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Post–penitentiary Isolation Measures - Back to the Concept of a Dangerous Offender?

1. Introduction

At the turn of the year 2013/2014 in Poland we could witness a fierce discussion concerning the possibility of the isolation of dangerous perpetrators within the so-called postpenitentiary isolation measures. The debate had grown on the case of Mariusz T. who was sentenced to the death penalty for a series of four rape-related murders on young children. The sentence, however, was not carried out. In result of the resolution of the amnesty act of December 7, 1989 the penalty was changed to 25 years imprisonment. The act did not provide life imprisonment. The consequences of this controversial criminal-political decision resurfaced at the end of the year 2013, when the problem of releasing perpetrators the amnesty concerned started to became a reality. Among these persons was Mariusz T. who, while being still imprisoned, did not exclude the possibility of committing further crimes.

By the time the problem of the release of dangerous perpetrators had been given more and more mass media coverage, the Sejm worked on a legal act to isolate dangerous individuals who did not display mental illness that would justify compulsory treatment at mental institutions. The result of this work was realized in „*the Act on proceedings against mentally disturbed persons who pose a threat to life, health or sexual liberty of others*[1], called „the Act of Beasts" by the media. Under the terms of this Act, a dangerous person could be isolated judged on his or her personal characteristics, and not – as it had been so far – on his or her deeds. Thus, Poland joined the countries that, so to say, smuggled elements of offender-based criminal law thorugh the back door.

This paper is aimed at the elaboration of main controversies connected to the problem of racionalization of the solution described above. There arises a question of the way preventive isolation of an indiviudal can be justified and substantiated in a situation where no legeal sentence or mental illness take place. Of equal importance in this context are doubts concerning the possibility of the limitation of legal interest, which is individual freedom – considering the threat related to the person's personality, and not a specific behaviour.

2. The characteristic of postpenitentiary isolation measures on the example of the so-called Act of Beasts

The institution that allows isolation of a dangerous perpetrator introduced by the Act of Beasts is considered a postpenitentiary (or postpenal) isolation measures[2]. This allows isolation of a perpetrator of a prohibited deed who (despite serving a sentence of imprisonment) still poses a threat to the society. The existence of such a threat is not

1 The Act of November 22, 2013 on proceedings against mentally disturbed persons who pose a threat to life, health or sexual liberty of others, Dz.U.2014.24, herein referred to as: *the Act of Beasts*.

2 E.Weigend, J. Długosz, *Stosowanie środka zabezpieczającego określonego w art. 95a § 1a k.k. w świetle standardów europejskich. Rozważania na tle wyroku ETPC z 17 grudnia 2009 r. w sprawie M. v* Niemcy, CzPKiNP 2010, z. 4, p. 56-60. Non-isolating postpenal means, such as supervision, are beyond the scope of the considerations included in this paper.

determined on the basis of the manner and significance of a commited crime, but on the display of widely considered mental disturbances, lack of social adaptation, etc., that prevent or hinder his or her internalization of social norms[3].

In the process of historic development, the attitude towards dangerous perpetrators has been subject to important changes. During the period marked by the domination of the classical paradigm[4], the problem was marginalized. What is typical is a rather strict determination of crimes committed by responsible persons (those served a sentence judged by the significance of their guilt) and irresponsible. The latter, as perpetrators who failed to recognize the significance of their deeds due to mental illness did not answer to criminal liability. In such cases, the assumption of responsible behaviour of an individual was rejected.

The solution, a variant of which is the Act of Beasts, would be rehabilitated every time positivist (biological, psychological, or sociological[5]) criminological ideas that differentiated the between the cases of responsible perpetrators triumphed in penal sciences. Initially, the categories of incidental and occupational perpetrators, born and habitual criminals, or notorious recidivists were distinguished. As psychiatry developed, a group of criminals who could not be categorized as mentally ill, but who displayed some other mental dysfunctions came to notice. What was observed was the fact that personal or sexual disorders significantly determined behaviour of the perpetrators of the part of criminal acts, which could not exclude responsibility, as it is in case of the mentally ill. Simultaneously, it was indicated that the functioning of such individuals within society can pose serious threats to life and health of others – until the specified disorders are cured, until the isolation of dangerous persons is necessary. From a deterministic perspective – and what follows – recognizing person's inherent evil, or the evil in his or her environment as the origin of a crime, it was concluded that the sole act of punishment without elimination of the rooted cause is not an adequate solution to the problem of reaction against crime. To sentence imprisonment without the possibility of further isolation in face of futility of rehabilitation process appeared from this perspective not so much unacceptable, but more nonsensical. The role of the state was the elimination of the cause – isolation or treatment of the perpetrator.

