

## THE CONCEPT OF COMPULSORY MEDICAL MEASURES AND ITS LEGAL BASIS

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In spite of the reforms carried out in the judicial system in Uzbekistan in recent years, the procedure for applying coercive medical measures, its clear understanding and the work to ensure the rights and freedoms of the person to whom coercive medical measures are applied are based on the fact that they are left aside. In the course of the reforms carried out by our state "For the dignity of man", the return of mentally retarded persons to the life of society, their treatment and the prevention of crimes and socially dangerous acts by them should not be overlooked, and the procedure for applying this institution should be improved. In order to legally regulate this problem, it is necessary to adapt the legislation in the field of medical coercive measures to international requirements and to include a clear definition of medical coercive measures in the Laws.

According to the current criminal law, a person who commits a socially dangerous act in a state of mental deficiency or has a mental disorder in such a way that he is unable to understand the importance of his actions or control them before the sentence is passed or during the serving of the sentence, if he, according to his mental state and the nature of the act he committed, is a threat to society in case of danger, it is established that coercive medical measures may be ordered by the court. Also, the procedure for applying coercive medical measures along with criminal punishment is indicated.

In the cases provided for in Article 92 of the Criminal Code of the Republic of Uzbekistan, it is stated that persons suffering from mental illness have all the rights and freedoms specified in the Constitution of our country and the Law of the Republic of Uzbekistan "On Psychiatric Assistance" [1], in which coercive medical measures were applied to him. It is established that the persons staying in the psychiatric institutions of the Ministry of Health shall enjoy the rights of the mentally disturbed persons staying in the psychiatric hospital. However, the criminal law does not provide a clear definition of coercive medical measures.

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Professor M.H. Rustambaev on coercive medical measures: coercive medical measures are a coercive measure of the state that provides mental or other medical care to mentally ill people who have committed a socially dangerous act or crime, as well as to those suffering from alcoholism, drug addiction or intoxication by a court decision (full recovery or improvement of mental state and loss of social danger of the patient) [2].

In our opinion, this definition is quite perfect, but it does not clearly indicate that coercive medical measures against persons suffering from alcoholism, drug addiction or drug addiction are used together with criminal punishment.

Russian jurists try to give different doctrinal definitions of coercive medical measures. In their definitions, the authors sought to reveal the meaning and purpose of coercive medical measures.

V.I. Gorobtsov medical coercive measures are those that are appointed by the court to persons who have violated the criminal law prohibition in the case of not realizing the importance of their actions or who have suffered from mental illness after committing a crime, as well as to persons who have committed a crime and need treatment for alcoholism or drug addiction, and the treatment of these persons and is defined as one of the criminal-legal coercive measures provided for in the criminal law, which consists of medical (treatment) effects and social-prevention measures used to improve the mental state" [3].

The point of view that coercive medical measures are applied not only to persons who have committed socially dangerous acts, but to "persons who have violated the criminal law ban" is controversial. If the act committed by a person who cannot understand the importance of his actions is not socially dangerous, it is not a basis for the application of criminal legal measures by itself. Also, for medical coercion to apply, the mentally ill person must be incapable of understanding the significance of their actions or of controlling their actions.

P.A. Kolmakov medical coercive measures are considered a special coercive measure of the state provided for in the criminal law, and those who have committed a socially dangerous act in a state of mental insanity or have a mental illness that does not exclude mental insanity or have an obstacle to the imposition or serving of punishment, as well as alcoholism or drug addiction, are considered a special coercive measure of the state states that the treatment of mentally ill persons and socially dangerous acts is carried out in order to prevent socially dangerous acts committed by them or to protect the person from his own dangerous acts and social rehabilitation [4].

The fact that V.I. Gorobtsov and P.A. Kolmakov gave an overly broad definition of coercive measures in the medical field can be expressed by the efforts of jurists to show all the signs of coercive measures in the medical field. These given definitions should show the difference of the studied institute from other institutes and include the main features that reflect the legal nature of coercive measures in medical field. It is wrong to include their goals in the definition of coercive medical measures, because these goals are specified in the Criminal Code, and therefore do not

need to be specified again. Therefore, we believe that it would be correct to specify the content of these measures in the definition of coercive medical measures.

The concept of coercive medical measures should reflect their legal content and the scope of applicable persons.

