

# The Cultural Diversity of Muslim Convicts and the Expectations of Penitentiary Practices in Eastern European Countries

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*The study presents tendencies in dealing with Muslims that became apparent in Poland, Lithuania and Czech Republic. The research was conducted among prison staff members and demonstrates their reactions to expectations of Muslim convicts. Also, they attempt to answer the question of sanctioning such claims. An attempt to identify the source of claims is necessary for developing a clear position in the field of penitentiary practice. Thus, it can also influence the creation of unequivocal guidelines for dealing with Muslim convicts.*

**Keywords:** *prison, foreign national, penal policy, multiculturalism.*

## Introduction

Penitentiary systems of Eastern European countries are more and more frequently faced with the broad issue of cultural or religious diversity. Population migrations naturally cause the administration of justice to develop standards and procedures adequate to the challenges of the present day. In Poland, like in Lithuania and the Czech Republic, one of the problems of prison reality is dealing with people of dif-

ferent cultures and religions. Even though this is definitely less common than in the case of Germany or France, Muslims who land in prisons also create a new quality and new challenges for penitentiary studies in the East European countries.

The enforcement of custodial sentences, particularly in the member states of the European Union, requires respecting definite legal standards. Such precepts of international law, concerning the issues of foreigners' distinctiveness, attempt to

create room for protection and respect for their diversity within prison settings, too. This issue is discussed in the Recommendation No. R (84) 12 of the Committee of Ministers of the Council of Europe on foreign prisoners, which quite broadly addresses the rights of culturally distinct convicts. International law thus outlines the space in which some claims put forward towards the prison administration by foreign prisoners are sanctioned. Claims resulting from distinct religions, standards of behavior or even from ethnic specificity turn out, however, to be very vast. This is due to the fact that obligations and rights are differently defined in the particular regions of the world. It is a mixture of religious tradition, various schools of sharia law, a distinct style of building social relations; the boundaries between the requirements of the law enforcers and the concessions in favor of the respect for diversity are increasingly blurred. On the one hand, international law opens space for respecting canons of diversity; on the other hand, justified questions appear concerning the capabilities of European prisons to respect all sorts of expectations, especially those resulting from religious, cultural or ethnic differences.

The deliberations being carried out are aimed at confronting the observed tendencies with the results of the survey conducted among prison staff members representing their reactions to the Muslims' expectations. On the other hand, and more importantly, in an academic discourse, they attempt to answer the question of sanctioning such claims. An attempt to further identify their sources will be helpful in developing a clear position towards

penitentiary policy and will make it possible to create unequivocal guidelines for dealing with Muslim convicts.

### **Theoretical aspects of creating work with culturally diverse convicts**

An ethnic or religious diversity of convicts, particularly those originating from Islamic countries, constitutes a huge challenge for penitentiary practice. However, pragmatism must not obscure the theoretical aspects of methodical penitentiary work. This is because the existing psychopedagogic assumptions for working with convicts require reprioritization, even more so if they are to create standards of working with condemned Muslims. Of key importance are the questions of the competencies of prison personnel who are to accomplish these tasks. The diversity in understanding the role of religion in a Muslim's life, as well as the plurality of ethnic standards, cause that it is difficult to prepare a man serving time in an European prison for a return to the society in an Islamic country. Traditionally, work with a convict is understood in terms of preparing them for a conflict-free return to the society; in the case of Muslims, however, the image of the rules within the society of the executors of the punishment is completely different than within the minority that those convicts represent. The diversity in understanding laws, social relations or obligations causes that the prison staff are not able to learn new skills that are useful with regard to social reintegration. In the opinion of D. Matsumoto and L. Juang, it is, among other things, the diversity of cultures in which people function that affects the diverse ways of integrating, syn-

thesizing and organizing one's own world (Matsumoto, Juang, 2007, p. 369). Thus, the issue of social integration itself is a problem, because culturally alien people often possess no distinct, permanent social relations in the country where the sentence is enforced; they seldom take advantage of any forms of temporary pass from prison while serving the sentence. Also, troublesome is the balance in the social group in which the culturally diverse convict functions. Z. Zaborowski's theory of interpersonal equilibrium indicates that in order to function correctly a person must maintain interpersonal equilibrium manifesting itself in the reciprocity of behaviors, obligations, perceptions of emotions and fulfilling social roles, which is difficult in relations with culturally diverse people, and even more so in a total institution (cf. Zaborowski, 1994).

For penitentiary work, yet another challenge arises in this context, one related with transforming inter-group barriers into areas of equilibrium of relations. So far, difficulties in work with persons representing diverse languages and presenting diverse cultural codes have been broadly accentuated on the grounds of the treatment of psychological disorders, indicating that our knowledge on the standards of work in this scope is negligible (Al-Mutlaq, Chaleb, 1995, pp. 125-136), while treatment is also a part of the work with convicts whose rules we know very little of. In this connection, the issue of psychopedagogic creation of work with this group of convicts touches upon issues paramount to the social integration. It is rather the perspective of building a new identity, embedded in one's own culture and tradition. The space of rights must be

observed so as to respect the diversity of religious rituals; ensuring contact with a Muslim cleric establishes the basis for shaping that which constitutes the personal value of man. The own identity, religiousness, axiology in the prison conditions all begin to shape a Muslim's own identity. However, on the other hand, there appears the problem of the Muslim fundamentalism, because among the convicts, especially in the western countries, due to a larger population of these prisoners, recruitment by organizations of a fundamentalist character is taking place.

