



World Scientific News

WSN 13 (2015) 50-65

EISSN 2392-2192

Social readaptation of offenders with intellectual and mental disability in the institutional context

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ABSTRACT

Social readaptation is a process of returning people to a life in a society, who for a period of time were isolated from a natural social life. A concept of the totality is becoming the basic determinant of an alienation level from the natural environment. The criminal court can sentence offenders to: involuntary commitment, therapeutic detention or place them in the National Centre for the Prevention of Dissocial Behaviour. The law and medical communities present a view which is based on the fact that the basic and true aim of solving the problem is an isolation of such people, therefore measures and arguments of medical nature should not be reached out. To a large extent, further actions for social readaptation depend on effective re-socialisation/therapy.

Keywords: social readaptation, total institutions, prison, asylum, criminality

1. INTRODUCTION

Social readaptation is a process of returning people to a life in a society, who for a period of time were isolated from a natural social life. The intellectual disability according to ICD-10, is a significantly lower intellectual functioning than an average one, the intelligence

quotient is around 70 or lower, which is determined based on individually selected intelligence tests.

At the same time, there exists a co-occurrence of a deficit or adaptation disorder of at least two of the following spheres: communication, personal resource, running house, ability to decide for oneself, interpersonal skills, using sources of social support, ability to learn, work, relax, caring for one's health and safety.

2. OFFENDERS WITH MENTAL DISABILITY IN POLISH REALITY

The genesis of disorders resulting in the intellectual disability occurs before the age of 18. The mental disability is a wider concept and involves, aside from the intellectual disability, also people with personality disorders, behaviour disorders and disturbance of consciousness.

Sexual disorders consist in a preference of objects, situations or practices which do not allow a person to have a stable and satisfactory relation with another person.

The described disorders are related to a larger possibility of an occurrence of disorders in terms of social adaptation and can lead to a shorter or longer detention in the total institutions. Isolation from a society is usually related to the premises of social, medical, law, military, religious nature or of instrumental nature, as it was noticed by E. Goffman, when creating a paradigm of the total institutions.

Placement in the total institutions, regardless of reasons for ordering a placement of individuals in these institutions, leads to, apart from already existing disorders of functioning, the occurrence of new ones or intensification of the existing ones. Such experience also generates, especially with regard to a longer stay, acquirement of specific abilities to cope in an isolated environment.

These abilities constitute usually the biggest impediment in a later social adaptation of such people. Researches of the total institutions include in such abilities, amongst others, hospitalism and prisonization. A concept of the totality is becoming the basic determinant of an alienation level from the natural environment.

The totality of an institution consists in a limitation of the possibility to make choices and make independent decisions, to take control over the time and space in which the inmates are functioning, annexation and incapacitation executed under the conditions of isolation. The totality of institutions anticipates that both inmates and personnel will function in a universe of coercion.

The scope of this universe is defined by tasks and organisational possibilities of respective total institutions. The basic factors of totality level include: the level of isolation and incapacitation.

The incapacitation consists in a partial or total deprivation of a possibility to take up actions according to one's own reflections. Its level depends on the magnitude of a freedom enclave in the coercion universe. Isolation consists in a partial or total limitation of an institution transparency/permeability.

The level of isolation depends on ad extra and ad intra permeability. The total institutions are a specific type of social institutions in which barriers isolating form the outer world and a specific model of an incapacitation play a dominative role.



Photo 1. Bars on windows, wire fences, walls typical for penitentiary units.



Photo 2. Isolation cell in a correctional facility.



Photo 3. Room for emotional calm down in a psychiatric hospital.

