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Proceedings relating to the disciplinary liability of prisoners in the State of New York

Postępowanie w przedmiocie odpowiedzialności dyscyplinarnej więźniów w stanie Nowy Jork

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Abstract: Prison disciplinary actions constitute one of the essential and – at the same time – necessary elements of penitentiary proceedings, which serve to ensure order and institutional security. When they are undertaken and conducted in a reasonable and moderate, and especially fair manner, then these activities not only protect the health, safety and security of all people participating in prison life, but also constitute a positive factor in the process of rehabilitation of prisoners. The article presents the rules of disciplinary proceedings in the State of New York.

Keywords: disciplinary proceedings, prisoner, prison, prisoner rehabilitation

Abstrakt: Działania dyscyplinarne stanowią jeden z zasadniczych, a zarazem niezbędnych elementów postępowania penitencjarnego, które służy zapewnieniu porządku oraz bezpieczeństwa instytucjonalnego. Gdy ich podejmowanie i prowadzenie następuje w sposób rozsądny i umiarkowany, a zwłaszcza sprawiedliwy, wtedy czynności te służą nie tylko ochronie zdrowia, bezpieczeństwa i zabezpieczeniu wszystkich osób uczestniczących w życiu więziennym, ale również stanowią pozytywny czynnik w procesie resocjalizacji więźniów. W artykule przedstawiono zasady postępowania dyscyplinarnego obowiązujące w stanie Nowy Jork.

Słowa kluczowe: postępowanie dyscyplinarne, więzień, więzienie, resocjalizacja więźniów

I

The fundamental principles of disciplinary action in individual American penitentiary laws have been influenced by the rich jurisprudence of the Supreme Court of the United States and, following its judicature – of federal district courts and courts of appeals. In the U.S. legal and penitentiary system, an inmate was initially treated as a slave of the state – one who had forfeited not only his liberty as a result of conviction, but practically all his personal rights, as stated in *Ruffin v. Commonwealth* (Rock 2009: 1; Lasocik 1993: 147; U.S. Supreme Court – 62 Va. 790, 796/1871). In subsequent years, according to a modified version of this position – the so-called hands-off doctrine – the courts adopted the premise that they had no power to exercise supervision over prison administration. In keeping with this doctrine, it was recognized that controlling the methods and procedures of disciplining inmates was beyond the competencies of courts (Court of Appeals 9 – 187 F 2d.850; Court of Appeals 10 – 213 F2d 771; Court of Appeals 9 – 240 F2d 910; 290 F 2d 632; Calhoun 1977: 220-222; Gutterman 1992: 870-872; Millemann 1971: 36-38). In 1974, in the landmark case of *Wolff v. McDonnell* (Judgment of the U.S. Supreme Court 1974 – 418 U.S. 539, 555-56), the Supreme Court unequivocally stated that there is no iron curtain drawn between the Constitution and American prisons; at the time, there was a total of 196,000 inmates in all of the state and federal prisons (Borchardt 2012: 470). The Supreme Court made further important decisions following this judgment, which significantly affected not only the content of penitentiary regulations adopted in individual U.S. states, but also the scope of inmates' legal protection, not only in the area of disciplinary liability. In this respect, suffice it to quote the judgments of *Procurner v. Martinez* (Judgment of the U.S. Supreme Court 1974 – 416 US 396), *Pell v. Procurner* (Judgment of the U.S. Supreme Court 1974 – 417 US 817), *Baxter v. Palmigiano* (Judgment of the U.S. Supreme Court 1976 – 425 US 308), *Bounds v. Smith* (Judgment of the U.S. Supreme Court 1977 – 430 US 817) or *Meachum v. Fano* (Judgment of the U.S. Supreme Court 1976 – 427 US 215).