In summary, a question arises of why the issue of ethnic or religious diversity gains importance in prison conditions. Well, the answer to this question is provided by the theory of de-stigmatization (Heckert, Heckert 2002), making reference to the stigma of a deviant. According to this theory, the lifting of the stigma takes place through creating a new identity beside the deviant one. The new identity is, as it were, an alternative for the so far existing negative experiences and requires a reformulation of the manner of thinking and acting. However, the theory of de-stigmatization may only elucidate a part of the problem, because it explains why sentenced Muslims may so willingly manifest their religious preferences, which, in prison, are to lift from them the stigma of the old life and create their otherness towards others as a whole. Religion, ritual and custom are the values that constitute the self. Yet, it is difficult to adapt this approach directly into the organization of pedagogical work with convicts, as cultural diversity conditions that the scope of supporting such inmates in this respect is narrow.

## **The methodological aspects of our own research**

Field research was carried out based on the method of a diagnostic survey among Prison Service staff. The scope of the comparative studies concerned three countries, i.e., Poland (232 respondents), Czech Republic (52 respondents) and Lithuania (143 respondents). Participation in the survey was voluntary. Among the Lithuanians, there were staff members of three penitentiary establishments, employed in Vilnius (14% respondents), Šiauliai (49.7%) and Kybartai (36.4%). Additionally, the research made use of our original matrix of conflict situations that occur in the relations between prison staff and Muslim convicts. The key thread in such situations was a definite claim that the Muslims forwarded to the prison administration. The claim was strictly related to their cultural diversity, which generated some expectations with regard to altering the detention conditions. It is worth stressing that, from the point of view of international law, religious, cultural or ethnic diversity is a part of legal protection, which is referred to in the content of the Recommendation No. R (84) 12.

In our own research, the prison staff were confronted with two situations:

- a) when the Muslim convict expects help in arranging sanitary conditions in the cell in such a manner as to enable him to perform his ablutions after relieving himself;
- b) when the convict expects being provided with halal-certified meat that is only available from ritual slaughter.

The above situations, concerning the specificity of Muslims' functioning within

the confinement of the prison cell, proved essential due to the considerable dissimilarity of these behaviors and the potential impact of respecting the expectations stemming from the diversity on generating big changes in the standards of sentences enforcement. This evoked a lot of emotion among the respondents but at the same time encouraged them to formulate unambiguous opinions. The survey, conducted using the technique of written interview, prompted the officers to indicate specific actions that they would take with regard to the ensuing claim-related situations as well as to justify these actions by articulating their motivations. The gathered material was arranged into a catalogue of actions and motivations and subjected to a quantitative statistical analysis.

The study presents tendencies in dealing with Muslims that became apparent in each of the countries. The observed tendencies were correlated with the independent variable, which was the country of origin, searching for those aspects that would differentiate the individual groups of respondents. The analysis results of the tendencies also triggered a wider discussion on the subject of sanctioning convicts' claims towards prison staff.

There appear significant doubts regarding the sanctioning of claims and expectations. Of key significance is an attempt at identifying their sources: do they result from the cultural diversity or are they rather manifestations of the ethnic specificity characteristic for the country or region of the convict's origin? The answer to these doubts is of key importance because it constitutes an attempt at sanctioning the subject of contention – at providing it with

theoretical significance. On this account, the investigation should answer two questions:

- 1) What actions of the prison staff are dominant in the situation of a conflict between the detention conditions and the Muslims' claims for modification thereof?
- 2) Are (and if so, to what extent) the analyzed Muslim convicts' expectations sanctioned by religious, cultural or ethnic diversity?

### **Penitentiary staff versus Muslims' expectations concerning modification of conditions of detention**

Respondents from the three countries were confronted with two conflict situations in which the convicted Muslims forwarded specific claims concerning their conditions of serving the sentence. One of the situations was the right to ablutions after urination and defecation, which implies a number of difficulties, especially in an overcrowded prison cell. The other situation was of the expectation that meals

with halal-certified meat will be ensured. Both the Polish and the Lithuanian laws are rather restrictive with regard to ritual slaughter and deem it a banned practice, which does not mean that this kind of meat is not legally marketed in the territories of the both countries. By confronting penitentiary officers with the above situations, we searched for a statistical relationship between the country from which the officers come and the actions taken by these officers and the motivations for these actions (Table No. 1).

Cramér's V measure of association indicated, with moderate strength, the significance of the decision (1) and motivation that the respondents were guided by in each country. In situation 1, when a Muslim convict forwarded claims regarding changing technical conditions in the cell so that ablutions after urination or defecation would be possible, the Lithuanian staff displayed a marked tendency towards refusing any changes. As is shown in Table No. 2, which compares replies from all the respondents, the Lithuanians predominantly refused the right to such claims.

