

Research Article

Other Disturbances of Mental Function as a Cause of the Insanity of the Offender in Light of the Polish Criminal Code-Questions and Concerns

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Abstract

The subject of this presentation is issues concerning the regulation of insanity and diminished responsibility in accordance with the Polish Criminal Code. Special attention will be paid to one of the sources of insanity and diminished sanity (this being one of the statutory terms of these states which maybe the cause of insanity or diminished sanity) i.e., at the so called "other disturbances of mental functions".

The background to the dispute in this matter is the possibility of taking into account as a cause of insanity not only pathological disorders, but also those called, in legal literature, physiological disruptions. What are the types of disruptions? How do the judicial practice and forensic psychiatrists resolve this problem? The answers to these and similar questions will constitute the main aspects of this paper.

Keywords: Diminished responsibility; Diminished sanity; Insanity; Polish criminal law

Introduction

In contemporary society the need of assurance of the appropriate legal protection for all persons with mental disorders couldn't arouse any objections [1]. In past however the rights of those people were however not in every case enforced so strictly. In past times, head-words were propagated like those supported by E-Mann. He believed that a cardinal condition of society's development is the elimination people who were touched with any kind of disabilities. In one of his banner works titled: "How to free mankind from misery" he had postulated even openly: "(...) to eliminate without hesitation the mentally ill if they were recognized as incapable of deciding for themselves" and further: "(...) all touched with incurable disability are a burden to themselves and to their families" [2].

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Currently there is no place - at least theoretically- in any civilized countries for a lack of equality between people that should concern especially men's health. This rule was clearly expressed both in Article 32 of the Polish Constitution on the 2nd of April 1997 [3] and in the Preamble to the Act on Protection of Mental Health enacted on the 19th of August 1994 [4]. The last one orders expressis verbis to recognize mental health as one of the fundamental personal good and entrusts its protection to the authorities, as one of their duties [5].

Insanity and diminished sanity although they have medical conjunction are undoubtedly legal terms. For this reason, they must be interpreted on ground of the whole legal system and understood as marks of legal determined states.

Firstly we shall take into account that there is no special definition neither in psychopathology (a branch of medical knowledge and science which covers psychiatric facets of people's health) nor in law.

It's however possible to create such a definition based on negative descriptions of these mental states given by Polish legislators mainly in the Criminal Code of the 6th of June 1997 (currently in force) [6]. It allows the assumption that insanity ("not of sound mind") should be understand as any kind of mental illness usually of such a severe nature that a person cannot distinguish fantasy from reality (the term is sometimes referred to as psychiatric disability) Mental illnesses most often mentioned as causes of insanity are: major psychotic illnesses, such as endogenous depression, schizophrenia and manic depressive psychosis [5]. As a result of these causes one cannot conduct his or her affairs or is subject to uncontrollable impulsive behavior.

On the other hand diminished sanity (also as diminished responsibility or diminished capacity) sits somewhere in between the two legal extremes of insanity and sanity (but bringing expert psychiatric opinion into legal frameworks is where it all gets interesting!). The legal meaning requires that the ability to recognize an importance of act or to control one's conduct were diminished at least to "a significant extent" (more about it - below). The formulation "significantly" shall be subject to the opinion of the court and should be interpreted as "essentially".

Essential regulations in this matter are included in Article 31 § 1 and 2 of the Polish Criminal Code. The second main Act currently in force in Poland closely bound with the issue of this paper is above mentioned Act on Protection of Mental Health 1994.

Insanity and Diminished Sanity According to the Polish Penal Code

Before discussing the main issue i.e., questions concerning "other disturbances of mental function", as well as presenting the results of research conducted by myself in this matter it seems to be necessary to present previously basic regulations regarding insanity (pol. *niepoczytalność*) and diminished sanity (pol. *Poczytalnośćmniejszona*; *poczytalnośćograniczona*) according to the Polish Criminal Code (further as PCC). These regulations constitute a kind of "background" for understanding the reasons for insanity or diminished sanity.

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 is not included in *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 of sound mind. It might be worth adding at this moment that according to Polish criminal law the minimum age for liability has been determined as 17 years (as a rule because if one is committing a serious crime such as murder, rape, robbery etc., he/she is capable of incurring liability after completing 15 years-Art 10 PCC). So a question could arise: when is a person sane? The best answer to this question is provided by the popular understanding of this word. Referring to the dictionary definition of the sanity it is to accept that this means: the 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 the offender will not be able to be considered as sane.

