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The basics of applying medical precautions – an approach for the purposes of penitentiary practice

Podstawy zastosowania środków zabezpieczających o charakterze medycznym – ujęcie dla potrzeb praktyki penitencjarnej

The article deals with the issue of therapeutic security measures i.e. therapy, addiction therapy and stay in a psychiatric institution. The measures presented are regulated in their entirety in the provisions of the Penal Code, in Articles 93b-93g. The aforementioned provisions deal with the general premises and principles of adjudication, the subjective criteria for adjudication, the time of adjudication and the application of therapeutic security measures, as well as the obligations of the offender against whom therapy, addiction therapy or a stay in a psychiatric institution has been adjudicated, which corresponds to the structure of the publication.

Key words: precautionary measures, therapy, addiction therapy, stay in a psychiatric facility, criminal liability.

Artykuł dotyczy problematyki leczniczych środków zabezpieczających, czyli terapii, terapii uzależnień oraz pobytu w zakładzie psychiatrycznym. Przedstawione środki uregulowane są w całości w przepisach kodeksu karnego w art. 93b-93g. Powyższe przepisy dotyczą przesłanek ogólnych i zasad orzekania, podmiotowych kryteriów orzekania, czasu orzekania i stosowania leczniczych środków zabezpieczających oraz obowiązków sprawy, wobec którego orzeczono terapię, terapię uzależnień czy pobyt w zakładzie psychiatrycznym, co odpowiada strukturze publikacji.

Słowa kluczowe: środki zabezpieczające, terapia, terapia uzależnień, pobyt w zakładzie psychiatrycznym, odpowiedzialność karna.

1. General premises for adjudication of security measures

Precautionary measures, apart from penalties and penal measures, constitute an institution of criminal law applied to perpetrators of prohibited acts. They serve to protect the society against the threat to the legal order caused by the perpetrator. For this reason, precautionary measures are traditionally applied to specific categories of perpetrators - people who cannot be punished (because they are not guilty due to insanity), people who have a well-founded fear that, despite being punished, they will continue to commit crimes, or against people who cannot be punished severely enough due to the limit of the degree of guilt, and there is a need to implement isolation or preventive reasons.

On the other hand, the penal measure is intermediate between the penalty and the precautionary measure. It is both a repression and a method of protection against undesirable behavior of the perpetrator. The concept of a precautionary measure, both under Polish law and in other European countries, was not and does not have a completely unambiguous character and meaning, and it included and includes institutions of various nature, applied to various categories of perpetrators, for several reasons. This is mainly related to disputes and the evolution of views in the science of criminal law and criminology on what cases of a perpetrator posing a threat to society, a threat measured primarily by the possibility of re-committing a crime, justify the use of precautionary measures. As indicated in the scientific literature, “modern criminal law systems use penalties, penal measures and precautionary measures to protect the legal order. The first two categories are related to the guilt of the perpetrator of a prohibited act, the third one is characterized by the lack of culpability of the prohibited act and the related threat to the legal order. The perpetrators belonging to the third group are simply dangerous because of their mental state, resulting in irresponsibility for the committed actions. The scientific literature also indicates that “criminal law is often confronted with situations in which the perpetrator of a prohibited act cannot be held criminally responsible due to the impossibility of assigning his guilt or his guilt is significantly

limited. Sometimes it is associated with personality disorders, states of addiction to alcohol or intoxicants, emotional or social immaturity, or even mental illness. Often the aforementioned disorders result in a high probability of re-committing a prohibited act by the perpetrator”.

When analyzing security measures, it is worth emphasizing that they are applied to a person with serious problems, dysfunctions, and often socially maladjusted. They are often insane, with limited sanity, with disturbed sexual preferences, with personality disorders, addicted to alcohol or drugs. Influencing this type of perpetrator with a criminal sanction, aimed at inducing them to start a therapy or implement other precautionary measures, does not always bring the effects intended by the legislator.