*Table No. 1. The statistical correlation of variables: Country vs. Situation 1 and Country vs. Situation 2.*

	<b>Relationship between the variable 'Country' and the variable:</b>	<b>Chi-Square</b>	<b>df</b>	<b>p</b>	<b>Cramér's V</b>
1	Situation 1 General tendency concerning consent to the claim	23.424	4	0	0.17
2	Situation 1 motivation	28.096	12	0.005	0.18
3	Situation 1 action	17.394	10	0.066	0.14
4	Situation 2 General tendency concerning concession to the claims	1.317	4	0.858	0.04
5	Situation 2 motivation	24.347	14	0.042	0.17
6	Situation 2 action	22.574	14	0.068	0.16

Table No. 2. *The percentages of replies concerning consent to acknowledge the claims; comparative data for each country.*

Country	Situation 1 Consent to acknowledge convict's claim		
	No	Yes	N/A
Poland	46.98%	50.86%	2.16%
Lithuania	61.54%	32.17%	6.29%
Czech Republic	30.77%	65.38%	3.85%
Total	49.88%	46.37%	3.75%

Table No. 3. *The categories of motivations that the Lithuanians were guided by, N=143.*

Situation 1 Motives for action	N	%
1: Respect for the Muslim's tradition	11	7.7
2: Respect for the religion and its requirements	8	5.6
3: Standardizing sanitary conditions to be equal to all	47	32.9
4: The elimination of conflict in the cell	31	21.7
5: Forcing the Muslim to accept the necessary compromise	13	9.1
6: Concessions in favour of the Muslim in order to avoid a situation of confrontation	15	10.5
N/A	18	12.6

The predominance of the tendency to reject claims prompts a broader analysis of the motives that the Lithuanian respondents were guided by. Table No. 3 presents the catalogue of six motives as declared by the respondents.

It is worth to pay attention to the predominance of two motives. On the one hand, there appeared the necessity to standardize prison conditions, equal for all inmates, i.e., a *de facto* refusal to respect any claims on religious, cultural or ethical grounds that require an alteration of conditions in the cell. Such a motivation justifies the above indicated predominance of the reluctance towards any claims formulated by Muslim prisoners. At the same time, however, there occurs another tendency, expressing the striving to eliminate conflicts in the cell, i.e., to take actions aimed

at preventing them. Here, the problem is even more complex, because conflicts can be prevented by both eliminating that which is diverse and on the other hand also through concessions. Therefore, justification should be sought in the particular actions that were preferred by Lithuanians. Obviously, there appeared no statistical association between the respondents' country of origin and the actions taken by them. Nevertheless, their analysis might explain the issues of eliminating conflicts in the cell based on showing the personal motives of the prison officers subjected to the survey.

Actions that were found among the respondents' replies can be grouped in five categories:

**A** – isolate the Muslim into a separate cell (25.2% responses);

- B** – make rules for performing ablutions in the cell (9.1% responses);
- C** – teach the Muslim the ways of taking care of personal hygiene accepted in each country (11.2% responses);
- D** – coerce the Muslim to adapt to the existing conditions (23.8% responses);
- E** – adapt the arrangements to the convict’s needs (22.45% responses). The respective actions of the staff are centered around the issue of non-conflict enforcement of sentences and avoidance of situations that may potentially trigger a conflict. Undoubtedly, ablutions do generate such conflicts, both as the other convicts’ objection to concessions in favor of Muslims and as the concerned Muslim’s objection to the total disregard of his needs. The actions that were indicated are aimed at searching for seemingly compromising solutions, by isolating the culturally diverse people so that they should be able to manifest their diversity without triggering any conflicts. Relatively frequent was the officers’ willingness to concessions (E), i.e., a willingness to introduce modifications in the cell. On the other hand, however, there also occurred a strong tendency for forcing the convict to adapt to the conditions prevailing in the European prisons and to give up the diverse behaviors of a ritual character (23.8%). The lack of an unequivocal position points out to difficulties in interpreting claims on the part of the Muslim convicts.

In summary, two groups of officers can be distinguished: those who absolutely reject the Muslims’ claims and those who accept claims made by those culturally

diverse. Here, the key role is played by personal interpretation of the discussed conflict situation as well as one’s own opinion on respecting or rejecting claims by a person of different culture. Therefore, it becomes necessary to raise the question about a clear penitentiary policy in this scope, especially that the enforcement of sentences should take place according to definite procedures and regulations of the law, and not according to the own interpretations of the Prison Service officers.

The observed tendencies require further elucidation; therefore, the survey results concerning the other conflict situation, i.e., decisions regarding expectations related to providing Muslim prisoners with halal-certified meat coming from ritual slaughter, were subjected to an extended analysis. In this case, the matter is more complicated because it is even more difficult for Europeans to evaluate the sources of these expectations, whether they stem from ethnic traditions or rather from Islam and its precepts. On the other hand, claims in this category are much more demanding towards the prison administration than in the case of adjusting cell conditions. The difficulty of this decision and its culturally remote character were the reasons why the Lithuanians predominantly displayed a tendency towards rejecting such claims (Table No. 4).

