

Selected Problems of Forensic Psychiatry: Polish Perspective

Dr. Błażej Kmieciak*

Department of Medical Law, Medical University of Lodz, al. Tadeusza Kościuszki 4, 90-419 Łódź, Poland

DOI:10.21276/sijlcrj.2019.2.8.1

| Received: 06.08.2019 | Accepted: 13.08.2019 | Published: 23.08.2019

*Corresponding author: Dr. Błażej Kmieciak

Abstract

Summary: Mental health protection is a special area of interest for lawyers, ethicists and doctors. He directly refers to such special topics as: compulsory treatment of the patient, use of direct coercion towards the sick person and incapacitation. Psychiatry is inevitably combined in its activities with the law. When undertaking forced actions, it is necessary to analyze the patient's situation. This analysis applies not only to the health sphere. It also refers to the assessment of the level of respect for human rights. The law on mental health protection has been in force in Poland for 25 years. The indicated act was changed several times. These activities were aimed at increasing the level of protection of human rights. Over the past months, unanswered questions and challenges have emerged. They concern the situation of people leaving prison. In the last months, it turned out that the Polish system of mental health protection does not take into account the situation of former prisoners. Is it possible to force a given person to heal? How to deal with a situation in which a person leaving a prison does not want to be treated psychiatrically? What to do if the person is in danger? The presented article aims to show important gaps in the Polish system of forensic psychiatry. A new draft of changes to Polish law will also be shown. It concerns the situation of people leaving prison: those who have been diagnosed with mental disorders. It will be subjected to a preliminary analysis.

Keywords: Prison, law, patient's rights, psychiatry, mental health.

Copyright @ 2019: This is an open-access article distributed under the terms of the Creative Commons Attribution license which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use (NonCommercial, or CC-BY-NC) provided the original author and source are credited.

INTRODUCTION

At the beginning of 2019, a dramatic event widely commented in numerous international media took place in Poland. During an annual national charity event, a Mayor of one of the Polish cities was murdered. This Mayor was Paweł Adamowicz, who had held the office of the Mayor of Gdańsk for several terms [1, 2]. The occurrence was recorded by persons who took part in the event [3]. During the investigation procedure of this situation, it turned out that the perpetrator had been released from prison several weeks earlier. There was some information in the media and official statements made by public officers and politicians that suggested the past of the person accused of murdering the Mayor. It was stressed that the perpetrator, during his stay in prison, was at the same time undergoing treatment in a psychiatric hospital [4]. As it was pointed out, the mental disorders that the perpetrator was diagnosed with appeared during his time in prison. At this occasion, representatives of media, politicians, journalists as well as medical doctors and lawyers began to consider whether a perpetrator can be held responsible for an act that was recorded by several cameras. There was a doubt whether he

understood the meaning and consequences of his actions. At the same time, a concept of some significant modification of the Polish criminal law emerged [5-7]. As it turned out, the Polish law does not provide for the possibility of taking compulsory therapeutic measures towards those who while leaving a prison experience some mental disorders, including mental illness [8]. The suggested legal loophole is significant from the social and legal point of view. There is no formal tool in Poland that would allow intervening (including forced intervention) towards persons leaving prison, who are in a state that requires psychiatric intervention [9].

The following considerations are a preliminary assessment of similar proposals inevitably combining the system of penitentiary support for prisoners and aid activities for people who experience a mental crisis.

Questions and Actions

"Is Stefan W., a suspect in the murder of the Mayor of Gdańsk, a mentally ill person?" Many people observing the Polish socio-political area asked this question for several weeks. According to media reports, the discussed doubt was formally presented to expert

psychiatrists in the proceedings conducted by the prosecutor's office concerning the murder of Paweł Adamowicz [10, 11]. Criminal law practitioners are aware that a lot depends on the answer to that question: it is not clear whether the murder suspect discussed here may be found guilty of an act committed before hundreds of people [12]. The above question should be supplemented with another doubt. We need to consider what follows: "Did Stefan W. while leaving the prison, demanded some psychiatric support?" Subsequent journalistic sources stressed that the suspect stayed in a mental hospital while serving his sentence. However, this information did not bring any particular solution to the whole case [13]. The reason for the indicated hospitalization was not known. In a similar situation, it is crucial to find out whether the defendant experienced any mental disorders (e.g. anxiety neurosis) or whether any symptoms of mental illness (e.g. paranoid schizophrenia) were observed in him [14]. It is, however, a fact that the situation of Sebastian W. drew attention to a significant loophole in Polish regulations. According to the Polish Minister of Health, Prof. Łukasz Szumowski: "Today's legal situation is that those people who are serving a prison sentence, and who are suspected of developing some mental disorders, we don't have any tools to apply to courts to cover them with diagnostics and treatment" [15]. Therefore, at the beginning of 2019, the public official referred to presented a proposal of a particular action that will be probably undertaken. As Szumowski stressed: "We propose amendments to the Act on Mental Health and to the Penal Code, such that would allow the state bodies, in this case the Head of Prison, to file an application with the guardianship court, which asking the experts to examine the patients, renders the judgments that the patient must be sent for forced outpatient or inpatient treatment" [16, 17].