The consequence of the adaptation of the philospohy of punishment described above was introduction to the additional isolating means of protection used against a specified category of wrongdoers who can be collectively named „incorrigible criminals" or „born criminals"[6]. The isolation measures described in this paper used extensively in Europe of the interwar period were not of a caring type – the process of rehabilitation proceeded on the similare basis as in the case of a regular imprisonment. By default, they were not followed by therapy[7].

Such drafted assumptions formed the foundation of the works on the above mentioned Act of Beasts. Article 1 of the regulation by implementing a term „person that poses a threat" introduces a close catalogue of criteria that allows to determine that we deal with a dangerous individual, who requires isolation or inspection. Such a person must prove altogether the following grounds:

a) serving the imprisonment sentence in a therapeutic system
b) being characterized by personality or sexual preference disorders, or mental illness
c) the character or intensity of these disorders must be high enough to the extent that there comes around a high possibility of the committment of a serious crime (violent, against sexual liberty, etc.).

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3 M. Królikowski, A. Sakowicz, *Granice legalności postpenalnej detencji sprawców niebezpiecznych*, Forum Prawnicze 2013, nr 5, pp. 17 – 18.

4 *The Oxford Handbook of Crimininology*, (eds. M. Maguire, R. Morgan, R. Reiner), Oxford University Press 2012, p. 53; W. J. Einstadter, S. Henry, *Criminological Theory. An Analysis of Its Underlying Assumtions,* United States 2006, pp. 47-73.

5 W. J. Einstadter, S. Henry, *Criminological Theory. An Analysis of Its Underlying Assumtions,* United States 2006, pp. 76, 104, 127, 151, 182, 207.

6 E. Ferri, *Szkoła pozytywna prawa karnego*, Warsaw 1885, p. 34.

7 This solution provided the 8th Article of Polish Penal Code of 1932 (Rozporządzenie Prezydenta Rzeczypospolitej z dnia 11 lipca 1932 r. Kodeks karny, Dz.U.1932.60.571).

The act of imprisonment alone is merely a preliminary condition, while the Act applies both to perpetrators who at the moment of crime commitment displayed the above mentioned disorders, and to the persons who manifested them later. The execution of the imprisonment sentence should be considered as the main criterion behind the division of a wide group of people suffering disorders into two subcategories. The first would include these people who, even thoug characterized by mental disorders, did not commit the acts deserving sentencing the imprisonment. The Act of Beasts does not apply to them. The occurrence of disorders among them is often undetected. The second would include convicts who were diagnosed with such disorders, commonly during examination conducted as a part of the rehabilitation process. The commitment of a crime as well as **the sentence are here factors that throw the assumption that a person displaying personality disorders is capable of functioning in a society normally**.

The second subcategory that concerns mental disorders raises far more doubts. As far as such formulated criterion may seem acceptable from the point of view of criminal policy, it faces strong opposition from psychiatrists and psychologists. They pay attention to the ambigutiy of the term „mental disorders", the lack of sufficient specialist knowledge in this area. They notice that there occurrs a possibility of using this term as a buzzword that allows isolation of virtually every convict whose behaviour over the period of his or her serving the sentence would cause concern among correction unit personnel.

According to the justification of the Act's[8] project, the disorders metioned in Art. 1 were classified in subgroups F60-F62 and F-65 of the International Classiffication of Diseases ICD-10 (Personality Disorders)[9]. It should be underlined that these were not recognized as mental diseases. Also, they cannot be connected with the notion of insanity. Modern psychiatry refers to the discussed category with utmost carefulness. Successful and commonly accepted methods of treatment are not known[10], and science gives birth to new theories that are about to recognize some types of disorders (psychopathies) as alternative modes of evolution[11]. Literature points out that what is taken today is nothing more than just efforts to establish boundaries between a healthy and disordered personality – situations happening at the bordeline raise great doubts[12].