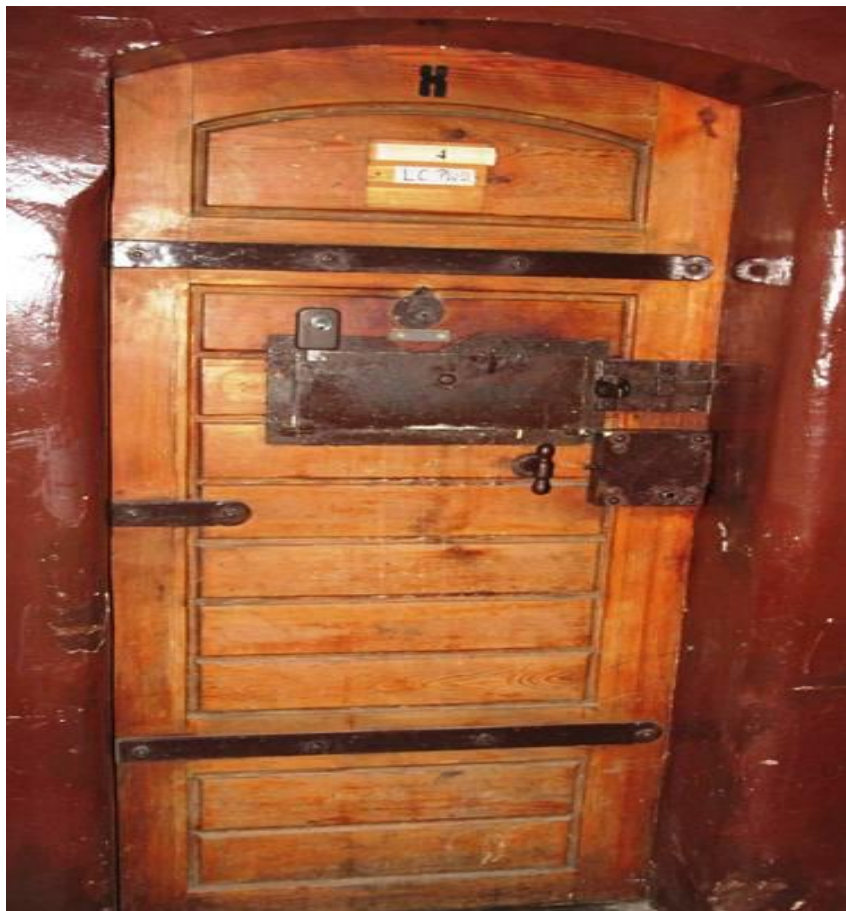


Photo 4. Doors to the accommodation cell



Photo 5. One-piece safety belt



Photo 6. Handcuffs.



Photo 7. Wire entanglements.

The barriers used in the total institutions involve, amongst others:

Physical barriers: - natural ones: e.g. forest

Artificial barriers: wire entanglements, wire fences, thick windows made from plastic, two-way mirror, walls, no handles inside rooms, sound-absorbing walls.

Symbolic barriers: rules of stay, jargon; ostracism, stigmatisation; detention rules, quarantine, rules of enclosure, internment; no access to the outer sources of information.

Partial barriers: wire entanglements, bars, windows, wire fences.

Complete barriers: walls, doors.

Removable barriers: handcuffs, safety belts, straitjacket.

Immovable barriers: isolation cells.

Court can order offenders into:

- based on Article 93 and 94 of Civil Code - the involuntary commitment of a person in a psychiatric hospital who committed a criminal offence, but criminal proceedings were discontinued due to the fact that the offence was committed under the absence of sanity.

Detention is not a punishment, but one of the preventive measures. The detention is used against people who, due to their mental illness, mind handicap or other disorders of mental activities are highly probable to commit a criminal offence of high social harm again.

The court decides when a detention is finished based on psychiatrists' opinion based on which a further detention is not necessary.

- based on Article 62 of Civil Code, the court orders a person into a therapeutic detention
- based on the Act on the procedures related to people with mental disorders posing a danger to other people's life, health or sexual freedom, the court orders a person into detention in the National Centre for the Prevention of Dissocial Behaviour.

On 1/07/2015, amendment of the civil code enters into life which anticipates modification of a method of ordering and the use of preventive measures. New rules are in the form of Article 93a-g and new content of Article 99 of Civil Code.

