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PREVENTIVE DETENTION AND PUBLIC SAFETY UNDER THE POLISH ACT ON DANGEROUS PERSONS WITH MENTAL DISORDERS

Abstract

This article examines the legal solutions introduced by the Polish Act of 22 November 2013 concerning persons with mental disorders who pose a threat to the life, health, or sexual freedom of other persons. The study focuses on the conditions required for classifying an individual as dangerous, the application of preventive supervision, and placement in the National Centre for the Prevention of Dissocial Behaviour (KOZZD). The research is based on the legal-dogmatic method and an analysis of the relevant legal provisions and scientific literature. Particular attention is paid to the relationship between public safety and the protection of individual rights and freedoms. The findings indicate that the Act constitutes a unique preventive mechanism designed to protect society from individuals presenting a high risk of committing serious offences after completing their prison sentences. At the same time, the application of post-penal isolation raises important legal and ethical concerns regarding proportionality, personal liberty, and human rights protection. The effectiveness of the Act depends on judicial oversight, reliable psychiatric assessment, and the availability of appropriate therapeutic measures.

Keywords

preventive detention, public safety, mental disorders, preventive supervision, KOZZD, polish law

Methodological and methodological assumptions

The study is based on a doctrinal and analytical approach. The primary research method applied in this paper is the legal-dogmatic method, which involves the analysis and interpretation of legal provisions governing proceedings concerning persons with mental disorders who pose a threat to the life, health, or sexual freedom of other persons. The analysis focuses primarily on the Act of 22 November 2013 and the legal mechanisms introduced therein.

The study is supplemented by a review of the relevant scientific literature, including legal, criminological, and psychiatric publications addressing preventive detention, therapeutic measures, and the protection of public safety. Comparative references to selected foreign legal systems were also incorporated in order to place the Polish solutions within a broader international context.

The main research objective is to examine the legal status of persons covered by the Act and to assess whether the mechanisms introduced by the legislator effectively balance the need to protect society with the protection of individual rights and freedoms. The research is guided by the following questions:

- What conditions must be met for an individual to be classified as a person posing a threat under the Act?
- What legal measures may be applied to such individuals?
- Does the Act provide adequate guarantees for the protection of human rights while ensuring public safety?

Research hypothesis: The legal mechanisms introduced by the Act of 22 November 2013 provide an effective framework for protecting public safety while maintaining procedural safeguards designed to protect the fundamental rights of persons subjected to preventive measures.

The article adopts a qualitative approach and does not involve empirical research or statistical analysis. The conclusions are based on an examination of legal regulations, court-related mechanisms, and the views presented in the scientific literature.

Introduction

Ensuring public safety is one of the fundamental responsibilities of every head of state and parliament. Undoubtedly, one of the more challenging issues in this area concerns individuals with mental disorders, namely ensuring protection against the actions of such persons. Many people may ask themselves why. a dysfunctional individual thinks differently, acts differently, perceives the world differently and, above all, experiences emotions more intensely. a mental disorder is an illness; therefore, it is natural that no one can completely protect us from contact with people affected by such conditions[1]. Every legal regulation arises from attempts to answer this question.

1 Sułkowski M., Bargiel K., Safin R., *Przymus w psychiatrii*, „Sztuka Leczenia", 2023, Kraków, pp. 45–58.

Such an attempt was undertaken on 22 November 2013. This legal act established clear boundaries and introduced preventive measures aimed at individuals who, due to their condition, may pose a serious threat to society.

The aim of this article is to analyse the legal framework established by the Polish Act of 22 November 2013 concerning persons with mental disorders who pose a threat to the life, health, or sexual freedom of other persons. Particular attention is devoted to preventive supervision, post-penal detention in the National Centre for the Prevention of Dissocial Behaviour (KOZZD), and the balance between public safety and the protection of fundamental human rights.

The aforementioned Act is also one of the few legal regulations that has generated considerable controversy and remains the subject of discussion within legal, psychological, and public circles to this day. It is also worth noting that the issue of dealing with particularly dysfunctional individuals is not unique to the Polish legal system. Similar solutions operate in many other European countries as well as outside Europe, including France, the United Kingdom, and the United States[2]. In various countries, legal mechanisms are used to allow for the continued detention or isolation of perpetrators of particularly serious offences when there are grounds indicating a high risk of reoffending. Germany serves as a notable example of such an approach[3]. However, these measures take different forms and are often the subject of intense debate regarding their compatibility with human rights standards.