Interestingly, the opinion made by an expert in psychiatry by order of Bureau of Research, we can read that:

> *„Both the Polish Psychiatry Association and the national psychiatry Consultant claim that because the basic and real goal of finding a solution to this problem (dangerous perpetrators – DZ) is social isolation of these persons, medical arguments and means should not be resorted to (...) The fact that, conversely to the opinions in the fields of psychiatry and psychology, the project emphasizes treatment and mental disorders over isolation as a safety measure can might be marked by pretentiousness and a veneer of therapy[13]".*

From a psychiatrical perspective, which appears to be of competence in reference to the issues here discussed, the search for a medical justification for isolation of dangerous perpetrators is a kind of an „axiological fig leaf"[14]. Only

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8 http://orka.sejm.gov.pl/Druki7ka.nsf/0/8FAC382EE3488066C1257BAC004796F3/%24File/1577.pdf

9 http://www.who.int/classifications/icd/ICD10Volume2_en_2010.pdf?ua=1

10 K. Pospiszyl, *Psychopatia*, Warszawa 2000, s. 75-79.

11 F. de Waal, *Primates and Philosophers: How Morality Evolved: How Morality Evolved*, Princeton University Press 2009, ss. 6–21.

12 P. Tyrer, *Personality Structure as an Organizing Construct,* Journal of Personality Disorders 2010, Vol. 24, pp. 14-24.; A. Jablensky, *The Classification of Personality Disorders: Critical Review and Need for Rethinking,* Psychopathology 2002, Vol. 35, pp. 112-116.

13 Expert opinion on the act – on proceedings against mentally disturbed persons who pose a threat to life, health or sexual liberty of others (Printed matter No 1577).

14 J. Gierowski, *Apel w związku z wejściem w życie Ustawy z dnia 23 października 2013 roku o postępowaniu wobec osób z zaburzeniami psychicznymi stwarzającymi zagrożenie życia, zdrowia lub wolności seksualnej innych osób oraz wynikającymi z niej dla opieki psychiatrycznej implikacjami organizacyjnymi, diagnostycznymi,*

as a side note it is worth noticing that the persons against whom the Act of Beasts is used left behind years of compulsory and fruitless therapy performed during their service. The lack of results can be yet another argument against the belief in the possibility of a successful therapy.

The third subgroup – the high probability of commitment of a serious crime by the perpetrator in relation to the occurrence of personality disorders should – in reference to the above mentioned arguments – raise even more doubts. The identification of mental disorders alone offers difficulties and is erroneous. To draw conclusions about the possibility of future crime be an examined person on the basis of such a diagnosis seems to be the reading of tea leaves.

The completion of three grounds described above (imprisonment, personality disorder, possibility of commiting another crime) is a basis for recognition of a certain person as a „dangerous person"[15]. The final decision on this matter is made by the Court, which, after learning the psycholegal opinions, decrees on the need of preventive isolation or supervision[16]. From the perspective of the problems touched in this paper, further elaboration on the latter institution appears to be justifiable.

The Act of Beasts provides for a specific measure of protection through „institutionalization in the Center for Dissocial Behaviour Prevention". The Act regulates both the terms of stay and the method of a dangerous person's supervision. Such an institutionalization is indefinite – release is possible only after a conclusion that the grounds that stood behind it have ceased to exist, which deiced by the Court based on psycholegal opinion[17].

The Center takes safety measures which should be assessed as more aggressive than those used in closed mental institutions against insane criminals[18]. Individuals institutionalized in the Center are given less freedom of communication with the outside world, they cannot possess potentially hazardous items, and in some cases (e.g. assaultable and suicidal attempts, damage to things, attempts of unauthorized departure from the Center) coercive means can be used against them (e.g. physical restraint, forced medication, using straitjacket). The rooms of perpetrators' residence are constantly monitored[19].. Unauthorized departure from the Center or leaving a room into a corridor is forbidden.

It is beyond any doubt that in the first situation we deal with an actual imprisonment. **Compulsory isolation is not a reaction to evil made by the perpetrator.** As it has been stated earlier – the fact of imprisonment is merely a initial condition that refutes the assumptions that an individual suffering personality disorders can function in a society without any hindrance. Article 25 of the Act of Beasts reads:

> *„A dangerous person instituinoalized in the Center is subject to a proper therapeutical treatment the aim of which is the improvement of his or her health and behaviour to the extent that enables functioning in the society in a way that does not pose threats to life, health or sexual liberty of others. The Head of the Center prepares an individual plan of therapy for each institutionalized dangerous person".*

Thus - contrary to the words by psychiatrists referred to earlier – Polish lawmaker pre-empted the fact that compulsory isolation of dangerous perpetrators will aim in the first place at therapy of sex drive and personality desrcibed in the normative act[20].

