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PROTECTIVE MEASURE IN THE FORM OF PHARMACOLOGICAL THERAPY IN POLISH SYSTEM IN COMPARATIVE PERSPECTIVE

Historical background

Compulsory measure of pharmacological therapy was introduced into Polish criminal law in the year 2005 with the adoption of the law from 27th of July 2005 on the amendment of the Criminal Code and Criminal Penitentiary Code[1]. An incentive of this solution was to prevent the criminal activity of the sexual offenders and to provide a compulsory measure adjusted to the needs of this category of the culprits. Prior to this amendment, the treatment of this actor who committed sexual crimes against minors was possible with simultaneous symptoms of the mental illness, enabling imposing the measure of psychiatric detention[2].

At this point, this regulation has numerous flaws, including the absence of details concerning the procedure of implementation of the measure, the place where the offender should be treated. Over and above, due to the post-punishment character, heated discussions accompanied the novelty. The worries were whether this measure is violating basic human rights principles imprinted into international law and the Constitution of Poland from 27th July 2005[3]. The measure has undergone amendments in the year 2009[4] and in 2015[5], which eventually shaped the binding form of the institution.

[1] Ustawa z dnia 27 lipca 2005 r. o zmianie ustawy – Kodeks karny, ustawy – Kodeks postępowania karnego i ustawy – Kodeks karny wykonawczy (Dz.U. 2005, nr 163, poz. 1363).

[2] P. Góralski, *Środki zabezpieczające w polskim prawie karnym*, Warszawa 2015, p. 448.

[3] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. 1997, nr 78, poz. 483); Stanowisko Rządu w sprawie poselskiego projektu ustawy o zmianie ustawy Kodeks karny i kodeks karny wykonawczy (druk nr 2693).

[4] Ustawa z dnia 5 listopada 2009 r. o zmianie ustawy – Kodeks karny, ustawy – Kodeks postępowania karnego, ustawy – Kodeks karny wykonawczy, ustawy Kodeks karny skarbowy oraz niektórych innych ustaw (Dz.U. 2009, nr 206, poz. 1589).

[5] Ustawa z dnia 20 lutego 2015 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (Dz.U. 2015, poz. 396).

Pharmacological therapy – present solution

The current standpoint adopted in Polish Penal Code from 27th of July 1997[6] (PPC) is imprinted in Article 93f and is called "therapy". As was mentioned, the measure has and had negative cognizance in the literature of the subject[7]. It is aimed at treating individuals who are in a state of mental disorder or personality disorders and delinquents suffering from disorders of sexual preferences. It can take the form of in and out-patient treatment[8]. Notwithstanding, starting from the mentioned reform of the Criminal Code of 2015, the wording of Article 93f § 1[9] was changed; as a consequence, an offender must report to a court-designated facility on days designated by a psychiatrist sexologist or therapist. It purports that an individual can be compelled to undergo outpatient treatment in the form of therapy. Since the locution points to an open form of treatment, this configuration that can be executed on an obligatory basis[10]. Nonetheless, out-patient therapy can arise only voluntarily, which seems to be the crux of the problem[11].

The self-same is when an offender agrees to undergo pharmacological treatment with a different objective, that of decreasing the libido of the perpetrator[12]. The desired result in the PPC of the therapy measure for the sexual offenders is to eliminate the danger of committing a crime in future, which has its origins in the already-committed crime and the state of the delinquent. Concomitantly, the enactment of therapy consists of therapy for the offender to protect society from the future danger of committing crimes alike[13].

The construction of the therapy is versatile since within it, the following treatments can be enacted: psychiatric therapy and pharmacological therapy aimed at decreasing libido[14]. The therapist determines the form of the treatment at the

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[6] Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny (Dz.U. 1997, nr 88, poz. 553).