Article 93a. Section 1. The preventive measures are:

- 1) Electronic monitoring of offenders' location
- 2) Therapy
- 3) Addiction treatment
- 4) Stay in a psychiatric hospital

Article 93b.

Section 1. The court can order a preventive measure if it is necessary, in order to prevent an offender from committing a repeated criminal offence, and other legal measures specified in the code or ordered based on other Acts are not sufficient. The preventive measure under Article 93a section 1 item 4 can be ordered only to prevent committing a repeated criminal offence of high social harm.

Section 2. The court lifts the preventive measure if its further execution is not necessary.

Section 3. The preventive measure and method of its execution should be in accordance with the level of social harm of the criminal offence which an offender can commit and the probability of its commitment, also the needs and progress of a therapy or addiction treatment should be taken into account. The court can amend the ordered preventive measure or a method of its execution, if the previously ordered preventive measure is inappropriate or its execution cannot be carried out.

Section 4. Against the same offender more than one preventive measure can be ordered; section 1 and 3 are applied taking into account all ordered preventive measures.

Section 5. A court orders a placement in a psychiatric hospital only if it is specified within the Law.

Article 93c.

The preventive measures can be ordered against an offender:

- 1) Against whom proceedings for a criminal offence committed in the state of insanity envisaged in Article 31 section 1 were discontinued;
- 2) In the case if a person is sentenced for a crime committed in the state of limited insanity envisaged in Article 31 section 2;
- 3) In the case if a person is sentenced for a crime envisaged in Article 148, Article 156, Article 197, Article 198, Article 199 section 2 or Article 200 section 1, committed on the basis of abnormal sexual preferences;
- 4) In the case if a person is sentenced to imprisonment without the possibility of parole for an intentional offence envisaged in Chapter XIX, XXIII, XXV or XXVI, committed on the basis

of a personality disorder of such nature or intensification, that there is a high probability that a criminal offence will be committed with a use of violence or a threat of using it.

5) In the case of sentencing for a criminal offence committed on the basis of addiction to alcohol, intoxicants or other similarly acting substances.

Article 93d.

Section 1. The period of execution of the preventive measure is never specified beforehand.

Section 2. When lifting the preventive measure in the form of a stay in a psychiatric hospital, the court can order one or more preventive measures, specified in Article 93a, section 1, item 1-3.

Section 3. The court determines the need and possibility of execution of the ordered preventive measure no earlier than 6 months before envisaged parole or serving a prison term.

Section 4. If an offender is serving a prison term, the preventive measures envisaged in Article 93a section 1 item 1-3 can be also ordered until the execution of the punishment, however, no earlier than 6 months before envisaged parole or serving a prison term.

Section 5. If an offender sentenced to imprisonment to a total of 25 years or to life without stay of execution, the ordered preventive measure is executed after serving their prison sentence or parole, unless specified otherwise within the Law.

Section 6. If, upon lifting the preventive measure, the offender's behaviour indicates that there is a need to order the preventive measures, the court no later than within 3 years since lifting the measure can order the same preventive measure or other measure envisaged in Article 93a Section 1 items 1-3.

Article 93e.

The offender against whom an electronic monitoring was ordered, is obliged to submit themselves to electronic monitoring of their location with the use of technical devices, including a transmitter an offender needs to wear.

Article 93f.

Section 1. An offender who was court ordered to undergo a therapy, is obliged to appear at an institution indicated by the court on days fixed by a psychiatrist, sex therapist or therapist and submit themselves to pharmacological treatment aimed at reducing their sexual drive, psychotherapy or psychoeducation aimed at improving their functioning in the society.

Section 2. An offender who was court ordered to undergo an addiction treatment is obliged to appear at an institution indicated by the court on days fixed by an addiction doctor and undergo treatments for alcohol addiction, intoxicants or other similarly acting substances.

Article 93g.

Section 1. The court orders a placement of the offender, envisaged in Article 93c item 1, at an appropriate psychiatric hospital if it is highly probable that the offender will again commit a criminal offence of high social harm on the basis of mental illness or mental handicap.

