinking in the inn. The length of the sanction was usually up to three days, and the convict had to be held for three hours each day, under guard to ensure that the convict did not suffocate. A marten was a chain attached to the pillory or to the door of a church, in which the convict was locked by the neck or by the hand. This punishment played an important role in urban and rural practice, it was used for disobedience, insults, etc.<sup>4</sup> A very unusual punishment was the sanction called “bishop”—this name referred to the procedure

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*Wykład prawa karnego wykonawczego z elementami polityki kryminalnej*, Łódź 1996, p. 25.

<sup>2</sup> J. Rafacz, *Dawne polskie...*, pp. 146–150.

<sup>3</sup> W. Maisel, *Poznańskie prawo karne do końca XVI wieku*, Poznań 1963, pp. 143–146.

<sup>4</sup> T. Maciejewski, “Rozwój prawa karnego,” [in:] *System prawa karnego*, vol. 2, *Źródła prawa karnego*, ed. T. Bojarski, Warszawa 2011, p. 100.

of placing the convict in a specially hollowed-out tree, which was then closed with two poles, confining the convict in a standing position. In the old Polish law, house arrest was also known and used in court practice as a form of mitigating the penalty of imprisonment. The arrested person was kept at home, under the guard of soldiers, and forbidden to leave.

A punishment similar to imprisonment was confinement in a tower (*poena turris*). It began to be used on a wider scale at the end of the 15th century. The tower served as a temporary prison for periods ranging from one week to one year and six weeks, and exceptionally up to four years. This sentence was served either in the so-called lower tower or in the upper tower.<sup>5</sup> The punishment of the lower tower (the tower at the bottom) was a particularly severe measure used for murder, as well as for destroying royal letters. This punishment was carried out underground, in special towers built for this purpose (in Polish Kingdom the lower tower was about nine metres deep, and in Grand Duchy of Lithuania it reached as much as 11 metres). The convict was kept in terrible sanitary and hygienic conditions (damp, cold, dark) and this punishment often resulted in significant damage to the convict's health. The second type of the punishment was the so-called upper tower penalties, which were usually applied for lesser crimes. In this case, the convict was locked up in rooms without any special security. At the same time, the convict retained a number of rights: he could freely receive guests, prepare his own food, and keep servants.

Both lower and upper tower penalties did not bring any disgrace to honour. They were used against the nobility. In both cases, the convicts were not forced to work or perform other activities. This was partly due to the fact that this punishment applied to the nobility, as well the manner in which it was executed. The convicts served their sentences individually or, in the case of the lower tower sentence, in darkness. The cost of keeping the convict in the tower was borne directly by the convict himself. Supervision over the implementation of this measure rested with the starosta (royal marshal with judicial power). In both cases, the convict was not handcuffed. The convict showed up to serve his sentence

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<sup>5</sup> L. Rabinowicz, *Podstawy nauki o więziennictwie*, Warszawa 1933, pp. 18–20; Z. Kaczmarczyk, B. Leśnodorski, *Historia państwa i prawa Polski od połowy XV w. do r. 795*, vol. II, Warszawa 1957, p. 192.

himself—the so-called *zasięcie* (occupying the tower). At the beginning and at the end of the sentence, the convicted person submitted appropriate testimony to the court records. This always took place in the presence of a court usher and two witnesses selected from a noble family. These penalties did not achieve any educational goals, and the characteristic form of the so-called being in the tower, which had the meaning of a certain manifesto, emphasized the formula of self-punishment.