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terapeutycznymi i opiniodawczymi, Psychiatria Polska 2013, Vol. 47, No 6; Z. Semprich, *Gorący kartofel rzucony psychiatrom*, Medical Tribune 2013, No 8, p. II.

15 Article 1 of Act of Beasts *in fine.*

16 Article 3 and 14 of Act of Beasts.

17 Chapter 7 of Act of Beasts.

18 Chapter 6 of Act of Beasts. B. Kmieciak, *Prawnopsychiatryczny kontekst wprowadzenia przepisów zezwalających na detencję niepsychotycznych sprawców,* Forum Prawnicze 2013, No 6, p. 38.

19 Article 7 of Act of Beasts.

20 Justification of the draft of *Act of beast*, p. 1 (p. 26 of pdf document). Source:

Therefore, a situation occurs in which perpetrators recognized as dangerous are imprisoned once again, which now is justified ostensibly by the need of further therapy. Moreover, the release from the Center depends on the decision of the Court based on psycholegal opinion. The expert is forced to evaluate the progress of therapy which was supposed to eliminate the grounds on which a perpetrator is institutionalized. However, taking into consideration the above mentioned expert psychiatric opinion it should be stated that both the diagnosis of the disorders themselves, specification of a proper therapy, and determination of its effects is significantly inhibited, if not impossible. For the time being, we do not possess a sufficient knowledge to develop a scientifically-based judgment in this area. One should suppose that in such a case the expert will be inclined to „maintain" the earlier opinion on the psychological condition of a dangerous person, rahter than risk a change. It is obvious that in the event of a commitment of new crime by a dangerous person after he or she has been released, the expert will be accused of making a diagnostic error.

In conclusion: a convict who served the sentence of imprisonment is recognized as a dangerous person and is kept isolated on ambiguous grounds. Simultaneously, on the basis of the same criteria it is virtually impossible to claim an improvement of mental health that would grant a release from the Center. Thus, the situation resembles the one that the protagonist of Joseph Heller's Catch 22 found himself in.

Of importance is the fact that homogenous solutions have well functioned in Europe for decades. German[21] and Austrian[22] legal systems can serve here as examples. The European Court of Human Rights[23] has also spoken about the subject of postpenal isolation measur, to whose Art. 5 p. 1e is binding:

> *"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants".*

Following the resolutions of the Convention, isolation of a person of unsound mind is permissible. The terms has been explained the most thoroughly in a substantiation of Winterwerp v Netherlands case:

> *"The Convention does not state what is to be understood by the words "persons of unsound mind". This term is not one that can be given a definitive interpretation: as was pointed out by the Commission, the Government and the applicant, it is a term whose meaning is continually evolving as research in psychiatry progresses, an increasing flexibility in treatment is developing and society's attitude to mental illness changes, in particular so that a greater understanding of the problems of mental patients is becoming more wide-spread"*[24].

Similar perspective was taken in Rakevich v Russia case, where it was stated that:

> *"The Court recalls that the term "a person of unsound mind" does not lend itself to precise definition since psychiatry is an evolving field, both medically and in social attitudes. However, it cannot be taken to permit the detention of someone simply because his or her views or behaviour*

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http://orka.sejm.gov.pl/Druki7ka.nsf/0/8FAC382EE3488066C1257BAC004796F3/%24File/1577.pdf.

21 Strafgesetzbuch (German Penal Code, translated as *preventive detention*), 13.11.1998 (BGBl. I S. 3322), § 66 Unterbringung in der Sicherungsverwahrung.

22 *International Handbook on Psychopathic Disorders and the Law*, (edi. Alan Felthous, Hennig Sass), West Sussex 2007, p. 219.

23 Cf. ECHR sentence to the case of Winterwerp v. Netherlands of October 24, 1979. Series A, Strasbourg 1980, vol. 33, s. 17-18, § 39, ECHR sentence to the case of Johnson v. Great Britain of October 24, 1997 r., Reports 1997-VII, s. 2409, § 60; ECHR sentence to the case of Varbanov v. Bulgaria of October 5, 2000. ECHR 2000-X, § 45; ECHR sentence to the case of Hutchison Reid v. Great Britain of February 20, 2003. ECHR 2003, § 48.