Precautionary measures and the manner of their execution should be appropriate to the degree of social harmfulness of the prohibited act that the perpetrator may commit¹, and the probability of its commission. This results in the obligation for adjudicating panels to predict future uncertain events, and based on such findings, it orders decisions regarding the application of precautionary measures. The degree of social harmfulness of the act is also taken into account in the framework of general directives of the penalty and penal measures (Art. 53 § 1 of the Penal Code and Art. 56 of the Penal Code), when the significance of the social harmfulness of the act is one of the conditions for placing an insane perpetrator in a psychiatric institution². The catalog of precautionary measures, included in Art. 93a § 1 of the Penal Code, is arranged according to an increasing systematics, from the mildest safeguard measures to the most painful ones, most interfering with the sphere of individual freedom. The increasing systematics indicate the priority of applying non-custodial measures. Electronic control of the place of stay is a non-therapeutic measure, although remaining in the electronic supervision system, apart from the control of the perpetrator's location, may additionally be a certain stimulus for him to appear conscientiously at the treatment facility. Subsequently, the catalog distinguishes therapeutic measures, i.e. therapy including cognitive-behavioral psychoeducation and various forms of psychotherapy conducted in health care entities. Addiction therapy

¹ In art. 115 § 2 of the Act of 6 June 1997 Penal Code (Journal of Laws of 2022, item 1138, as amended, hereinafter referred to as the Penal Code), the circumstances that should be taken into account when examining the social harmfulness of the act are listed. On their basis, it is determined whether a given prohibited act is socially harmful, and if so, to what extent.

² P. Daniluk, *Ocena społecznej szkodliwości czynu*, „Prokuratura i Prawo” 2011, nr 6, s. 127 i nast.

is a separate protective measure. Nevertheless, all types of therapies, including addiction therapy, are implemented in non-violent conditions. The most painful protective measure of a therapeutic and isolating nature is a stay in a psychiatric institution³.

Precautionary measures are not a criminal penalty in the strict sense, they have a different function and are adjudicated on different principles. These measures may affect the sphere of an individual's goods, including the sphere of their freedom. In the case of some measures securing the scope of their interference with human freedom, such a scope of their interference is wider than in the case of criminal penalties. All the security measures applied should meet the standards of human rights protection following on the Constitution and international agreements⁴.

The basic function of protective measures is to secure the society against dangerous individuals, but after the criticism of non-therapeutic security, two axioms lie at the basis of their justification: the belief about the effectiveness of compulsory treatment of mental disorders and the assumption that the adjudicating body can formulate an accurate (real, adequate) criminological forecast. The use of security measures, e.g. the electronic control of the place of stay, therapy, addiction therapy or placing the suspect in a psychiatric institution, which may be ordered against a person suffering from a mental illness or other mental dysfunction, is associated with a threat from the perpetrator, and adjudication of these measures allows to protect society in front of people for whom it has been found a particularly high probability that they may pose a threat to society and the legal order.

When analyzing security measures, it is worth emphasizing that they are applied to a person with serious problems, dysfunctions, and often socially maladjusted. They are often insane, with limited sanity, with disturbed sexual preferences, with personality disorders, addicted to alcohol or intoxicants. Influencing this type of perpetrator with a criminal sanction, aimed at inducing them to start a therapy or implement other security measures, does not always bring the effects intended by the legislator⁵.

³ See decision of December 2, 2021, District Court in Tarnobrzeg, file ref. II Kzw 192/21.

⁴ See the judgment of August 19, 2020, file ref. K 46/15.

⁵ See L. Paprzycki (red.), *Środki zabezpieczające. System prawa karnego*, tom 7, Warszawa 2015.

In accordance with Art. 199a § 1 of the Act of 6 June 1997 of the Executive Penal Code⁶, the court adjudicating in the first instance may issue a decision on the application of one of the four security measures pursuant to the principles contained in Chapter X of the Penal Code, against which a complaint may be lodged. Chapter X of the Criminal Code⁷ provides for four basic groups of security measures (electronic control of the place of stay, therapy, addiction therapy and stay in a psychiatric institution), as well as in relation to people who have committed a criminal act in a state of insanity specified in Art. 31 § 1 of the Penal Code, allows for adjudication of penal measures listed in Art. 39 points 2-3 of the Penal Code (Art. 99 of the Penal Code). The category of potential perpetrators, against whom it will be possible to adjudicate the measures provided for in this chapter, is similarly diversified. It includes insane and sane people to a significantly limited degree, as referred to in Art. 31 § 1 and § 2 of the Penal Code (art.93c points 1 and 2 of the penal code), perpetrators of serious crimes committed in connection with disorders of sexual preferences (art.93c point 3 of the penal code), a large group of people committing intentional crimes of various gravity in connection with a personality disorder of such a nature or severity that there is at least a high probability of committing a prohibited act with the use of violence or the threat of using it [Article 93c (4) of the Penal Code], and offenders committing acts related to alcohol, intoxicants or other drugs [Article 93c (5) of the Penal Code]. The only common denominator for the above-mentioned category of entities potentially subject to the securing regime in the procedures provided for in Chapter X of the Criminal Code is the forecasted degree of probability that, due to their characteristics, they will again commit crimes. However, the acts committed by them and those they may commit, as well as the circumstances, the quantum of risk, and finally the real possibility of self-control, will determine the specific type and scope of the adjudicated measure. The basic condition for the adjudication of security measures is that the court confirms that there is a probability that the perpetrator has committed a prohibited act. The degree of this probability influences the selection of a specific security measure by the court. Other factors that the court is required to take into account are the degree of social harmfulness of