[7] E. Weigend, J. Długosz, *Stosowanie środka zabezpieczającego określonego w art. 95a § 1a k.k. w świetle standardów europejskich. Rozważania na tle wyroku ETPC z 17 grudnia 2009 r. w sprawie M. v. Niemcy*, „Czasopismo Prawa Karnego i Nauk Penalnych" 2010, R. XIV, z. 4, p. 54.

[8] K. Krajewski, *System Prawa Karnego*, vol. VII: commentary to 93f, pp. 6–8.

[9] § 1: "The perpetrator with regard to whom therapy has been ordered is obliged to report at a court-designated facility on days designated by a psychiatrists, sexologist or therapist and submit himself to pharmacological therapy aimed at decreasing his libido, psychotherapy or psychoeducation with the purpose of improving his social functioning".

[10] M. Pyrcak-Górowska [in:] *Kodeks karny. Część ogólna*, vol. I: *Komentarz do art. 53–116*, eds. W. Wróbel, A. Zoll, Warszawa 2016, pp. 786–787.

[11] P. Zakrzewski [in:] *Nowelizacja prawa karnego 2015. Komentarz*, ed. W. Wróbel, Kraków 2015, p. 705.

[12] *Ibidem*.

[13] P. Zakrzewski [in:] *Nowelizacja prawa karnego 2015. Komentarz*, ed. W. Wróbel, Kraków 2015, p. 706.

[14] M. Pyrcak-Górowska [in:] *Kodeks karny. Część ogólna*, vol. I: *Komentarz do art. 53–116*, eds. W. Wróbel, A. Zoll, Warszawa 2016, p. 789; I. Zgoliński, *Komentarz do art. 93(a) Kodeksu karnego*, 1.08.2018, Lex.

execution stage of the measure. This attitude was elucidated by the need for constant adjustment of the treatment to the development of medicine and psychology[15]. The measure aims to prevent committing a crime caused by the aberration of sexual preferences by decreasing the libido. Still, there is a particular constraint on situations where pharmacological therapy cannot be risked – when pharmacological therapy could lead to danger to the health or life of the offender[16].

One of the first constraints imprinted into the PCC that pertains to this measure is that to be admitted to the therapy, and the perpetrator has to commit one of the crimes enumerated in article 93c point 3 PPC[17]. The measure of therapy is enacted after the sentence of punishment; hence the person has to be sentenced for one of the crimes. For example, this is a crime of murder, the crime of engaging in sexual intercourse or another sexual activity with a minor under 15 years of age.

Article 93d § 3 PPC provides that the court develops a prognosis stating whether an individual will need therapy after discharge six months before the predicted release from the imprisonment facility[18]. Once the court issues a decision to send an individual to therapy after release from prison or detention facility, the person will not be discharged since their state implies the need to continue imprisonment or detention. Therefore, in this state of affairs, the court's decision should be null and void[19] and issued again six months before the release from the facility.

Criticism of the compulsory measure of pharmacological therapy

In the Polish legal realm, the measure from article 93a point 3 CC is widely deprecated due to the effects of the medicine used in the process of treatment. The medication prescribed can have side effects, such as loss of hairiness, gynecomastia, skin sagging, etc.[20] As a result, it is accepted that the court cannot impose the measure on a delinquent if it can cause danger to the life or health of the individual. Concomitantly, it is hard to imagine a situation in which a doctor would force the patient to take this kind of medication without the latter's ap-

[15] P. Zakrzewski [in:] *Nowelizacja prawa karnego 2015. Komentarz*, ed. W. Wróbel, Kraków 2015, pp. 701–702.

[16] *Ibidem*, p. 704.

[17] "3) who has been sentenced for a crime provided for in art. 148, art. 156, art. 197, art. 198, art. 199 § 2 or art. 200 § 1, committed in relation to his aberration of sexual preferences". Penal Code (Dz.U. 2018, poz. 1600 – translation, Lex).

[18] M. Królikowski, *Środki zabepzieczające* [in:] *Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach*, ed. P. Wiliński, Lex.