The Concept of Mental Disorders

Under the Act of 22 November 2013 on Proceedings Concerning Persons with Mental Disorders Who Pose a Threat to the Life, Health, or Sexual Freedom of Other Persons, an individual may be classified as a dangerous person only if three essential conditions are met:

- Serving a term of imprisonment – a person serving a sentence of 25 years' imprisonment or a sentence carried out within a therapeutic system. ("Persons serving a legally imposed sentence of imprisonment or a sentence of 25 years' imprisonment executed within a therapeutic system")[4]. a therapeutic system means that, during the sentence, various rehabilitation and treatment programmes are implemented, a typical example being psychiatric consultations.
- Presence of mental disorders – a person who has documented mental disorders diagnosed by a psychiatrist, such as personality disorders or disorders of sexual preference. It is important that the documentation was prepared during the enforcement proceedings. *("During enforcement proceedings, they exhibited mental*

2 Drenkhahn K., *Secure preventive detention in Germany: incapacitation or treatment intervention?*, Behavioral Sciences & the Law, 2013, Hoboken (New Jersey).

3 Chlebowska A., *Leczniczo-izolacyjne środki zabezpieczające a gwarancje ochrony wolności i praw (w polskim i niemieckim prawie karnym)*, „Państwo i Prawo", 2009, Warszawa.

4 Act of 22 November 2013 on proceedings against persons with mental disorders posing a threat to the life, health or sexual freedom of others (Journal of Laws 2022, item 1689).

disorders in the form of intellectual disability, personality disorders, or disorders of sexual preference")[5].

– Risk of committing a serious criminal offence – a person who has documented psychiatric disorders must present a high probability of committing a violent offence. *("The diagnosed mental disorders are of such a nature or severity that there exists at least a high probability of committing a prohibited act involving violence or the threat of violence against life, health, or sexual freedom, punishable by imprisonment with a maximum penalty of at least ten years)*[6].

In practice, when discussing persons with mental disorders within the framework of this Act, it is important to adopt a broader perspective than merely focusing on the legal provisions themselves. Mental disorders constitute a very broad category encompassing a wide range of conditions and diagnoses. Some of these disorders are mild and have no impact on an individual's functioning in society, while others may be severe and require continuous treatment or therapy. In Poland, many people experience at least one episode of mental health difficulties during their lifetime. According to the World Health Organization, approximately one in eight people worldwide lives with a mental disorder, making mental health conditions among the most significant public health challenges of the twenty-first century[7]. When examining the number of offences committed by persons diagnosed with mental disorders, it becomes evident that they account for only a small proportion of overall crime. One epidemiological study found that such individuals were responsible for approximately 5% of violent acts within the population examined[8].

This indicates that violence and mental illness are not automatically linked. The relationship emerges only when additional risk factors are present. However, the provisions of the Act do not apply to all individuals with mental disorders. Rather, they apply only to those who meet specific criteria: first, serving a prison sentence; second, having documented mental disorders identified during enforcement proceedings; and third, presenting a high probability of committing a serious violent offence punishable by at least ten years of imprisonment[9].

A psychiatric diagnosis alone is therefore insufficient to classify someone as a "person posing a threat." It is the combination of a diagnosis, a history of behaviour, and a realistic assessment of risk that determines whether the statutory criteria are met. If these conditions are satisfied, the court may impose one of two measures provided for under the Act. The first is preventive supervision, which involves continuous monitoring of the individual's conduct and functioning after release from

5 Ibidem.

6 Ibidem.

7 World Health Organization, *World Mental Health Report: Transforming Mental Health for All*, Geneva: WHO, 2022, available at: https://www.who.int/publications/i/item/9789240049338.

8 Elbogen E.B., Johnson S.C., *The Intricate Link Between Violence and Mental Disorder, Archives of General Psychiatry*, 2009, Chicago.

9 World Health Organization, *World Mental Health Report: Transforming Mental Health for All*, Geneva: WHO, 2022, available at: https://www.who.int/publications/i/item/9789240049338.

prison. The second measure is placement in the National Centre for the Prevention of Dissocial Behaviour (KOZZD), a specialised institution intended for individuals who are considered particularly dangerous.