Section 2. By sentencing the offender, envisaged in Article 93c item 2, to imprisonment to a total of 25 years or to life without stay of execution, the court orders the offender to stay at an appropriate psychiatric hospital if it is highly probable that the offender will again

commit a criminal offence of high social harm on the basis of mental illness or mental handicap.

Section 3. By sentencing the offender, envisaged in Article 93c item 3, to imprisonment to a total of 25 years or to life without stay of execution, the court orders the offender to stay at appropriate psychiatric hospital if it is highly probable that the convicted will again commit a criminal offence against life, health or sexual freedom on the basis of abnormal sexual preferences. Art. 99. Section 1. If an offender commits a criminal offence in the state of insanity, envisaged in Article 31 section 1, the court can order the preventive measure in the form of warrant or prohibitions envisaged in Article 39 items 1-3.

Section 4. The prohibitions listed in article 39 items 2-3 are ordered without specifying their duration; the court lifts them if reasons for ordering them ceased.

Besides punishment, criminal measures and probation preventive measures are the judiciary reaction for breaking the law. The preventive measures belong to treatment measures and their aim is to protect the society against the offender. Depending on the level of threat, a person is put in a unit of a basic or increased security level.

Besides **obligatory** placement of an offender at an appropriate psychiatric hospital, which is ordered when the offender at a time of committing the crime was in the state of insanity, the crime was of high social harm and there is a possibility of committing a similar offence again in the future, the court can apply **extracurricular** preventive measures. They can involve placing a person in a penitentiary, in which particular treatment measures are used, and can be ordered when an offender at a time of committing the crime was in the state of limited sanity.

The offenders who committed a crime against sexual freedom, and the crime was based on abnormal sexual preferences, upon serving their prison sentence, are placed in a closed facility or undergo out-patients' clinic treatment. The same applies to the offenders who committed an offence in relation to addiction. The court ordering such measure has to listen to an opinion of psychiatrists, psychologists and sex therapists, if the offender committed a crime in relation to abnormal sexual preferences.

The court does not decide beforehand about duration of stay of such person at a psychiatric hospital. The detention duration depends on the progress in the treatment, positive forecast for the future, and every six months the court is obliged to decide on appropriateness of further execution of the preventive measure, often after consulting the psychiatrists and psychologists. Since these measures are very acute to an offender, they are ordered only if it is really necessary and the court when delivers a verdict, besides the rule of consulting the psychiatrists, has to comply with the rule of indispensability (necessity), proportionality and compulsoriness.

The court psychiatric units are designated to implement and execute the preventive measures according to the Regulation of Minister of Health. The task of a unit is to involve a patient, against whom the preventive measure is being executed, in actions which aim is to prepare the patient to function in a normal society in a way that the probability of committing an offence based on mental illness is minimal.

What is the difference between the basic and increased security unit? In the increased security unit, the patients who committed a serious offence and who are especially dangerous to society are placed. At the units of the basic security, the patient have more freedom, they can go for walk under supervision of a guardian and are not monitored 24/7.

A patient who was initially placed at the increased security unit can be transferred to the basic security unit, e.g. for good behaviour and adhering to instructions.

The patients of a psychiatric hospital are involved in a complex treatment, which mainly consists in application of pharmacotherapy. It is related to the fact that majority of patients are psychotic, therefore application of antipsychotics is necessary in order to subside the symptom of psychosis and to stabilise patient's mental state. Besides the pharmacotherapy, psychological help, psychotherapy, art therapy, rehabilitation or re-socialisation are very important.

Besides these activities in which a patient is obliged to take part in, there are additional activities available: fine arts classes, taking part in running the hospital newspaper or in hospital theatre. Upon ending a duration of the preventive measure a person returns to "normal" life. If a patient needs care, and there are no relatives who could look after them, the patient is placed, e.g. in a Care Centre.

