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Recidivism in Polish Criminal Law

Recidivism is a serious issue in the criminal justice systems of most nations. This article examines relevant Polish law to give insight into legal responses to this common problem.

By Andrzej Spotowski

INTRODUCTION

Poland, like other Socialist countries, views recidivism as a particularly dangerous phenomenon that must be combatted through appropriate legal sanctions. Since the measures taken against recidivism in Poland differ from those taken in other countries, they may be of interest to foreign lawmakers. One generally speaks of recidivism when a person with a criminal record commits another crime. This is recidivism in the criminological sense of the word, but its legal meaning is different. This paper will consider the characteristics and consequences of recidivism as they are defined in Polish criminal law.

HISTORICAL DEVELOPMENT

For hundreds of years, Polish law has provided stricter penalties for offenders who repeat certain crimes, such as larceny. According to statutes enacted by King Kazimierz Wielki in the 14th century, a third conviction of larceny evoked the death penalty. The laws of the Polish Monarchy of 1818 followed the model of the Napoleonic Code in dealing with recidivism. In the Code, laws were very casuistic and detailed. Distinctions were made according to the seriousness of the repeated offenses. In general, a recidivist received a stricter penalty no matter how much time had elapsed since the previous conviction or how much of the earlier sentence had been completed.

In periods of foreign occupation of parts of Poland, Polish citizens were subject to the legal systems of other countries: Austrian, Russian, German, and Russian again. The last foreign system imposed on Poland, the Russian Penal Code of 1903 (introduced in 1915), allowed extra penalties for recidivism only if the same type of

offense was repeated within a short time after the completion of a sentence.

Enacted after Poland regained its independence, Article 60 of the Polish Penal Code of 1932 dealt with recidivism in general terms. Recidivists received stricter sentences if the following conditions were fulfilled: (1) the new crime was of the same type as the earlier offense or the offender acted out of the same motives; (2) the offender had served at least one-third of the earlier sentence; and (3) the new crime was committed within 5 years of completing the previous sentence. In such cases, the court could impose a sentence exceeding the maximum penalty for the crime in question by up to one-half. (It is worth noting, however, that the courts did not make use of this provision.) If a sentence called for confinement, the Penal Code of 1932 required that this confinement take place in a penitentiary rather than in a local jail; the minimum penalty would be 6 months rather than the previous penalty of 1 week. Furthermore, a court was not allowed to substitute probation or parole in such cases.

The penal laws of the Peoples' Republic of Poland, which were drawn up in the 1950's, dealt much more severely with recidivists. This was especially true for the laws protecting nationalized property, which unconditionally required heavier penalties for repeat offenders.

PRESENT LAWS (PENAL CODE OF 1969)

Types of Recidivism

Many regulations in the Penal Code of 1969 pertain to recidivism. Generally, the Code defines different kinds of recidivism and calls for appropriate penalties for each. A distinction is made between general recidivism and special recidivism. General recidivism refers to new offenses by a person who had been previously convicted for different offenses; the offenses do not have to be related. Special recidivism involves the repetition of similar offenses and takes into consideration the amount of time since the offender had been

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prison, for the court can assign him to probation officers or even order his placement in a center for social adjustment. These measures are intended to prevent him from committing new offenses after completing his sentence, and they are put into effect when an assessment indicates that he is prone to do so. For simple special recidivism, the decision is left up to the courts, but for multiple special recidivism, the negative prediction is automatic and the assignment to probation officers is a legal requirement. Probationary supervision runs from 3 to 5 years and begins immediately upon release. The recidivist must not change his place of residence without court approval, and he is required to appear before the court whenever summoned in order to receive the court's instructions. He may be forbidden to stay in certain places, or he may be ordered to remain in a location of the court's choice.

In the event that probationary supervision seems inadequate for preventing a multiple recidivist from committing new crimes, the court can assign him to a center for social adjustment. This assignment can also be imposed if his probationary obligations are not fulfilled or if the probationer refuses to cooperate. Committing an offender to a center for social adjustment is intended to achieve the following goals: (1) an additional rehabilitating effort in a situation of limited freedom, (2) a test of the offender's capability for leading a law-abiding life, and (3) the protection of society from any further criminal activities.² The period of commitment is not determined in advance; however, it may not exceed 5 years. After 2 years, the court can order the offender's release if there is reason to suspect that he will refrain from criminal activities.

At the centers, work for the benefit of society is viewed as the most effective means of social reintegration. The offender is required by law to work. The workers are compensated at standard rates, and enjoy the most important rights granted to the normal working population: they are entitled to paid leave and receive all social security benefits and any other benefits dependent upon the length of employment. These rights are intended to facilitate the transition to ordinary working life after release.