⁶ Journal of Laws of 2021, item 53 as amended, hereinafter referred to as the Executive Penal Code.

⁷ See M. Jurgilewicz i in. (red.), *Zarys nauki o prawie i wiedzy o bezpieczeństwie*, Rzeszów 2020, s. 94-97.

the act that is likely to be committed, as well as the needs and progress of the perpetrator in addiction therapy or therapy. The evaluation of the degree of probability of a repeated offense by the perpetrator is made by the court primarily, but not only⁸, on the basis of the specialist expert opinion. The court is also obliged to take into account “other life and social factors”, which are understood to mean both the current line of life of the perpetrator, including his previous criminal record, and the current life situation, including the possibility of circumstances determining the actual possibility of treatment⁹. Evidence regarding the determination of the suspect’s current lifeline, approach to treatment and criticism in relation to the disorders that arise in the suspect may be, among other things, custodial community interview or letters submitted by the suspect in the course of the proceedings¹⁰.

2. Principles of applying security measures

Articles Art. 93b, Art. 93c and 93d of the Penal Code regulate such issues as: general premises, rules of adjudication, subjective adjudication criteria as well as adjudication time and application of security measures.

The ruling of therapeutic security measures is possible if the general conditions undertaken in Art. 93b of the Criminal Code. There is no doubt that the basic condition for the adjudication of any of the security measures is the commission of a prohibited act by the perpetrator. The general conditions for the application of the discussed security measures are formulated as the principles of adjudicating them, and they are: the principle of necessity, proportionality and subsidiarity.

The principle of necessity consists in the fact that the court may order a security measure only when it is necessary to prevent the perpetrator from committing a prohibited act (Art. 93b § 1 of the Penal Code). The essence of the principle of necessity also includes the obligation to revoke a security measure when the condition for its application fails, i.e. its further application is no longer necessary (Article 93b § 2 of the Penal Code). The principle of necessity is related to the principle of

⁸ See Decision of the Supreme Court of December 9, 2015, file ref. act V KK 330/15.

⁹ K. Eichstaedt, *Środek zabezpieczający w postaci pobytu w zakładzie psychiatrycznym, wątpliwości związane z orzekaniem*, „Prokuratura i Prawo” 2016, nr 12, s. 81 i nast.

¹⁰ See the decision of the Supreme Court of November 16, 2015, file ref. no. II KK 320/15.

subsidiarity, consisting in a statutory requirement for the court to ascertain the circumstances that other legal measures provided for in the Penal Code or adjudicated on the basis of other acts are not sufficient. On the other hand, the principle of proportionality corresponds primarily to the catalog of the aforementioned security measures, the sequence of which takes into account the degree of harmfulness. It is worth noticing that the use of the term “perpetrator” by the legislator in the above-mentioned regulation unequivocally determines that it applies only to the group of entities listed in Art. 18 § 1 of the Penal Code (single perpetrator, accomplice, recommending perpetrator). Therefore, it cannot be applied to ineffective forms of committing a crime, e.g. inciting and conspiracy¹¹.

At this point, it should be remembered that the instigator and the accomplice commit “their own” crimes and, as phenomenal figures of the crime, they are committed, unlike the causative characters at the moment of performing the features of these phenomenal figures, at the end of inciting or providing help¹². The principle of proportionality also corresponds to the catalog of the aforementioned security measures, the sequence of which takes into account the degree of harmfulness. The indicated provision further emphasizes the obvious, preventive nature of the security measures directly: “to prevent the perpetrator from committing a prohibited act again”. In line with the mentioned principle of proportionality, in one of the judgments of the Supreme Court it was emphasized that before making a decision on the application of the most far-reaching security measure which is the placement in a closed psychiatric institution, the court should conduct a kind of a test by considering what, if not for the insanity of the perpetrator of the prohibited act, penalty should be imposed on the perpetrator for committing such a prohibited act. Only if there is no doubt that the appropriate penalty for such a perpetrator for committing the alleged act (if he could be criminally liable) would be an absolute imprisonment, the court should decide to place such a person in a closed psychiatric institution. In a situation where the court finds that the penalty appropriate to the gravity of the committed act would be a penalty of a liberty, the application of

¹¹ J. Postulski, *Środki zabezpieczające jako forma reakcji karnej*, „Gdańskie Studia Prawnicze” 2008, nr 1, s. 313 i nast.