24 Winterwerp v. Netherlands of October 24, 1979. Series A, Strasbourg 1980, vol. 33

deviate from established norms."[25]

The above expressly indicates that the Court did not specify the term „unsound mind" and in addition it indicated the underspecification of the term. This was utilized by countries that signed the ECHR, who – based on an unprecise explication of the term – started to recognize „mental disorders" as a designate of „unsound mind" and failed to consider protests of representatives of mainstream medical sciences[26]. It resulted in a situation where therapy is used not as a cure, but as a pretext for long-lasting isolation of persons claimed to be dangerous. The countries resorted to the fragments of opinions issued by the ECHR that accentuated the openness of the notion. At the same time, they skipped excerpts that told about the possibility of isolation of distrubed persons only in cases that opened door to therapy when it is justifiable and possible from a medical point of view[27].

This specific argumentative schizofrenia seems to have originated from the conflict of two values rooted in European culture: freedom as a right of every individual, and safety as a lack of threat that is guaranteed by a complex and commonly accepted system of social norms[28]. On one hand, we want to prevent violation of these norms on the earliest possible stage, and on the other we cannot agree on isolation of a person based on premises that are not firmly grounded axiologically (punishment for crime) or science (compulsory psychiatric treatment). Only this kind of arguments we see as strong enough to deprive a person of freedom. Since in this case the decision is left to lawyers, who find straining the rules of medicine they do not know easier than the system of values that lays at the foundation of law, the justification behind isolation of dangerous persons was searched in the alleged necessity of treatment.

3. Back to the concept of a dangerous offender

Despite the above mentioned discrepancies that overlap with the actions of lawmakers and psychiatry experts, it is beyond doubt that the isuue of the so-called dangerous perpetrators is an important social problem the solution to which lays within the competence of penal sciences.

To date, both the legislative practice and ECHR decisions have proved that isolating dangerous persons does not face objection if they. are well-grounded. It seems then that the question of the possibility of the use of postpenal isolation measures has been answered positively. It, however, has not been decided to present a substantiation that would be coherent both from axilogical and scientifical (mediacl and psychological) point of view.

In the first place, what should be mentioned is four facts already discussed, which will be the starting point for further considerations. Firstly, in every society there are individuals who for some reasons should be considered dangerous (posing greater threat than regular citizens) in regard of their problems with internalization of social norms. Secondly, some of these persons can diagnosed with personality disorders that inhibit such an internalization. Thirdly, even if a proper diagnosis of a type of disorder has been made, then on the basis of present state of medical knowledge it will not be possible the conduction of a successful compulsory treatment. We stay face to face with an alternative: whether to isolate dangerous individuals for prevention, or let them function in the society freely. The answer to such formulated question will depend on the outcome of the conflict between the personal benefit of the individual and the benefit of the society. The problem is that one of the foundations of European culture is the primacy of individual right over communal right and each and every limitation of individualism must be justified. Freedom of a person is placed

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25 Rakevich v. Russia 58973/00 (2004) ECHR

26 K. L.Peng, M.Cheang, C. K. Tsee, *Mental disorders and the law*, Singapore 1994, p. 68.

27 Uzasadnienie projektu ustawy, p. 28 (p. 53 of pdf document). Source: http://orka.sejm.gov.pl/Druki7ka.nsf/0/8FAC382EE3488066C1257BAC004796F3/%24File/1577.pdf.

28 J. Czapska, *Bezpieczeństwo obywateli. Studium z zakresu polityki prawa*, Kraków 2004, pp. 56-59.

against the safety of all. I am of opinion that in case of dangerous persons **the conflict should be resolved to the benefit of social values with respect to – what should be strongly emphasized – the principle of proportionality. The rights of an individual can be limited only to the extent that is necessary for the protection of the most elemental legal interests (life, health – but not property, dignity, good name, etc.).**

Society has the right to protect themselves from violations of the law. The more serious they become, the more radical the precautions. If a threat of a violation refers to, or downright has its source in personality of a former convict, society should be granted the right to isolate the perpetrator. The need for protection of society from „a dangerous person" seems to be a socially accepted rationalization of the use of protective means, that is to say preventive and non-medical isolation. Simultaneously, this constitutes a new rationalization of deprivation of liberty, separate from penalty and the medical need. This relates neither to condemnation or retribution for the done evil, nor medical treatment (which, condireding the present state of knowledge, is impossible). Isolation of a perpetrator does not correspond here to psychiatric therapy, but rehabilitation which is non-medical.