Proposed Modifications

The proposal for changes in the Polish law referred to in this paper were specified in one statement by prof. Piotr Gałecki. We are talking about a National Consultant in Psychiatry. In his opinion, the undertaken governmental initiatives are primarily about changing the so-called motion-based mode of forced psychiatric hospitalization [18]. According to the Act on Mental Health Protection, a mentally ill patient may be referred to a hospital without their consent upon request made by their relatives and welfare bodies. A decision about treatment without consent is finally made by a guardianship court which analyzes whether a given person:

- Is mentally ill,
- Can satisfy their basic life needs,
- Is in a health situation that requires aid provided in a hospital [19].

However, linking similar provisions with the Penal Code is not a simple process. The mentioned motion-based mode is a statutory possibility to refer to

a psychiatric hospital a person who is diagnosed with mental illness, unable to fulfill the basic life needs (the stay in the hospital is intended to help them), or their "previous behavior suggests that failure to admit to the hospital will cause significant deterioration in their mental health" [20]. But do this provision "fit" the persons leaving the prison and having been diagnosed with mental illness there?

The solutions proposed in the interviews by prof. Szumowski and Gałecki have some significant justification. There can be a situation where an imprisoned person experiences some psychotic disorders (e.g. paranoid schizophrenia). At the same time, however, it turns out that the perpetrator was of sound mind when committing the offense (a precautionary measure was not employed here, meaning that he was not referred to the forensic psychiatry department). It is also possible that the first symptoms of mental illness appeared already in prison [21]. Prison staff may notice some serious problems when they see a clear necessity of mental support for a person leaving the prison. At the same time, Polish legislation does not provide for formal grounds to submit an adequate application allowing this kind of diagnostic and therapeutic intervention [22].

Assumptions for the amendments of the Polish law, presented by the media, unfortunately, resemble the previous legislative drafts proposed more than five years ago on the so-called Isolation Act. It concerned the perpetrators of serious sexual offenses who left prisons (namely the persons who gave rise to some serious concerns of not being rehabilitated and still posing a significant threat to the society) [23, 24]. Also in that time, it was considered whether a mental disorder (without symptoms of psychosis) may lead to some dangerous behaviors of the indicated persons. Therefore, a civilian solution was introduced in 2014, allowing for psychiatric isolation of the discussed group of former prisoners [25]. The above-mentioned amendment of principles related to the so-called motion-based mode of forced hospitalization should theoretically not raise similar concerns. This is because the matter concerns the prisoners who can be considered mentally ill. The provisions of the Act on Mental Health Protection have been in force in Poland for 25 years in this respect [26]. It is worth referring them to the changes proposed by the Polish government.

Forced treatment of a patient in a motion-based mode is a tough task, from both the clinical and legal perspectives. The discussed procedure is as follows: A person close to the patient applies to the guardianship court. The motion should be accompanied by a certificate from a psychiatrist who diagnosed mental illness and sees the need for hospital treatment. This doctor is obliged to examine the patient personally. However, the patient does not need to attend this

examination appointment. If the examination is carried out, the close relative directs the case to the court. The court appoints an expert psychiatrist. The psychiatrist can examine the patient even without the patient's consent. This doctor gives an opinion on whether the treatment is necessary. Based on that, the court delivers a ruling, but it does not consider the patient yet. Moreover, this person is not considered aggressive or self-aggressive. The person concerned may appeal to a higher instance court. They also have the right to an assigned counsel. A potential ruling obliging the patient to undertake treatment must become final. The patient obliged to undertake treatment may evade compulsory therapy for weeks or months to come. After this period, the discussed patient is admitted to the hospital [27, 28]. Several crucial questions appear then: Is this patient unable to fulfill the basic life needs? How did the patient manage for the past few months? Furthermore: What is this patient's mental health after such a long time after the examination? Does it in any way reflect the situation encountered by e.g. the expert examining the participant of the court proceedings?