¹² See the judgment of the SA in Białystok of April 25, 2002, file ref. II AKa 112/02.

this security measure may only be justified by the specific circumstances of the act¹³.

3. Criteria for adjudication of therapeutic security measures

In accordance with Art. 93c of the Penal Code, therapeutic security measures can be adjudicated against five categories of perpetrators. The first category includes the perpetrators for whom the proceedings for a prohibited act committed in a state of insanity have been remitted, as defined in Art. 31 of the Penal Code. The second category includes perpetrators convicted of an offense committed in a state of limited sanity, as defined in Art. 31 § 2 of the Penal Code. Thirdly, the perpetrators of the crimes specified in Art. 148 of the Criminal Code, murder, art. 156 of the Penal Code, causing serious damage to health, Art. 197 of the Penal Code, rape or extortion of sexual activity, Art. 198 of the Penal Code, sexual exploitation of the helplessness or insanity of another person, art. 199 of the Penal Code, sexual abuse of a dependency relationship or a critical position § 2 or Art. 200 of the Penal Code, sexual intercourse with minors or causing them to submit to sexual activities § 1, committed in connection with a disorder of sexual preferences. The fourth category includes perpetrators sentenced to imprisonment without its conditional suspension for an intentional crime specified in Chapter XIX, XXIII, XXV or XXVI of the Penal Code, committed in connection with a personality disorder of such a nature or severity that there is at least a high probability of committing a prohibited act with the use of violence or the threat of its use. The last category concerns perpetrators convicted of a crime committed in connection with addiction to alcohol, narcotic drugs or another similar substance. The obligatory premises for the ruling of therapeutic security measures also include a formal premise - the obligation to hear experts of specific specialties by the court. The provision of art. 354a of the Act of June 6, 1997, the Code of Criminal Procedure¹⁴ imposes on the court, prior to the ruling of the security measure referred to in Art. 93 a § 1 of the Penal Code, the obligation to hear an expert psychologist (Article 354a § 1 point 1 of the Code of Criminal

¹³ The judgment of the Supreme Court of 5 February 2009, file ref. II KK 252/08, LEX No. 491593.

¹⁴ Journal of Laws of 2021, item 53, as amended, hereinafter referred to as the CCP.

Procedure), also in cases of insane people, people with limited sanity or with personality disorders of expert psychiatrists (Article 354a § 1 point 2 of the Code of Criminal Procedure).

This obligation may be waived only when the perpetrator, for whom there are grounds to adjudicate addiction therapy or therapy, consents to such therapy or addiction therapy (Article 354a § 2 of the Code of Criminal Procedure). The “hearing” referred to in Article 354a of the Code of Criminal Procedure is nothing more than admitting and taking evidence from an oral expert opinion submitted at a hearing or session (see the decision of the Supreme Court of 22 September 2003, IV Penal Code 288/03). As a rule, this opinion will be preceded by a previously submitted written opinion on the same subject¹⁵. This hearing must take place before adjudicating all security measures. When deciding to apply these measures, the court is required to hear the following experts:

- a) psychologist – obligatorily in the case of imposing security measures against perpetrators who are not liable due to insanity, have limited sanity and are responsible for committing a crime in connection with alcohol addiction or a similar drug (Article 93c points 1, 2 and 5 of the Penal Code). The remaining group of perpetrators referred to in Article 93c (3) and (4) of the Criminal Code applies to those convicted of crimes specified in Art. 148, art. 156, art. 197, art. 198, art. 199 § 2 or article. 200 § 1 of the Penal Code, committed in connection with a disorder of sexual preferences and sentenced to imprisonment without its conditional suspension for an intentional offense specified in Chapter XIX, XXIII, XXV or XXVI of the Criminal Code, committed in connection with a personality disorder of this nature or intensity, that there is at least a high probability of committing a prohibited act with the use of violence or the threat of its use;
- b) at least two obligatory and optional psychiatrists. Obligatorily in the case of adjudicating against insane and impaired perpetrators. Optionally, when the court deems it advisable, in the case of adjudicating against other perpetrators.
- c) an expert on addiction – optional in the case of adjudication against addicted perpetrators, if the court deems it advisable¹⁶.