For the past several years, as H. Machel noted, a disappointment in psychocorrective/re-socialisation model of penitentiary institutions is growing. The efficiency of penitentiary effects on people with mental disorders who are sentenced, often not for the first time, to many years imprisonment, leaves much to be desired

The public pressure related to the release from the penitentiary institutions especially dangerous offenders in the past years, has led to the creation in the Polish reality of a new type of a total institution, which constitute a hybrid connecting features of a penitentiary institution and a psychiatric hospital.



Photo 8



Photo 9



Photo 10



Photo 11

Photos 8-11. Depict the National Centre for the Prevention of Dissocial Behaviour in Gostynin.

The author of a concept of the total institutions stresses that these institutions attract, in particular, interest of sociologist, since they are social hybrids connecting elements of community of residents and elements of a formal organisation. The hybridity of the total institutions can be noted, in particular, in institutions such as ships, hospital ships, clinics, galleys, spaceships, military, police and other uniformed public services academies and seminaries.

The expectations of the society were met by passing the Act on the procedures related to people with mental disorders posing a danger to other people's life, health or sexual freedom court as of 22 November 2013 /Journal of Laws of, No. 24/2014/. Under the terms of the Act, the National Centre for the Prevention of Dissocial Behaviour was created. It is meant to be a medical institution designated for people for whom therapeutic measures were ordered. A placement in the Centre constitutes an alternative to the use of preventive police supervision.

The abovementioned Act regulates proceedings against people who meet all the below premises:

- 1) People who have been given a final custodial sentence or sentenced to imprisonment to a total of 25 years, which they serve under therapeutic system.
- 2) During the enforcement proceedings they showed mental disorders in the form of mental handicap, personality disorder or abnormal sexual preferences.

3) The recognised mental disorders are of such nature or intensification that there is a high probability that a criminal offence will be committed with a use of violence or a threat of using it against life, health or sexual freedom punishable by deprivation of liberty, which maximum sentence is no less than 10 years.

The lack of formal possibility and legally non-conflictual isolation of these people upon finishing serving their time, forced the state to use measures counted among medical effects. The basic assumption of the Act was to protect society against people posing a real danger, although, from the point of view of psychiatry and psychology, curing people from "posing a danger" by placing them in a treatment institution according to current levels of knowledge is impossible.

The Act relates to a creation of medical sanction against people with "mental handicap, personality disorder or abnormal sexual preferences", whose "mental disorder" – according to the provisions of the Act consist in the fact that they are still dangerous offenders. There is no doubt that potential confirmation of posing a threat, in the opinion of psychiatrists at the end of serving a sentence, constitutes a premise of posing a threat by their remaining at large.

Nonetheless, the premise, as J. Heitzman noted, cannot be identified with a medical premise with regard to such mental disorder for which a medical procedures are needed in order to achieve improvement. There is no justification for using a compulsory treatment for people who do not show a medical condition. However, there is a justification that they should be subject to a "forced isolation". This guiding aim of the Act should be most of all honestly and courageously proclaimed and not hidden behind medical procedures.

The attempt of medicalisation and creation of an impression that it is about treatment and a psychiatric hospital does not meet requirements of laws regulating the institution functioning. An envisaged punishment and the scope of allowable direct coercion measures which can be applied in a wide range makes, as M. Płatek from the Centre noted, a strictly penitentiary institution.

The penitentiary institutions, psychiatric hospitals as well as the mentioned Centre constitute a sign of the state intervention in a specific areas or social life. Provided the penitentiary institutions fulfil their isolation and re-socialisation functions, the psychiatric hospitals fulfil the therapeutic and treatment function, and the isolation function plays a secondary role, the Centre, on the assumption, fulfils a therapeutic function, and the isolation function treats equivalently. This can be proven by a typical to the penitentiary institutions existence of physical barriers and extensively described in the Act range of direct coercion measures both for therapeutic and security aims.