[19] M. Pyrcak-Górowska [in:] *Kodeks karny. Część ogólna*, vol. I: *Komentarz do art. 53–116*, eds. W. Wróbel, A. Zoll, Warszawa 2016, p. 775.

[20] A. Wilkowska-Płóciennik [in:] R.A. Stefański, *Kodeks karny. Komentarz*, 2018, commentary to Art. 95a, Legalis; M. Mozgawa, *Komentarz aktualizowany do art. 93(f) Kodeksu karnego, stan prawny*, 15.11.2018, Lex.

proval[21]. Moreover, the therapy can also include a schedule of psychotherapy or psychoeducation. Most opinions propound an outlook that these methods should be amalgamated to be most efficacious[22]. The outlook mentioned above is asserted by the "Recommendations of the state consultant in the field of sexology concerning the treatment of offenders with sexual preference disorders"[23]. It implies that the therapy process consists of various types of action, comprised of the application of drugs leading to a decrease in testosterone and work on the offender's mental state through group meetings and additional exercises.

If a patient is not fulfilling the obligations put upon them as a part of the therapy, they can be submitted to closed treatment according to Article 93d § 6[24]. If the patient would be placed again under one of the measures, the choice of the measure depends on the primal measure. Thus, if the individual is discharged from in-patient psychiatric detention, he or she could be resubmitted to this type of measure. Still, if the measure is embodied in out-patient treatment, the measure to which the person can be placed would be one of the out-patient measures, such as electronic monitoring of a person's location, etc.

The question arises whether a delinquent placed into in-patient treatment can undergo pharmacological treatment aimed at decreasing libido. The answer should be positive since the aim of in-patient detention is the treatment of the patient. In contrast, the goal set by the legislator to pharmacological therapy is to decrease the libido and protect society from the perpetrator's possible future return to crime by eliminating such factors as depression, et cetera. This aim is pursued by removing or suppressing the symptoms of the personality disorder that manifests in the unnatural appeasement of sexual urges by the patient[25].

A different interpretation would open the way for a situation where the measure would be empty since it would produce offenders with decreased testosterone but still with a mental ailment and the need to satisfy their urges and at the end of the day, it would alleviate the frustration and mental problems.

What is more, the concept of pharmacological therapy from Article 93f § 1 PPC is inseparably connected with the individual's consent to undergo therapy since the patient's permission plays a crucial role. Still, without consent, the measure becomes an empty shell because it is enough that the individual comes to the medical facility, stays there for a few minutes, and goes home. Having done that, they would meet the conditions of the therapy.

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[21] K. Krajewski [in:] *System Prawa Karnego*, vol. VII, commentary to Art. 93a, pp. 113–114.

[22] *Ibidem*, p. 26.

[23] Z. Lew-Starowicz, A. Przyłuska-Fiszer, J. Stusiński, *Normy i kontrowersje etyczne w seksuologii, anex 1*, Gdańsk 2015, p. 331

[24] M. Pyrcak-Górowska [in:] *Kodeks karny. Część ogólna*, vol. I: *Komentarz do art. 53–116*, eds. W. Wróbel, A. Zoll, Warszawa 2016, p. 791.

[25] A. Strzelec, *Przymusowe leczenie sprawców czynów zabronionych popełnionych w związku z zaburzeniami preferencji seksualnych* [in:] *Konteksty prawa i praw człowieka*, ed. Z. Dymińska, Kraków 2012, p. 59.

The measure of therapy together with its voluntary basis at the execution stage leads to the evident conclusion that PPC can abstain from the measure of so-called "chemical castration". The only rationalization for the measure is its sociological aspect: the message to society that the legislator is counteracting the existence of paedophilia.