The National Centre for the Prevention of Dissocial Behaviour – Between Public Safety and Therapeutic Intervention

Chapter Two of the Act addresses all issues related to the National Centre for the Prevention of Dissocial Behaviour (KOZZD). This institution was established by the state. Many people, upon hearing its name, assume that it is a facility similar to a prison; however, nothing could be further from the truth. It is not a form of punishment but rather a therapeutic institution to which individuals are admitted after completing their prison sentences. Despite its formally therapeutic character, KOZZD remains the subject of considerable legal controversy. Some scholars argue that prolonged detention after the completion of a criminal sentence may resemble a form of post-penal punishment. Consequently, questions arise regarding compliance with the principles of proportionality, personal liberty, and the prohibition of double punishment.

Its primary purpose is to provide treatment and therapy for persons who are considered to pose a serious threat due to their condition. As stated in the Act, *"the task of the Centre is to conduct therapeutic proceedings with respect to persons posing a threat who have been placed in the Centre"*[10].

Due to the characteristics of the individuals placed in the Centre, security is of paramount importance. The institution employs a specialised security service composed of security personnel and, in some cases, officers of the Prison Service. Their primary responsibilities include maintaining order and safety within the facility, protecting individuals and property, and ensuring that residents do not leave the Centre without authorisation. As specified in the Act, *"the duties of the security service include protecting persons staying in the Centre, protecting property, ensuring safety and order within the Centre, and ensuring that persons posing a threat placed therein do not leave or abscond without permission"*[11].

The Act also provides for situations in which the Centre uses facilities previously belonging to the Prison Service. In such cases, certain security duties may be performed by Prison Service officers. Upon the request of the Minister of Health, the Director General of the Prison Service may delegate officers to work at the Centre. Such delegation is temporary in nature. As a rule, it may last for a maximum of six months, while the total period of support should not exceed eighteen months from the date on which the property was made available. The Act states that "*where a Prison Service organisational unit lends a developed property to the Centre for a specified period in order to accommodate a greater number of persons posing a threat, the Director General of the*

10 Act of 22 November 2013 on proceedings against persons with mental disorders posing a threat to the life, health or sexual freedom of others (Journal of Laws 2022, item 1689).

11 Ibidem.

Prison Service may, at the request of the Minister responsible for health matters, delegate Prison Service officers to perform security duties at the Centre for a period not exceeding eighteen months from the date the property is made available"[12].

Another important security measure is the monitoring system. The entire Centre and all rooms located within it are subject to continuous camera surveillance. Monitoring enables the observation of the behaviour of residents as well as the manner in which staff members apply direct coercive measures. Both image and sound are recorded. At the same time, the Act introduces safeguards designed to protect privacy. In sanitary facilities, surveillance must be conducted in a manner that prevents the display of intimate parts of the body or physiological activities. Recordings obtained through monitoring are treated as sensitive data and are protected in accordance with personal data protection regulations. As provided by the Act, "*images obtained through the monitoring of sanitary facilities or parts thereof shall be transmitted in a manner preventing the display of intimate parts of the human body and intimate physiological activities*"[13].

Procedure

Contemporary legal systems require mechanisms for dealing with individuals who may continue to pose a danger after their release from prison, as mentioned earlier. In Poland, a specific legal procedure has been established for such situations. This procedure enables the formal classification of an individual as a person who poses a threat to the life, health, or sexual freedom of other members of society. The purpose of this procedure is preventive in nature and is intended to determine whether, following the completion of a sentence, it is necessary to apply additional measures aimed at protecting society. In practice, such an individual may be subjected to preventive supervision or referred to a specialised treatment facility. The procedure begins while the offender is still serving a prison sentence. The prison governor initiates the process by submitting an application to the competent court requesting that the inmate be recognised as a person posing a threat to society. The application must be accompanied by psychiatric assessments, descriptions of the inmate's behaviour and concerns related to their condition, as well as reports on the progress of their rehabilitation. These materials are crucial to the subsequent stages of the proceedings because they form the basis for determining whether there are grounds to believe that serious mental health problems continue to exist[14]. Upon receiving the application, the court immediately appoints a team of experts, usually consisting of two specialists, typically a psychologist and a sexologist, although the exact composition depends on the specifics of the case. The experts are responsible for conducting a thorough examination

12 Ibidem.

13 Ibidem.

14 M. Bocheński, *Kogo „uleczy" Krajowy Ośrodek Zapobiegania Zachowaniom Dyssocjalnym?*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny", 2015, no 3, Poznań, pp. 101–116.