¹⁵ See the judgment of the Supreme Court of September 26, 2018, file ref. IV KK 341/18.

¹⁶ R.A Stefański (red.), Kodeks karny. Komentarz, Legalis 2021, teza 5 do art. 93b kk.

The adjudication is based on the position that hearing experts consists in the fact that the court is obliged to hear at least an oral opinion of appointed experts of the indicated specialties. This means that it is not enough to submit an opinion in writing, as the court is obliged to take evidence from an oral opinion of experts of these specialties at the hearing or at the meeting. Moreover, as indicated by the Supreme Court, it is not sufficient to read only the written opinion of experts, or to hear only one expert, even if this expert declares that he is submitting a supplementary opinion on behalf of both expert psychiatrists¹⁷.

4. Time for adjudication of therapeutic security measures

As a rule, pursuant to Art. 93d § 1 of the Penal Code, the time of application of a security measure is not specified in advance. When a security measure has been ordered in a sentence of imprisonment, the court is obliged to determine the need and the possibility of executing the sentence not earlier than 6 months before the expected conditional release or serving a sentence of imprisonment (Article 93d § 3 of the Penal Code). At the same time, it is possible to change the security measure to a different one (only a freedom one), depending on the mental state of the perpetrator and other circumstances that emerged after the sentencing (Article 93d § 4 of the Penal Code). Pursuant to this provision, when revoking a security measure as a stay in a psychiatric institution, the court may order one or more of the detention measures, i.e. electronic control of the place of stay, therapy or addiction therapy (Article 93d § 2 of the Penal Code). Establishing the necessity to execute a detention measure 6 months before the anticipated conditional release or serving a prison sentence results from the difficulties in formulating an accurate criminological forecast concerning the perpetrator who ends his sentence. On the other hand, if the perpetrator has been sentenced to imprisonment without conditional suspension of its execution, a penalty of 25 years imprisonment or a penalty of life imprisonment, the adjudicated security measure is applied after serving the sentence or conditional release, unless the law provides otherwise (Article 93d § 5 of the Penal Code). In a situation where the behavior of the perpetrator after the

¹⁷ See the judgment of the Supreme Court of February 27, 2008, file ref. IV KK 20/08.

revocation of a security measure indicates that it is necessary to apply security measures, the court may, no later than within 3 years from the revocation of the measure, adjudicate again the same security measure or another measure of freedom: electronic control of the place of stay, addiction therapy and therapy (Article 93d § 6 of the Penal Code).

5. Therapy

The provisions of Art. 93f of the Penal Code concern freedom measures, e.g. addiction therapy and therapy. Addiction therapy and therapy are therapeutic measures, the aim of which is not only to protect the legal order, but also to obtain such an improvement and behavior of the perpetrator that he can continue treatment under conditions of freedom and perform socially approved functions. The first of them can be implemented in various forms – pharmacological therapy aimed at weakening the sex drive, psychotherapy or psychoeducation, in which the perpetrator participates in order to improve his functioning in society. Addiction therapy, on the other hand, consists in undergoing treatment for addiction to alcohol, narcotic drugs or similar ones. The obligation of the person against whom one of these measures has been ordered is to appear at the facility indicated by the court on the dates set by the doctor or psychiatrist, sexologist or therapist and to undergo therapeutic treatments. Entities in which treatment and addiction therapy may be conducted on an outpatient basis, are listed in Annex 1 to the announcement of the Minister of Health of June 30, 2015 on the lists of psychiatric establishments intended for the implementation of the security measure referred to in Art. 93c in points 1-3 of the Penal Code and medical entities intended to provide therapy to perpetrators referred to in Art. 93c of the Penal Code in the field of stationary activities¹⁸. The essence of the security measure referred to as therapy is to oblige the perpetrator to appear (at the facility indicated by the court) on dates set by a psychiatrist, sexologist or therapist and to undergo therapeutic interactions, which may take various forms. Adjudication of a security

¹⁸ Official Journal of the Ministry of Health of 2015, item 28 with amendments.

measure of addiction therapy or therapy does not require the consent from the defendant¹⁹.