In regard to disciplinary action, the second case law – alongside *Wolff v. MacDonnell* – that had a significant impact on the form of disciplinary proceedings and the extent of inmates' rights in their course was the decision in the case of *Sandin v. Conner* (Judgment of the U.S. Supreme Court 1995 – 515 U.S. 472). It set a new, higher standard that had to be met in order for an inmate to be able to demonstrate that he has a constitutional right which he was deprived of as a result of the actions of the prison administration authorities (Goldman 2004: 423 et seq.). According to this judgment, if the penalty administered to an inmate following a disciplinary hearing does not impose atypical and significant hardship in relation to ordinary events in everyday life during imprisonment,

the inmate is not entitled to use the minimum procedures laid down in *Wolff v. McDonnell*. According to the position of the U.S. Supreme Court, inmates' rights could still be interpreted from the due process of law clause set forth in the 14th Amendment to the U.S. Constitution, or they could be granted on the basis of state penitentiary regulations, but the protection against violation will only be applicable when, as a result of the actions of the prison authorities, atypical and significant hardship was imposed on the inmate in relation to the ordinary incidents of prison life (Weisman 1997: 913-914; Lee 2004: 800-805). Atypical hardship means treatment significantly different from the way in which other inmates are treated. Significant hardship occurs when the treatment of the inmate is significantly severe, not just inconvenient or irritating.

These judgments of the U.S. Supreme Court – which, due to the length of this article, cannot be described in detail – in practice set out the legal framework for all state penitentiary legislation and had a significant impact on the jurisprudence of both state and federal courts with respect to the protection of the rights of inmates accused of violating the disciplinary rules of conduct in force in prison.

For comparative purposes, the article will outline the main solutions in force in the State of New York in the field of inmates' disciplinary liability.

II

Disciplinary action constitutes one of the essential and indispensable elements of correctional proceedings, which serve to ensure order and institutional safety. When it is undertaken and applied in a reasonable, moderate and above all fair manner, this action not only protects the health, safety and safety of all participants in prison life, but also constitutes a positive factor in the process of rehabilitation of inmates. Section 250.2. Compilation of Codes, Rules and Regulations of The State of New York, Title 7 – Department of Corrections and Community Supervision (hereinafter: CRR-NY tit. 7).

The proportionality of disciplinary action is highlighted in Para 250.2c of CRR-NY tit. 7, indicating that it will be taken only in such measures and degree as is necessary, taking into account the principle of gradation. The aforementioned clause stresses that disciplinary action is aimed at regulating an inmate's behavior within acceptable limits and assisting in achieving compliance by the entire inmate population with required standards of behavior. Further important, even fundamental, principles are indicated in Para 250.2e-f, which state that disciplinary measures should not be overly severe because the disciplinary program should rely on certainty and promptness of action rather than severity. Secondly, disciplinary action must be neither arbitrary or "capricious" nor administered for the purpose of retaliation or revenge. Corporal punishment

is absolutely forbidden. It must not be used for any purpose and under any circumstances.

Disciplinary action which results in imposing penalty on an inmate in the State of New York is comprehensively regulated in Chapter 7 of the New York Codes, Rules and Regulations. The norms contained therein are of a dualistic nature, including both substantive and procedural provisions. As indicated in Para 250.1 of CRR-NY tit. 7, the provisions of Chapter 7 shall be applied when an inmate violates a rule or regulation governing his behavior, fails or refuses to comply with an instruction given to him by an employee of the department acting within the scope of his official duties, or attempts to escape or escapes or engages in any other unlawful conduct. Therefore, the basis for initiating disciplinary action against an inmate is the fact that he has committed a specific disciplinary offense.

III

In *Wolff v. McDonnell*, the U.S. Supreme Court did not consider whether a prisoner has the right to know the content of internal prison rules indicating what behavior is prohibited and what penalties may be imposed on an inmate in the course of disciplinary action. In other words, the question revolves around two considerations: Is the penitentiary administration obliged to promulgate written rules of conduct and announce them in such a way that inmates can read them? Secondly, must the language of the rules be sufficiently clear and precise to leave no doubts as to what conduct is prohibited? Therefore, it is a matter of sufficient specificity of the act, i.e. whether the regulations may simply prohibit an act, or whether the text must specify the prohibited behavior in such a way that an inmate can clearly distinguish prohibited behavior from non-prohibited behavior (Babcock 1981: 1015).