of the individual's mental condition and determining the level of risk that the person may commit another serious criminal offence[15]. The inmate who is the subject of the proceedings may refuse to attend the ordered examinations or observation. In such circumstances, the court may order the Police to bring the individual to the examination. This coercive measure serves to ensure that the necessary expert assessment is conducted, as it constitutes an essential basis for the court's decision. At the same time, the legislator introduced procedural safeguards for the person concerned. One such safeguard is the right to legal representation. If the individual does not have a legal representative, the court appoints a lawyer or legal adviser who is obliged to protect the person's rights throughout the proceedings[16]. The proceedings conclude with a court hearing during which the panel of judges evaluates all gathered evidence, with particular attention given to expert opinions. The decision is issued by a panel of three professional judges, with the mandatory participation of both the prosecutor and the defence counsel representing the individual concerned. The most important aspect of the ruling is the assessment of the likelihood that the individual will commit another serious offence. If the risk is considered significant, the court may impose preventive supervision. If the probability of reoffending is assessed as exceptionally high, the court may order placement in the National Centre for the Prevention of Dissocial Behaviour (KOZZD). In addition, the court orders the collection of biological samples for genetic analysis, fingerprint records, and photographic documentation for inclusion in police identification databases[17].

Preventive supervision is a form of monitoring applied to individuals who remain at liberty but are considered capable of posing a threat. Its primary purpose is to reduce the likelihood of reoffending. Responsibility for enforcing this supervision rests with the local Chief of Police. a supervised person is required to notify law enforcement authorities of significant changes, including changes of residence or employment, and must provide information regarding their current whereabouts[18]. The Police possess a range of powers in this regard. These include conducting operational and intelligence activities aimed at determining whether the supervised individual is planning to commit a serious offence. Where justified grounds exist, operational surveillance may also be implemented. At the same time, legal regulations provide safeguards regarding the handling of collected information. Documents that do not contain evidence of a criminal offence or information relevant to risk assessment should be destroyed in accordance with the appropriate commission procedure[19].

The court may terminate preventive supervision if the circumstances that justified its imposition no longer exist. Such decisions are never made hastily, as they rely

15 Ibidem.

16 Ibidem.

17 E. Dawidziuk, *Izolacja od społeczeństwa po odbyciu w pełni kary pozbawienia wolności*, „Archiwum Kryminologii", 2019, t. 41, pp. 341–363, Instytut Nauk Prawnych PAN, Warszawa.

18 Ibidem.

19 Ibidem.

on the opinions of experts, including psychologists, sexologists, and psychiatrists. However, supervision may not be revoked earlier than six months after it has been imposed. If an individual refuses to comply with supervision or refuses to participate in therapy, the court may order placement in a secure institution. The National Centre for the Prevention of Dissocial Behaviour plays a unique role within the system designed to protect society from individuals responsible for the most serious offences. The Centre's management and multidisciplinary team of specialists prepare an individualised treatment plan for each resident[20].

With regard to medical services, strict regulations apply. a person receiving treatment within the Centre does not have the right to choose their attending physician or treatment team independently. Medical care is generally provided by healthcare institutions specialising in the treatment of individuals deprived of liberty. In many situations, medical treatment is accompanied by the presence of Centre personnel due to security requirements. At the same time, residents are entitled to free access to therapy, medication, and medical equipment financed by the state budget[21]. The operation of the institution also relies on an extensive security system. Staff members are authorised to inspect residents' living quarters and personal belongings. In emergency situations, service dogs may also be used. Objects considered dangerous or prohibited may be confiscated and stored. Nevertheless, residents retain the right to challenge such decisions before a court. Communication with the outside world, including telephone conversations and electronic communication, requires the consent of the Centre's director. Permission may be refused if the director believes that the contact could endanger safety or negatively affect the therapeutic process[22]. Special regulations also govern the use of direct coercive measures. Such measures are applied only in exceptional circumstances when a resident's actions pose a threat to their own life or health or to that of others. The least intrusive methods possible are generally used and only for the shortest necessary period. Before force is applied, the resident must be informed of that possibility unless doing so would endanger the safety of others. Individuals placed in isolation or subjected to physical restraints must remain under continuous observation by medical staff, who regularly monitor their condition and document all relevant details of the intervention[23]. The duration of a person's stay in the Centre is subject to regular judicial review. At least every six months, the court examines whether continued detention remains necessary. Decisions are based on expert psychiatric opinions and assessments of therapeutic progress. According to the Constitutional Tribunal, a decision to continue detention cannot be based solely on the opinion of a single expert. Residents also have the right to request a review of the legality of their continued detention, although subsequent

20 P. Kukliński, *Praktyka funkcjonowania Krajowego Ośrodka Zapobiegania Zachowaniom Dyssocjalnym. Uwagi na tle wyroku Trybunału Konstytucyjnego z 23 listopada 2016 r. (część I)*, „Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne", 2020, no 34, pp. 75–89, Wrocław.

