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Review Article

Medical aspects of insanity in Polish Criminal Law

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ABSTRACT

Introduction: Insanity is an issue at the border between two different fields of science: law and medicine. Medicine is a widely developed field that undergoes continuous and dynamic development. On the other hand, legal aspects of medicine are based on classical medical solutions adopted already in the 19th century science. Insanity is a strictly legal term. Definition of this term is an extremely important aspect for the application of Art. 31 of the Penal Code, since its interpretation determines criminal liability, and in consequence the use of criminal penalties or security measures.

Aim: The aim of this work was to present the issue of insanity in respect to the Polish Criminal Law and current medical knowledge.

Material and methods: Dogmatic-legal analysis of the current legal regulations in Poland through the prism of well-established Supreme Court jurisprudence and literature of the field was conducted.

Results and discussion: Recently, the condition for liability of a perpetrator for a criminal act is guilt, which in certain circumstances may be excluded. Culpability does not occur *inter alia* in situations where the state of mind of the perpetrator shows some deficiency. A Polish legislator provides three sources of insanity: mental illness, mental retardation, and other mental disturbance activities. Two psychological criteria of the very state are also defined, which at the same time are the consequences of the above-mentioned sources: inability to recognize the significance of the act and inability to manage its conduct.

Conclusions: The issue of insanity requires effective combination of complex and suitable legal structures, current medical knowledge, and interest of an individual and society. For the effective and accurate regulations of the issue of insanity and well-functioning practice, a dialog between the two professions is required. Specifying the term of insanity is the responsibility of physicians, since its clarification on the basis of current legal status is unreasonable and inadequate due to the fact that its extent is each time determined by the current medical knowledge.

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1. Introduction

Insanity is an issue at the border between two different fields of science: law and medicine. Both disciplines have characteristic research methods, functions, purposes and fields of interest. Whereas the law, as a system of normative regulations, uses precise definitions, such as the criminal law which is based mainly on dichotomy of guilt vs. innocence, medicine allows no such divisions. The course of a disease is not uniform and there is no precise border between health and disease.

The object of research in medicine is always a human being. However, in the criminal law the priority is not a human being himself but the offense the individual committed, defined precisely by Art. 1 § 1 of the Penal Code as “an act prohibited under penalty, by a law in force at the time of its commission.”¹ The criminal law explicitly indicates in Art. 3 of the Penal Code the principle of humanitarian action. This principle plays a major role in the aspect of insanity, because it obliges to perceive a human being not as a criminal, but as an individual affected by certain psychological or mental disorder, who is unable to properly and knowingly perform his/her social role and coexist peacefully with this society.

Though it is hard to expect lawyers to be experts in both law and medicine, it is indisputable that they should have elementary knowledge in this field, even despite the fact that Art. 193 of the Criminal Procedure Code requires calling expert witnesses, if in the criminal proceedings special knowledge is required to determine significant circumstances for deciding a case.² The need for cooperation is revealed not only in proceedings already pending and requiring calling expert witnesses, but also in the process of creating the law. Medicine is a widely advanced field, which undergoes constant and dynamic development. On the other hand, legal aspects of medicine are based on classical medical solutions adopted already in the 19th century science. Thus, the law becomes anachronistic, disjunctive to the rapid development of modern medicine.

Insanity is a strictly legal term. Definition of this term is an extremely important aspect for the application of Art. 31 of the Penal Code, since its interpretation determines criminal liability or lack of it, and in consequence the use of criminal penalty, which is a particularly severe tool affecting the recipient, the possibility of its modification or application of security measures.

2. Aim

The aim of this work was to present the issue of insanity in respect to the Polish Criminal Law and current medical knowledge.

3. Material and methods

Dogmatic-legal analysis of the current legal regulations in Poland through the prism of well-established Supreme Court jurisprudence and literature of the field was conducted.