Their complete opposite was a prison sentence (*carceribus*), which brought disrepute to the convict's honour. This measure more closely resembled the imprisonment penalty developed later. *Carceribus* has been known in Poland since the 17th century.<sup>6</sup> It was used mainly within municipal and dominal courts, it did not play a major role in land law and was used exceptionally against the nobility. The convict was sent to prison by force; the prisoners were constantly under guard and were shackled. The convicts were forced to undertake hard labour, called forced public works (on embankments, erecting and repairing castles and city buildings, etc.).<sup>7</sup> *Carceribus* held a special place under city law and became an increasingly common sanction from the end of the 17th century.<sup>8</sup>

In Polish cities, criminals who still had hope for improvement were sentenced to prison combined with public works. Public works, most often in chains, served as a form of penance for the act committed. Working for the benefit of the urban community was also seen as an element of compensation for the wrong done, but above all it was a mechanism of economic exploitation and cheap labour. It is difficult today to say unequivocally whether performing public works was also intended to educate the perpetrator, however, a clear trend in the 16th and 17th centuries, especially in urban communities, was the idea of combating laziness, idleness, and vagrancy, and therefore also against crime related to these social pathologies. A tentative confirmation of the thesis about the educational importance of public works, at least as a form of a declaration, can be found in the content of judgments issued in Cracow at the end of

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<sup>6</sup> J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Warszawa, 1994, p. 270.

<sup>7</sup> J. Rafacz, *Dawne polskie...*, p. 140.

<sup>8</sup> M. Mikołajczyk, *Przestępstwo i kara w prawie miast polski południowej XVI–XVIII wieku*, Katowice 1998, p. 234.

the 17th century, where it was sometimes noted that when, for example, a convict was assigned the task of clearing mud from the streets, it was done to improve his life (*ad correctionis vitam*).<sup>9</sup> According to estimates, at the beginning of the 17th century, the daily wages of handcuffers (as they called prisoners taken out to work) ranged from a third to a half of the free market wage of an unskilled worker.<sup>10</sup>

The incorporation of forced labour into the prison sentence occurred during the establishment of *cuchthouses*—correctional houses (modelled on the Amsterdam houses<sup>11</sup>). The first such house in the Polish-Lithuanian Commonwealth was built in 1629 in Gdansk, the next one probably in 1716 in Cracow<sup>12</sup> and in 1736 in Warsaw.<sup>13</sup> Polish correctional houses were most likely modelled on the Gdansk model. These institutions became more important only in the mid-18th century. As part of this measure, convicts were subjected to numerous restrictions and obligations.<sup>14</sup> As J. Rafacz<sup>15</sup> notes, the convict was brought by force and served his sentence under guard, but without shackles (the latter were reserved for disciplinary measures). Time spent in a correction house did not lead to any diminution of honour; all inmates were obliged to work, and tasks

<sup>9</sup> Ibid., p. 235.

<sup>10</sup> A. Karpiński, *Pauperes: o mieszkańcach Warszawy XVI i XVII wieku*, Warszawa 1983, p. 236; M. Porowski, *Spoleczne inicjatywy na rzecz więźniów*, Warszawa 1991, p. 34.

<sup>11</sup> In the 18th century, there were about sixty plants of this type in Europe, but only a few in Poland: in Warsaw, Vilnius, Gdansk, Cracow, Elblag, and Torun. K. Maksymowicz, “Z problematyki kształtowania się instytucji kary opartej na pracy w polskim prawie karnym,” [in:] ed. L. Bogunia, *Księga pamiątkowa ku czci Profesora Józefa J. Wąsika*, Wrocław 1999, p. 211.

<sup>12</sup> M. Mikołajczyk, *Przestępstwo...*, p. 236.

<sup>13</sup> The Warsaw house of correction, founded on the initiative of Bishop Adam Rostkowski, by a resolution of the Sejm of 1736, under the name House of Corrections alias *Zuchthaus* for “the taming of evil and wanton people,” gained considerable fame in the Polish-Lithuanian Commonwealth. However, it was the second institution of this type in the capital, the first was the correctional house founded in 1732 by priest Gabriel Piotr Baudoin. K. Pawlak, *Za kratami więzień i drutami obozów*, Kalisz 1999, p. 12.

<sup>14</sup> Placement in these institutions was initially based on a court decision, but later the principle was adopted that a decision of the administrative authority or even the family’s wish was enough. T. Kalisz, *Zatrudnienie skazanych odbywających karę pozbawienia wolności*, Wrocław 2004, pp. 18–19.