*Table No. 4. The distribution of responses from Lithuanian officers concerning concessions with regard to a halal meat diet.*

<b>Situation 3 religious concession</b>	<b>N</b>	<b>%</b>
No	102	71.3
Yes	31	21.7
?	10	7.0

The explicit tendency towards rejection in the case of this claim was reflected in the motives declared by the respondents. As is shown by the data on the strength association between the variables (Table No. 1), in the case of situation 2, both the motives and the actions taken only differentiated the country of the respondents' origin to a moderate degree. This allows arguing for the thesis that the tendencies that were observed among the Lithuanians are also typical for the Czechs and Poles.

With regard to the motivation that was predominant in the discussed situation 2, based on the interview data, six superior categories were created (Figure No. 1):

- 1) Concession due to religion;
- 2) Forcing the Muslim to adapt to the local conditions;
- 3) Excessive concessions and claims of the convict;
- 4) The risk of escalation of expectations on the part of the Muslims in the future;
- 5) A claim impossible logistically and legally;
- 6) The convicted Muslim is entitled to concessions in this respect.

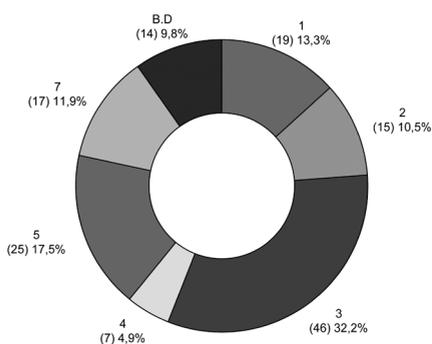


Figure No. 1. The distribution of motives that the Lithuanian officers were guided by towards expectations concerning a halal meat diet

Motivation concerning risks of escalation of demands and excessive concessions justified the actions taken, among which the predominant were the following: ensuring the convict's right only to a standard diet without pork or to a vegetarian diet (28.7%), an absolute rejection of such a claim (23.8%), a rejection of the request because it is technically impossible to satisfy within prison settings (14.7%). Only actions within the first category were favorable to satisfying the convicted Muslim's needs by consenting to a provision of halal meat and the inclusion of it in the diet (13.3%).

With regard to the comparison of the ways of reacting to the two claim-related situations in all the countries in the survey, the conduct of the Lithuanian prison officers turned out to be congruent with the approach of the Czech and Polish representatives of the Prison Service. Generally, respondents presented similar motivation (Figures Nos. 2 and 3), which, admittedly, differed quantitatively yet matched the congruent tendency. This is a very interesting observation showing that there is hardly any clear methodology of penitentiary work with Muslims in the countries included in the survey.

It is also worth pointing out that the absence of explicit guidelines as to the approaches in working with a convicted Muslim is compensated by the officers' personal ideas about cultural diversity and its significance. Thus, the personal attitude is the factor that differentiates prison staff in displaying reluctance or readiness to respect expectations related with the Muslims' diversity. On the other hand, penitentiary systems in these three countries rather rarely have Muslims in their

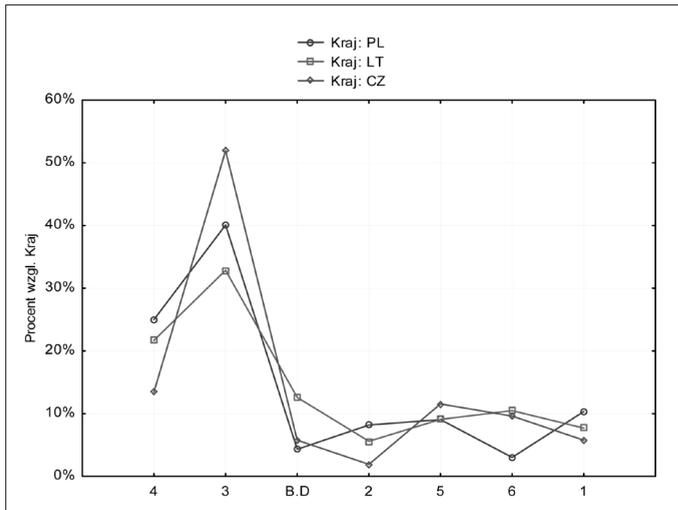


Figure No. 2. The comparison of motives that prisoner officers were guided by with regard to claims concerning the right to ablutions in the cell.

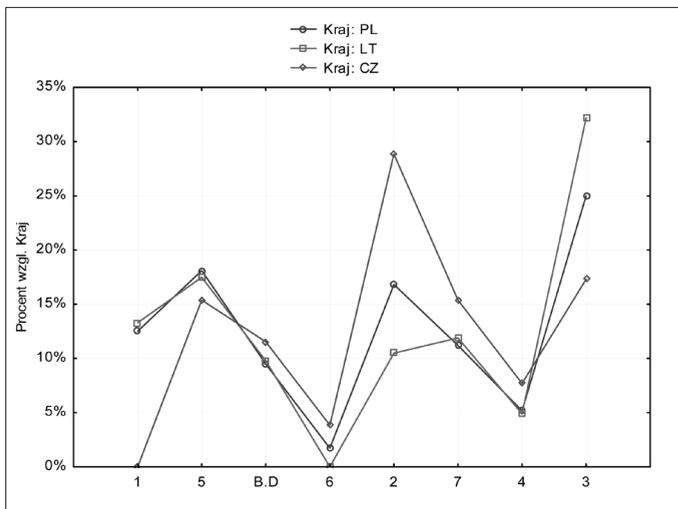


Figure No. 3. The comparison of motives that prisoner officers were guided by with regard to claims concerning the right to a halal meat diet.

custody, and hence the officers only have indirect and limited experience in working with this group of inmates, which makes them rather reluctant to acknowledge their rights to have their diversity respected.