Loophole and Concern

The above-mentioned draft of the Ministry of Health assumes that a Head of Prison will be included in a group of entities authorized to file the motion regarding treatment. Will it actually change anything? Perhaps it will only lead to some situations complicated in psychiatric and legal terms? Is the amendment of the Polish Psychiatric Act currently necessary from the perspective of legal and penal challenges?

It is certainly justified to work over modification of reality, where some clear legislation loopholes should be noted. The dramatic events led to a situation where the representatives of Polish authorities decided on the need to amend the regulations related to the possibility of undertaking therapeutic intervention towards persons leaving penitentiary institutions. It is proposed to equip the prison authorities with the right to file an adequate motion, directing a particular person to treatment. However, similar solutions will not necessarily lead to placing this person in a psychiatric institution. While reading the statements of the representatives of the Polish Ministry of Health, it can be seen that they are about persons who are in a state called a mental crisis when ending their sentence. In the discussed context we deal most of the time with a person that may pose a threat because of the symptoms of the disease. The legal regulations functioning in Poland to date, regarding the above so-called motion-based mode of psychiatric treatment without the patient's consent, consider those patients who are not aggressive due to their illness. Therefore, we are dealing here with the new reality [29].

CONCLUSIONS

2019 is the 25th anniversary of introducing regulations of the Act on Mental Health Protection in

Poland. Its co-creator, prof. Stanisław Dąbrowski stressed that the works over this document took more than 20 years. This Act has already had some key amendments, namely modification of regulations on the protection of rights of persons who experience mental disorders. Also, the principles of using direct coercion measures towards the patients were changed. Similar amendments show how significant a document this legislation is [30]. Perhaps the introduction of new solutions considering the discussed motion-based mode will bring some improvement to socially significant situations. It is first of all about the moments when a person giving rise to concerns of the prison staff leaves the prison. But maybe the key problem is elsewhere? It is a legislative modification that ignores the cause of the problem. It must be stressed that the Polish mental health care system is in crisis. And this crisis does not omit prisons. It is hard to find both psychiatrists and psychologists in numerous prisons. Hence, paradoxically, it may happen that after some time almost every person leaving the prison walls will need therapeutic support [31, 32].

While analyzing the contemporary challenges identified in Poland after the tragic events from the beginning of 2019, it is undoubtedly necessary to conclude that there is a need to change the regulations on the protection of mental health of persons leaving prisons. However, it is also necessary for psychiatrists and lawyers to cooperate in the process.

REFERENCES

1. Material, National path after the Gdansk president's death, City Hall in Gdańsk, 2019; 1.
2. Material, Paweł Adamowicz, President of Gdańsk, is dead. Four-day mourning in Kielce, Marshal Office, Świętokrzyskie Voivodeship, Kielce, 2019; 1-2.
3. Material, President of Gdansk Paweł Adamowicz is dead [Record Of Relations For Live], Polish Radio, Warsaw, online, <https://www.polskieradio24.pl/5/1222/Artykul/2245445,Prezydent-Gdanska-Pawel-Adamowicz-nie-zyje-ZAPIS-RELACJI-NA-ZYWO>
4. Material, The killer of Paweł Adamowicz was examined by psychiatrists 20 times. Before the murder, he stopped taking drugs, "Gazeta Wyborcza", 2019. online: <http://wiadomosci.gazeta.pl/wiadomosci/7,114883,24368245,zabojca-pawla-adamowicza-byl-badany-przez-psychiatrow-20-razy.html>
5. Cohen LH, Coffin TE. The Pattern of Murder in Insanity: A Criterion for the Murderer's Abnormality. *J. Crim. L. & Criminology*. 1946;37:262.
6. Knoll IV, James L, Annas GD. Mass shootings and mental illness. 2016.
7. Matejkowski JC, Solomon PL, Cullen SW. Characteristics of persons with severe mental

