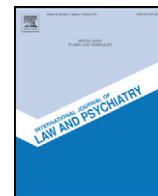




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Effects of alcohol on the offender's sanity—Issues of criminal law and psychiatry in light of findings of research

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ABSTRACT

The present report is the result of research on the causes of insanity or issuing opinions about the causes of insanity or diminished sanity perpetrators in criminal proceedings conducted in Poland (CEE). Research has shown the impact that has, in fact, use or abuse of alcohol and other alcoholic diseases on the status of the accused in criminal proceedings. This publication presents not only the results but also the basic regulations – valid in Poland and in other European countries – with respect to the responsibility of the perpetrators insane, with diminished sanity and being in a state of inebriation at the time of committing a criminal act.

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1. Introduction

There have been written a lot about an alcohol and alcohol abuse. Authors on the pages of professional publications described various aspects of alcohol drinking, beginning its harmful effects on human body with all the negative consequences of alcohol drinking or its abuse on physical and psychological realm of man. They wrote also about the destructive impact of alcohol abuse on family and professional life. On the other hand in the legal literature many pages have been devoted to the studies on the connections between crimes and a fact of using alcohol by their perpetrators. As a result alcohol drinking has been recognized as one of the most important criminogenic factor. It was also proved that an alcohol triggers most aggressive reactions, unlocks moral brakes, which contributes to the commission of an offenses, both acts of hooliganism and the most serious crimes, such as murders. The research conducted in Poland 2008–2012 regarding the connection between alcohol drinking and committing crimes, proved even that 57% of murders, about one third of all offenses of rape, grievous bodily harm and robbery have been committed by offenders in state of inebriation (Hołyst, 2009). Within 2013 there were 61 047 people suspected of domestic violence according to data provided by the Police Headquarters of Poland. More than 37 650 of them were under the influence of alcohol, out of which in 1200 cases, their perpetrators were women, and in further 34 – juveniles (Police Headquarters, Domestic Violence, 2013). Even worse are these statistics in the cases of domestic violence or causing a traffic accident. According to the statistical data of 2012, Polish police officers in this period of time stopped 169 323 drunk drivers (Police Headquarters Road Traffic

Accidents, 2012). What's more, the studies of criminology and sociology prove that in Poland about 2% of the population suffers from alcoholism and the further 8% becomes its victim as family members of addicted. Such data in figures indicate that in country with more than 38.6 million inhabitants, because so many people count Poland, about 800 000 of them are dependent on alcohol and more than three million lives in their vicinity. Approximately, two thirds of them become the victim of domestic violence used by alcoholics (Czarnecka, 2004; Hołyst, 2009; Szczepanowski, 2004). However, an importance of alcohol drinking for a possible perpetrator's responsibility is much more complex issue. The fact that the perpetrator in time of committing the offense was in a state of inebriation may lead to a question about his or her state of mind in the context of his or her sanity. On the other hand, offender's insanity in most modern criminal justice systems disables the possibility of bringing the perpetrator to the criminal liability for his or her offense. Such a conclusion can be drawn by an analysis of the provisions of penal codes being in force in most European (and not only) countries. As an example of European penal codes which represents the so-called: Continental Criminal Law system might be given: Article 19 Section 1 of the Swiss Criminal Code (*Schweizerische Strafgesetzbuch*, sStGB), Paragraph 20 of the German Criminal Code (*Deutsche Strafgesetzbuch*, dStGB), Paragraph 11 of the Austrian Criminal Code (*Oesterreichische Strafgesetzbuch*, oeStGB), Article 122-1 of the French Criminal Code (*Code pénal français*), Article 20 Section 1 of the Spanish Criminal Code (*Código Penal de España*), Article 34 of the Greek Criminal Code (*Ελληνικό Ποινικό Κώδικα*), Article 20 Section 1 of the Portuguese Criminal Code (*Código Penal de Portugal*) or Article 88 of the Italian Criminal Code (*Codice penale italiano*). This applies both to real effects of using alcohol on the human organisms, as well as certain legal solutions, which – by creating a fiction of perpetrator's sanity – allow justify his/her criminal liability. In which cases this “fiction” takes

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precedence over reality, and when it falls – answer to this and similar questions can provide this publication. It is based on the current state of law and some facts that have been taking place in Poland. In order to formulate a few proposals in this matter, it seems to be appropriate to analyze relevant provisions of the Polish Criminal Code, as well as to present the results of research conducted by me on 179 court records conducted by the Polish criminal courts. In all these cases perpetrator's sanity was into question. The analysis of the court records seems to be interesting and certainly it is a matter about a transnational importance, so it is worthy to present it to the broader.

2. Insanity and diminished sanity according to the Polish Penal Code

Before discussing the issues related to liability for an offense committed in a state of inebriation and presenting the results of my research, as I mentioned at the outset of this paper, it seems to be necessary to present previously the basic regulations regarding insanity (pol. *niepoczytalność*) and diminished sanity (pol. *poczytalność zmniejszona, poczytalność ograniczona*) according to the Polish Penal Code (further as P.P.C.). These regulations constitute a kind of “background” for the provision, which sets out the principles of responsibility offender in a state of inebriation. Thus, without an outline of context to insanity and diminished sanity in the Polish system of criminal law, it could be difficult to understand an exception, which is in fact the regulation defining the status of offender in state of inebriation in relation to these rules.

