Available online at www.sciencedirect.com

ScienceDirect

journal homepage: http://www.elsevier.com/locate/poamed

Review Article

Medical aspects of insanity in Polish Criminal Law

Leszek Frąckowiak [a], Kamil Frąckowiak [b,*]

[a] Department of Public Health, Hygiene and Epidemiology, Faculty of Medical Sciences, University of Warmia and Mazury in Olsztyn, Poland

[b] Department of Substantive Criminal Law, Faculty of Law and Administration, University of Warmia and Mazury in Olsztyn, Poland

ARTICLE INFO

Article history:
Received 15 November 2013
Accepted 3 April 2014
Available online 30 April 2014

Keywords:
Criminal liability
Insanity
Mental illness
Mental retardation
Mental disturbance activities

ABSTRACT

Introduction: Insanity is an issue at the border between two different fields of science: law and medicine. Medicine is a widely developed field that undergoes continuous and dynamic development. On the other hand, legal aspects of medicine are based on classical medical solutions adopted already in the 19th century science. Insanity is a strictly legal term. Definition of this term is an extremely important aspect for the application of Art. 31 of the Penal Code, since its interpretation determines criminal liability, and in consequence the use of criminal penalties or security measures.

Aim: The aim of this work was to present the issue of insanity in respect to the Polish Criminal Law and current medical knowledge.

Material and methods: Dogmatic-legal analysis of the current legal regulations in Poland through the prism of well-established Supreme Court jurisprudence and literature of the field was conducted.

Results and discussion: Recently, the condition for liability of a perpetrator for a criminal act is guilt, which in certain circumstances may be excluded. Culpability does not occur inter alia in situations where the state of mind of the perpetrator shows some deficiency. A Polish legislator provides three sources of insanity: mental illness, mental retardation, and other mental disturbance activities. Two psychological criteria of the very state are also defined, which at the same time are the consequences of the above-mentioned sources: inability to recognize the significance of the act and inability to manage its conduct.

Conclusions: The issue of insanity requires effective combination of complex and suitable legal structures, current medical knowledge, and interest of an individual and society. For the effective and accurate regulations of the issue of insanity and well-functioning practice, a dialog between the two professions is required. Specifying the term of insanity is the responsibility of physicians, since its clarification on the basis of current legal status is unreasonable and inadequate due to the fact that its extent is each time determined by the current medical knowledge.

* *Correspondence to*: Department of Substantive Criminal Law, Faculty of Law and Administration, University of Warmia and Mazury in Olsztyn, Warszawska 98, 10-900 Olsztyn, Poland. Tel.: +48 509954574.
E-mail address: kamilfrackowiak@tlen.pl (K. Frąckowiak).

http://dx.doi.org/10.1016/j.poamed.2014.04.001

1. Introduction

Insanity is an issue at the border between two different fields of science: law and medicine. Both disciplines have characteristic research methods, functions, purposes and fields of interest. Whereas the law, as a system of normative regulations, uses precise definitions, such as the criminal law which is based mainly on dichotomy of guilt vs. innocence, medicine allows no such divisions. The course of a disease is not uniform and there is no precise border between health and disease.

The object of research in medicine is always a human being. However, in the criminal law the priority is not a human being himself but the offense the individual committed, defined precisely by Art. 1 § 1 of the Penal Code as ''an act prohibited under penalty, by a law in force at the time of its commission.''[1] The criminal law explicitly indicates in Art. 3 of the Penal Code the principle of humanitarian action. This principle plays a major role in the aspect of insanity, because it obliges to perceive a human being not as a criminal, but as an individual affected by certain psychological or mental disorder, who is unable to properly and knowingly perform his/her social role and coexist peacefully with this society.

Though it is hard to expect lawyers to be experts in both law and medicine, it is indisputable that they should have elementary knowledge in this field, even despite the fact that Art. 193 of the Criminal Procedure Code requires calling expert witnesses, if in the criminal proceedings special knowledge is required to determine significant circumstances for deciding a case.[2] The need for cooperation is revealed not only in proceedings already pending and requiring calling expert witnesses, but also in the process of creating the law. Medicine is a widely advanced field, which undergoes constant and dynamic development. On the other hand, legal aspects of medicine are based on classical medical solutions adopted already in the 19th century science. Thus, the law becomes anachronistic, disjunctive to the rapid development of modern medicine.

Insanity is a strictly legal term. Definition of this term is an extremely important aspect for the application of Art. 31 of the Penal Code, since its interpretation determines criminal liability or lack of it, and in consequence the use of criminal penalty, which is a particularly severe tool affecting the recipient, the possibility of its modification or application of security measures.

2. Aim

The aim of this work was to present the issue of insanity in respect to the Polish Criminal Law and current medical knowledge.

3. Material and methods

Dogmatic-legal analysis of the current legal regulations in Poland through the prism of well-established Supreme Court jurisprudence and literature of the field was conducted.

4. Results and discussion

4.1. *The essence of guilt*

Guilt is a fundamental term of the criminal law and it has a dual role. Firstly, it has a legitimizing role, being the condition to the existence of criminal liability. According to Andrejew, it is a ''bulwark against objective liability.''[3] Certainly, it is one of the elements constituting an offense. Under Art. 1 § 3 of the Penal Code ''the perpetrator of a prohibited act does not commit an offense if guilt cannot be attributed to him at the time of the commission of the act.'' Another expression of this is also a paremia *nullum crimen sine culpa*. This fact is also confirmed by the definition of crime derived from the standards of Art. 1 of the Penal Code: penal liability shall be incurred only by a person who commits an act prohibited under penalty, by a law in force at the time of its commission, as a crime or misdemeanor, prohibited, culpable and socially harmful to a greater extent than negligible. Consequently, not any prohibited act is a crime. To be the one, it also has to satisfy the criteria of objective antisocialness and guilt, which are differentiated based on a value criterion and reference points. Unlawfulness is the relation of an act to the law. According to Cieślak, the law has a positive value and its violation in the form of unlawfulness has to be inherently negative. Social noxiousness is characterized also by a negative judgment, and in this case value of legal rights is taken into account, which should remain unaffected. However, negative value of guilt is examined for possibility and obligation to avoid commission of the prohibited act of a considerable social noxiousness by the perpetrator.[4]

Guilt is an element of the structure of a crime in the criminal law: prior to raising the question of the perpetrators' guilt it should be considered whether the act fulfills other features mentioned earlier. As a result, guilt in substantive law does not include objective conditions of liability. In addition, Cieślak indicates that guilt in such form, as understood by substantive criminal law, is a ''typical hypostasis,'' because it cannot be referred to as noun, but only as an adjective, as a culpable act. Therefore, the meaning of guilt itself should not be discussed, but conditions that must be satisfied for the act to be considered culpable should be defined. Cieślak has also given the explicitly formulated answer – it should be an act ''which in certain circumstances could and should have been avoided.''[4]

In the current Penal Code, due to a variety of theories, no definition of guilt was included, although in accordance with the Draft Penal Code of 1997, an attempt at implementing a purely normative concept was made, despite the absence of historical basis and established position in Polish law.[5]

On the basis of the current Penal Code, numerous definitions of guilt were formulated, which depending on the accepted theory demonstrate various significance. As said by Gardocki: ''guilt in the substantive criminal law is an offense personally alleged.''[6] On the other hand, Marek, as a supporter of comprehensive approach, claims that ''guilt in a criminal law, under provisions of this law, is the alleged relation between the perpetrator and the commitment of a prohibited act.''[5] Thus, Polish doctrinal solutions oscillate