

## Doctoral Dissertation Abstract

**Author: mgr Adrian Tabak [MA]**

**Dissertation Advisor: prof. zw. dr hab. Andrzej Sakowicz [Prof. PhD]**

**Topic of the doctoral dissertation: Non-punitive detention with regard to individual rights and freedoms**

The subject matter of this doctoral dissertation is the institution of non-punitive detention, with particular focus on administrative ('for the purpose of a person's sobering-up'), penitentiary, preventive and stadium disorder detention. The need to take a closer look at the topic of non-punitive detention stems from the fact that in the Polish legal literature this subject has not aroused much interest so far. There have been some articles about various types of non-punitive detention but there are not so many elaborations that give an overall picture of the problem. Therefore, it is necessary to fill, at least to some extent, this gap by creating a comprehensive and reliable study regarding the institution of non-punitive detention, its basic functions and tasks.

It should be stressed out that there are many legislative acts in Polish law governing non-punitive detention for purposes not directly related to the criminal process. Therefore, apart from detention for legal proceeding purposes, which is regulated by the Code of Criminal Procedure, there are some types of detentions distinguished in the legal literature, in most cases referred to as non-punitive detention that is broadly discussed in this doctoral dissertation.

The aim of this paper is to answer the question regarding the place of non-punitive detention in the Polish legal system, as well as what distinguishes it from punitive detention. It has already been stressed out that punitive detention has been the subject of academic interest on a much larger scale than the concept of non-punitive detention. Another factor that should not be ignored is the definition of mutual relations between the legal regulations governing the institution of non-punitive detention with regard to human and citizen's rights and freedoms. The elaboration of this topic is dogmatic. The main research method used in this dissertation is the analysis of the legal text, extended by an analysis of the views of representatives of the doctrine of law, an analysis of the guidelines of the justice system and judicial practice and the jurisprudence of the Constitutional Tribunal, the Supreme Court, as well as common and international courts.

The main research hypothesis, that has been subject to verification, is the view that there is a need for regulation of the institution of non-punitive detention under ordinary legislation. At the same time, it should be recognised that the regulations contained in the provisions of particular acts related to non-punitive detention constitute, as a rule, an adequate, although not always perfect, the legislator's response

to the need for regulation of non-punitive detention in the national legal order, with the simultaneous obligation to guarantee that the detained person's rights and freedoms resulting from constitutional and international standards are respected. Here, it should be pointed that although detention and deprivation of freedom is, in any case, a final measure, used only when other measures have been considered insufficient, the possibility of taking a lawful decision on non-punitive detention should be linked to an obligation to exercise even greater caution and restraint than in the case of punitive detention, as here is the case with the detention of people who are not accused or even suspects, and in many cases, there are no evidence to bring charges against them.

The topic of this dissertation has defined structure. This doctoral dissertation consists of an introduction, six chapters and conclusion.

In the first chapter, the conceptual apparatus regarding detention was organised and developed. The existing definitions of detention were shown, the differences in the definition of the institution in question were pointed out, and the functions of this coercive mean were discussed. In addition, preliminary consideration was given to non-punitive types of detention. What is more, the historical background of the institution of detention under legal acts in force in various time periods within the territory of Poland was also presented.

The second chapter discusses the constitutional standard of protection of the rights of detained persons. Particular attention should be paid to Article 41 of the Constitution which plays a specific role in the protection of personal freedom and integrity. Due to the fact that it is particularly important to the aforementioned topic, the Article 41 has been subject to an in-depth analysis. Here, it should only be noted that Article 41 of the Constitution of the Republic of Poland sets out the legal framework for the deprivation of freedom and contains fundamental guarantees for the protection of personal freedom and integrity. Both punitive and non-punitive detentions constitute a very drastic interference in personal freedom. It should be noted that the construction of the provisions of paragraphs 1-3 of this article has a cascading nature. Paragraph 1 contains a general guarantee with regard to the protection of personal freedom and integrity. Paragraph 2 provides for more far-reaching guarantees, but at the same time limits them to the types of deprivation of freedom on grounds other than a court judgement. In paragraph 3, however, there are more detailed regulations regarding only one form of deprivation of freedom set out in paragraph 2, that is detention. Other provisions introduce an obligation to apply relevant standards of conduct towards detained persons (paragraph 4 - humane treatment) and the right to claim for compensation for unlawful detention (paragraph 5). The second chapter also points out how constitutional values are connected with a person's detention. These are mainly: the right to personal freedom and integrity (Article 41 of the Constitution), the right to legal protection of private and family life, honour and good name, and to decide about one's personal life (Article 47 of the Constitution), the right to freedom

and protection of the secrecy of communication (Article 49 of the Constitution) and freedom of movement (Article 52 of the Constitution). This chapter ends up with considerations with regard to the attempt to find an answer to the question of the extent to which the guarantees contained in the Constitution of the Republic of Poland relate to non-punitive detention.