As emphasized in the literature, the need to maintain order, discipline and institutional security coupled with the unequal relations between the incarcerated and penitentiary officers constitute a strong argument for requiring prisons to promulgate written rules and make them known to prisoners (Babcock 1981: 1015). It is also generally accepted that the content of prison regulations specifying prohibited behavior must be sufficiently clear and understandable to inform prisoners of prohibited behavior (Sullivan 1974: 310-311).

New York penitentiary law requires that each inmate be provided with their own copy of internal prison regulations. A detailed list of prohibited behavior in all correctional facilities, whose violation will result in appropriate disciplinary action, is provided in Para 270.2 of CRR-NY tit. 7. The opening section 270.2A clearly states that in the event that a disciplinary offense is simultaneously a penal law offense, an inmate will be criminally liable regard-

less of disciplinary liability. The subsequent 25 thematically grouped sections (rules series 100-124) specify various types of prohibited behavior. For example, the rules contained in series 100 (Assault and Fighting) prohibit assaulting or inflicting bodily harm upon another inmate, practicing or instructing others in martial arts (e.g. rule 100.14 Para 270.2B prohibits practicing or training other inmates in aikido, judo, karate, jujitsu or kung fu, while rule 100.15 Para 270.2B prohibits unauthorized sparring, wrestling, body-punching, or other forms of disorderly conduct). The provisions in series 101 specify Sex Offenses, series 102 (Threats) prohibits making threats against others under any circumstances, series 103 (Bribery and Extortion) prohibits any attempts to bribe or extort any person, series 104 (Riot, Disturbances and Demonstrations) specifies behavior related to riots and other actions which may disrupt order in the facility (e.g. rule 104.12 indicates that it is forbidden to lead, organize, participate, or urge other inmates to participate, in a work-stoppage, sit-in, lock-in, or other actions which may be detrimental to the order of facility). Series 105 (Unauthorized Assembly or Activity) prohibits forming a group of inmates or joining an assembly of inmates without authorization. Series 106 (Refusal to Obey a Direct Order) states that each prisoner shall obey all orders of department personnel promptly and without argument. Series 107 (Interference with an Employee or Other Person) prohibits any obstruction or interference (physical, verbal, written) with prison employees. The provisions of series 108 (Escape and Abscondence) regulate issues connected with undertaking an escape or attempting an escape, including the possession of any article or paraphernalia related to such an intent.

IV

New York penitentiary legislation establishes a three-tier system of disciplinary hearings (Para 270.3a of CRR-NY tit. 7). Its structure depends on the severity of the investigated disciplinary offense. The lowest tier – violation hearings – determines allegations of minor violations of rules of conduct by an inmate. Analogously, the second tier – disciplinary hearings – is used to investigate violations of average severity. Finally, at the superintendent's hearing – the third tier of disciplinary hearings – the superintendent as a disciplinary authority conducts proceedings investigating the most serious offenses, including penal law offenses.

An important role in the structure and course of disciplinary action is played by a review officer, i.e. an officer of the rank of lieutenant or above (one person or more, depending on the needs) appointed by the prison superintendent. This requirement, however, is relatively obligatory, because according to Para 251.2.1 of CRR-NY tit.7, if a sufficient reason exists, the superintendent

may designate some other employee to serve as the review officer. The function of the review officer is specified in Para 251.2.2 of CRR-NY tit.7. Pursuant to this section, the review officer receives misbehavior reports on the violation of the standards of inmate behavior that were issued by officers at the facility during the day. The main task of the review officer is to review the reports and consider the seriousness of the alleged violations and refer the reports to the appropriate disciplinary body for action. If the violation is substantiated and warrants only a penalty of loss of recreation and other privileges, excluding correspondence and visitation privileges, for up to 13 days, the report is referred to the violation officer who then hears the case in a violation hearing. If the violation is substantiated and warrants a penalty of loss of privileges up to 30 days, including confinement to a cell or room (keeplock) for a period up to 30 days, the misbehavior report is forwarded to the disciplinary hearing officer for appropriate action. Finally, when the review of the misbehavior report leads to the conclusion that a penalty more severe than the above may be imposed, the report is forwarded to the superintendent for designation of a hearing officer to conduct the superintendent's hearing.