What's more it is worth mentioning that according to Polish system of criminal law (alike to all continental criminal law systems), a crime has its own defined structure. Substantive criminal law requires (most commonly) five elements (prerequisites) which need to be full filled in order to talk about an offence. These are: deed i.e., an act (comprehended as the behavior which can be either action or omission), illegality (is the behavior is contrary to the law), punishable (it means that it is under penalty), reprehensible (it is requirement for the degree of social harm which has to be higher than insignificant) and finally fault (a person's guilt). The guilt is the last one of the elements that makes up the structure of the offense. Other words - there is no crime without guilt (*lat. nullum crimen sine lege*).

Article 31 § 1 PCC 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". It means that there is no guilt because the result of insanity is lack of guilt (insanity causes exclusion of the guilt).

Moreover, according to § 2 of this article: "If at the time of the commission of an offence the ability to recognise 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 provision refers neither to so called diminished sanity which essentially covers the intermediate cases including neither insanity nor - as its opposite - full sanity. In light of the Polish criminal law the opinion issued by forensic psychiatrists on diminished sanity of the offender does not lead to exclusion of his/her guilt.

Besides the two above cited paragraphs Article 31 of the Polish Penal Code includes one more regulation which has a specific character. It's included in paragraph 3: "§ 3. The provisions of § 1 and 2 shall not be applied when the perpetrator has brought himself to a state of insobriety or intoxication causing the exclusion or reduction of accountability which he has or could have foreseen".

This regulation covers cases when a perpetrator had brought into a state of insobriety or intoxication before committing the forbidden act. For this reason we used to say that he or she causes by himself or herself those states and - as a consequence - he or she should be treated as guilty of his or her own actual insanity or diminished sanity.

There is also a need to clarify issues related to the 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 the basis of the behaviour 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, dependence from intoxicating substances etc.,). These 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 a diagnosis on the offender's sanity, diminished sanity or insanity. What is necessary to stipulate here is 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 the offender's insanity may arise both at the stage of the proceedings conducted by law enforcement (what is the most common case) as well as during the course of proceedings before the courts.

When the officer has reasonable grounds to doubt that the perpetrator was of sound mind at the time of committing the prohibited act he / she shall appoint two forensic psychiatrists as well as - most often also - a psychologist (which is not mandatory under Polish criminal procedure) in order to examine the mental state of the accused and in order to give an assessment regarding the 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 all conditions have been fulfilled as set out in Article 31 § 1 PPC the court shall decide on the 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 a psychiatric diagnosis. The recognition that the offender during a prohibited act was in sane causes that he/she cannot be found guilty (the insanity in Polish criminal law is a factor disabling the guilt). As a result this personal so cannot be punished. Does it mean that he or she does not be a criminal responsibility? in principle yes. The only response to his or her criminal behaviour 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 in sane 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 in sanity is not taken into account only as an institution tied with his or her defence (although the defender may always try to contest the sanity of his client during the proceedings as far as the conditions of Article 31 § 1 or 2 PPC have been fulfilled and if it would be beneficial for him/ her).

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

There are no indications under Polish criminal law which allow the definition of what is meant by a “significant degree”. So it is assumed most commonly that this means simply an important also: essential but certainly not small. Other words - the degree of reduction of these abilities is closer to insanity than to full sanity. When will the degree of sanity restriction be able to be recognized as such? The answer to this question should be provided by 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 catalogue 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 and cause) of reducing the ability to recognize the importance of the actor to direct the proceedings by the offender can be any type of mental dysfunctions. It might be mental illness and mental retardation as well as any other disturbance of mental action (e.g., certain disorders of sexual preference some of the post-traumatic personality disorder sometimes neurosis or drug dependence state - more about the last one below). Last but not least in light of the Polish criminal law system the opinion issued by forensic psychiatrists on the diminished sanity of the offender does not lead to the exclusion of his/her guilt (guilt is one of the elements that make up the so-called structure of the offense; in other words - there is no crime without guilt (*lat. nullum crimen sine lege*). Thus the perpetrator - basically is responsible as the person who committed the crime being of sound mind. However, the court has the possibility in this case to apply extraordinary mitigation of punishment. This adjustment is dictated by the reduced degree of the guilt which shows the perpetrator who at the time of committing the crime had significantly reduced the ability to recognize the significance of the act or to direct of his/her behaviour. So altogether he/she are still guilty and therefore are responsible for his/her act as any other (sane) offender.