The third chapter shows the standard of detention as defined by international law. First of all, appropriate guarantees were taken into account in this matter, resulting from the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights), the International Covenant on Civil and Political Rights and the Charter of Fundamental Rights of the European Union. Most attention was paid to the provisions on the standard related to personal freedom and security, that is Article 3 and 13 of the Universal Declaration of Human Rights, Article 5 of the European Convention on Human Rights, Article 11 of the International Covenant on Civil and Political Rights and Article 6 of the Charter of Fundamental Rights of the European Union. The case law of the European Court of Human Rights and of the Committee on Human Rights, as well as of the Court of Justice of the European Union, is essential to the provisions contained in the aforementioned legal instruments of international law. This case law was recalled and discussed in the dissertation. It was also stressed out that the currently applicable Constitution of the Republic of Poland of 1997 made it possible to recognise the international agreements as generally binding sources of law within the territory of the Republic of Poland. In addition, an analysis of the provisions of the Constitution of the Republic of Poland on human rights indicates that, as a result of repetition, international standards in the field of protection of individual rights have acquired constitutional status. This method was used by the constitutional legislator in Chapter II of the Constitution regarding the freedoms, rights and obligations of a human being and a citizen, where international standards are generally reflected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms. Additionally, international agreements on individual rights were recognised.

Chapters four and five are of key importance for the entire dissertation, as they are devoted to the institution of non-punitive detention. Chapter four presents an in-depth analysis of the concept of non-punitive detention, its essence and the functions it performs, and classifies the various types of non-punitive detentions, presenting many views of legal academics in this respect. Additionally, an attempt was made to identify the key differences between punitive and non-punitive detention.

In turn, in chapter five, the different types of non-punitive detentions, their essence, preconditions and functions are described. Reference is also made to the case law of Polish and international tribunals

and courts allowing for a better understanding of the essence and specificity of individual detentions. The considerations contained in this chapter are, to a large extent, devoted to administrative, penitentiary, preventive and stadium disorder detention. A separate subsection is devoted to each of these types of non-punitive detentions. In addition to the above, the other types of non-punitive detentions were briefly introduced, so that the dissertation, in the fullest possible way, deals with the aforementioned topic.

The last, sixth chapter presents the guarantees of a detained person under non-punitive detention. The basic guarantees in this respect are the right to information, the right to be assisted by a lawyer or a legal counsel, an order that the detention authority should respect the detention time frame, the right to lodge a complaint with a court and the possibility to claim for compensation and reparation for unlawful detention. In this case, it is crucial to refer to the regulations contained in the Code of Criminal Procedure, which regulates the institution of punitive detention. It should be remembered that although the Code of Criminal Procedure mainly refers to the institution of punitive detention, however, despite the existence of separate laws regulating particular types of non-punitive detention, the provisions contained in the Code of Criminal Procedure are, as a rule, applied to the extent not regulated in a given law. Therefore, in order to fully elaborate the institution of non-punitive detention, it is necessary to conduct an analysis of the relevant regulations of criminal procedure, including Articles 243-248 of the Code of Criminal Procedure, as well as a group of regulations contained in Articles 552-558 of the Code of Criminal Procedure, the subject of which is the issue related to compensation for wrongful conviction, pre-trial detention or detention. Moreover, the provisions regulating the means of appeal, i.e. a complaint, were also discussed, which plays the role of a guarantee institution allowing for control and verification of the authority's decision on detention (Articles 459-467 of the Code of Criminal Procedure).

This paper ends up with the conclusion, which summarises the considerations contained in the doctoral dissertation, as well as the conclusions drawn from the applicable legal regulations and *de lege ferenda* postulates.

Adrian Tebek