It would be appropriate to begin with the fact that under Polish law the so-called sanity has not been positively determined. Such a definition does not include de facto any other continental legal system, including the criminal justice system. In spite of this, it is assumed that the offender's sanity is a principle.

This means, as a general rule, that everyone, who due to his or her age may be liable, shall be treated as being soundness of mind. It might be worth to add in this place that, according to Polish criminal law minimum age for liability has been determined as 17 years (as a rule, because if one is committing serious crime such as murder, rape, and robbery, he/she is capable to incur liability after completing 15 years-Art. 10 P.P.C.). So, it could arise a question: when a person is sane? The best answer to this question is provided by popular understanding of this word. Referring to the dictionary definition of the sanity, it is to accept that this means: capacity to act with discernment, or to act in a reasonable way. The criminal law, instead of the positive definition of sanity, provides for the regulations giving directions, in which cases of the offender will not be able to be considered as sane.

Article 31 § 1 P.P.C provides for an exception to the rule which is sanity by indicating when we are dealing with the insanity of the offender. In accordance with this provision: “Whoever, at the time of the commission of a prohibited act, was incapable of recognising its significance or controlling his conduct because of a mental disease, mental deficiency or other mental disturbances, shall not commit an offence”.

Moreover, according to § 2 of this Article: “If at the time of the commission of an offence the ability to recognize the significance of the act or to control one's conduct was diminished to a significant extent, the court may apply an extraordinary mitigation of the penalty”. The last one provision refers to so called diminished sanity, which essentially covers the intermediate cases, including neither insanity, nor – as its opposite – full sanity.

There is also a need to clarify issues related to questions, how is subjected to doubt the sanity of perpetrator of the criminal act and at what stage of the criminal proceedings it is possible? Suspicions in this matter occur usually on basis of behavior of the perpetrator in the course of his or her offense (it should be considered e.g. whether his or her act is justifiable, or whether he/she has acted with some predictable logic, whether one had previously demonstrated any kind of disturbances such as ascertained: psychosis, neurosis, and

dependence from intoxicating substances). These and similar conditions should be taken into consideration by the authority conducting the criminal proceedings and, consequently, the authority is obliged to take the measures that will allow for diagnosis on offender's sanity, diminished sanity or insanity. Necessary to stipulate is here, that there is no Polish penal statute describing “criteria for assessing” whether the conduct of perpetrator can be treated as a “normal” (within the meaning – he/she acted like a sane or not). So, it is always left to the discretion of the judicial authority and professional intuition of the officer whether to take the steps necessary to verify the defendant's mental health. In response to the second question, it should be noted that the suspicion regarding offender's insanity may arise both on the stage of the proceedings conducted by law enforcement (what is the most common case), as well as in the course of proceedings before the courts.

When the officer has reasonable grounds to doubt that the perpetrator was of sound mind at time of committing prohibited act, he/she shall appoint two forensic psychiatrists as well as – most often also – psychologist (which is not mandatory under Polish criminal procedure) in order to examine the mental state of the accused and in order to give the assessment regarding mental health of the accused and as a result also to confirm if this person is able to bear criminal responsibility. If forensic psychiatrists recognize that there have been fulfilled all conditions set out in Article 31 § 1 P.P.C., the court shall decide perpetrator's insanity. Must the court issue such a decision mandatory or not? The answer is obvious – definitely not, because the court is independent. However, in practice knowledge of experts in psychiatry is not questioned by the courts for this reason, that it would be difficult to ‘overthrow’ by a lawyer the results of psychiatrists' diagnosis. The recognition that the offender during a prohibited act was insane causes that he/she cannot be found guilty (the insanity in Polish criminal law is a factor disabling the guilt). As a result, this person cannot be also punished. Does it mean that he or she does not bear criminal responsibility? In principle, yes, the only response to his or her criminal behavior in this situation may be applying so-called preventive measure (e.g. his/her compulsory placement in a psychiatric hospital). This is acceptable, however, only if it is necessary to isolate the insane offender to protect the public, as well as when there is a high probability, and a fear, that this person will commit the crime again. In contrast to the Anglo-Saxon legal system, in Polish criminal law the offender's insanity is not taken into account only as an institution tied with his or her defense (although the defender may always try to contest the sanity of his client during the proceedings, as far as there have been fulfilled conditions of Article 31 § 1 or 2 P.P.C. and if it would be beneficial for him/her).

Not in every case forensic psychiatrists may issue the unequivocal statement that the perpetrator during committing the prohibited act was really insane. Not always the perpetrator during committing his/her offense had abolished completely ability to recognize the importance of the act or to conduct his or her behavior. More frequently in the judicial practice, it is concluded that these abilities were only reduced. It is not enough, however, any kind of reduction these abilities, because it must be “significantly reduction” accordingly Article 31 § 2 P.P.C.

There are no indications under Polish criminal law which allow to define what a “significant degree” means. So, it is assumed most commonly that this means simply an important, also: essential, but certainly not small. In other words – the degree of reduction these abilities is closer to insanity than to full sanity. When the degree sanity restriction will be able to be recognized as such? This question have to answer to the court forensic psychiatrists. Simultaneously it must be added that they have not clearly identified evaluation criteria on which they could rely in the diagnosis of diminished sanity of the perpetrator. There is also no catalog of strictly described disorders that might be considered as a cause of such a state. In the doctrine of criminal law in Poland (like in most continental legal systems), it is assumed that the source (i.e. origins, cause) of reducing the ability to recognize the

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