The particular attempts to solve the problem of the need for cooperation on the part of the wrongdoer were furnished by Article 244b § 1, which provides criminal liability for failing to fulfil the duties arising from the protective measure imposed by the court on an offender. The role of the article is purely technical, seeing as it wasn't even commented in the 2015 proposal of amendments[26]. The article was initially criticized in view of the fact that it is also punishing the individual for not undergoing the therapy. The literature put forward that the mentioned category of patients should not be punished; on the contrary, they need further help[27]. Simultaneously, the issue of voluntariness of treatment was further developed by the Constitutional Tribunal in case OTK-A 2006[28], where the Tribunal adopted the position that dissent from undergoing the therapy is not unlawful behaviour. When combined with the wording of Article 93f § 1, it would be criminally relevant should an occasion arise when an individual did not show up at the place indicated by the court[29]; hence Article 244b, from a strictly pragmatic position, does not provide a system of implementation of the therapy.

A different aspect is serious doubt as to whether Article 244b § 1 is consistent with the basic principles of the Constitution of Poland, such as ne bis in idem and Article 30 of the Constitution guaranteeing respect to the dignity of the human being, and the proportionality principle from Article 31 § 3 of Constitution[30]. Due to the above-mentioned constitutional concerns, the outlook is that the punishment for this crime can be imposed only on the patient who does not report to the medical facility on the days designated by the psychiatrist, sexologist or therapist. If the patient refuses to undergo therapy, it should not entail meeting the requisites from Article 244b by the act[31].

One should also make allowance to art. 72 PC. It allows imposing on the offender duty to undergo particular therapy, including pharmacological therapy,

[26] W. Zontek [in:] *Nowelizacja prawa karnego 2015. Komentarz*, ed. W. Wróbel, Kraków 2015, p. 846.

[27] W. Zontek, *Kara za brak poddania się terapii? Konsekwencje wprowadzenia art. 244b k.k.*, „Palestra" 2015, nr 7–8, p. 125.

[28] OTK-A 2006, nr 7, poz. 78, Decision from 4 July 2006.

[29] W. Zontek, *Kara za brak…*, p. 129.

[30] Opinia Helsińskiej Fundacji Praw Człowieka o ustawie z dnia 15 stycznia 2015 r. o zmianie ustawy – Kodeks karny oraz niektórych ustaw, https://www.senat.gov.pl/gfx/senat/userfiles/_public/k8/dokumenty/konsultacje/809/809_hfpc.pdf (10.02.2021); W. Zontek [in:] *Nowelizacja prawa karnego 2015. Komentarz*, ed. W. Wróbel, Kraków 2015, p. 853.

[31] M. Szewczyk, A. Wojtaszczyk, W. Zontek [in:] *Kodeks karny. Część szczególna*, vol. II: *Komentarz do art. 212–277d (cz. 2)*, eds. W. Wróbel, A. Zoll, Lex, commentary to Art. 244b.

as a duty imposed while suspending the enforcement of a penalty. Nonetheless, it seems that all drawbacks of the binding shape of pharmacological therapy, are present also when this type of therapy is a part of duties imposed by the court while suspending the enforcement of a penalty.

The mentioned frame of reference leads to the conclusion that the Polish legislature has constructed a system in which pharmacological therapy is in practice unenforceable without the consent of the patient, and it is not pertinent whether it is in the PCC or other acts.

Comparative perspective

To understand what a possible solution to the hardship present in Polish system, the Author studied two countries, one of which adopted the pharmacological therapy, nevertheless it was annulled, and the country, which considers adoption of this type of compulsory measure. The first mentioned legal system is the Swedish one, and the second is Ukrainian.

The Swedish legal system is an excellent example of a country, which has had an institution of castration and sterilisation in its system for almost 40 years. First law allowing castration and sterilisation of particular offenders was adopted on the 1st of January 1935. Based on the Law, the feeble-minded and insane offenders could be sterilised or castrated even without their consent, originating in the decisions of medical boards[32]. In 1934 the Law was implemented with the measure of castration and sterilisation of the sexual offenders. The new proposal was comprised of a solution according to which compulsory castration or sterilisation could be brought into effect to the individuals put down to their "disrupted mental activity"; thus, the circle of subjects of sterilisation was quite extensive[33].