4. Results and discussion

4.1. The essence of guilt

Guilt is a fundamental term of the criminal law and it has a dual role. Firstly, it has a legitimizing role, being the condition to the existence of criminal liability. According to Andrejew, it is a “bulwark against objective liability.”³ Certainly, it is one of the elements constituting an offense. Under Art. 1 § 3 of the Penal Code “the perpetrator of a prohibited act does not commit an offense if guilt cannot be attributed to him at the time of the commission of the act.” Another expression of this is also a *paremia nullum crimen sine culpa*. This fact is also confirmed by the definition of crime derived from the standards of Art. 1 of the Penal Code: penal liability shall be incurred only by a person who commits an act prohibited under penalty, by a law in force at the time of its commission, as a crime or misdemeanor, prohibited, culpable and socially harmful to a greater extent than negligible. Consequently, not any prohibited act is a crime. To be the one, it also has to satisfy the criteria of objective antisocialness and guilt, which are differentiated based on a value criterion and reference points. Unlawfulness is the relation of an act to the law. According to Cieślak, the law has a positive value and its violation in the form of unlawfulness has to be inherently negative. Social noxiousness is characterized also by a negative judgment, and in this case value of legal rights is taken into account, which should remain unaffected. However, negative value of guilt is examined for possibility and obligation to avoid commission of the prohibited act of a considerable social noxiousness by the perpetrator.⁴

Guilt is an element of the structure of a crime in the criminal law: prior to raising the question of the perpetrators' guilt it should be considered whether the act fulfills other features mentioned earlier. As a result, guilt in substantive law does not include objective conditions of liability. In addition, Cieślak indicates that guilt in such form, as understood by substantive criminal law, is a “typical hypostasis,” because it cannot be referred to as noun, but only as an adjective, as a culpable act. Therefore, the meaning of guilt itself should not be discussed, but conditions that must be satisfied for the act to be considered culpable should be defined. Cieślak has also given the explicitly formulated answer – it should be an act “which in certain circumstances could and should have been avoided.”⁴

In the current Penal Code, due to a variety of theories, no definition of guilt was included, although in accordance with the Draft Penal Code of 1997, an attempt at implementing a purely normative concept was made, despite the absence of historical basis and established position in Polish law.⁵

On the basis of the current Penal Code, numerous definitions of guilt were formulated, which depending on the accepted theory demonstrate various significance. As said by Gardocki: “guilt in the substantive criminal law is an offense personally alleged.”⁶ On the other hand, Marek, as a supporter of comprehensive approach, claims that “guilt in a criminal law, under provisions of this law, is the alleged relation between the perpetrator and the commitment of a prohibited act.”⁵ Thus, Polish doctrinal solutions oscillate

within normative theories, in accordance with legislators' assumptions.

4.2. Capacity to attribute guilt

At present, the condition of liability of a perpetrator for an offense is culpability, which however in certain circumstances, strictly limited by the law, may be excluded. Culpability does not occur in situations when the perpetrator has certain mental impairment or acts in abnormal situational conditions, despite normal mental function.

Under current law, a person 17 years of age, and in several cases specified in Art. 10 § 2 of the Penal Code, 15 years of age, who commits an act defined in this Act is subject to criminal liability. Mature persons are able to recognize the significance of their deeds and thus the proper conduct of their actions. A normal mental function that determines criminal liability and culpability is called sanity. This is a way of perceiving, thinking, feeling emotions and making decisions in accordance with mental norm. Sanity has no legal definition in the current criminal law. Clarifying the issue of sanity is therefore a very difficult task. The easiest and the most natural definition of sanity is the antonym of insanity. Such explanation is not precise enough, but conforms to requirements imposed by provisions of the Penal Code. There is not much controversy with regard to the fact that wide range of types and forms of human behaviors, moods and reactions, sanity should be defined particularly widely.

In the study of criminal law, attempts to define the essence of sanity are not isolated. The most common defect of the created definitions is referring to vague concepts, which thwarts any attempts because they contain error *ignotum per ignotum*. On the basis of Tarnawski's work, definition of sanity presented by various representatives of the doctrine may be cited. Krzymuski thinks it is the human ability, totally independent from the fact of committing a crime, to realize the relationship between human behavior and obligations imposed by law or to be autonomously guided by motives, which the law raises. Makarewicz calls sanity the total individual conditions of the perpetrator required to justify criminal liability. Berger orders to consider sanity from three sides. Moral aspect involves "the ability of a normal human being to self-define according to the knowledge and realization of their act and its relation to the world," assuming the free coordination of acts with nature and external world, eliminating external and internal influences. The social aspect is "a normal state of a human being in the sense of social similarity of a certain group, community."⁷ The medical point of view "consists of determining total and normal nervous system of a subject." Definition of Znamierowski is "sane is the one, who understands what is wrong and what is right, or the one who understands what is prohibited and mandated by the applicable norms, [...] who is able to control their motor impulses, subduing them according to their will. Such a sane person is every mentally healthy person."⁷

The opposite of sanity is insanity, defined in the Polish Criminal Law in Art. 31 § 1 of the Penal Code, which specifies that a person "does not commit a crime, who, by reason of mental illness, mental retardation or other mental disturbance activities, could not act in time to recognize its significance or

to direct his actions." Between these states there are also intermediate situations, including substantially diminished sanity, referred to in Art. 31 § 2 of the Penal Code: "If, at the time of the offense ability to recognize the importance of the act or conduct targeting was significantly reduced, the court may apply extraordinary mitigation of punishment."