Other disturbances of Mental Function

First of all at this point I would point out that the Polish Criminal Code of 1997 based on the so - called psychiatric method (also known as the biological method) as regards determining sources (origins) of insanity following the example of their predecessors (Polish Criminal Codes of 1969 and 1932) assumes that “other disturbances of mental function” may be one of the sources of insanity beside mental illness and mental retardation. In accordance with the principles of systematic interpretation mentioned psychiatric reasons may be also a genesis of sanity significantly reduced (diminished responsibility diminished sanity) as referred to in Article 31 § 2 PCC. Defining the first two states referred to in Article 31 § 1 PCC, that is mental illness and mental retardation essentially raises no difficulties. The qualifying action of the perpetrator as committed in one of these states requires only references to medical knowledge which is fulfilled by the condition of giving a psychiatric opinion by experts (forensic psychiatrist). In so far as the issue is concerned of the findings as to what kind of nosological units (i.e., disease units) of the Statistical Manual (ICD- 11) shall be accepted in light of criminal law rules does not raise any doubt about their meaning (and diseases that can be included). This matter looks quite different in relation to the third category of insanity sources so to the above mentioned “other disturbances of mental function”.

In the legal literature as such are identified: “(...) these kind of disturbances based not on birth defects or disease processes but which derive essentially from short and transient body reactions to certain internal or external stimuli (e.g., alcohol or drug intoxication, strong

affections, menstruation, pregnancy, childbirth, poisons, puberty and menopause hypnosis etc.)” [7]. So it is also noted that the other disturbances of mental function may be both of a pathological nature (e.g., meningitis, post-coma states and pathological intoxication) as well as purely physiological nature (here are: drug and alcohol intoxication - as physiological state, menstruation, pregnancy and childbirth etc.). As it follows both - at least theoretically pathological and non-pathological states can lead to the total abolition ability to recognize the meaning of action and to guide his/her behaviour by the offender [This is the commonly accepted point of view among the representatives of criminal law in Poland - but I do not agree with it indiscriminately as well as some representatives of psychopathology]. What’s more as it is emphasized both these categories of reason should not be equated. This applies in particular to the need to distinguish physiological from “pathological” mental states (like by state of drunkenness and pathological intoxication or intoxication on pathological grounds. Such an approach however raised objections of clinical psychiatry representatives for years. According to the latter other disturbances of mental function are: “(...) mainly acute mental disorders short-lived (brief) occurring suddenly by a man who is not actually affected by any mental illness or mental retardation, or other chronic mental disorders” [8]. There had been postulated some time [strictly on the stage of work on the previous Penal Code 1969] to complement the birthmarks of other mental functions disturbances by adding to them the phrase -disease (disturbances).

Although this postulate in fact represented the voice of psychiatry in this matter it had not met the suitable acceptance of the Polish legislature. Why? It was not clearly explained. I can only assume that the reason for this was already rooted in the tradition of criminal law conviction that “the other disturbances of mental functions” shall be understood as widely as possible so involving also non-pathological causes.

This point of view puts into question the widely proclaimed especially by lawyers concept of correctness taking into consideration under “other disturbances of mental functions” referred to in Article 31 §1 PCC (insanity) also physiological disturbances i.e., those that do not exceed beyond the accepted norm.

I would like - at this point - to emphasize clearly that the norm as the standard means only those types of interference mental activities which are recognized as physiological states remaining beyond the area of interest and competence of psychiatry. Generally speaking these disturbances cover all situations in which human personality is no longer able to fulfill its regulatory and integrative functions in a proper and appropriate manner. They may manifest themselves for example by satisfying psychological and biological needs in a manner in consistent with generally accepted norms and social or legal standards the tendency to resolve motional conflicts through aggressive behaviors directed against other people self-image deformation or value system disturbances as well as the lack of tolerance and resistance to various difficult and stress situations.

What’s more it is worth adding here our legislator did not consider as correct also, in the alternative to use in this regard the model of determining of insanity adopted for example by the German Penal legislator [although PCC is based largely on the Germanic doctrine of criminal law]. According to Section 20 of the German Criminal Code (Insanity): “Any person who at the time of the commission of the offence is incapable of appreciating the unlawfulness of their actions or of acting in accordance with any such appreciation due to a

pathological mental disorder a profound consciousness disorder, debility or any other serious mental abnormality shall be deemed to act without guilt” [9-11]. On the other hand the next Section i.e., Section 21 of the German Criminal Code (Diminished responsibility) emphasizes that such a state occurs: “If the capacity of the offender to appreciate the unlawfulness of his actions or to act in accordance with any such appreciation is substantially diminished at the time of the commission of the offence due to one of the reasons indicated in section 20”. The sentence may be mitigated pursuant to section 49(1).

Such a provision as it can be assumed allows on one hand one to understand disturbances of mental function in a narrow sense on the other however it commands in the same way to perceive the reason of diminished responsibility.