Submitting a report to the review officer does not mean that it will automatically be referred to one of the three disciplinary bodies for action. It is the prerogative of the review officer to dismiss the report when he deems it to be unfounded, or he may return it to be rewritten. Once an inmate specified in the report is keeplocked, the review officer is obliged to review their status and may order the release of an inmate who is no longer a threat to the safety and security of the facility or to himself.

Moreover, when the submitted report shows that an inmate has engaged in an act of self-harm, the review officer shall refer the report to the deputy superintendent for security, who fulfils the function of the review officer and who has the authority to dismiss the charge if he or she believes, due to the inmate's mental state or for any other reason, that proceeding to a hearing would serve no useful purpose.

Section 251.2.2 of NYCRR tit. 7 includes an extremely important rule according to which a review officer shall not act as a hearing officer in any proceeding arising from a misbehavior report which he or she has reviewed.

As demonstrated by the considerations above, a fundamental role in the activities of a review officer is played by the misbehavior report. Basic regulations in this regard are contained in Para 251.3.1(a) of NYCRR tit. 7, according to which any inmate misbehavior that violates the rules of conduct in the facility or involves danger to life, health, safety or property, must be immediately included in a written misbehavior report. The document is drawn up by an officer (or another employee) who has witnessed the incident or who has ascertained the

facts of the incident. In a situation where more than one officer has knowledge of the facts, each of them is required to make a separate report; however, this activity is also relatively obligatory, as Para 251.-3.1 of NYCRR tit. 7 provides that in the latter case, one joint report signed by all officers may be submitted.

The report must contain a detailed specification of the particulars of the alleged incident of misbehavior, a reference to the rule number allegedly violated by an inmate and a brief description of the rule, and an indication of the date, time and place of the disciplinary offense. When more than one inmate was involved in the incident, the report should indicate the specific role played by each inmate. If two or more incidents are involved, all of them may be included in a single misbehavior report. However, each incident must be separately stated (Para 251.-3.1(c) of NYCRR tit. 7).

Pursuant to the provisions of Para 251.3-1(d) of CRR-NY tit. 7, a report that has been reviewed by the review officer and is submitted for investigation, either in the disciplinary hearings or in the superintendent's hearings mode, must contain three instructions: firstly, that no statement made by the inmate in response to the disciplinary charge may be used against him in a criminal proceeding; secondly, that the inmate has the right to call witnesses if approved by the hearing officer; and thirdly, that if the inmate has been restricted pending a hearing for the misbehavior report, he may submit a motion for its annulment. In the case of a report that has been referred for examination at the lowest tier, i.e. in the violation hearings mode, only the first of the statements above must be contained in it.

A few additional remarks should be made regarding the subject of being advised about the possibility of using testimonies made in the course of disciplinary action during subsequent penal proceedings. It is noteworthy that this issue is highly controversial, both in jurisprudence and in the doctrine, and it is closely connected with the right to remain silent. Suffice it to mention here the ruling of the U.S. Supreme Court in the case of *Baxter v. Palmigiano* or rulings of lower courts, e.g. in the cases of *Tench v. Henderson*; *Worthen v. State of Oklahoma* (Babcock 1981: 1044). In fact, virtually every federal district court of appeals has ruled that the disciplinary action in the penitentiary facility does not violate the so-called "double jeopardy" principle that prevents an accused person from being tried twice on the same charges, which is contained in the fifth amendment to the U.S. Constitution. What is more, as there is no one penitentiary system in the USA, the penitentiary regulations in individual states may require prison officials to read an inmate his *Miranda* rights regarding the fifth amendment privilege. Seven states (Colorado, Hawaii, Louisiana, Massachusetts, Mississippi, Washington, District of Columbia) provide this right in all cases, four states (Louisiana, Mississippi, Washington and the District of Columbia) extend the obligation to inform the inmate at all stages of the proceeding,