In the Polish Criminal Law there is a presumption of sanity, which means that there is a preliminary assumption of a mental capacity of the perpetrator. Thus, it is not required to prove the capacity to attribute guilt each time but only in the event of doubt, its absence in the form of insanity or possibly diminished sanity is established. Sanity and associated criminal liability are the rule, while insanity is the exception. It was precisely demonstrated by the Supreme Court in its judgment of 14 March 1974, by stating that "the issue of sanity of the defendant always requires consideration, when the subjects of judicial notice are crimes which either have no reasonable justification, or their motives are completely inadequate to the particular action."⁸

4.3. Insanity

Insanity is not only a term in the legal language, but since the provisions of the Penal Code of 1969 it is also a term in language of the law.⁹ This is a state of being unable to be guilty and according to the maxim *nullum crimen sine culpa*, exempting perpetrator from the criminal liability by virtue of lack of crime, thus resulting in inability to judgment of sentence. In the jurisprudence of the Supreme Court there is an opinion that evaluation of insanity should always be related to a particular act and not abstractively defined.¹⁰

Undoubtedly, lawyers are unable to independently decide whether in the particular case insanity or diminished sanity occurs, or diagnose mental health. Even with the help of psychiatry specialists this is not an easy task, since "judicial psychiatry has not developed clinically reliable criteria to identify insanity or diminished sanity and methodology of scientific analysis of the principles of experts' assessment. No theory of sanity and absence of it was created, which would organize psychiatric, psychological and legal knowledge and could become the starting point of research hypotheses and its scientific verification; it has not been accomplished anywhere in the world. [...] The provision of sanity is a formal and legal structure, which has no direct mental designates in mental experiences of the perpetrator."¹¹

4.4. Methods of determining insanity

The study of law has developed three analytical methods of determining insanity: biological (psychiatric), psychological, and mixed (combined).

Biological method emphasizes only the sources of the state of insanity, with the exclusion of its consequences. This method is based on the statement that particular legal consequences of an act will not occur if the perpetrator suffers from mental disorder which is the cause of insanity. The disadvantage of this approach is focusing only on one side of the clinical manifestation of abnormal conditions, with no consideration of its consequences, since these conditions may not only disable sanity, but also diminish it to a varying degree.⁹

Psychological method is the opposite of the previously discussed. It ignores the causes of insanity and concentrates on its consequences for the mental life. The disadvantage of this approach is missing the sources of insanity, which results in a significant widening of the extent as compared to insanity itself. Thus, it leads to the formation of irresponsibility and not insanity.

In view of the limitations of both the above methods, a combined method, which is the synthesis of the two, may be used. In the literature examples of referring to this method as medical or medical-legal may be found, which is a reference to its "interdisciplinary" character and emphasis of the need to use the expertise of specialists in the assessment of the perpetrator's sanity.¹²

Definition of insanity in the Penal Code of 1997 on one hand is based on establishing the mental state of the perpetrator (inability to recognize the significance of an act or direct ones actions) and on the other hand determining the cause of this state (mental illness, mental retardation or other mental disturbance activities). Despite popularity of such an approach to insanity, several doubts concerning the doctrine have appeared. If definition of insanity directly resulting from the Penal Code is adopted, characterizing mental illness, mental retardation and "other mental disturbance activities" as constructional elements of insanity, then what are the causes of this state? Tarnawski speculates to define insanity only by means of psychological method, based on the opinion of Makarewicz, who has repeatedly emphasized superiority of psychological over mixed criterion, as an indication of the decisive role of the judge, while psychiatric criterion throws the entire burden on psychiatrists, who in this way in fact determine the criminal liability. In addition, he underlines that mixed method "is only a phase of evolution leading to pure psychological method."¹¹ Determining insanity only by means of psychological method is not appropriate, since it considers this issue too broadly. Makarewicz has also overestimated the role of experts in the trial. It should not be forgotten that each evidence is subject to the discretion of the court and therefore lawyers are required to possess basic knowledge in psychiatry and psychology. The role of experts is to determine the state of health of the subject, but its legal assessment is in competence of the court. This does not however change the fact that psychological component plays a crucial role in determining either "full" or diminished sanity, or insanity. While it is possible to accept formula of insanity without psychiatric element, it is not possible without psychological criteria that identify the condition mentioned in Art. 31 § 1 and § 2 of the Penal Code. In accordance with the discussed method it should be determined whether any of the above biopsychiatric causes resulted in psychological effect, which was expressed in the Polish Penal Code as "by reason of". Thus, it is essential that abnormal biopsychiatric conditions affect the will and awareness. It is absolutely forbidden to use any automatism for that purpose. In particular case under consideration, in order to establish insanity, occurrence of one of the causes defined in Art. 31 § 1 of the Penal Code and at least one consequence in the human mind is required. It is therefore argued that a situation in which the perpetrator, who has no ability to recognize the importance of the act, is able to manage its conduct is not possible.