For the abovementioned reasons, it is becoming a key task for the penitentiary practice in Eastern European countries to discern the sources of the inmates' claims forwarded by Muslim inmates and to identify more precisely to what extent they are

motivated on religious, cultural or ethnic grounds. By way of introduction, it is worth noting that the world of Islam is very differentiated and is not a monolith<sup>1</sup>. Built

<sup>1</sup> It should be clarified here that only at the outset of its existence the community of Islam was treated as a homogenous, compact and coherent unity. This perception was changed after the Battle of Siffin, which took place in AD 657. Then, the Muslim community was divided into the majority of those who remained faithful to the *Sunni* custom (*Sunna Tan Nabi*) and two smaller groups, represented by the *Khawarij* (they confess

from the very beginning by peoples of diverse past and aspirations characterized by rich cultural heritage and tradition, it has finally transformed into a non-homogeneous Arab-Muslim circle of civilization (cf. Jędrzejczyk-Kuliniak, 2010, p. 45; Dziekan, 2011, p. 235; Taperska-Klasińska, 2012, p. 163). At present, this is a vast area, consisting of nearly 60 countries across Asia and Africa, that is predominantly populated by Muslims. It is a poor world lagging behind the Western countries, in terms of such development indicators as per capita gross domestic product, level of education, healthcare or access to the internet (Zdanowski, 2010, p. 35).

In terms of the number of worshippers, Muslims are the second largest religious group in the multi-faith society of the European Union. They are a very non-homogeneous community of people of various ethnic backgrounds, different languages, secular and religious tendencies, cultural traditions and political persuasions (Frańczuk, 2014, p. 112). Muslim immigrants coming to Europe, predominantly “[...] in search of jobs and better living conditions, are typically characterised by religious culture on the elementary level; but at the same time it makes their only instrument of identity and self-consciousness” (Cardini, 2006, p. 210). Also, K. Wojciechowska emphasizes that recalling the origins of the flowering of the religion and the continuation of the ancestors’ traditions provides Muslims with the confidence “[...] that when breaking

away from their motherland they were not stripped of the entirety of the possessed cultural goods” (Wojciechowska, 2014, p. 145). On the other hand, B. Pasamonik point out that one of the key dilemmas “[...] faced by the present-day descendants of the Muslim immigrants is the choice of identity made between the Western and the Muslim cultures as well as between the religious modernism and fundamentalism” (Pasamonik, 2013, p. 13).

Islam is currently the most dynamically developing religion as well as ideology. Alongside strictly religious precepts, it contains moral and legal standards that delineate the limits of man’s functioning, both in the individual and communal life, and also define the role of the state in the development of the society (cf. Zdanowski, 2010, p. 35; Łukaszewicz, 2011, p. 32; Sadowski, 2013, p. 29). The so-formulated holistic role of religion in regulating the worshippers’ social lives proves that Islam acquired the reputation of being an important legal culture “[...] in which that which was religious got intertwined in a unique way with that which was moral and legal” (Tokarczyk, 2001, p. 225).

“The law, and more precisely the religious law, is a very important aspect of culture to Muslims. It is referred to as ‘sharīah’<sup>2</sup> meaning ‘road’, and its importance is due to the fact that it is the means to achieve unity with God and gives religious value to all activities related to the human life” (Sadowa & Kuriata, 2015,

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egalitarianism and extremely strict ethics) and the *Shiites* (adherents of the “grouping” – Ali’s party). At later time, both of these groupings gave rise to other more or less radical Muslim sects (cf. Sadowski, 2013, p. 31).

<sup>2</sup> As is stressed by M. Ruthven, sharia is also characterised by timelessness, being independent of the circumstances or time. The authors points to the fact that this character does not apply to interpretation of the Muslim law, which may be dependent on both the place and time (cf. Ruthven, 1998, p. 90).