three states (Colorado, Hawaii, Massachusetts) only require it at the hearing, eight states (Idaho, Indiana, Iowa, Missouri, Nevada, Rhode Island, Vermont, West Virginia) require the *Miranda* warnings only where criminal charges may be pending, with six of them (Idaho, Indiana, Iowa, Missouri, Nevada, Rhode Island, Vermont and West Virginia) mandating it at the investigative stage of the proceedings (Babcock 1981: 1044; Judgment of the Supreme Court of Utah – 61 P.3d 1019, 1037/2002; Federal Courts of Appeal – 158 F.3d 1215, 1220/1998; 59 F.3d 102, 105/1995; 58 F.3d 802, 806-08/1995; 41 F.3d 1150, 1152/1994; 11 F.3d 1143, 1144-45/1993; 867 F.2d 1255, 1259/1989; 672 F.2d 690, 691-92/1982; 429 F.2d 258, 261/1970; 349 F.2d 370, 372/1965; 161 F.2d 973, 974/1947; Brown 1996; Colussi 1980).

1. Violation hearing

As already noted, violation hearings, in which minor violations of the rules of prisoner conduct are heard, constitute the lowest tier in the three-tier system of disciplinary action. The violation hearing procedure is conducted by a designated violation officer of the rank of sergeant or above. One or more persons may be designated to function as a violation officer, depending on the needs of the facility (Para 252.1(a) of NYCRR tit. 7). The tasks of the violation officer include interrogating the inmate and then hearing and determining allegations of rule violations contained in the misbehavior report.

The procedure in this mode is as follows. After receiving the report from the review officer, the violation officer appoints the date of a disciplinary hearing, which must be held within seven days of the writing of the misbehavior report (Para 251.-5.1(c) of NYCRR tit. 7). The violation officer is not required to deliver a written notice of charges to the inmate before the hearing, which undoubtedly affects the inmate's ability to prepare an adequate line of defense. It is only during the hearing that the violation officer provides the inmate with a report specifying the charges. The participation of the inmate in the proceedings is not obligatory – he has the right to refuse to attend. If the inmate does not exercise this right and decides to attend, he may present documentary evidence, submit a written statement on his behalf, and reply to the charge – with the consent of the violation officer. It should be noted, however, that in this procedure the inmate does not have the right to call witnesses on his behalf, which may also significantly increase the difficulty in proving his statements. Importantly, the violation officer is not bound in any way as to the manner of conducting the hearing and may allow any evidence necessary to aid in his decision (Para 252.3(b) of NYCRR tit. 7).

The provisions governing violation hearings do not provide the inmate with the right to counsel. Nevertheless, according to Para 252.4 of NYCRR tit. 7, a non-English speaking or illiterate inmate must be given translated charges and

provided with an interpreter during the hearing. Similarly, in the case of a deaf inmate who uses sign language to communicate, he should receive the assistance of a sign language interpreter during the hearing. A hard of hearing inmate who uses an amplifier must have the opportunity to use it during the hearing.

Upon affirming a charge, the violation officer may impose the following penalties:

- loss of all or part of recreation (game room, day room, television, movies, yard, gym, special events) for up to 13 days; this penalty may be suspended for a period of 13 days;

- loss of maximum of two of the following privileges: one commissary buy, excluding items related to the inmate's health and sanitary needs, withholding of radio for up to 13 days, withholding of packages for up to 13 days, excluding perishables that cannot be returned. Also in this case, the loss of privileges may be suspended for a period of 13 days;

- the imposition of additional work, other than a regular work assignment, for a maximum of seven days. This work must not be performed on Sundays and public holidays. Moreover, it must not last more than nine hours a day.

- counsel and/or reprimand (Para 252.5(a) (1-4) of NYCRR tit. 7).

After the violation hearing, the officer is obliged to deliver to the inmate a written statement indicating the imposed penalty. It should take place as soon as possible (immediately), but not later than 24 hours after the conclusion of the hearing.