The Code distinguishes pharmacotherapy from therapeutic management, which may range from psychoeducation to an advanced clinical therapy. This provision also defines the goal of a therapy, which is to weaken the psychosexual drive in the case of pharmacotherapy and to improve the functioning of the perpetrator in the society in the case of psychotherapeutic interactions. Although the court is free to choose the measure, it does not bind the doctor, psychologist or psychotherapist with specific indications as to the method of proceeding. When adjudicating a therapy or an addiction therapy to a convict referred to in Art. 93c point 5 of the Penal Code, who is released from a psychiatric institution or a penal institution, the court determines the probation period for a period of 6 months to 2 years and entrusts the convicted person to the supervision of a probation officer or a trustworthy person, association, institution or social organization whose activities include upbringing, preventing demoralization or helping convicts.

Until the amendment of the Penal Code in 2015, the therapy was not an independent form of a security measure, but was only one of several elements of a therapeutic protective measure, apart from, inter alia, the process of universally understood social rehabilitation, as well as rehabilitation, which – if necessary – could be conducted in conditions of social isolation in a closed medical facility. If the perpetrator did not undergo therapy in conditions of social isolation, it was theoretically possible to intern such a person without undergoing the treatment process. The method of protective procedure, and within it also of therapy, depended largely on the type of mental disorder and symptoms the perpetrator showed, but also on the type of closed facility in which the perpetrator could be placed – and as we know – until the amendment of the Penal Code in 2015, the forms of these treatment facilities were adjusted to the form of the adjudicated security measure (e.g. psychiatric facilities for insane perpetrators, special treatment units in prisons for criminals with limited sanity, specialized closed facilities for units with disturbed sexual preferences, and drug rehabilitation facilities for criminals – alcoholics)²⁰.

¹⁹ A. Barczak-Oplustil, *Ogólne przestanki stosowania środków zabezpieczających*, [w:] Nowelizacja prawa karnego. Komentarz, W. Wróbel (red.), Kraków 2015, s. 674-677.

²⁰ K. Postulski, *Zakończenie wykonywania środka zabezpieczającego*, [w:] *System prawa karnego*, t. 7 – Środki zabezpieczające, pod red. L.K. Paprzyckiego, Warszawa 2015, s. 463 i nast.

6. Addiction therapy

Addiction therapy, similar to the therapy in accordance with Art. 93f § 1 of the Penal Code imposes certain obligations on the perpetrator, which consist in appearing in a facility indicated by the court on dates set by a psychiatrist, sexologist or therapist and undergoing pharmacological therapy aimed at weakening the sex drive, psychotherapy or psychoeducation in order to improve his functioning in society. The perpetrator is also required to appear in a drug addiction treatment facility indicated by a court on the dates prescribed by a doctor and undergo treatment for alcohol addiction, narcotic drug addiction or another similar substance (Article 93f § 2 of the Penal Code). The Act of 29 July 2005 on counteracting drug addiction contains a legal definition of addiction and it is a set of mental or somatic phenomena resulting from the action of narcotic drugs or psychotropic substances on the human body, characterized by a change in behavior or other psychophysical reactions and the necessity to use them constantly or periodically in order to experience their effects on the psyche or to avoid the consequences caused by their absence. Therapy as a security measure is prescribed for an indefinite period of time. The court repeals this measure when it deems that its further application is unnecessary (Art. 93b § 2 of the Penal Code). This measure is post-penal (or more specifically post-custodial), i.e. it is conducted after the perpetrator has served a prison sentence or has left the psychiatric institution. If the therapy was ordered together with freedom penalties – i.e. a fine or restriction of liberty – or with penal measures, and the accused was not given an absolute penalty of deprivation of liberty, then the treatment is performed during the implementation of non-custodial penalties and penal measures. Due to the fact that it is not possible to determine in advance the moment of termination of therapeutic interactions, addiction therapy and therapy are adjudicated indefinitely. The court revokes the security measure when its further application is no longer necessary. An application for revoking (or changing) a security measure may also be submitted by the director of a prison, head of a psychiatric facility or head of a medical facility where the perpetrator is undergoing addiction therapy or therapy (Article 199b of the Executive Penal Code).