p. 211). Sharia, as the Muslim religious law, was formed between the 7<sup>th</sup> and 9<sup>th</sup> centuries. Its sources include the following: *the Quran* – God’s word, *the Sunnah* – the Prophet’s practice, *the Ijma* – consensus and *the Qiyas* – analogy (Sadowski, 2003, p.18; Sadowski, 2013, p. 30). Additionally, M. Dziekan notices that the Muslim law “[...] considered by those adhering to it as natural law, written down in the heavenly Mother Book, and having an all-embracing character. [...] concerns all matters pertaining to man’s relationship with God – this part of the law is called *ibadah* – and with other man – *muamalat*, which includes matters of the state” (Dziekan, 2011, p. 240). The author further emphasizes that the sacred character of sharia means that man has no possibility of changing it, but can only take recourse to its interpretation. Thus, when considering the issue of the impact of the Islamic religion on the social, political and economic system, it is so important to take into account the diversity of expositions and interpretations of the Muslim law. It should be borne in mind that each country belonging to the Islamic world can act according with a different pattern and things that are permitted in one country may be forbidden in another. This is so because the Quran allows for different directions of interpretation (cf. Sadowa & Kuriata, 2015, p.211; Łukaszewicz, 2011, p. 34). This gave rise to the emergence of multiple schools of Islamic law. Within the scope of doctrinal interpretation of the sharia law, the leading ones are the schools that were developed in the 9<sup>th</sup> century. The differences between them concern the diverse approaches to the source of the law. These include:

1. *the Maliki school* – relies on the Quran and the tradition of Medina as primary sources of Islamic law;
2. *the Hanafi school* – applies reasoning by analogy, the principle of preference and allows various tricks of the law;
3. *the Shafi’i school* – relies exclusively on the Quran;
4. *the Hanbali school* – postulates absolute application of the Quran along with the sunnahs without asking any additional questions (Benek, 2007, p. 492; Bury & Kasprzak, 2007, pp. 76-78; Łukaszewicz, 2011, p. 34).

The matters of law in Islam, and particularly those concerning issuing commentaries and expositions on the legal and theological sense of the Quran are dealt with by the *ulama*, i.e., a narrow group of specialists comprising theologians, legal theoreticians, practitioners and imams – the Muslim clergymen. They are required to have adequate religious education and knowledge (cf. M. Dziekan, 2011, p. 241; Łukaszewicz, 2011, p. 34).

In summary, the process of the Muslim lawmaking was more or less completed in the 13<sup>th</sup> century. At that point, it can be said, the development of the legal culture of Islam was subjected to stagnation. This is evidenced by the fact that even nowadays, within a certain country, if a new law is enacted, it makes strict reference to the exposition of sharia. This practice, particularly apparent within the regenerating and increasing power of fundamentalist movements (*inter alia* Wahhabism and Salafism), repeatedly leads to brutal and controversial cases of violating fundamental human rights in the name of religion. Additionally, A. Łukaszewicz notices that such a restric-

tive system of legal regulations of sharia, as well as its total rigidity that results from the acknowledgement that it is God-given, “[...] has a limiting effect on modernisation of the Muslim society and its adjustment to the changing, globalised world” (Łukaszewicz, 2011, p. 34).

Each Muslim’s daily practices and public life are subordinated to the Five Pillars of the religion (*arkan ad-din*)<sup>3</sup>, comprised of the following: the confession of faith (*shahada*), prayer (*salat*), fasting (*sawm*), charitable giving (*zakāt*) and pilgrimage to Mecca (*hajj*) (Sadowski, 2013, p. 31). The above listed precepts belong to the category of obligations; thus, their omission implies God’s punishment and their observance is rewarded by God. Furthermore, *arkan ad-din* have a character of individual obligations; thus, every mature, mentally and physically fit Muslim must observe them. One of the conditions for a satisfied obligation to be legally valid is a declaration of the intention to satisfy the particular obligation. This intention can be uttered orally or merely realized (Prochwicz-Studnicka, Teperska-Klasińska, 2012, p. 171). Muslim lawyers, who attach great importance to the regulations relating to satisfying religious obligations by the believers, have carefully elaborated them. As regarding further explanation:

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<sup>3</sup> Some extreme Islamic groupings added a sixth pillar of faith in the form of *jihad*. It should be borne in mind however that this is not an obligation equal to prayer or fasting. This is an altogether different category of act. The concept of *jihad* is not homogenous, which constitutes a big problem in its proper interpretation. The Muslim law distinguishes for manners of pursuing *jihad*: with the hear, tongue, hands and sword. As a concept of the struggle against the West, it was regenerated along with the revitalisation of the fundamentalist movements (Dziekan, 2011, pp. 243-244).

[In this context, an essential issue] [...] seems to be the strife between traditionalism and modernism around the concept of Ummah and the fundamental cultural and civilizational values of Islam. It can be observed that in the poorer, less developed regions the traditional thought has a strong influence and the observance of the religious practices is closer to the requirements of the law while where the changes of economic and social character are taking place relatively quickly and the influence of the Western civilisation is stronger, it has a less restrictive character (Prochwicz-Studnicka, Teperska-Klasińska, 2012, p. 171).

