

Project concerns protective measures, which are legal measures aimed at protecting society from dangerous perpetrator. The danger may result from mental disease, mental retardation, abuse of alcohol, drug or other stupeficient substances abuse, aberration of sexual preferences or personality disorder. This category of perpetrators sometimes cannot be imposed a penalty (if they are insane, fault cannot be attributed to them) and sometimes the punishment is not sufficient to protect society against them. For this reason the protective measures are imposed. They can be imposed either instead of or in addition to the punishment. These measures have generally medical character - may include eg. placement the offender in the psychiatric hospital or obligation to submit oneself to addiction treatment. Placement in National Centre for Preventing Dissociative Behaviour (Krajowy Ośrodek Zapobiegania Zachowaniom Dysocjalnym) pursuant to Act on proceedings with regard to persons with mental disturbances posing threat to life, health and sexual freedom of other persons is also a protective measure.

Development of legal measures protecting society from the threat posed by perpetrators of prohibited acts seems to be one of the leading tendencies of contemporary criminal law. Amendment of the Criminal Code provision concerning the protective measures came into force on July 1st, 2015. Unfortunately, new provisions are inconsistent and incorrectly constructed. They have been criticized by both lawyers and psychiatrists.

Since the abandonment of the application of the protective measures seems to be impossible, a coherent system of protective measures that would be effective in the most possible manner but at the same time would be not very onerous to perpetrator should be developed. Developing of such a system is the aim of this research project. To achieve this aim, comparative, empiric and dogmatic research have been planned.

Dogmatic research consists of analysis of judicial rulings of the Polish Constitutional Tribunal and the European Courts of Human Rights, Polish legal provisions, professional literature and judicial rulings in order to formulate the constitutional and conventional standard for imposing protective measures and admissible degree of limiting rights of persons on whom such measures are imposed and determine requisites for imposing different protective measures according to the currently binding legislation. Comparative legal research will be conducted by analysis of other European states' legal provisions, professional literature and judicial rulings. Based on information about other legislations it would be possible to decide whether such measures (unknown to Polish legislation) can be transferred to Polish legislation as more effective in protecting human rights of perpetrator and rights of other people. Case-file research will be conducted in 14 Polish cities, in district and circuit courts. Analysis of situations described in the case-files that have been subject to research will provide a starting point for deliberations regarding the necessity of introducing protective measures that are known in foreign legislations to the Polish legal system.