Therefore, a thesis should be fromulated which states that the solutions taken in the Act of Beasts should be accepted as desirable. Isolation of dangerous perpetrators is necessary. What raises doubts, however, is the medical rationalization of the deprivation of freedom, which should be rejected to the advantage of prevetive (protective) rationalization.

There only remains the problem of determination the criteria that allow classification of particular persons as dangerous perpetrators. Here – paradoxically – what seems to be necessary is the use of psychological and psychiatric knowledge. The same tools that prohibit a proper diagnosis allow in some cases to incontestably determine that mental state of a particular individual in abnormal. This, in connection to the data obtained over the term of serving the sentence, conversations with the perpetrator, etc. enables to determine whether in a particular case we deal with a dangerous person. Obviously, the final decision on this matter is at Court's responsibility and in case of any doubts an equivalent of the rule *in dubio pro reo* should be implemented. An additional disincentive for potential abuse shall here be the constitutions of particular countries. The decision made should be – in public eye – approxiamted more to a sentence than a doctor's opinion. I am aware that the criteria indicated above are not sharp, and what follows – leave to the power of the court a great range of discretion. This does not seem to be a significant disadvantage. A similar situation already happens when deciding about guilt or sentence, which does not raise axiological doubts (mainly due to a strong cultural embedment of this solution). Over the course of history, we have come to the conclusion that society is empowered to the institutional condemnation connected with punishment on, in one way or another, intuitive criteria (nuisance, malevolence, etc.). Maybe today our legal system has recognizes the „new", yet known to history, type of raitonalization of deprivation of liberty – based above all on the conception a dangerous perpetrator, which criminology has known since the 19th century. In this sense, the criteria included in the Act of Beasts should be accepted as adequate.

Nevertheless, this does not mean a regress in penal sciences. What should be remembered is the fact that social sciences are characterized by a cyclicality of changes. Old ideas return along the shift in social relations, become clarified and infused with new elements. If in the earlier days vagrancy, drug addiction, or living occupation-like criminal life were a premise on the basis of which preventive isolation was used, now the criteria for the recognition of a dangerous person has been clarified. Decision of isolation, at least to some extent, was based on medical grounds, with its simultaneous limitation to a situation in which personal characteristics of an individual enable to assume that he or she will commit a serious crime again, which will violate vital legal interests. So it is impossible to isolate, for instance, professional thieves or drug dealers, even if there is a suspicion that in consideration of the environment, professional attachment, and profit, they will return to the job.

However, it should be underlined that such a take on the problem makes the country that implements the conception of a dangerous person practically responsible for taking utmost precautions while pronouncing the use of the measures discussed here. Preventive isolation cannot be neither a method of elimination from the society uncomfortable or burdensome individuals (the homeless, vagrants, good thieves), nor a political tool. As far as in the democratic societies of the Western culture the latter threat seems unprobable, the former might become reality. The role of the independent courts should be a rational and adequate use of preventive isolation. Also, what seems to be necessary is the provision to the isolated proper standards of residence: the right to communicate with the outside world (phone and internet access, etc.), access to literature, mass media, etc. Infliction of accessary punishment is inadmissible.

4. Conslusions:

1. Justification of the necessity of isolation of dangerous perpetrators based on medical arguments cannot be accepted as appropriate due to the inadequacy of knowledge of the character and possibilities of therapy of mental diosrders.
2. Simultaneously, it appears that among society there is a need for isolation of perpetrators recognized as dangerous and consent to use non-medical preventive isolation.
3. The mere fact of being a threat to vital legal interests (life or health) should suffice to rationalize isolation – resorting to medical premises in this context forms a type of a facade for the justification of isolation.
4. Medical and psychological criteria, even though indecisive and not providing the answer to the question of the form of therapy, should be taken into account in the decision-making process over isolation, but they cannot be treated as an ultimate and sole determinant behind the decision of the court.