Since the 1st of July 1944, the new law was adopted, making it possible to castrate or sterilize sexual offenders. The doctors decide on castration or sterilization at the first stage and at the second stage by the special board of doctors to protect doctors from reapproval from patients or society. Approximately 100 sexual offenders were castrated or sterilized, 13 were castrated because they were sexually aggressive but did not commit a crime, 13 were castrated based on their own will because of their sexual urge[34]. The law was repelled from the Swedish system starting from 1975. During the period of its validity, up to 63.000 people were castrated or sterilized[35].

[32] O. Kinberg, *Criminal Policy in Sweden during the last 50 years*, "Journal of Criminal Law and Criminology" 1933, vol. 24, Art. 21, Issue 1.

[33] R. Qvarsell, *Utan vett och vilja. Om synen på brottslighet och sinnesjukdom*, Stockholm 1993, pp. 311–313.

[34] *Ibidem*, pp. 315–316.

[35] Steriliseringsfrågan i Sverige 1935–1975 Historisk belysning – Kartläggning – Intervjuer SOU 2000:20, p. 16.

Contemporary Swedish criminal law does not encompass a specific measure of castration or sterilization. Still, one should answer whether the pharmacological castration can be carried out in the framework of other existing measures. After a thorough analysis of the Swedish Penal Code 1962[36] (swe. *Brottsbalken*) (BrB)), an institution, which at a certain point enables the possibility of treatment of the sexual offenders, is an institution of "contract care" (swe. *kontraksvård*). It was implemented into BrB in the year 1988. The idea was to provide an instrument allowing the court to have more control over the process. It was implemented into BrB in the year 1988. The idea was to provide an instrument, which will allow court to have more control over the process[37]. It is regulated within frames of two Chapters; the first is Chapter 28 § 1, 4, 6a and 6b and the second – Chapter 30 § 9[38].

The starting point of sentencing to the contract care is that a court, according to Chapter 30 § 4[39] of BrB would come to closure that the appropriate punishment would be imprisonment up to two years of imprisonment. After this, if the court can analyze the circumstances of the case and decide whether there is a place for contract care[40]. Concomitantly, when constructing the treatment plan, its conditions ought to correspond, meaning – the period of the treatment, to the period of the initial punishment of imprisonment[41].

As it was already stressed out, contract care is the measure created for addicts. Nonetheless, it could also be enacted in situations when there was a need to treat different mental ailments such as, i.e. exhibitionism or incest. Hence, it could be a mental state, which was not severe; as an outcome, an offender could not be sent to forensic psychiatric care[42].

What is more, contract probation can be combined with the punishment of imprisonment, according to Chapter 30 § 11 of BrB. The punishment of imprisonment ought to be short-term and could last from 14 days to three months[43], intimating that imprisonment can be combined with contract care[44]. According to the working papers, the aim of combining both punishments was not of any ther-

[36] The translation was adopted after the official translation DS 1999:36.

[37] A. Gillblom, K. Kihlberg, *Tvingad av fri vilja Upplevelser av kontraktsvård, motivation och relation ur ett förändringsperspektiv,* Göteborg 2007, p. 3, https://gupea.ub.gu.se/handle/2077/9419 (1.07.2021).

[38] M. Borgeke, *At bestemma påföljd för brott*, Stockholm 2012, p. 378.

[39] "In choosing a sanction, the court shall pay special attention to any circumstance or circumstances that argue for the imposition of a less severe punishment than imprisonment. In this connection, the court shall consider such circumstances as are mentioned in Chapter 29, Section 5". Source: DS 1999:36.

[40] M. Borgeke, *At bestemma*…, p. 374.

[41] *Ibidem*, p. 384.