The Correctional Code (Chapter XII) deals with an offender's rights and duties in the centers and determines correctional measures and rewards. Penalties include reprimands, visitor restrictions, reductions in pay, and restriction to certain rooms for up to 6 months. As a reward, an offender may be allowed to leave the center for a number of days or even take his vacation outside the center. In practice, penalties are more common than rewards, as demonstrated in a study of 170 residents conducted in November 1974.³ Only 13 persons went without penalties: 157 (92.4 percent) were disciplined, 68 residents more than 5 times. Sixty-five persons were rewarded, 24 residents only once.

²Pawela: *Kodeks Karny wykonawczy, Komentarz* (Commentary on a Book of Sentencing Statutes), 1972, p. 297.

³Fidecki: *Nadzór ochronny i ośrodek przystosowania społecznego w praktyce* (Supervision and the Center for Social Adjustment Practice), Nowe Prawo, 1975, p. 1538 ff.

The same study demonstrated that the amount of punishment received is considered an important factor in the assessment of an offender's rehabilitation. Other important factors are overall behavior, attitude toward work, escape attempts, and alcohol abuse. The directors considered the rehabilitation process effective for 37 members (21.8 percent) of the study group, but only one recidivist was released from the center after the 2-year minimum period required by law.

Recidivism laws and court practice. The law requires penal measures for special recidivism that are quite severe. However, the strict application of the laws can sometimes lead the courts to pronounce sentences that they consider excessive and, therefore, unjust. In order to avoid such situations, the criminal code (Article 61) allows the courts to refrain from applying recidivism regulations in cases where the personal circumstances (motives, personality, social environment) of the offender, rather than the circumstances of the offense, must be taken into consideration. This regulation gives the court an opportunity to handle each case individually, and emphasizes the preventive function of punishment. The application of Article 61 means that the court can impose partial confinement or fines rather than imprisonment. The Polish Supreme Court has ruled, though, that the other recidivism provisions of the criminal code must remain in effect.

A controversy that sometimes arises is whether a recidivist's offense may be considered as "insignificantly dangerous"⁴ to society and thus go unpunished in accordance with Article 26 of the criminal code. In practice, charges against recidivists have been dismissed relatively often for this reason, usually in cases involving the theft of objects of less than 500 Złoty in value. Such a theft actually constitutes a petty offense to be dealt with by administrative agencies. A petty offense is sent to the courts only if the offender repeats his crime; then, the offense is considered a delict and the courts must use the applicable sections of the criminal code in determining a punishment, including those which deal with special recidivism. In order to avoid serious consequences for a minor theft, the courts often dismiss the case. The result is that the repeat offender may go unpunished, while the first-time offender usually receives a heavy fine from the responsible administrative authorities.

STATISTICS

According to a study of the years 1970 to 1973,⁵ the majority of those convicted by the courts are first-time offenders; in 1973 they constituted two-thirds of the criminal population sentenced. The rest were recid-

⁴Translator's Note: In the materialistic concept of law used in Communist countries, the potential danger to society determines whether an offense is prosecuted.

⁵Published in Jasiński: "Charakterystyka przestępczości" (Characteristics of Criminality), in Jasiński ed., *Zagadnienia przestępczości w Polsce* (Problems of Criminality in Poland), 1975, p. 83.

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released from jail and the amount of time he spent in jail.

General Recidivism

The prerequisites and the penalties for general recidivism vary from case to case. Article 27 defines the prerequisites for dismissal of a case. Previously convicted offenders cannot be granted dismissals as long as their earlier convictions still appear in the penal register, whether the earlier offense was premeditated or negligent. Article 112 prohibits the expungement of a previous conviction from the penal register if an offender commits a new crime punishable with imprisonment before the normal removal date. Article 52 describes the most important case of general recidivism:

...an earlier conviction for a willful offense or for a similar negligent offense will be considered by the court to be an aggravating circumstance requiring heavier penalties. If the law allows a choice of penalties, a milder penalty may be imposed only if the conditions of Article 50 are fulfilled.

Heavier penalties are not imposed if a previous negligent offense is not similar to the new negligent offense. The question of what constitutes a "similar" offense will be taken up in the section on special recidivism, where the concept is especially important. Article 52 does not specify the extent to which a penalty should be increased, which is determined by the court.