The disciplined inmate has the right to appeal against the decision to the superintendent. However, in order for the appeal to be effective, it must be submitted within 24 hours of the receipt of the violation disposition. The superintendent is obliged to consider the appeal within seven days of receiving it. An important prerogative of the superintendent is the right to reduce the penalty at any time during which it is in effect, despite the prior upholding of the decision made in the course of the violation hearing (Para 252.7 of NYCRR tit. 7).

2. Disciplinary Hearing

Disciplinary hearings are the second tier of disciplinary proceedings serving the purpose of determining allegations of rule violations of medium severity (Para 270.3(a) (2) of NYCRR tit. 7). Analogously to first-tier disciplinary action, in the course of disciplinary hearings, an important role is played by a disciplinary hearing officer of the rank of lieutenant or above, who is responsible for conducting disciplinary hearings in an impartial manner, as indicated in Para 253.1(a) of NYCRR tit. 7. The latter principle is further strengthened by stressing that no person who has participated in any investigations of the acts, nor any person who has prepared the misbehavior report on which the hearing is held, may act as the hearing officer on that charge (Para 253.1(b) of NYCRR tit. 7).

The disciplinary hearing officer is appointed by the superintendent. The number of these officers depends on the needs of the facility – it is permissible to appoint more than one such officer. Also in this case, the rules admit the possibility of disregarding the formal requirement of having the appropriate rank, because in accordance with Para 253.1(a) of NYCRR tit. 7, the superintendent may designate another person from among the prison personnel to perform this function.

Compared to first-tier disciplinary proceedings, a disciplinary hearing is much more formalized. After receiving the report from the review officer, the disciplinary hearing officer appoints the date of the disciplinary hearing, which must take place within 14 days of writing the misbehavior report. Subsequently, it is his duty to serve on the accused inmate a copy of the misbehavior report containing the charges. Therefore, the phrase “misbehavior report” used in Para 253.6 (a) of NYCRR tit. 7 actually corresponds with the written notice of charges as specified in *Wolff v. McDonnell*, which must be delivered at least 24 hours before the date of the hearing. As highlighted in Para 251.3 in connection with Para 253.3 of NYCRR tit. 7, the misbehavior report shall include a detailed specification of the particulars of the alleged incident of misbehavior, a reference to the rule number allegedly violated by the inmate and a brief description of the rule, and an indication of the date, time and place of the disciplinary offense; if more than one inmate was involved in the incident, the report should indicate the specific role played by each inmate. If the accused inmate is illiterate or does not speak English, he should be provided with a translated notice of the charges and statements of evidence relied upon and reasons for actions taken. In this case, the presence of an interpreter is also required during the disciplinary hearing. Similarly, in the case of a deaf inmate who uses sign language, he should receive the assistance of a qualified sign language interpreter during the hearing. A hard of hearing inmate who uses an amplifier must also have the opportunity to use the device during the hearing.

Pursuant to Para 253.4 of NYCRR tit. 7, if an inmate faces punishment under the disciplinary hearing procedure, then he should be provided with assistance by a designated person. In this situation, the provisions of Para 251-4.1 of NYCRR tit. 7 are applicable. According to them, an inmate shall be provided with assistance when he does not speak English, is illiterate, uses sign language, has been charged with the use of drugs or other intoxicating substances, is confined pending a superintendent’s hearing.

Unlike in the case of violation hearings, in second-tier disciplinary action the inmate has the right to call witnesses in his defense (Para 253.5 of NYCRR tit. 7) as long as it does not jeopardize institutional safety or correctional goals. In the event of denying this right, the hearing officer must provide the inmate with a written statement indicating the reasons for the denial, in particular

specifying the threat to institutional safety. The witnesses testify at the hearing in the presence of the inmate unless the hearing officer determines that it may jeopardize institutional safety. In a situation where the witness is interviewed out of the presence of the inmate, the interview is recorded. The recording of the statement is made available to the inmate. This rule may be waived when doing so could pose a threat to institutional safety.

An inmate may call a witness by informing his assistant or the hearing officer before the hearing, or informing the hearing officer during the hearing.

