

# Prison Disciplinary Reports

John Ward BL

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# 1. Introduction

- ▶ When committed to prison, one becomes a member of prison community and subject to the 'Prison Rules 2007 to 2013 – pursuant to Prisons Act, 2007. These govern all aspects of prison life (healthcare; work; recreation; education, visits etc) in all prisons within the State. It also includes Discipline. Significant case law in terms of Judicial Review and Article 40 Applications have arisen.
- ▶ **Primary Legislation**
  - Prisons Act, 2007
  - Sections 11 to 16 inclusive.
- ▶ **Secondary Legislation**
  - Prison Rules 2007 to 2013
  - S.I. 252/2007
  - S.I. 11/2013
  
  - Rules 66 to 68 – Discipline
  - Rules 62 to 65 – Control

## 2. What is a 'P.19' and how is it generated?

- ▶ A 'P.19' is a written report, made by any prison officer, to the Governor, which alleges that an inmate has committed a breach of discipline set out in the Prison Rules. It briefly sets out the details of the alleged breach. It should be signed by the officer.
- ▶ It is generated by the Officer entering the details on the P.I.M.S. Prison Computer System and printing out the 'P.19' form.
- ▶ Examples of breaches are: possess/receive prohibited article (knife/mobile phone); being violent, abusive etc.; disobey order to name a few. Entire list set out in Schedule 1 in the Rules 2007.
- ▶ Governor should then decide whether to hold inquiry and, if so, the P.19 is served on the inmate who is meant to sign receipt of it.
- ▶ Hearing not earlier than next day after served on inmate and not later than seven days – unless cause shown.

# 3. Conduct of Hearings

- ▶ Governor conducts the hearing – quasi judicial process
- ▶ Hearings held most days (excl. Sat/Sun)
- ▶ Sanctions set out in s.13 – and includes loss of remission – **Loss of Liberty.**
- ▶ **No legal Representation permitted– has been refused. Only exception is on appeal where loss of remission involved. Questionable under ECHR Law – especially having regard for issues that may arise: an inability to represent him/herself – lack of education; mental health etc.**
- ▶ **A number of sanctions are prohibited 13(7) (a) – (k) sanctions of indefinite duration; corporal punishment; placing in restraints; cruel, inhumane or degrading etc.**

# Conduct of hearing contd...

- ▶ Rule 67 (6) “The prisoner shall be entitled to be told what is alleged against him or her and to hear or be given an opportunity to examine or have explained to him or her any evidence given or submitted in support of an allegation that he or she committed a breach of prison discipline.”
- ▶ **Who decides? In re Haughey principles? Case currently before High Court – Hamilton v Governor of Mountjoy Prison 268/2013 JR**
- ▶ Can put questions to witness – through the Governor
- ▶ Governor cannot withhold consent unreasonably.
- ▶ Governor may adjourn.
- ▶ Inmate has right to be present and call witnesses on his/her behalf–on prior notice to governor.
- ▶ Enter a plea in mitigation

## 5. PETITION / APPEAL PROCESS.

S.13 (8) On the imposition of a sanction under this section, the Governor shall explain in ordinary language to the prisoner concerned the content of section 14 (1) and, if the sanction consists of or includes forfeiture of remission of portion of his or her sentence, of section 15(1).

S.14 (1) “..may within 7 days of its imposition, send to the Governor, for transmission to the Minister, a petition concerning the finding or sanction..”

s.14 (2) On such a petition the Minister may, **after consulting the Governor**, affirm, modify, suspend ..or revoke the sanction..”

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Where loss of remission ordered (Loss of Liberty) – an Appeal Tribunal hears any appeal on finding and/or sanction. Legal Representation allowed. Legal Aid may be applied for. Appeal Tribunal – solicitor or barrister of not less than seven years. S.15 and S.16 refers.

## **6. POINTS OF CONCERN AND INTEREST TO NOTE:**

### **INTERPRETATION OF S.14(1) BY I.P.S. DEPUTY DIRECTOR APRIL, 2013.**

“When a prisoner indicates that he wishes to Petition, a computer-generated email to that effect notifies the relevant authorised officers. There is no paper record of the Petition itself, and the Petition will be considered on the basis of the papers generated by the Disciplinary Hearing and referred to in the decision letter provided to you”

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### **INSPECTOR OF PRISONS ANNUAL REPORT 2012:**

“...56 days ‘loss of privileges’ is commonplace in Irish Prisons. I have encountered instances where 60 days punishment was imposed. These punishments are totally out of line with accepted best international practice.”

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- A prohibition on visits as a sanction shall not be ordered without specifying the reason why. Rule 67 (13) (a), (b) & (c) – S.I. 11 / 2013(3)

**Subject to Rules 62 to 65, disciplinary action may only be taken by the Governor following an inquiry pursuant to Part 3 of the Prisons Act, 2007.**

# 7. CASE LAW.

- ▶ Mc Auley – 2012 IESC 57 – 29 NOVEMBER 2012
- ▶ Kinsella – 2011 IEHC 235 – 12 JUNE, 2011
- ▶ Creighton – 2003/13989P – 14 JUNE 2013



# 8. What to do.....

Obtain as much detailed information from client immediately to include:

Time, date and exact location of alleged breach;

CCTV footage? (explain significance)

Who was present – witnesses

What sanction imposed: particularly if loss of remission involved.

If any other sanction – is petition re: sanction or finding?

Write to Governor and obtain:

- All documents, notes (contemporaneous or otherwise), compiled at the hearing.
- Names of all witnesses who tendered evidence at the hearing.
- Copy of 'P.19' form; the 'Record of Hearing' and 'Record of Sanction' imposed.
- CCTV footage (undertakings) – if refused, confirmation of its preservation

# Points to Note

- ▶ Is P19 signed?
- ▶ Is allegation specific?
- ▶ The time and date P19 served on inmate and by whom.
- ▶ Was the time and date of the hearing notified.
- ▶ Notes taken at hearing on PIMS Record.
- ▶ Decisions made/reasons given – if any– (witnesses; questions; etc.)

# ANY QUESTIONS?

John Ward B.L.  
DX 301121  
The Law Library  
Criminal Courts of Justice,  
Dublin 8.

Email: [johnwardbl@gmail.com](mailto:johnwardbl@gmail.com)

Mobile No.: 086-2477002