4.5. Sources of insanity (psychiatric criteria) and consequences of insanity (psychological criteria)

A Polish legislator provides three sources of insanity: mental illness, mental retardation, and other mental disturbance activities. Two psychological criteria of the very state are also defined, which at the same time are the consequences of the above-mentioned sources: inability to appreciate the significance of the act and inability to manage its conduct. The above consequences were contained in the simple alternative (inseparable), thus it is sufficient to prove the presence of at least one. It is however only superficially a simple alternative, since the situation in which the perpetrator, who has no ability to recognize the importance of the act, is able to manage its conduct is not possible. It should be remembered that discussed circumstances are the abilities, not permanent features of cognitive processes, so its state at a precisely specified time if reliable.

Inability to recognize the significance of an act is a disturbance of intellectual and cognitive processes, in contrast to another consequence of insanity, in which volitive malfunction is assumed. Such a division is not commonly accepted. Gierowski considers both consequences as two aspects of the same motivational process. Lernell emphasizes that "inability to recognize the significance of an act exists when a human individual simply cannot realize what they are doing (in the 'ontological' sense, in terms of being), and also when they are not able to recognize the 'negative' consequence of their behavior [...]. Inability to 'recognize the significance of an act' refers to the sphere of awareness, which cannot accept the fact of doing a certain act or value judgment of this act. This is the case when the perpetrator is unfamiliar with elementary moral rules, minimum restraint required for normal social intercourse, concept of right and wrong."⁷

The ability to manage behavior refers to volitive sphere of the mind. Volitive acts are very complex processes, since they are strictly associated with awareness and emotions. It should be recalled that the concept of will in modern psychology was replaced by "decision-making processes," which are defined as the selection of a course of action among several possibilities. It is difficult to agree with the opinion of many criminal lawyers that committing an offense is pursuant to an exercise of perpetrator's free will, which affects criminal liability. Modern psychology claims that the choice of a human being is determined by the existing situation, features of personality and self-control in motivational processes. Thus, the ability to manage behavior depends particularly on self-control, the essence of which is specified by Raykowski "It involves conforming various contradictory desires and impulses, sources of which may be various regulatory mechanisms (i.e. attentional-emotional and cognitive) of one general strategy developed with organized information available to the subject."¹³ Such an approach to self-control leads once again to the dilemma of whether an alternative approach in the consequences of insanity is sensible and correct.

Difficulty in defining discussed terms is shown by Gordon, who states, "experts prove that current legal definition of mental components of sanity, which describes it as 'the ability to recognize the significance of the act or manage its conduct'

is from the pre-scientific period, is completely subjectivist and cannot be operationalized in empirical framework. Efforts to create scales to 'measure' sanity are only an attempt to organize clinical data of the perpetrator and connecting it with still intuitive evaluations of sanity performed by several experts. Therefore, the answer to whether the perpetrator 'had the ability to recognize... etc.', cannot actually be proved and it remains a sort of a magic spell, which is a formal justification for court's decision in cases, where it is intuitively felt that the perpetrator acted 'abnormally'.¹⁴

5. Conclusions

1. The issue of insanity requires effective combination of complex and suitable legal structures, actual medical knowledge, and welfare of an individual and society.
2. The issues of sanity lie between inherently conservative law and dynamically developing medical sciences. For the effective and appropriate regulations of the issue of insanity, and well-functioning practice, a dialog between the two professions is required.
3. Specifying the term of insanity is the responsibility of physicians, since its clarification on the basis of current legal status is unreasonable and inadequate due to the fact that its extent is each time determined by the current medical knowledge.

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