[42] O. Berggren, A. Bäcklund, J. Munck, D. Victor, F. Wersäl, *Brottsbalken. En kommentar. Kap. 25–38*, Stockholm, Supplement 5, July 2014, Chpater 30 § 9, p. 5.

[43] M. Borgeke, *At bestemma*…, p. 395.

[44] O. Berggren, A. Bäcklund, J. Munck, D. Victor, F. Wersäl, *Brottsbalken*…, Chpater 30 § 11, p. 1.

apeutical character but was rooted in the type of crime committed and the previous criminal record of the offender[45]. It intricates that imprisonment without protective supervision would last long, and the term of short imprisonment indicates this fact[46].

At its core, an offender is entering a contract with the medical facility to undergo treatment. The benefit of this situation would be that an individual would be in prison only for short period of time. This instrument replaced in the Swedish system a measure of open psychiatric care and is also used in the cases of sexual crimes against minors. As an example of the use of contract probation, one can name a case before the Supreme Court of Sweden NJA 2006 s. 212.

The factual background of the case was the following: an offender has committed a crime from Chapter 6 § 4 of BrB, the crime of child pornography and sexual exploitation of a minor[47]. An individual needed long-term psychiatric treatment. The court adopted a standpoint according to which to reduce the risk of committing a crime in the future; the latter ought to be sentenced to contract probation. The offender was instructed about the plan and was eager to take part in it[48]. The second case concerned an offender who was 79 years old and was sentenced for sexual exploitation of minors according to Chapter 6 § 4 BrB[49]. The court has reached the conclusion that the most fitting punishment for this crime would be contract care combined with open psychiatric care. Making allowance to the character of the crime, the additional punishment was imposed in the form of three months of imprisonment[50].

These two cases are perfect examples of the role of contract probation in cases concerning sexual crimes against minors. What is more, due to its elastic character, it can encompass various types of treatments. Therefore, one can presume that it can also be a therapy aiming at decreasing the libido of the perpetrator.

The illustration of contract probation depicts that even though the Swedish system does not enumerate special treatment of sexual offenders, it is permissible, and the aims of treatment can be reached.

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[45] *Ibidem*.

[46] *Ibidem*, p. 2.

[47] NJA 2006, p. 212.

[48] *Ibidem*.

[49] "A person who engages in a sexual act with someone under eighteen years of age and who is that person's offspring or for whose upbringing he or she is responsible, or for whose care or supervision he or she is responsible by decision of a public authority, shall be sentenced for sexual exploitation of a minor to imprisonment for at most four years. This also applies to a person who, in circumstances other those mentioned previously in this Chapter, engages in a sexual act with a child under fifteen years. If the person who committed the act exhibited particular lack of regard for the minor or if the crime by reason of the minor's young age or otherwise is regarded as gross, imprisonment for at least two and at most eight years shall be imposed for gross sexual exploitation of a minor". (Law 1998:393), source: DS 1996:36.

[50] NJA 2006, p. 212.

As per Ukrainian solutions, at this point, there is no compulsory measure of pharmacological castration (orig. *хімічна кастрація*). The Parliament adopted the law introducing chemical castration into Ukrainian criminal law. Notwithstanding, the President of Ukraine never signed it, hence never went into action. The rationale for the project of pharmacological castration were two sexual crimes committed in first case against 13 years old girl by her father-in-law and in the second case the rape of the 11-year-old girl. It was promoted that the sole imprisonment punishment is not effective towards mentioned individuals. Furthermore, it was stressed that there is a need for a measure of castration in the Ukrainian system[51]. According to the wording of the project, proposed article 59--1 ought to be imprinted into criminal law. According to this article, the punishment of chemical castration ought to consist of injecting antiandrogen drugs, which include chemicals designed to reduce the libido and sexual activity of the offender. Still, there was an interesting limitation provided in the article 59-1 of the proposal stating that the chemical castration could be enacted only towards offenders who reached 18 years and did not finish 65 years.