On 16/5/2014, the Ombudsman appealed to the Constitutional Tribunal to examine the compatibility of the Act with the Constitution, due to:

1. Lack of precision in describing a potential group of candidates to be placed in the Centre.
2. Lack of determination of the time needed for drawing up a psychiatric and psychological opinion.
3. Lack of operationalisation of concepts "high" and "very high probability" of committing criminal offences used in the Act.
4. Different comprehension of operational actions than in the Act on Police against persons subject to prevention supervision.

5. Committing the basic function of the Centre /therapy/ disproportionate to the importance of this place in the provisions of the Act.
6. Inconsistency between the procedure for placing a person in the Centre and the procedure for determining their further stay in it.

The Polish Psychiatric Association, as well as a National Consultant in Psychiatry present a view which is based on the fact that the basic and true aim of solving the problem is an isolation of such people, therefore measures and arguments of medical nature should not be reached out. The Act, however, shows that the decision-makers conviction is that the optimal in the case of potential inmates is the isolation of a medical nature. There is no uniform essential stance among experts, and concerns of legal nature do not help the stabilisation and appropriate performance of a task by the Centre, i.e. the social readaptation.

A psychiatric point of view assumes that people with mental illness can and should be treated, and people with mental dysfunctions of psychopathy or sociopathy, as termed in the past, nature, should be effectively re-socialised (provided that such possibility is supported by an offender motivation), but not under hospital conditions. Therapeutic interactions which can be applied with respect to these people are not related to the necessity of hospital isolation. A problem of effectiveness of therapeutic interactions and re-socialisation results from an instrumental treatment of them by the inmates.

H. Machel in a research on social readaptation and repeated offending, as one of the main reasons for it recognised the aversion of the social environment. The same aversion manifested in the opinion of the society led to taking legislative action and to create of a new type of institution, which formally was supposed to be conducive to the social readaptation, and in fact is becoming an expensive and not fully effective method for reassuring the social attitudes. Despite the legal empowerment of the new institution as a medical institution, the medical community treats it as a "hot potato" thrown by the judiciary.

Table 1. A statistic of people serving prison sentence under therapeutic system as of 31/05/2015.

Convicted and penalised serving a prison sentence under therapeutic system.	As off 30/04/2015	As off 31/05/2015	Proportion of population of convicted and penalised subgroup	Penitentiary closed	Penitentiary semi-closed	Penitentiary opened
Subgroup M	91	98	6.8%	77	21	0
Subgroup P	2159	2132	7.2%	1378	753	1
Subgroup R	2423	2355	6.1%	1733	621	1
total	4673	4585	6.5%	3188	1395	2

Table 2. Statistics of involuntary commitment.

Legal classification of offence	N	%
Murder attempted murder	289	34.1
Rape	41	4.8
Crimes against decency	29	3.4
Crimes against health	104	12.2
Tormenting family	119	14.0
Assault	37	4.4
Arson	82	9.6
Threats	86	10.1
Robbery and burglary	70	8.2

3. CONCLUSIONS

Currently, 4585 people are serving a prison sentence in the penitentiary institutions under therapeutic system. Due to the limited space in the psychiatric hospitals, in particular, the court detention units, the number of people staying at them for a number of years is changing slightly. As the prison statistics show, many of them are serving a prison sentence for murders, rapes, indecent conduct and abuse. It is natural, that the directors of the penitentiary institutions will do their best not to overlook a potential threat. On the other hand, they can expect reluctance of the convicted to take part in a treatment under therapeutic system which automatically includes them under the rulings of the disused Act. Apart from the previous problems with motivating the inmates to take active part in their own re-socialisation/therapy, a new one appeared. To a large extent, further actions for social readaptation depend on effective re-socialisation/therapy. In this conviction I am strengthened by the results of researches carried out by many authors, in particular, in closed penitentiary facilities whose inmates show instrumental attitude toward a proposition of taking part in programmed or therapeutic interaction, especially since conditions and security system in the Centre in Gostynin is adequate to the level of security measures in penitentiary facilities of a closed type.

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(Received 08 June 2015; accepted 21 June 2015)