On account of the range of issues discussed in this paper, the only commandment discussed here will be that of prayer, which in Islam is presumably the most apparent manifestation of affiliation to a Muslim commune. Its significance does not only result from the fact that its fundamental element is recitation of the Quran and the confession of faith (through the so-called *tashahhud*), but also from the fact that it unites the believer with that which in his religious space has the absolutely highest value: with God, with the prophet and the community (Prochwicz-Studnicka, Teperska-Klasińska, 2012, pp. 174-175). Sharia provides for five mandatory prayers during the day<sup>4</sup>: *salat as-subh* – the morning prayer performed between the dawn and the sunrise; *salat az-zuhr* – the noonday prayer, performed immediately after the sun passes its zenith; *salat al-asr* – the af-

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<sup>4</sup> The exact times of prayers are set based on astronomical calculations with reference to the moon calendar. In former times, the approaching time for a prayer was only signalled by a call performed by professional muezzins. Nowadays, media communication is also used for this purpose (Prochwicz-Studnicka, Teperska-Klasińska, 2012, p. 175).

ternoon prayer, performed during the time between the end of the noon prayer and the setting of the sun; *salat al-maghrib* – the prayer after the sunset; *salat al-isha* – the night prayer performed between the moment when the red afterglow disappears in the west and the dawn (Dziekan, 2011, p. 243). As further explained:

One should approach the prayer in a state of ritual purity (*tahara*), which can be achieved by ritual ablution. The law distinguishes between small/partial ablution (*wudu*) and large/full ablution (*ghusl*)<sup>5</sup> consisting in washing the whole body. That which ablution is performed depends on the type of impurity of the believer. Each school of Islamic jurisprudence precisely enumerates the situations that lead the believer into a state of minor or major impurity and describes the consecutive steps constituting the ritual of purification. As a rule, small ablution is required after urination or defecation, touching one's own private parts, touching a person of the opposite sex (except the spouse), and also after sleeping or loss of consciousness. Especially nowadays, in many environments small ablu-tions are not performed before each of the five prayers; this depends on the believer's individual decision (Prochwicz-Studnicka, Teperska-Klasińska, 2012, p. 175).

When considering the possibility of performing ablu-tions before prayers in the prison cell settings, it should be pointed out that *wudu* is most commonly performed using water. When it is not readily available, ritual ablution can also be performed using dust, powder, sand, grit – a natural substance of soil (*tayammum*). In *The*

*Book of Purification*, developed based on the work by Muhammad bin Jamil Zino, entitled *The Pillars of Islam & Iman – And What Every Muslim Must Know About His Religion*, one can find a provision saying that it is possible to perform a prayer also by a person who does not have access to water or clean soil. This special situation was justified by recalling a specific hadith in which the Prophet did not order the believers to repeat their prayer even though they had performed it without first performing the ritual of ablution.<sup>6</sup>

For a fuller depiction of the sources of Islam, one should also indicate the role of tradition in the Muslim world. It is not only connected with celebrating holidays and major family events, but is also present, above all, in the daily life of every Muslim, regardless of his material status. Tradition plays a significant role in the shaping of the Muslim jurisprudence and passing judgements based thereon. The most important regulations that zealous worshippers are guided by are fashioned in accordance therewith. Even though a lot of them are hardly reflected in the contemporary, globalized world, the Islamists are deeply attached to them.

In this context, it is worth noting the fact that the Muslims' approach to continuing certain rites, as well as the same themselves, often arouse controversy among the community of Europeans. This is often the cause of difficulties and problems that must be faced by *inter alia* the countries receiving immigrants from the Arab-Muslim cultural environments. Tra-

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<sup>5</sup> This is performed after childbearing and the postpartum period, completion of the menstrual cycle, sexual intercourse and nocturnal emissions (Prochwicz-Studnicka, Teperska-Klasińska, 2012, p. 175)

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<sup>6</sup> [https://www.islamland.com/uploads/books/pl\\_Ksiega\\_Oczyszcz-czenia.pdf](https://www.islamland.com/uploads/books/pl_Ksiega_Oczyszcz-czenia.pdf)

dition is an aspect of life; thus, it is not possible to eliminate tradition within a course of few years. Moreover, attempts to break away from the ancestors' heritage might bring undesired effects and cause protests within the communities of human rights defenders.

A rite that causes considerable controversy, especially in the Eastern European countries observed within our study, and which is related to the kind of meals that are eaten, is the ritual slaughter of animals. As is commonly known, Muslims do not eat neither pork nor donkey meat or mule meat. Meat from these animals is deemed unclean. According to the faith of Islam, meat eaten by the believers should come from a clean animal that was reared in the natural manner and killed in compliance with the Muslim ritual, and therefore holds the halal certificate (cf. Baranowski, 1987, p. 48). As previously mentioned, the practice of ritual slaughter is banned under Polish and Lithuanian laws. It does not mean, however, that this kind of meat is not legally marketed in the two countries.

In summarizing the above considerations, we may refer to a statement by Brataniec:

[It should be pointed out that] [...] the civilization of Islam is primarily expressed in the unity of the social and religious life, which is manifested mainly in jurisprudence and social structure. When challenged with the problems of the contemporary world, Muslims resort to solutions from the past, to a return to the traditional religiousness and to the organization of the society based on just the religious law. Perhaps maintaining their own cultural identity is more important than the encounter with the problems that modernity brings to these societies (Brataniec, 2009, p. 36).