7. Stay in a psychiatric institution

The court adjudicates a stay in a psychiatric institution and only if the act provides so (Art. 93b § 5 of the Penal Code), and Art. 93g of the Penal Code strictly defines the cases in which the Court may order a security measure such as a stay in a psychiatric institution. It follows from the content of this provision that the Court rules this security measure when there is a high probability that the perpetrator will commit a prohibited act of significant social harmfulness again due to mental illness or mental retardation (Article 93g § 1 of the Penal Code), as well as when there is high probability that the perpetrator will commit a prohibited act of significant social harmfulness due to mental illness or mental retardation (Article 93g § 2 of the Penal Code). In art. 93g § 1-2 of the Penal Code, the legislator used the term “high probability” of “significant social harmfulness”, and also in § 1 Art. 93g of the Penal Code the term “will commit again”. In adjudication, a high probability means a probability bordering on certainty²¹. It is worth emphasizing that the Supreme Court, in its judgment of 2017, stated that the probability of committing even a serious prohibited act, which is “not high”, does not justify placing the perpetrator in a closed psychiatric facility. The court, before deciding to apply a security measure such as the placement in a closed psychiatric institution, should conduct a kind of a test by considering what - if not for the insanity of the perpetrator of the prohibited act - penalty should be imposed on the perpetrator for committing the prohibited act. Only when there is no doubt that the appropriate penalty for such a perpetrator (if one could be criminally liable) would be an absolute imprisonment, the court should decide to place the perpetrator in a closed psychiatric facility²². A ruling on placing the perpetrator in a psychiatric institution may take place only when it is necessary to prevent him from re-committing a prohibited act of significant social harmfulness related to his illness. This goal results from the content of Art. 93 of the Penal Code and Art. 94 § 1 of the Criminal Code. The purpose of this institution is also provided for in Art. 202 of the Executive Penal Code, which stipulates that the perpetrator against whom a security measure is conducted is subjected to appropriate therapeutic, therapeutic and rehabilitation as

²¹ See decision of the SA in Lublin of January 27, 2010, file ref. II AKzw 9/10.

²² See the decision of the Supreme Court of March 14, 2017, file ref. IV KK 376/16.

well as rehabilitation procedures, the purpose of which is to improve the perpetrator's health and behavior, to the extent that allows one to return to life in society and further treatment in off-site conditions. An essential element of the analyzed measures is the actual isolation of the perpetrators, provided in specific medical conditions, in a situation where it is necessary to prevent the perpetrator from re-committing a prohibited act related to the mental illness, mental retardation or addiction to alcohol or other intoxicants, or disturbance of sexual preferences (Article 93 of the Penal Code). The clarification of the problem requires some analysis whether the perpetrator should be undergoing compulsory psychiatric treatment during the application of a security measure as being placed in a closed psychiatric institution, when one categorically refuses to take medications in the light of the applicable regulations. Pursuant to Art. 202 of the Penal Code, the facility conducting the security measure is obliged to effectively treat an isolated patient. In turn, the patient is obliged to participate in the rehabilitation and treatment and rehabilitation programs of the facility. It means that during the application of security measures, a psychiatric institution not only serves as a place of isolation of the perpetrator, but is primarily a place of treatment, even of a compulsory nature, if the perpetrator refuses to continue treatment. A request to revoke a security measure may be submitted by the person concerned, as well as by the director of the penitentiary institution, head of the psychiatric institution or medical entities in which the perpetrator resides. Such a request may also be submitted by an attorney who will not only provide legal advice appropriate to the situation, but will also represent the interests of the perpetrator in the further course of the proceedings. Before ruling on the change or revocation of the security measure, the court should hear the psychologist, and in certain cases also the psychiatrist, sexologist or sexologist psychologist. Only on such a basis, the court, having the certainty that the further application of the security measure is no longer necessary, may revoke it. Importantly, in the event of the revocation of a security measure such as a stay in a psychiatric institution, the court may order another security measure – electronic control of the place of stay or the obligation to undergo therapy or addiction therapy. The above-mentioned security measures may also be ordered by the court, if, within 3 years after revoking the preventive

measure, the perpetrator's behavior indicates the need to continue the application of such measures²³.

According to the data of the Central Board of the Prison Service, as of December 31, 2021, a total of 3289 inmates were detained in therapeutic wards²⁴ (data are presented in Table 1).

Table 1. Convicts admitted to therapeutic wards staying in these units (as of December 31, 2021).

Year	Total	Including women	With non-psychotic mental disorders, mentally retarded	Sexual preference disorders	Addicted to narcotic or psychotropic drugs	Addicted to alcohol
2021	3289	205	1570	393	550	1169
2020	2865	179	1526	390	441	898
2019	3315	192	1571	392	575	1169
2018	3172	166	1552	355	512	1108
2017	3229	180	1553	326	509	1167
2016	3133	185	1507	297	487	1139
2015	3061	159	1493	252	480	1088
2014	2936	159	1466	233	462	1008
2013	2943	194	1492	211	436	1015
2012	3044	184	1497	220	472	1075
2011	2953	161	1510	162	435	1008
2010	3037	178	1593	178	501	943

Source: own study based on the Central Board of the Prison Service data (<https://www.sw.gov.pl/strona/statystyka-roczna>).