A second legal consequence of recidivism is that a judge may impose a milder penalty only in exceptional cases; thus, if a choice exists between imprisonment, limited confinement, and a fine, the court may choose the fine only in exceptional cases. Reference to Article 50,¹ which defines the general principles for deciding penalties, is of little use in determining what constitutes an exceptional case.

Special Recidivism

Prerequisites for special recidivism. Lawmakers believe that the articles dealing with special recidivism play a particularly important role in combatting recidivism. A distinction is made between simple and multiple recidivism. Simple special recidivism (Article 60, paragraph 1) exists when an offender who has been imprisoned for an intentional offense commits a similar intentional offense within 5 years of completing at least 6 months of the original sentence. Cases in which confinement has been imposed because of an inability to pay a fine do not constitute special recidivism. The length of the previous confinement does not play a decisive role. The law requires only that an offender have spent 6 months in prison. Both earlier and new offenses must have been intentionally committed: special recidivism does not cover negligent offenses. A situation of special recidivism exists only when both offenses are similar, as explained in Article 120:

Similar offenses are...directed against the same or similar protected interest, or are committed out of the same motives. Offenses committed for the purposes of personal gain are considered similar.

Of course, this legal definition does not remove all doubts concerning the similarity of offenses, which remains an object of dispute among Polish criminal lawyers.

The regulations concerning multiple recidivism are found in the second paragraph of Article 60 and apply only if all of the following conditions are fulfilled: (1) the offender has two previous convictions; (2) he has served a minimum of 1 year in jail; (3) the new, intentional crime has been committed within 5 years of his release; (4) the crimes were committed for personal gain or could be described as hooliganism; and (5) the new crime is similar to at least one of the previous offenses. The range of special multiple recidivism is much narrower than that of simple special recidivism.

Legal consequences of special recidivism. The legal consequences of simple special recidivism are different from those for multiple special recidivism, although heavier penalties are obligatory in both cases. This increased strictness is attained by raising both the minimum and maximum penalties allowed by law. Imprisonment is always required in cases of special recidivism: for simple special recidivism, the minimum penalty must be doubled; and for multiple special recidivism, the minimum must be tripled and must be at least 2 years. Since the Polish courts usually impose the minimum penalty for any offense, an increase in a minimum penalty entails a real increase in punishment.

For both simple and multiple special recidivism, the maximum penalties allowed by law are increased by one-half; for cases of multiple recidivism, up to 5 years of imprisonment may be imposed if the maximum penalty for a crime is less than 3 years. However, a 15-year maximum penalty has been set, above which no further increases are allowed. The increase in the penalty range is allowed only if the second offense is classified as a misdemeanor: if the increases were obligatory for felonies, the 15-year maximum would be exceeded.

There are other legal consequences for special recidivism. For example, the sentence for a repeat offender may not be suspended. In addition, multiple offenders may not be granted an early release from prison unless special circumstances justify it, and then only after three-quarters of the sentence has been completed; in comparison, a nonrepeat offender is eligible for early release after two-thirds of his term has been completed. The probationary period is also longer for those repeat offenders granted early release under special circumstances: a 3-year minimum, compared to a 1-year minimum for nonrepeat offenders. A further consequence for the recidivist is that he may be placed on pretrial detention without further preconditions.

Post-release measures. The consequences of special recidivism do not end with the offender's release from

¹Translator's Note: Article 50 is a catch-all provision covering general conditions for punishment in the Polish criminal code.

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ivists. Of these, only one-quarter (9.3 percent of the whole) were convicted under the regulations governing special recidivism, while the others were either exempt from conviction under the recidivism laws or were sentenced according to the laws dealing with general recidivism. Of those convicted under the laws for special recidivism, 90 percent fell under the regulations for simple special recidivism, although the proportion of multiple special recidivists increased from year to year.

Recidivism involving major offenses is relatively uncommon; in 1973 only every 16th simple repeat offender and every 25th multiple recidivist committed a major offense. The courts seldom took advantage of the opportunity to give lighter sentences for exceptional cases: the provisions of Article 61 were applied in only 5 percent of the cases.

Another study, covering the years 1971 to 1975, demonstrated that the number of released offenders assigned to probation officers remained relatively constant, while the number transferred to the centers for social adjustment doubled.⁶ While almost all of the offenders assigned to probation officers were so assigned in the original sentence, most assignments to the centers resulted from probationary violations: only a small number of offenders were transferred there as a result of a negative prediction at the time of sentencing. Thus, the increase in the population at the centers during this period was a direct result of an increase in the number of probationary violations.

⁶Rocznik statystyczny (Statistical Yearbook), 1976, p. 532.