L.V. Bagriy-Shakhmatov considers coercive measures in the medical direction to be one of the forms of implementation of criminal responsibility [5]. The scientist justifies that the purpose of coercive measures in the medical field is to prevent new socially dangerous actions against persons who have committed socially dangerous acts in case of mental illness, to correct them. For this reason, he considers coercive medical measures, which are appointed along with the punishment, to be one of the forms of implementation of criminal responsibility.

Coercive measures of medical nature, which are appointed along with the punishment, are appointed by the court, and their execution is ensured by state coercion. However, coercive medical measures, which are prescribed along with the punishment, are not considered criminal punishments, even if they are used together with the punishment. Such coercive measures differ from criminal punishment in terms of their basis and goals, content and legal consequences. They do not represent a formal punishment imposed by the state on a person who has committed a crime, they do not contain elements of punishment, and they do not constitute a conviction. Also, when coercive medical measures are assigned, the defendant is not required to answer for his actions. This measure assigned to the person who committed the crime does not mean that he is punished or condemned for his actions. Criminal punishment is a form of implementation of responsibility, the rights and freedoms of the defendant are limited [6]. Even when coercive medical measures are prescribed, the rights and freedoms of a person are limited to a certain extent [7]. However, these restrictions are related to the treatment and rehabilitation of the mentally ill, unlike the restrictions on criminal punishment.

Coercive medical measures include the examination of mental health of citizens, diagnosis, treatment and medical-psychological rehabilitation of citizens according to the procedures and grounds established by the Criminal Code of the Republic of Uzbekistan and the Law "On Psychiatric Assistance", but not "coercion".

T. N. Zhuravleva, who conducted research on this problem, also believes that coercive measures in the medical direction are not a mandatory measure. In his opinion, he recommends changing the name of the institution of "medical coercive measures" to "a measure of a medical nature applied by a court decision" [8]. This opinion is not justified, because coercive measures in the medical field are coercive measures of the state, and it is appointed only by the court. The special feature of the use of coercive medical measures is their implementation through state coercion. Therefore, this phenomenon should be evaluated from the point of view of its importance for society: firstly, coercive measures are applied to a person who has committed a socially dangerous act and is dangerous to society in order to prevent him from committing a new socially

dangerous act; secondly, the person on whom coercive measures can be applied is dangerous to himself and others due to his mental state. As a result, the safety of the society depends on the dangerousness of the individual and requires the implementation of measures to prevent the commission of crimes by the state. In order to solve this problem, the norms of the criminal law are used in the application of coercive medical measures against persons who have committed socially dangerous acts and are considered dangerous for society. In most cases, persons subject to coercive medical measures do not want treatment or do not realize that they are sick due to their mental state, therefore there is a need to treat them forcibly or to improve their mental state and prevent them from socially dangerous acts that may be committed by them.

According to B.A.Spasennikov, coercive medical measures are imposed, extended, modified and canceled by a court decision (decision), committed socially dangerous acts by persons suffering from mental illness to the extent that they cannot understand the consequences of their actions, as well as punishment after committing a crime. aimed at restoring and strengthening the mental health of persons with a mental illness that excludes the appointment and its execution, or persons convicted of a crime and suffering from a mental illness, as well as prevention of new socially dangerous acts, risk of harm to oneself and other persons, and protection of the rights and legal interests of individuals are coercive measures of the state [9].

The above definition of medical coercive measures is really scientific and includes many aspects of medical coercive measures, but some concepts are over-extended. For example, it would be more accurate if the phrase "rehabilitation and promotion of the mental health of mentally ill persons" is replaced by "treatment of the mentally ill". Legal terms should be scientific, complete, short, clear and understandable.

Below we will consider the concept of coercive measures in the medical field based on a comparative analysis of the norms of the criminal law of foreign countries and the Republic of Uzbekistan.

In the criminal law of most foreign countries, coercive medical measures are generally regarded as "security measures [10]". Unlike punishment, security measures do not have the purpose of intimidation or motivation, but instead serve to eliminate the "dangerous situation" of a person who commits or may commit a socially dangerous act. Security measures include not only medical measures, but also sanctions applied to offenders. In the criminal law of the Republic of Uzbekistan, coercive medical measures are considered a separate institution and differ from other criminal-legal measures according to their purpose.

For example, in France, coercive medical measures are considered security measures. Such measures are applied to persons who are found to be mentally retarded due to mental illness and to persons suffering from "dangerous" alcoholism, drug addiction, and intoxication [11]. They are aimed at preventing criminal acts by socially dangerous subjects. The choice of types of security measures under French criminal law depends on the level of danger to the individual and society.