21 Ibidem.

22 Ibidem.

23 Ibidem.

requests may only be considered after a specified period has elapsed since the previous court decision. The entire system is financed by public funds and operates under the supervision of the Minister of Health. The costs associated with the Centre's operation are monitored annually, and if established budgetary limits are exceeded, measures aimed at reducing expenditure may be introduced[24].

In its judgment of 23 November 2016 (case K 6/14), the Constitutional Tribunal held that the preventive measures introduced by the Act are compatible with the Constitution, provided that their application remains subject to strict judicial review and is based on reliable expert assessments.

The constitutional legitimacy of the Act was examined by the Constitutional Tribunal in its judgment of 23 November 2016 (case K 6/14). The Tribunal concluded that the preventive measures introduced by the Act are compatible with the Constitution of the Republic of Poland, provided that they serve protective and therapeutic purposes rather than constitute an additional criminal sanction. The judgment emphasised the importance of judicial oversight, periodic reviews of detention, and reliance on comprehensive expert opinions when assessing the risk posed by an individual. According to the Tribunal, the application of preventive measures must remain proportionate to the level of risk and respect the fundamental rights and freedoms guaranteed by the Constitution.

Numerous academic publications and public discussions indicate that the Polish legislation seeks to strike a balance between protecting society and respecting individual rights. The process of determining whether a person poses a threat, as well as the functioning of the specialised treatment facility, are preventive measures that rely on judicial oversight, independent expert assessments, and procedural safeguards protecting the rights of those affected. In this way, the system seeks to reduce the risk of the most serious offences being repeated while remaining consistent with the principles of a state governed by the rule of law.

Conclusion

The analysis of the legal act of 22 November 2013 indicates that the Polish legislator had to face the challenge of reconciling two key constitutional values: citizens' right to safety and the individual's right to liberty. This balance should be interpreted in light of Article 31(3) of the Constitution of the Republic of Poland, which establishes the principle of proportionality, and Article 41, which guarantees personal liberty and legal protection against arbitrary deprivation of freedom.

The introduction of the mechanism of isolation after serving a sentence, as well as preventive supervision, was intended to fill a gap in the system which had previously prevented the state from responding appropriately in situations where rehabilitation

24 A. Gutkowska, A. Włodarczyk-Madejska, M. Szymanowska, *Stosowanie ustawy o postępowaniu wobec osób z zaburzeniami psychicznymi stwarzających zagrożenie dla życia, zdrowia lub wolności seksualnej innych osób*, 2020, Warszawa: Instytut Wymiaru Sprawiedliwości.

in a correctional facility proved ineffective in the case of persons with serious mental disorders. From a legal perspective, this regulation raises numerous doubts. The most problematic issue remains the nature of the stay in the National Centre for the Prevention of Dissocial Behaviour. Formally, it is a therapeutic measure rather than an additional punishment; however, in practice it involves a long-term restriction of liberty under conditions of strict supervision and monitoring. This raises the question of the limits of state interference in individual autonomy, especially in the context of the prohibition against being punished twice for the same act. The functioning of this institution is based on a strict balance between treatment and isolation.

In order for this Centre not to turn into a place of actual lifelong imprisonment, it is crucial to provide residents with genuine support from mental health specialists and psychologists. Only carefully planned treatment makes it possible to achieve the objective set out in the law: improving the patient's condition to a level that allows them to return safely to life in society, although under constant supervision. This issue also touches upon the social and moral sphere. Society's acceptance of strict measures often results from fear of acts of aggression; however, the state's task is to ensure that decisions classifying individuals as dangerous are transparent and based on reliable medical grounds. Every extension of isolation must be preceded by an in-depth analysis prepared by experts, which prevents arbitrariness and ensures that this measure is applied only as a last resort.

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