Similarly the question of the causes of insanity was regulated in the Austrian Penal Code of 1974. According to Section 20 of the Austrian Criminal Code (Österreichisches Strafgesetzbuch - StGB): “Whoever upon commission of the act is incapable of appreciating the wrongfulness of the act or acting in accordance with such appreciation due to a pathological emotional disorder profound consciousness disorder mental defect or any other serious emotional abnormality acts without guilt” [12].

On the other hand the French Penal Code (Pénal Code) in accordance with article 122-1 states that a person is not criminally liable when he or she at time of committing the act was suffering from a psychological or neuropsychological disorder which destroyed his discernment or his ability to control his actions [13].

Whereas the Spanish Penal Code (Penal Code) of 1995 in Article 20 Section 1 excludes criminal liability of the person who at the time of committing a crime due to any mental anomaly or alteration cannot comprehend the unlawful nature of the act or to act in line with that comprehension [14]. However with further proviso that a transitory mental disorder shall not cause exoneration from the punishment when provoked by the subject in order to commit the offence, or when he would or should have foreseen that it would be committed.

By contrast the Swiss Penal Code (*Schweizerisches Strafgesetzbuch - sStGB*) of 1937 seems to ignore even the genesis of insanity. Article 19 Section 1 of the Code provides that if the person concerned was unable at the time of the act to appreciate that his or her act was wrong or to act in accordance with this appreciation of the act he or she is not liable to prosecution [15].

In contrast returning to the Polish penal provisions before it comes to propose something in this regard it is worth signaling one more things. Namely contrary to the prevailing notion as presented currently in the criminal-law literature which allows for the possible inclusion in the “other disturbances of mental activity” also disorders of non-pathological aetiology the Polish legislator seems to support in this respect the voice of psychiatry not lawyers. The most notable example of this could be the provisions of the Act of 19 August 1994 on Mental Health Protection (here in after: MHP Act).

In Article 3pts.1 of the Act has been clearly indicated that the (broadly defined) mental disorders include (in addition to mental illness and mental retardation) also “other disturbances of mental function” but only those that: “according to the state of medical knowledge are classified as mental disorders”. Additional pre requisite set by the MHP Act in relation to this category of mental disorders is that a person affected by such disturbances requires health care benefits or other forms of assistance and care which is necessary for that person to live in a family environment or society.

This allows for the conclusion that adopting such approach primarily non-psychotic disorders would fall into this category of mental disorders (of course excluding mental retardation).

Among these types of disorders are most frequently mentioned among others neurotic disorders most of the organic units and personality disorders. The latter however with the proviso that there remains still not indisputable the rightness of taking into account of certain types of personality disorders in general as the mental disorders because many of them are in fact considered as a variant of the norm [Of course assuming the contractual nature of this wording instead of the psychiatric norm which does not exist]. This also applies to parts of deviations of sex drive. This difficulty in the delimitation of conventionally so-called pathologies from the standard applies also to certain deviations of sex drive. Analysis of research on the types and characteristics of the offenses committed by persons demonstrating disorders of sexual preferences conducted by experts from different fields of science ranging from psychiatrists, psychologists through sociologists, criminologists to the lawyers provides information which also seems to justify the need for a prudent approach supported by extensive knowledge and experience in the diagnosis of this type of disturbance as the potential cause of insanity [which is obviously not excluded].

In light of the cited Polish Act on the Protection of Mental Health the condition for recognition any kind of disruption as this “other disturbance” (occurring by the perpetrator) which allows for the adoption of insanity at least in theory is however confirmation that the disturbance of mental function can be classified as a mental disorder what’s more the person affected by it requires some form of care or health services.

Doubts in this regard are justified also by the research results carried out by me on the files of 179 law suits from the years 2004 - 2012 (completed court proceedings) where the insanity or diminished responsibility of the perpetrator of the crime was adjudicated.

The research sample has been selected on the basis of previous sociological studies taking into account current geopolitical of my country (that is: amount of total number of cases population density and local cultural differences).

Research are based on a quantitative method so they refer to the paradigm of positive sociology. The present data on the causes of insanity classified as “other disturbances of mental function”. The primary goal of the study was to determine (based on the results of research) that is not right too broad recognition the causes of insanity and subsequently also to make some proposals on changing the way the current perception the sources of insanity.

The analysis of existing data was carried out on basis of case studies as well as documentation incorporated to the files examined lawsuits.