<sup>15</sup> J. Rafacz, *Dawne polskie...*, pp. 143–144.

were assigned by the house's management. These facilities housed foremen (vocational teachers) who trained prisoners in various trades. After leaving the reform house, the convicts were treated equally with other members of the craft guilds. Daily prayer and religious education were important elements of the improvement process.<sup>16</sup>

Penalties based on imprisonment involved forced labour houses, which were established at the end of the Polish-Lithuanian Commonwealth. These institutions were not state-run, but rather private ventures, to which the authorities only sent prisoners to work, having previously agreed on all related conditions. The main impulse for the creation of forced labour houses was the need to combat begging, vagrancy, and the petty crime associated with these issues (mainly against property), known already at the origin of correctional houses. The desire to utilise cheap labour, typical of this era, was also important. An example of such a workhouse was Franciszek Rechan's company.

The owner, pursuant to an agreement concluded on 19 March 1792, between the entrepreneur and the Police Commission, received 200 convicts to work for a period of seven years. The owner of the enterprise was responsible for all obligations related to housing, feeding, and clothing the prisoners, while the state was only obliged to provide guards for protection against escape. The women and men assigned to the company were required to work 12 hours a day, with breaks for meals and sleep (except Sundays and Saturdays). The agreement regulated in detail the issues of dietary standards, clothing, and remuneration for work. Each male prisoner was to receive annually, for the first three years of his stay, two shirts, one waistcoat, one pair of linen trousers, one pair of stockings, one nightcap, and a pair of shoes. Each female prisoner was to receive two shirts, one jacket, one skirt, one pair of stockings, one woollen hat, and one pair of shoes. In addition, each prisoner had the right to a blanket, a straw mattress, and a pillow. None of the convicts received any salary during the first three years. It was granted only after that period and was paid for the subsequent four years of their stay. The remuneration was PLN 32 per person per year, and the number of clothing items was increased by

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<sup>16</sup> M. Czerwiec, *Więzienioznawstwo. Zarys rozwoju więziennictwa*, Warszawa 1958, pp. 23–24.

two new shirts and a pair of shoes, so that they were entitled to four shirts and two pairs of shoes. After their release, all convicts were to have appropriate labour qualifications. The agreement also called on Rechan to establish a chapel in the almshouse. Prisoners were not allowed to leave the prison except for official visits. After seven years, the convict had to be released, unless he expressed a desire to stay, in which case the amount of remuneration for work had to be agreed upon with him.<sup>17</sup>

Against the background of the situation described above, there were two notable exceptions: two modern penitentiaries established in the second half of the 18th century—the Marshal’s Prison in Warsaw (1767) and the prison in Kamieniec Podolski (1782).<sup>18</sup> The Marshal’s Prison in Warsaw is considered historically the first Polish prison, established on the initiative of the Grand Marshal of the Crown, Stanisław Lubomirski.<sup>19</sup> It was a perfectly organized facility, intended for 65 convicts, administered on a military model based on the “Prison Ordinance” issued in 1767 (considered the first specific prison regulations). The ordinance introduced a number of changes both in the way of serving the sentence and in the internal organization of the facility. These innovations were aimed at providing convicts with appropriate hygienic and sanitary conditions (treatment, keeping rooms clean, change of underwear and clothes, their own mattress, etc.), providing religious care, introducing prison works

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<sup>17</sup> J. Rafacz, *Dawne polskie...*, pp. 145–146.

<sup>18</sup> The prison in Kamieniec Podolski (currently Ukraine—Kamianets-Podilskyi) was established in 1782. Mainly long-term and life sentence convicts from all over the country (approx. 200 convicts) served their sentences in the Kamieniec fortress. The convicts were supported by the state, which in return demanded work repairing the fortress. This prison had a bad reputation. The living and sanitary conditions were very poor, the existing community system promoted demoralization, especially since there was no order of silence and no internal supervision.

