

Use of coercive measures against a person with mental disorders in the Polish criminal trial in the light of the international and EU law standards

The research aim is to solve the problem of using penal coercive measures provided for in Act 6.06.1997. - Code of Criminal Procedure (Journal of Laws of 2022, item 1375) against persons with mental disorders, in the context of international and EU standards of human rights protection, and to assess the adequacy of the guarantee mechanisms provided therein.

A person with mental disorders is mentally ill, mentally retarded (intellectually disabled), or presenting other disturbances of mental activities which, according to the state of knowledge, are classified as mental disorders (e.g., neurotic disorders, personality disorders, or disorders related to alcohol addiction).

Coercive measures (including isolating and non-isolating preventive measures), such as arrest, detention, compulsory bringing of a person in to perform a procedural act, prohibition to leave the country, or financial penalties, seriously interfere with the sphere of fundamental rights and freedoms of an individual. For this reason, guarantee mechanisms are necessary to secure an entity against arbitrary decisions in this respect. This problem becomes particularly important in the case of people with mental disorders, who constitute a specific group of participants in the proceedings.

Mental disorders can hinder or prevent individuals subjected to coercive measures from taking rational and intended legal actions to protect their rights. For example, a participant suffering from depression due to low mood, permanent fatigue, or depressive conviction that all his actions will fail may resign from taking procedural actions (e.g., appealing against a decision to apply coercive measure). Other pathological symptoms, such as anxiety symptoms or the tendency to avoid social roles occurring in some personality disorders, may cause the participant to fail to fulfill the trial obligation (e.g., to appear for an examination). The latter may also be a reason for using a coercive measure. Persons with mental disorders may also unknowingly act to their disadvantage (e.g., by paranoid interpretation of objectively neutral actions of the organ as hostile or the loss of social inhibitions and the tendency to confrontation observed in manic episodes). For the above reasons, this group of participants in the proceedings requires special, enhanced legal protection, considering the clinical picture of the disorders in question.

It should be considered whether the existing legal guarantees (arising from international, EU, and Polish law) sufficiently consider the specificity of people with mental disorders. Hence, do these provisions guarantee adequate protection of the rights of this group of entities in the case of using coercive measures against them? In a broader sense, appropriate guarantee mechanisms are also an indispensable element in counteracting social stigma and discrimination against people with mental disorders. Mental disorders are a growing health problem, which makes the issue under study highly topical.

Due to the interdisciplinary, legal, and medical nature of the problem, research is conducted simultaneously in four areas: medical, international law, EU law, and national law. The study conducted in the first area aims to identify legally relevant symptoms of mental disorders, i.e., symptoms that may be significant in the context of using coercive measures. This stage covers the achievements of medical sciences in psychiatry and the leading classifications of diseases (ICD-11, ICD-10, DSM-5). In the following stages, international, EU, and national regulations will be analyzed, along with the achievements of the doctrine and judicature. These activities aim to identify guarantee mechanisms that may apply to protect the rights of persons with mental disorders who are subject to coercive measures.

The project implementation will lead to a holistic analysis of the presented issue. Its effect will be verifying the provisions regulating the use of coercive measures in the Polish criminal trial and assessing the adequacy of guarantee mechanisms provided therein. Identifying national guarantee mechanisms will allow for their subsequent assessment in the context of international and EU law solutions. Finally, the conclusions obtained in all four areas will help identify legal solutions that, due to their inadequacy, threaten the rights of people with mental disorders subjected to coercive measures. The project results will help determine the desired direction of legislative changes in this matter.