Additionally, it is worth stressing that tradition is paramount in Muslim culture, and consequently the faithful followers are ready to go as far as committing a crime in its defense. The restrictive and, in extreme cases, very radical behavior on the part of Muslims can also be accounted for by their taking advantage of the rather liberal policy of the recipient countries. Therefore, it is worth considering whether these proportions should be reversed and should it rather be required that Muslim customs be adapted to the European ones and not the way around. One reason for this is the increasingly growing ill will and prejudices towards the Muslim diaspora that are more and more clearly voiced by the receiving societies (cf. Balicki, 2010, p. 96).

Serving a sentence of imprisonment takes place under specific legal regulations and requires application of appropriate guidelines and recommendations with regard to the aspect of both the organization, the execution and the respect of the inmates' rights. The confusion in their observance and implementation is caused by the vague character of the provision and diverse interpretation in the individual EU countries. Prison constitutes a specific social space, where encounters take place between people of various standards of behavior, different customs, rites and even diets and manners of perceiving social relations. This conglomerate of diversity generates various new difficulties, *inter alia* on the organizational and technical level, especially with regard to the clash with cultural diversity (cf. Urbanek, 2016, p. 247).

According to A. Szerlag, the canon of standards of enforcing sentences of im-

prisonment with maintained multicultural entanglements comprises the following aspects: a) respect for the principles of the foreigner's native culture and of the dominant culture, particularly in the context of social reintegration; b) recognition of the psychosocial motives that occur within the community of prison officers, fellow inmates and convicts from other ethnic groups; c) the balance of hazards to the foreigners' indigenous values; d) introduction of an overriding axiology for enforcing the sentence, with account for the values of cultural differences, tolerance, compromise and dialogue (Szerlag, 2015, p.80). The results of our own survey conducted among officers of the Prison Service in Poland, Lithuania and Czech Republic presented in this paper unequivocally indicate the respondents' significant distance towards the abovementioned standards.

Bearing in mind the fact that the Quran provides for various directions of interpretation and the reforms of the Muslim jurisprudence since the 7<sup>th</sup> century have definitely been the work of jurists and not theologians, learning the assumptions and sources of Islam would require in-depth studies in this subject on the part of prison officers.

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Another challenge would lie in developing rules for classifying Muslim convicts to the proper school of qur'anic law as these represent diverse interpretations.

In concluding this study, perhaps it might be worth to assume that the penalty of imprisonment should after all remain outside the issues of multiculturalism and rather be based on the lawfulness of the procedure according with standard solutions. Even more so because the existing models of managing cultural diversity, such as assimilationism or multiculturalism, proved faulty in their assumptions or implementation (Pasamonik, 2013, p. 13). Furthermore, neither the policy of ignoring the cultural changes taking place, pursued so far by the majority of the member states of the EU, nor the policy of concessions implemented to replace it, also lacking support from the Europeans, have brought about the intended effects. Therefore, perhaps the countries receiving Muslim immigrants and facing all of the consequences thereof should make a point of shaping their legal systems in such a manner as to ensure that Muslims will be free to practice their tradition, but ought to do so without compromising their own interests.

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## KULTURINĖ MUSULMONŲ KALINIŲ ĮVAIROVĖ IR ĮKALINIMO ĮSTAIGŲ PRAKTIKOS LŪKESČIAI RYTŲ EUROPOS ŠALYSE

Arkadiusz Urbanek, Kamila Gandecka

### S a n t r a u k a

Straipsnyje pristatomos elgesio su musulmonais tendencijos, pastebimos Lenkijoje, Lietuvoje ir Čekijoje. Remiamasi tyrimo, atspindinčio kalėjimo prižiūrėtojų reakciją į musulmonų lūkesčius ir pretenzijas, duomenimis. Tyrėjai taip pat bando atsakyti į klausimą apie tokių pretenzijų sankcionavimą. Pažymima, kad būtina identifikuoti tokių pretenzijų kilmę, norint suformuoti tikslią poziciją apie kalėjimo priežiūros praktiką. Tai gali būti svarbu kuriant nešališkas elgesio su kaliniais musulmonais gaires. Būtų geriausia, jei įkalinimo bausmė liktų už daugiakultūriškumo diskusijos ribų ir būtų vykdoma tik remiantis teisinėmis procedūromis ir standartiniais sprendimais. Ypač todėl, kad esami kultūrinės įvairovės valdymo modeliai, tokie kaip antai asimiliacija

ar daugiakultūriškumas, pasirodė esą netinkami savo prielaidomis ar praktiniu pritaikymu (Pasamonik, 2013, p.13). Be to, nei kultūrinių pokyčių ignoravimo politika, vykdoma daugumoje ES šalių, nei koncesijų politika, turėjusi ją pakeisti, nepasiekė norimų rezultatų. Todėl, ko gero, šalys, į kurias atvyksta musulmonai imigrantai ir ten atsiranda šios migracijos padarinių, turėtų pakeisti savo teisinės sistemas taip, kad užtikrintų, jog musulmonai galėtų laisvai praktikuoti savo tradicijas, bet kartu nebūtų pažeidžiami pačių šalių interesai.

**Pagrindiniai žodžiai:** daugiakultūriškumas, kultūrinė įvairovė, musulmonai, kalėjimas, kalėjimo įstaigų nuostatos.

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