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Abstract of the Doctoral Dissertation

entitled "Execution of a Protective Measure in the Form of a Stay in a Psychiatric Institution for Persons Convicted of Crimes Committed in a State of Diminished Capacity"

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Protective measures, in addition to penalties and punitive measures, are an institution of criminal law applied to perpetrators of prohibited acts. They serve to protect the society against the threat to the legal order posed by the perpetrator. Psychiatric detention is the most severe measure provided for in the Act. It undermines the essential value, which is freedom, guaranteed by the Constitution. Thus, it may be imposed against individual categories of perpetrators, explicitly indicated in the Act, only in justified cases. One of these categories includes those sentenced to imprisonment without conditional suspension or life imprisonment for a crime committed in a state Diminished Capacity. The premise justifying the possibility of its application, in turn, is the existence of a high probability of re-committing a prohibited act of significant social harm in connection with mental illness or mental retardation. The essence of this institution is therefore, to place the perpetrator in a psychiatric institution appropriate in terms of the security conditions in place, where he or she is subject to appropriate proceedings, the purpose of which is to achieve an improvement in health and behavior to the extent that allows for proper functioning in society without posing a threat to the legal order, as well a further treatment after leaving the institution.

Issues related to the implementation of an isolation protective measure against persons with mental disorders have been the subject of keen interest of legal scholars for years. Dogmatists of law have tried to analyse psychiatric detention both in terms of adjudicating this type of protective measure and its execution, as it is adjudicated alongside the penalty of imprisonment. Many valuable studies and research have been conducted in this area, but most of them concerned insane perpetrators. On the other hand, items containing chapters devoted to perpetrators under Article 31 § 2 of the Penal Code may have lost their value, due to the changes made to the regulations.

What mentioned above became an impulse to write this dissertation. Its main objective was to make a comprehensive analysis of the institution of psychiatric detention performed against perpetrators whose state of accountability, due to their mental disorders at the time of committing the act, remained limited. The proposed solutions and critical remarks contained in the paper may constitute auxiliary material for the proposed changes in the executive regulation.

Due to such a broad and complex nature of this issue, the structure of the work has been designed in a way that allows for a comprehensive analysis of the research issues. The work consists of five chapters, preceded by an introduction, and the whole is crowned with conclusions, which are a summary and conclusion. The dissertation also includes a bibliography, a list of tables, as well as models of research tools used.

The first chapter discusses the essence of all protective measures and the categories of perpetrators against whom they may be adjudicated.

The second chapter is devoted to the historical approach to the issue of protective measures, with particular emphasis on the evolution of psychiatric detention and the accompanying changes in regulations. The year 1932 was taken as the starting point, when protective measures appeared for the first time in the Polish penal code. The further part of the chapter discusses the development of these measures, with particular emphasis on psychiatric internment in the penal codes of 1969 and 1997. There is also a reference to the amendments being introduced and the regulations contained in the current legal system.

The next chapter discusses dogmatic considerations on the statutory dimension of a protective measure in the form of a stay in a psychiatric institution. The main focus is on the institution of adjudication of this measure, paying particular attention to the general and

specific conditions that allow its application and the principles on the basis of which it can be adjudicated. This section also discusses the impact of adjudicating a precautionary measure in the context of special prevention. In addition, the issue of forensic psychiatric opinions was raised concerning the confirmation of the state referred to in Article 31 § 2 of the Penal Code and the consequences resulting from this confirmation.

The fourth chapter discusses the goals of psychiatric detention and the methods by which they are achieved. A comparison of the legislator's expectations regarding the implementation of the institution in question with the actual effects it brings has also been carried out. To this end, reference was made to the extensive jurisprudence of common courts of law and the position of psychiatrists was taken into account, especially in the context of the treatment of convicts and its effectiveness. This chapter also contains an analysis of the structure of psychiatric institutions intended for internment, considering the degrees of security they have. In order to supplement this thread, especially in the context of the practice of classifying convicts into appropriate institutions, the issue of opinions made by the Psychiatric Commission for Protective Measures was also raised. In this chapter, particular attention is paid to the comparison of the time between the issuance of a decision on detention and the actual time of its implementation. The further part of the chapter emphasizes the prerequisites for the further application of the precautionary measure and its resolution. The legal status of the internees was also not omitted.

The last chapter is dedicated to the results of empirical research on the adjudication and performance of psychiatric internment. The study is based on the analysis of files carried out in the District Court in Legnica and in the District Court in Złotoryja. In addition, surveys conducted in two psychiatric institutions were considered: at the Institute of Psychiatry and Neurology in Warsaw, in a forensic psychiatry ward with a reinforced level of security, and at the Provincial Hospital for the Neurologically and Mentally Ill in Lubiąż, where three forensic psychiatry wards were analysed – two with a basic degree of security and one with a reinforced level of security. In addition, the analysis of medical files of persons staying in psychiatric institutions with different levels of security as part of the execution of the protective measure was carried out. The choice of the research method described was dictated by the desire to obtain not only a full, but above all a real picture of the institution, which is the protective measure in the form of a stay in a psychiatric institution, applied to perpetrators whose accountability *tempore criminis* was limited.

A comprehensive analysis of the above mentioned issues made it possible to compare the adopted normative solutions with the facts presented by the legislator and representatives of the legal doctrine, which resulted in the formulation of conclusions from the research carried out on the functioning and enforcement of the precautionary measure in question.

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