For example: when a person is diagnosed with a mental illness, his placement in a hospital with a medical report is used not only by the court, but also by administrative authorities (Ministry of Internal Affairs, prefect, etc.) [12].

According to the criminal law of the Republic of Uzbekistan, coercion in the form of medical measures may not be applied by administrative management bodies to persons who have committed a socially dangerous act, are dangerous to themselves or society, and are mentally ill. For this reason, according to the criminal law of the Republic of Uzbekistan, this authority is given only to the court.

In the Swiss criminal law, the institution of coercive medical measures is not in a separate chapter, as it is in the criminal law of our country, but consists of two articles, which are given in the section called "punishment, security measures and other measures". refers to the treatment of individuals. In accordance with Article 43 of the Swiss Civil Code, the court may issue a decision to place a mentally ill person in a mental institution who has committed an offense punishable by imprisonment. Also, the court takes into account the mental state of the person and the conditions under which the doctor observes. The purpose of this measure is to prevent the commission of new socially dangerous acts by such persons or to reduce such risk [13].

The procedure for the implementation of medical measures is determined by the social danger of the mentally ill. If the patient is not a danger to the society, the court can issue a decision to treat him in an outpatient clinic, and if he is a danger to the society, to place him in a special institution. If the goal is not achieved in outpatient treatment, that is, if the patient is dangerous for society, the person is placed in a special institution according to the court's decision. Sentences may be deferred for those with mental disorders undergoing treatment. After the patient recovers, the judge will discuss with the attending physician and decide whether to continue serving the deferred sentence. If the result of the medical measures used in serving the sentence endangers the health of the person, the judge can cancel the serving of the sentence and establish surveillance or apply other security measures. In contrast to the Swiss legislation, in our country persons who committed socially dangerous acts in the state of mental deficiency are exempted from criminal responsibility, and only medical coercive measures are applied to them.

In the US, the use of "security measures" is not related to the degree of social danger of the committed crime, but to the mental state of the person who committed the crime. These measures, by their very nature (specific state law), exclude defective offenders from the community; compulsory treatment of alcoholics; is carried out through social education of drug addicts, that is, the US criminal law does not provide a generally accepted understanding of these measures. Therefore, the system of applying security measures is specified in the JKs of the states, but there are no separate criminal-legal norms regulating this institution. In the 1970s, "security measures" such as the preventive segregation of "defective offenders" became widespread in the United States, for example, according to the legislation of the state of Maryland, such persons, who are prone to commit acts prohibited by criminal law and who are mentally or emotionally unstable,

may pose a danger to society includes persons who are and therefore should be excluded from society [14]. Isolation of defective offenders from society is carried out regardless of whether the person committed the offense in a state of mental insanity or partial insanity, or the person may be subject to criminal punishment along with medical coercive measures. These persons are kept in special treatment facilities specified in the criminal law until they are fully treated or until they no longer pose a danger to society. Medical coercion measures are also used in the US for sex offenders. In the law, these persons are considered as "sex offender-psychopaths" or "sexually dangerous". A person with a sexual desire disorder is defined as a mentally disturbed person who is prone to commit sexual crimes. In the US, treatment for such individuals is done through medication, psychotherapy, hypnosis, and other methods. In the US legal practice, people with a mental disorder, prone to sexual violence (sexual psychopaths) are often isolated from society as a preventive measure [15] (prevention - (lat. praventio) - prevention). At the same time, the US law provides for a safety measure such as castration (cutting) of sexual psychopaths. This method is considered to be the most useful in preventing the recurrence of this type of crime. According to the United States "Social Education of Drug Addictions" Act (passed on October 8, 1966) with the use of violence against drug addicts and drug addicts, for first-time offenders, the court offers them the choice of community isolation and mandatory treatment or criminal liability. If the criminal agrees to compulsory treatment, he will be placed in a closed type of treatment facility and the criminal case will be suspended, but the period of compulsory treatment should not exceed 3 years.

According to US criminal law, chemical castration is used as a safety measure for mentally disturbed persons who are prone to commit sex crimes. Article 96 of the Criminal Code of the Republic of Uzbekistan (medical coercive measures prescribed along with criminal punishment) includes persons who are prone to commit sexual crimes, and these crimes can be prevented by including the use of chemical castration as a coercive measure along with criminal punishment.