Moving on to discuss the results of research with regard to the causes of insanity in fifty-five cases out of one hundred seventy-nine cases which have been analyzed by me experts gave their opinions on the abolition of the ability to recognize the importance of the actor to direct behavior by the accused. Of this group while in thirty-five cases (63.6%) constituted grounds for such conclusions were cases of paranoid schizophrenia (F20.0). Delusional contents spoken by patients frequently took the form of persecutory or size delusions. In light of research carried out by me the perpetrator’s insanity was predicated upon diagnosis of (among others): Schizo affective disorder and Alcohol Dependence Syndrome Paranoia a typical Alcohol Intoxication

connected to the Ds (Delirium tremens) Hallucination- Delusional symptoms, Bipolar Affective, Post-traumatic Epilepsy etc. The comprehensive list of diagnosed causes of insanity is shown in table 1 [Diagnosed reason of insanity perpetrators of the offenses]. These studies have demonstrated beyond any doubt that the other disturbances of mental function does not constitute circumstance leading to the abolition of the ability to recognize the importance of the behavior or to control one's conduct.

Diagnosed disorders	Number of diagnosed cases
Paranoid schizophrenia	35
Affective on functional and structural grounds // organic affective disorders	1
Recurrent depressive disorders and depressive-delusional	1
A typical alcohol in toxication connected to the Ds (Deliriumtremens) Paranoia	1
Psychotic disorders of delusional-anxiety type	1
Bipolar affective disorders	1
Post-traumatic epilepsy	1
Organic delusional disorders and progressive cognitive dysfunction on background of advanced atherosclerotic cerebrovascular about the course of chronic diseases (residual)	1
Psychotic symptoms in form of persecutory delusions	1
An ongoing psychotic process of schizotypal disorder	1
Hallucination- delusional symptoms	1
Fixed delusional disorder combined with organic personality disorders	1
Residual schizophrenia and psycho organic syndromes of character optic-dementia	1
Simple schizophrenia	2
Schizoaffective disorder and alcohol dependence syndrome	1
Polymorphic psychotic disorders without symptoms of schizophrenia	1
Damage to the central nervous system and psychotic disorganization of personality	1
Hallucination- delusional organic disorder and dementia in the course of long-term alcohol abuse	1
Delusional syndrome with concomitant alcohol abuse and reduction of cognitive functioning to a mild intellectual disability (moron)	1

Table 1: Causes of insanity - Research results.

Conclusion

The presented results of research convinced meteor-formulate the idea of the sources (genesis) in the context of "other disturbances of mental functions" which should justify the finding of insanity. For me as a lawyer is another major reason for this. That reason is the impunity of the insane perpetrator. Imprecision concerning these sources (extremely evaluative marks) in conjunction with the above require a narrow approach to this wording based on Article 31 § 1 PCC. It should be accepted as "other disturbances of mental functions" certain categories of mental disturbances which became the rule in practice in forensic-psychiatric case law. This thesis is confirmed both by the results of my research presented above and the results of clinical case studies conducted by the medical community. These results justify the

conviction that the causes of insanity are the most common of insanity is the most common schizophrenia or delusional disorders, depressive disorders, deep psycho-organic syndromes and so-called exceptional states of consciousness (like pathological affection).

On the other hand the opinions about diminished sanity of the perpetrators were usually given by forensic psychiatrist in cases of:

- Psycho-organic syndromes
- Post traumatic conditions connected often with damage to the central nervous system
- Alcoholism (organic brain syndrome due to alcohol) as well as
- Mild (rather exceptionally moderate) mental retardation

Thus this includes only psychotic states which can be so precisely diagnosed and cases allowing their quite clear documentation. So in this latter respect into consideration should be taken first of all detectable organic abnormalities of the brain.

In contrast to the postulate of the narrow interpretation of the causes of insanity it does not seem that there are compelling reasons for the same interpretation of the reasons of diminished sanity.

Apart from the above it should be added that this issue presents itself quite differently in relation to diminished responsibility. In this regard both lawyers and representatives of psychiatry share unanimously the opinion that there may be a great variety of reasons this state. *Nota bene* it is further more confirmed in conducting by research. Such an approach is supported additionally by editing Article 31§ 2 of the PCC which only indicates the psychological element i.e., significantly restricted ability to recognize the importance of the act or to control one's conduct. I concur with this view.

Another reasonable proposal in this respect would be also the change of the Polish Criminal Code and the introduction to Article 31 § 1 PCC (in discussed part of this provision) of the form of words used by the Act on the Protection of Mental Health or - as an alternative solution - to point at the one simple determination: "(...) and other mental disorders". The advantage of such a solution would be to standardize the understanding and interpretations concerning the "other disturbances of mental function" which currently are not only still an undefined concept but in addition their understanding is different in two legal acts regulating in fact the convergent issues.

The above presented conclusions drawn from research carried out by the author of this paper although based on criminal cases conducted by the Polish courts should create an area for academic discussion in the international forum because of their universal nature.

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