The vast majority of convicts included in therapy programs are people addicted to alcohol. Therapeutic interactions with convicts addicted to alcohol in all wards are conducted as three-month stationary therapeutic programs, including a basic addiction psychotherapy program, with an extended range of goals, also including rehabilitation and social

²³ P. Góralski, *Terapia sprawców czynów zabronionych jako forma środka zabezpieczającego (art. 93a § 1 pkt 2 k.k.)*, „Prokuratura i Prawo” 2019, nr 2, s. 11.

²⁴ <https://www.sw.gov.pl/strona/statystyka-roczna> 2021 rok.

rehabilitation of addicted convicts. They use the same methods as in out-of-prison drug addiction treatment facilities²⁵.

Therapeutic programs usually last about 3 months. Prisons implement impact programs based on Personal Therapy Plans. Individual therapeutic programs implemented in prisons are specific programs. They often combine several elements. Sometimes they have to take into account different forms of overlapping disorders. This, in turn, requires a broader therapy process. Pursuant to § 18 of the Regulation of the Minister of Justice of August 14, 2003 on the methods of penitentiary interactions in prisons and pre-trial detention centers²⁶, when conducting interactions in the therapeutic system, the following are in particular taken into account: individual and group methods of therapeutic interactions, superiority of therapeutic interactions over other penitentiary interactions, integration of therapeutic interactions with other interactions conducted in the institution. The development of an individual therapeutic program should be done with the participation of the convict (§ 21 section 4). The individual impact program is updated depending on the needs [§ 21 (5)]. In the therapeutic program, special attention is paid to the need to educate on: the specificity of the therapeutic process in conditions of penitentiary isolation, basic psychological concepts, basic psychological processes influencing behavior, the specificity of alcoholism, the way alcohol works on the human body, the effects of alcohol abuse and the relationship between alcohol abuse and crime. Therapeutic units have qualified penitentiary staff, which are specialists in the field of addiction therapy, clinical sexology and psychologists. The spectrum of therapeutic interactions is extraordinarily rich, individually adapted to the convict. Particular emphasis is placed on diagnostics in a broad sense. This is important in programming therapeutic interactions²⁷. Conducting specialist therapeutic interventions, as one of the basic tasks performed by the Prison Service, is a dynamic phenomenon. It requires the adaptation and development of the methods used to the changing conditions and the constant search for innovative solutions²⁸.

²⁵ <https://www.parpa.pl/index.php/lecznictwo-odwykowe/leczenie-w-wiezieniu> (15.08.2022).

²⁶ Journal of Laws of 2003 no. 151, item 1469 with amendments.

²⁷ E. Żywucka-Kozłowska, *Wykonywanie kary pozbawienia wolności w systemie terapeutycznym*, „Kortowski Przegląd Prawniczy UWM” 2017, nr 4, s. 78-83.

²⁸ Por. M. Jurgilewicz, *Administrative and legal status of the Prison Service in Poland – an outline of the issues*, “The Prison Systems Review” 2021, nr 112,, s. 37-47.

The therapy processes implemented by the prison service are based on well-established methods, and at the same time are an expression of the constant search for new and effective ways of collaborating with people qualified to imprisonment in the therapeutic system²⁹.

8. Summary

The article presents the criteria that must be met for the court to adjudicate a security measure such as electronic control of the place of stay, therapy, addiction therapy and stay in a psychiatric institution. Certain orders and prohibitions can also be imposed as a security measure. Medical security measures provided for in the Penal Code, as opposed to penalties and penal measures, apply irrespective of the perpetrator's guilt, but taking into account the degree of danger of the act committed by the perpetrator. Indeed, individual security measures are not penalties, but an institution of substantive criminal law of a preventive nature.

²⁹ <https://www.sw.gov.pl/aktualnosc/Najwi%C4%99kszy%20oddzia%C5%82%20terapeutyczny%20w%20Polsce> (16.08.2022).

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Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy (Dz.U. z 2021 r., poz. 53 ze zm.).

Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (Dz.U. z 2021 r. poz. 2345 ze zm.).

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