<sup>19</sup> Grand Marshal of the Crown Stanisław Lubomirski took office in 1766 and began his term of office with a significant reform of the tower penalty. With the king’s consent, it was ordered to install windows in the lower tower, install a floor and a furnace, and build a toilet for the convicts next to the cell. However, the most important achievement of Marshal Lubomirski was the construction, at his own expense, of a new prison in the building of the old powder magazine (*kordegarda*) at Mostowa street in Warsaw—considered the first Polish prison. J. Rafacz, *Wieżenie marszałkowskie w latach 1767–1795*, Lwów 1932, pp. 9–14, M. Czerwiec, *Więzienioznawstwo*, pp. 24–25, J. Wąsik, *Kara dożywotniego...*, pp. 33–34.

and introducing a system of convict segregation. Visits and correspondence were allowed, it was possible to use passes during the holiday season, and upon final release, prison clothes were given to convicts who did not have their own. Convicts were also given cash benefits.<sup>20</sup> A significant solution of the ordinance was to grant convicts the right to submit complaints to the marshal himself.

Convicts in the Marshal's Prison were obliged to work within the facility or under a system of hiring outside the facility. Only those convicted of debt were exempt from the obligation to work.<sup>21</sup> The work was organized on the basis of contracts concluded by the plant's administration with private entities or state offices. "Work orders" were placed with the prison superintendent (he was the direct manager of the facility appointed by the marshal), who, in accordance with the recommendations of the ordinance, was to assign convicts to work, taking into account the order of applications. If tools were needed to perform the agreed work, they were purchased by the marshal's jurisdiction itself from its own funds. The provisions of the ordinance required that sick convicts be released from work. The convicts' duties were adjusted to their physical capabilities so as not to exploit them with excessively hard work. Convicts sent to work remained under constant supervision of a non-commissioned officer and soldiers from the marshal's banner. Prison work was organized in such a way that it could be performed with concentration and under constant supervision. The guards cared about efficiency and quality of work. The guard commander had the right to admonish a convict who was dishonestly performing the task entrusted to him, and if this did not help, he could hit the prisoner with a stick to force him to work (over time, the number of blows was limited to three). The convict's further resistance resulted in him being immediately taken to prison, where he was further punished. Temporary confinement on bread and water, followed by flogging, were used as punishments for refusing or improperly performing assigned work.<sup>22</sup> The soldier guard was also responsible for preventing contact between prisoners and civilians during work. Such contact was allowed exceptionally and only in the presence of the guard commander.

<sup>20</sup> M. Czerwiec, *Więzienioznawstwo*, p. 25.

<sup>21</sup> K. Pawlak, *Za kratami więzień i drutami obozów*, p. 16.

<sup>22</sup> *Ibid.*, p. 47.



Keeping convicts working was the task of the marshal's office. The entire amount earned by the convicts was taken over by the facility's administration. The marshal's prison was equipped with a special fund intended for its maintenance. The components of this fund include: income from the work of convicts, sums voted (allotted) by the Sejm, constituting part of the marshal's budget allocated to order in the king's place of residence, public loans granted in special cases, alms, part of the income obtained by Warsaw from the sale of special tickets authorizing Jews to stay in the capital, and income from the sale of items found with thieves and not claimed by their rightful owners.

Until the end of the 18th century, the organization of prisons in Poland presented a disastrous picture. There was practically no state system for executing imprisonment. The law at that time quite often left the initiative to the plaintiff or prosecutor, both in terms of initiating criminal proceedings and implementing the judgment.<sup>23</sup> In fact, all costs of implementing the judgment were transferred to the plaintiff or prosecutor. During this period, the penalty of imprisonment was treated as both a civil-legal sanction (*incarceratio civilis*) and a criminal sanction (*incarceratio criminalis*).<sup>24</sup> The state was most often not interested in maintaining prisons, passing this costly obligation on to cities, which in turn, wanting to reduce the costs of operating penitentiary institutions, leased them out.