- illness who have been incarcerated for murder. *Journa Am Acad Psychiatry Law*, 2008; 36:74-86.
8. Kmiecik B. Between the prison and psychiatric hospital, *Rzeczpospolita*, 2019. online, <https://www.rp.pl/Publicystyka/190129891-Miedzy-wiezieniem-a-szpitałem-psychiatrycznym.html>
9. Kmiecik B. Psychiatric public opinion, *Więź*, 2019. online, <http://wiaz.com.pl/2019/01/24/psychiatryczna-opinia-publiczna/>
10. Kenny A. The psychiatric expert in Cort. *Psychological Medicine*, 1984; 14(2), 291-302.
11. Rix K, Eastman N, Adshead G. Responsibilities of psychiatrists who provide expert opinion to courts and tribunals, *The Royal College of Psychiatrists*, 2015.
12. Sankar J. Mental health assessment of rape offenders. *Indian Journal Psychiatry*, 2013; 55(3): 235-243.
13. Bańkowski M. Gdańsk mayor dies after ex-con plunges knife into his heart during children's charity event, *The First News*, 2019. online: <https://www.thefirstnews.com/article/gdansk-mayor-dies-after-ex-con-plunges-knife-into-his-heart-during-childrens-charity-event-4188>
14. Kujawski R. Differential diagnosis of schizophrenia and bipolar disorder in the early 20th century. Are we wiser after a hundred years?, *Psychiatry and Psychotherapy*, 2017; 1, 42- 58.
15. Szumowski Ł. The prison director will be able to apply for compulsory psychiatric treatment, *Health Policy*, 2019. online: <https://www.politykadzrowotna.com/40562,lszumowski-dyrektor-wiezienia-bedzie-moglwnioskowac-o-przymusowe-leczenie-psychiatryczne>
16. Szumowski Ł. The prison director will be able to apply for compulsory psychiatric treatment, 2019.
17. Wilgocki M, Dobrosz-Oracz J. After the death of Paweł Adamowicz, the prime minister invites the opposition to a meeting, *Gazeta Wyborcza*, 2019. online: <https://translate.google.pl/?hl=pl#view=home&op=translate&sl=pl&tl=en&text=Gazeta%20Wyborcza>
18. Material: Psychiatrists: There are no legal tools for psychiatric supervision, *Rzeczpospolita*, 2019. online, <https://www.rp.pl/Zdrowie/301159912-Psychiatrzy-Nie-ma-narzedzi-prawnych-do-psychiatrycznego-nadzoru.html>
19. Zamulinski F. Legal aspects of detention of a foreigner with mental disorders in the hospital psychiatric in the light of the Health Care Act Mental and Code of Civil Procedure, *Legal Studies. Dissertations and Materials*, 2012; 2(11): 39-48.
20. Kmiecik B. Compulsory psychiatric hospitalization in the petition mode, in the context of respect for the rights of outpatient mental health clinic patient. *Psychiatr Psychol Clin*, 2010; 10(4), 282-287.
21. Dudeck M, Drenkhahn K, Spitzer C, Barnow S, Kopp D, Kuwert P, Freyberger HJ, Dünkler F. Traumatization and mental distress in long-term prisoners in Europe. *Punishment & Society*. 2011 Oct;13(4):403-23.
22. Machińska H. See more on this topic: Letter to General Jacek Kitninski, Director General of the Prison Service, Office of the Ombudsman, Warsaw, 2019; 1-2.
23. Act of 22 November 2013 on proceedings against people with mental disorders posing a threat to life, health or sexual freedom of others (*Journal of Laws* 2014 item 24).
24. Pilch K. Human rights and the institution of postpenal isolation – an analysis of selected standards of procedure of the Act against persons with mental disorders posing a threat to life, health or sexual freedom of other persons, *Folia Iuridica Universitatis Wratislaviensis*, 2016; 5(2), 149-164.
25. Pilch K. The constitutionality of the 'disturbed' act. Legal basis post-penal isolation and preventive supervision in Polish legal order. *Gardens of Sciences and Arts*, 2015; 5, 49-57.
26. Act of 19 August 1994 on the protection of mental health. (*Journal of Laws* of 1994 No. 111, item 535).
27. Chelmonska P. Forced hospital treatment of the mentally ill - some comments on the background of the Mental Health Protection Act. *Student Zeszyty Naukowe*, 2019; 34, 20-34.
28. Report: Compliance of patient's rights in psychiatric medicine, Supreme Audit Office, Warsaw, 2012.
29. Gierowski K, Heitzman J. Comments on the proposed changes are presented in the text: Open Letter to Readers of "Psychiatry Polska", *Psychiatria Polska*, 2019; 53(1): 203-207
30. Kmiecik B. Constitutional models for the protection of patients' rights in a psychiatric hospital, in: "Twentieth Anniversary of the Constitution of the Republic of Poland. Need a revolution or stagnation? Anniversary book, K. Stempniak (ed.), Think-Make Publishing House, Warsaw, 2017; 245-271.
31. Rogala D. A wider context of the problem is presented in: Health care system for prisoners in penitentiary facilities in Poland, *Hygeia Public Health*, 2013; 48, 441-448.
32. Report: Prison Health Service. Current status of discussions and directions of reforms, Helsinki Foundation for Human Rights, Warsaw; 2013.