As it was underlined, the project was never adopted since it was vague and unclear. As an example, the drafters omitted detailed regulation of the procedure implementation of the measure. Concurrently the project lacked the *vocatio legis* period, which is more than crucial in this category of cases[52]. The author's opinion is that the measure of chemical castration will be most certainly under discussion in Ukraine. Regrettably, it would be a result of further social unrest caused by one or more cases of sexual crimes against minors and debate concerning place and form of chemical castration remains open.

Summary

It is noticeable that the existence of the institution of pharmacological castration is a very delicate and troublesome query. Each of the presented countries has its unique attitude; still, the thorough analysis depicts that the Swedish system can be an example of the aptest and most realistic solution. At this point, the Swedish experience for Poland is invaluable since it might solve existing problems and its value for the Ukrainian system lie in the fact that adopted measure can be free of both Swedish and Polish mistakes.

[51] Проект Закону України 6449 «Про внесення змін до деяких законодавчих актів України щодо посилення відповідальності за злочини, вчинені щодо малолітньої чи малолітнього, неповнолітньої чи неповнолітнього та особи, яка не досягла статевої зрілості».

[52] Висновок на проект Закону України «Про внесення змін до деяких законодавчих актів України щодо посилення відповідальності за злочини, вчинені щодо малолітньої чи малолітнього, неповнолітньої чи неповнолітнього та особи, яка не досягла статевої зрілості».

The separate regulation of chemical castration in criminal law is not looked for since it implicates a series of questions from the point of view of human rights regulations. At the same time, this measure cannot be called compulsory since it needs to be voluntary to meet its goals. All above that, sole chemical castration has no effect on the culprit, and even though his libido is decreased, the deprived sexual attraction will not disappear. As an outturn, the successful therapy to sexual offenders should be comprised of chemical castration amalgamated with psychiatric therapy and in many cased prescriptions of additional drugs such as, i.e. antidepressants et cetera. Therefore, the best solution for the Polish problem would be to amend the existing law and introduce into Polish law the measure of contract therapy, designated primarily as a reaction to offender who had committed sexual crimes against minors.

It is worth to mention that the possibility of implementation of other types of therapy in widely understood probation is present in Polish system. When analyzing other types of therapies

The contractual character of the measure will make it possible to underline the voluntariness of the measure. Still, because the punishment for sexual crimes against minors is more severe in Poland when juxtaposing to Swedish one, the measure needs to be translated into the legal milieu of those countries. Firstly, the measure ought to have a post penal character, and the perpetrator should undergo at least a few years of imprisonment depending on the facts of the case. Although, from the point of view of the effectiveness, the imprisonment of such offenders is not reaching any aim of the punishment, hence it should be stressed that long term placement in prison has a mere symbolic meaning. From the point of view of the treatment process shorter periods of imprisonment are positive from the perspective of the treatment process among others through meetings and informational work with an offender in walls of prison.

In the struggle to minimize the rate of sexual crimes against minors, one should also take into account one aspect, which oftentimes omitted in discussion concerning prevention of sexual crimes against minors. The occurrence of *paedophilia* and reactions to it at this point has only a form of answer to already committed punishable act, whereas it is imperative to create preventive mechanisms used prior to a crime. It can be done by introducing programs providing help and treatment to this group of individuals on a daily basis on the stages preceding the materialization of their deviation[53].

One of the examples of such endeavors is the program conveyed by the Karolinska Institute in Sweden. It aims to reduce or exclude the risk of committing a sexual offence against children by the project participants. The delineation of the project was "Pedophilia at Risk – Investigations of Treatment and Biomarkers" (PRIOTAB)[54]. The sole aim of the project was to repurpose the drug *Degarelix.* In normal conditions, the drug is prescribed in the course of prostate treatment as

[53] https://www.health.harvard.edu/newsletter_article/pessimism-about-pedophilia (21.07.2021).