The procedure is as follows: upon receipt of a misbehavior report, the hearing officer delivers it to the inmate at least 24 hours before the disciplinary hearing. However, if the inmate has requested an assistant and is eligible for an assistant in accordance with the provisions of Paras 251-4 of NYCRR tit. 7, the hearing may not be held until 24 hours after the assistant's meeting with the inmate.

An inmate has the right to be present at the hearing, unless he has refused to attend or is excluded for reason of institutional safety. Section 253.6 of NYCRR tit. 7 requires that the entire hearing must be electronically recorded.

An inmate present at the hearing has the right to be heard, and is allowed to submit relevant documentary evidence or written statements on his behalf.

If an inmate is found guilty of the charge as a result of a disciplinary hearing, the hearing officer may impose one or more of the following penalties:

- counsel and/or reprimand;
- loss of one or more privileges for a period of up to 30 days, with the exception of correspondence and visiting privileges;
- confinement to a cell or a special housing unit under keeplock admission for a period of up to 30 days;
- restitution for loss or intentional damage to property up to \$100;
- the imposition of additional work other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays.

In the event of overlapping of penalties imposed in various hearings, the more restrictive penalty shall be applied first.

The hearing officer may suspend imposition of any penalty for a period of up to 90 days. However, this penalty will be imposed if a new misbehavior report is filed against the inmate during this period.

As soon as possible, but not later than 24 hours after the hearing, the inmate is given a written statement of the disposition of the hearing, listing the evidence relied upon by the hearing officer in reaching his decision and the reasons for any penalties imposed.

The inmate should be instructed on the right to appeal to the facility superintendent. The written appeal must be submitted within 72 hours of the receipt of the disposition.

The superintendent or his designee are obliged to issue a decision within 15 days of receipt of the appeal.

The superintendent may reduce the penalty at any time after the decision is issued.

3. Superintendent's hearing

The third and final tier of disciplinary action in the course of which the gravest disciplinary offenses are reviewed is the superintendent's hearing.

As in the case of first- and second-tier disciplinary action, in the course of the superintendent's hearing an important role is played by the hearing officer, called superintendent's hearing officer, who is either the superintendent or a person designated by the superintendent, of the rank of captain or above. It is within the discretion of the superintendent to appoint another employee to conduct the superintendent's hearing. Pursuant to Para 254.1, the following persons are excluded from conducting the proceeding: a person who actually witnessed the incident; a person who was directly involved in the incident; the review officer who reviewed the misbehavior report, or a person who has investigated the incident.

The formal charge must comply with the requirements specified in Para 251.03 of NYCRR tit. 7. (arg. ex Para 254.3 of NYCRR tit. 7).

An inmate who does not speak English must be provided with a translated version of the charges and the reasons for the disciplinary action. An interpreter must be present at the hearing. A deaf person must be provided with the assistance of a sign language interpreter, whose presence at the hearing is obligatory. If the accused inmate uses a hearing aid, he must be allowed to use it during the hearing (Para 254.2 of NYCRR tit. 7).

The formal charge must consist of the misbehavior report prepared in accordance with the provisions of Para 251-3.1 of NYCRR tit. 7.

The inmate has the right to the assistance of a designated person pursuant to Para 251-4 of NYCRR tit. 7.

In the case of the superintendent's hearing, an inmate has the right to call witnesses, but this is a limited right. The inmate may be denied this right if summoning witnesses would jeopardize institutional safety. In the event of denial, the inmate shall be given a written statement indicating the reasons for the denial, including the specific threat to institutional safety.

Witnesses (for the prosecution and defense) testify at the hearing in the presence of the accused inmate, unless the hearing officer decides otherwise due to safety considerations. Also in this case, when witnesses are interviewed in the absence of the accused inmate, their testimonies are recorded. The re-

ording is made available to the inmate, unless the hearing officer has made a different decision for safety reasons.

An inmate may request a witness to be called by either informing his assistant before the hearing or informing the hearing officer during the hearing (Para 254.5 of NYCRR tit. 7).