The first attempts to break the complete inertia of state structures in organizing the system of executing imprisonment were the Stanisław reforms. The Permanent Council, established in 1775, was the first attempt to exert central influence on the prison system. Sending long-term prisoners to the prison in Kamieniec Podolski, recommending that courts limit the imposition of the death penalty, pointing to the educational purpose of punishment, and providing subsidies for the maintenance of convicts (and then for prison renovations) are examples of actions taken during this period. In 1791, a Police Commission was established and was entrusted with the supervision of penitentiaries and the execution of imprisonment sentences. All these efforts were far from universal, and

<sup>23</sup> M. Porowski, *Spoleczne inicjatywy...*, p. 24.

<sup>24</sup> S. Borowski, *Ściganie przestępstw z urzędu w średniowiecznym prawie polskim*, Warszawa 1933; R. Taubenschlag, *Prawo karne polskiego średniowiecza*, Lwów 1934.

the final collapse of the state after the third partition (in 1795) definitely eliminated the possibility of further work towards creating a penitentiary system.<sup>25</sup>

Despite the collapse of the Polish state at the end of the 18th century, under the influence of the Enlightenment, there were clear changes in the views on the organization of the prison system and the principles of executing imprisonment. A noticeable voice of the era was seeing the penalty of imprisonment as a corrective measure, and not merely an instrument of retribution for the committed act. The demands of the Polish Enlightenment regarding the reform of the penitentiary system were most fully expressed by Józef Szymanowski—lawyer, writer, and political activist.<sup>26</sup> Szymanowski's position on the prison sentence was aimed at emphasizing the importance of the corrective and educational function of punishment. Prisons should be separated from remand centres and convicts should be properly classified. He postulated that the type of prison where the convict was to serve the sentence should depend on the type of crime, gender, and physical strength. It was necessary to divide prisons into those where forced labour was obligatory and those where the punishment was only imprisonment.<sup>27</sup>

The fall of the Polish state did not destroy reform efforts in the field of prisons and criminal law. Despite the partitioning countries imposing their solutions, we could still talk about the development of Polish penitentiary thought. This thesis was confirmed by the draft prison ordinance presented in 1809–1810 entitled: “Arrangement of national prisons.”<sup>28</sup> This extensive document, consisting of 331 paragraphs—as J. Śliwowski

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<sup>25</sup> J. Migdał, J. Raglewski, *Kara pozbawienia wolności. Zarys dziejów polskiej doktryny, prawa i polityki penitencjarnej*, Gdańsk 2005, p. 143.

<sup>26</sup> Józef Szymanowski (1748–1801), an outstanding Polish lawyer, co-creator of the Stanisław August Codex project, Head of the Ministry of Justice during the Kościuszko Uprising. His book titled *Thoughts for the Prospectus of Criminal Law* was a summary of the reform of penal institutions undertaken in the final years of the Polish-Lithuanian Commonwealth.

<sup>27</sup> M. Czerwiec, *Więziennictwo*, p. 50; J. Śliwowski, *Prawo i polityka penitencjarna*, Warszawa 1982, p. 53.

<sup>28</sup> The document was found by J. Śliwowski in the Archives of Old Records in Warsaw (Akta Rady Stanu Księstwa Warszawskiego; Więzienia i Aresztanci, Sek. II Nr 12A, Nr rd. 121). The text was published in full in *Przegląd Więziennictwa* in 1959.

notes<sup>29</sup>—was a surrogate for the Act on the Execution of Imprisonment Penalties and Prison Regulations. The proposed model aimed to introduce a system of joint serving of sentences by convicts with elements of progression. Prisons were to be placed under direct state management and become a structure based on the principle of financial self-sufficiency (mandatory employment of all convicts). However, due to the fall of the Duchy of Warsaw, the project of the ordinance was not implemented in practice. The Napoleonic period, despite attempts to reform the Polish penal system and create a penitentiary system, ended in complete failure. The first Polish penal code, which also regulates the basic principles of imposing imprisonment, was finally developed only in 1818, within the Kingdom of Poland, dependent on Russia.

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