[54] Kastrering testas på pedofiler, Dagens Nyheter 2016, https://www.dn.se/nyheter/sverige/kastrering-testas-pa-pedofiler/ (20.07.2021).

a medicine decreasing testosterone[55]. The treatment was volitional, and only delinquents who have not committed a crime could take part in it. The project aimed to prepare the effective treatment and to activate the individuals who have this type of problem, to be able to deal with it[56].

Even though it is essential to seek proper treatment instruments of the individuals who have committed sexual crimes against minors' attention should be given to constructing possibilities of receiving help by this category of individuals on the stages preceding committing a crime. Notwithstanding, the therapy employed in response to already committed crime should consider the character of the treatment, which, to be successful, should take the form of voluntary interaction of patient and specialist.

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Summary

Polish law knows various types of compulsory measures. The list of compulsory measures is regulated in Art. 93 a § 1 of the Polish Penal Code and is the following:
– Electronic control of the place of the stay regulated in Art. 93e,
– Therapy regulated in Art. 93f § 1,
– Addiction therapy regulated in Art. 93f § 2,
– Psychiatric detention regulated in § 93 g.

This work would give attention only to a singular compulsory measure in the form of therapy and within its frames so-called pharmacological therapy. The institution is relatively new to Polish law, nonetheless it caused a lot of controversies. In its current form, it is one of the examples of systemic paradoxes in Polish law. Even though the institution is imprinted into Polish law, in fact, without the cooperation of the culprit, it is empty. The sole purpose of the measure prescribed in the law is to lower the libido of the offender to prevent future sexual crimes towards minors. The work aims to answer whether the measure of pharmacological therapy can be labelled as a compulsory measure and whether it has a place in criminal law. For this purpose, the author analyzed the solutions applicable in the criminal law of the Kingdom of Sweden and Ukraine.

Keywords: pharmacological therapy, compulsory measures, notion of insanity, Swedish criminal law, Ukrainian criminal law

ŚRODEK OCHRONNY W FORMIE TERAPII FARMAKOLOGICZNEJ W POLSKIM SYSTEMIE W PERSPEKTYWIE PORÓWNAWCZEJ

Streszczenie

Polskie prawo zna różne rodzaje środków zabezpieczających leczniczych. Ich lista jest uregulowana w art. 93a § 1 k.k. i przedstawia się następująco:

- elektroniczna kontrola miejsca pobytu uregulowana w art. 93e,
- terapia uregulowana w art. 93f § 1,
- terapia uzależnień uregulowana w art. 93f § 2,
- areszt psychiatryczny uregulowany w § 93g.

W niniejszym opracowaniu poddano analizie jeden ze środków w postaci terapii, a konkretnie jej rodzaj, czyli tzw. terapię farmakologiczną. Jest to instytucja stosunkowo nowa w polskim prawie karnym, jednak od samego początku wzbudzała wiele kontrowersji. W swojej obecnej postaci jest jednym z przykładów paradoksów systemowych w polskim prawie. Mimo że instytucja jest jednym ze środków zabezpieczających leczniczych i zakłada swoisty przymus w leczeniu, to w rzeczywistości zdaniem autora bez współpracy sprawcy staje się rozwiązaniem nieefektywnym. Nadrzędnym celem tego środka jest obniżenie libida sprawcy, aby zapobiec w przyszłości popełnieniu przestępstw seksualnych wobec nieletnich. Artykuł ma na celu udzielenie odpowiedzi na pytanie, czy środek zabezpieczający leczniczy w postaci terapii farmakologicznej może być uznany za przymusowy i efektywny oraz w jaki sposób może on być usprawniony. W tym celu autor poddał analizie rozwiązania obowiązujące w prawie karnym Królestwa Szwecji oraz Ukrainy.

Słowa kluczowe: terapia farmakologiczna, środki przymusowe, pojęcie niepoczytalności, szwedzkie prawo karne, ukraińskie prawo karne