As for the procedure, it is similar to the second-tier proceedings. After receiving a misbehavior report, the hearing officer delivers its copy to the inmate at least 24 hours before the hearing; if the inmate has requested an assistant, the hearing may not start until 24 hours after the assistant's initial meeting with the inmate.

An inmate has the right to participate in the hearing, unless he refuses to attend it or is excluded for reasons of institutional safety. The entire hearing must be electronically recorded. An inmate also has the right to reply to the charge and/or evidence and submit relevant documentary evidence or written statements on his behalf. Where there are reasonable doubts as to the mental condition or intellectual capacity of the inmate, the hearing officer must consider evidence regarding the inmate's condition (Para 254.6 of NYCRR tit. 7).

After the hearing, if the inmate admits the charges or if the hearing officer affirms the charges on the basis of the evidence, one or more of the following penalties may be imposed on the inmate:

- counsel and/or reprimand;
- loss of one or more privileges for a specified period, however correspondence may be withheld with a particular person only where the inmate has been involved in improper conduct in connection with correspondence with such person;
- loss of visiting privileges for a specified period where the affirmed charges involve improper conduct as a result of the inmate's presence or conduct in connection with a visiting, family reunion or special events program.

A loss of visiting privileges may be imposed only where the affirmed charges involve the violation of any rule under rule series 100-102, 108, 113-115.

At the same time, pursuant to Para 254.7 of NYCRR tit. 7, as soon as possible, but not later than 24 hours after the hearing, the inmate shall be given a written statement of the disposition of the hearing, listing the evidence relied upon by the hearing officer in reaching his decision and the reasons for any penalties imposed.

An inmate may appeal to the commissioner within 30 days of the receipt of the disposition. The commissioner or his designee shall issue a decision within 60 days of the receipt of the appeal. After examining the appeal, the commissioner may affirm the hearing disposition, modify it by dismissing certain charges and/or reducing the penalty imposed. It is also admissible to reverse the hearing disposition and order a new hearing.

In the event of a new hearing, the penalty imposed at the new hearing may not exceed the penalty imposed at the original hearing (Para 254.8 of NYCRR tit. 7).

At any time during which the imposed penalty is in effect, the superintendent may reduce the penalty (Para 254.9 of NYCRR tit. 7).

Summary

By its very nature, penitentiary isolation carries the risk of abuse of rights of the persons deprived of liberty. A prison is a place of maximally increased social interaction, which may result in the clash of opposing interests causing tension and conflicts, often resolved by arbitrary decisions of the penitentiary administration. This prompts the inmate to conformism to the institutional rules of conduct. The overriding goal is to ensure institutional safety. Therefore, disciplinary penalties are inevitable in prison, as they constitute a measure forcing inmates to follow the rules of collective life.

One of the fundamental tasks is therefore to organize an effective and transparent mechanism regulating the rules of determining inmates' disciplinary liability. The procedure shall simultaneously respect the principles of procedural economy and allow inmates to effectively protect their subjective rights. Disciplinary action will be an effective means of disciplining only if it is transparent and conducted in accordance with the established rules of the game.

The presented model of proceedings with regard to disciplinary liability of inmates in the State of New York shows a wide range of possible solutions. It is undoubtedly a very interesting idea to differentiate the procedure depending on the severity of the disciplinary offense committed by the inmate. It seems to be important, especially from the perspective of economy and the principles of efficiency. Substantive decisions are made at the internal level, by means of dispositions made by the designated personnel. The same procedure is used to consider any appeal lodged by the incarcerated. This solution makes it possible to free the judicial authorities from hearing trivial and minor cases, thus increasing the efficiency of the proceedings. At the same time, the procedures have been developed in such a way that they do not prejudice the constitutionally guaranteed subjective rights of prisoners. The analysis of the solutions in force in the State of New York shows that inmates have effective and necessary legal instruments enabling them to effectively assert their rights protected by law.

Abbreviation used

NYCRR tit. 7 – *New York Codes, Rules and Regulations*, Title 7 – Department of Corrections and Community Supervision.

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