According to the Polish criminal law, "security measures" are measures of detention in a closed institution to prevent a person from committing a new socially dangerous act under the influence of a person's mental state, mental retardation, alcoholism or other substances that affect human intelligence [16]. A person is placed in a medical institution when he commits a socially dangerous act while mentally deficient and there is a risk of committing another act. Also, according to the Polish criminal law, the period of treatment in a medical institution is not predetermined. Treatment of criminals who are addicted to alcohol or other intoxicating substances is carried out in closed institutions. If the defendant has been sentenced to imprisonment for more than two years, then such treatment shall not be applied to him. Also, Article 96 of the Polish JK states that the treatment of alcoholics and drug addicts in a closed institution should not exceed three months. The release of a person from this institution is carried out by the court based on the results of treatment with the opinion of the attending physician. A specific aspect of Polish criminal law may impose an obligation on a person to undergo treatment during a probationary period. The trial period is set from six months to two years. If the defendant refuses treatment during the

probationary period, commits a crime, violates the regime of the treatment institution, the court may issue a decision to place the person in a closed institution for treatment [17].

The Criminal Code of the Republic of Belarus also contains the term "security measures", and Section IV of the law is entitled "Coercive measures of security and treatment" [18]. We believe that it is necessary to pay attention to the intended purpose of the use of coercive measures of safety and treatment in this law.

In accordance with Article 100 of the Civil Code of the Republic of Belarus, the purpose of this measure, which is applied to the following persons, is specifically indicated:

- 1) prevention, protection and treatment of new socially dangerous acts by mentally ill persons who have committed socially dangerous acts;
- 2) to organize the treatment of persons who are partially mentally deficient and have committed crimes and to achieve the goal of criminal responsibility;
- 3) treatment of persons who have committed a crime suffering from chronic alcoholism, drug addiction or intoxication, creating conditions for achieving the goal of criminal responsibility.

In accordance with Article 91 of the Criminal Law of the Republic of Uzbekistan, the objectives of coercive medical measures in the criminal law of the Republic of Uzbekistan, coercive medical measures may be prescribed for persons with a disturbed mental state who have committed socially dangerous acts in order to treat these persons and prevent them from committing new socially dangerous acts [19].

In contrast to the laws of the countries considered above, the Criminal Code of Ukraine defines coercive medical measures, i.e.: "Criminal medical measures include the provision of outpatient medical care, placement in special treatment facilities, and , is to prevent socially dangerous acts committed by them" [20].

This provision attempts to clarify the concept and purpose of coercive medical measures. However, it cannot be said that the concept of coercive medical measures is clearly given, because this norm does not clearly indicate the scope of persons to whom coercive medical measures can be applied.

Secondly, the Criminal Code of Ukraine also contains a norm on mandatory medical treatment for persons who have committed a crime and have a disease that is dangerous for the life and health of other persons. When the law mentions such patients, tuberculosis, skin-genital and AIDS diseases are meant.

Unlike the countries discussed above, the current criminal law of the Republic of Uzbekistan does not contain a definition of "security measures". Only in part 2 of Article 2 of the Criminal Code, the phrase "legal measures" is used. Of course, such measures are aimed at ensuring the

safety of society, but the concept of "security measures" specified in the criminal law of foreign countries is much broader than medical coercive measures. In the Criminal Code, the phrase "legal measures" is specified in three articles (Article 2, Part 2 of the Criminal Code, "Tasks of the Code", Article 7, "Principle of Humanity", Article 8, "Principle of Justice"). These articles provide for criminal punishment along with legal measures.

At the same time, Chapter 17 of the Criminal Code of the Republic of Uzbekistan does not provide the concept of coercive medical measures. Even in the legal literature, there is no single and universally recognized definition of this institution, which causes a number of negative consequences (for example, mandatory treatment, the distinction between the patient's observation and treatment by a psychiatrist in another form disappears). The definition of coercive medical measures was not even given in the previous criminal laws. In the legal literature, it is defined differently, in which the necessary signs, legal and medical content of these measures are taken into account [21].

In conclusion, we propose a new definition of coercive medical measures, namely:

"Medical coercive measures are expressed in the provision of psychological or other medical care in special treatment institutions to persons with a mentally disturbed state, who have committed a socially dangerous act, as well as to persons suffering from alcoholism, drug addiction, or intoxication with a criminal sentence, or persons with a mentally impaired state, not excluding mental retardation. is a coercive measure of the state applied with

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