


THE LEGAL NATURE OF THE USE OF COMPULSORY MEDICAL MEASURES AGAINST PERSONS SUFFERING FROM ALCOHOLISM, DRUG ADDICTION OR INTOXICATION

Ermатов Gayratjon Okmirzaevich

PhD in Law, Professor of the Department of Criminal law,
criminology and anti corruption Tashkent State University of Law

E-mail: g.ermatov@mail.ru

Article Info	ABSTRACT
<p>Article history: Received May 05, 2024 Revised May 20, 2024 Accepted May 25, 2024</p> <p>Keywords: <i>Sanity, Chronic Alcoholism, Addiction Addicts, Prisoners, Compulsory Medical Measures</i></p>	<p>This article describes the issues related to the improvement of the institution of coercive measures in the medical field and the regulation of its legal bases, and the normative legal documents in this regard are analyzed. Also, the grounds for imposing coercive medical measures by the court against a person who has committed a dangerous act, the goals and types of coercive medical measures, the general grounds for applying these measures, their appointment, extension, modification and termination, as well as coercive medical measures prescribed with punishment application rules are defined. Committing a socially dangerous act by a person in a state of mental insanity or whose mental state is disturbed in a way that does not exclude sanity, as well as addicted to alcohol, drugs or intoxication, threatens the violation of the rights and freedoms of other persons, the interests of society and the state, the natural environment, peace and human security.</p> <p style="text-align: right;">This is an open-access article under the CC-BY 4.0 license.</p> <div style="text-align: right;">  </div>

Corresponding Author:

Ermатов Gayratjon Okmirzaevich

PhD in Law, Professor of the Department of Criminal law,
criminology and anti corruption Tashkent State University of Law

E-mail: g.ermatov@mail.ru

INTRODUCTION

Coercive medical measures are of great importance in the implementation of the tasks defined in the Criminal Code. Committing a socially dangerous act by a person in a state of mental insanity or whose mental state is disturbed in a way that does not exclude sanity, as well as addicted to alcohol, drugs or intoxication, threatens the violation of the rights and freedoms of other persons, the interests of society and the state, the natural environment, peace and human security [1]. Accordingly, the application of criminal-legal measures to such persons and their treatment are carried out through the institution of coercive medical measures. The application of the institution of coercive medical measures requires consideration of a unique set of medical, social and legal issues. This

institute, together with criminal, criminal-procedural, criminal-executive legislation, "On psychiatric care", "On health care of citizens", "On compulsory treatment of patients suffering from chronic alcoholism, drug addiction or intoxication" of the Republic of Uzbekistan [2]. , laws "On narcotic drugs and psychotropic substances"[3], the Regulation "On specialized treatment and prevention institutions for the compulsory treatment of patients with chronic alcoholism or drug addiction" approved by the Cabinet of Ministers decision No. 195 of May 1, 1993 [4], and by the Minister of Internal Affairs, 2014 It is regulated by the regulation "On the procedure for applying coercive medical measures to persons sentenced to deprivation of liberty, addicted to alcoholism, drug addiction and intoxication" approved by order No. 65 on May 3 [5].

In contrast to other branches of law, in criminal law as a material right, the grounds for the appointment of coercive medical measures by the court against a person who has committed a socially dangerous act in a way that does not exclude insanity and sanity, the goals, types of coercive medical measures, the general application of these measures the basis, its appointment, extension, change and termination, as well as the rules regarding the application of coercive measures in the medical direction, which are appointed along with the punishment, are defined.

At this point, it is worth noting that the institute of coercive measures in the medical field was improved by the Law of the Republic of Uzbekistan "On Amendments and Additions to Certain Legislative Documents of the Republic of Uzbekistan" (September 12, 2019) [6]. According to the law, thirteen laws were set to be amended and supplemented. Accordingly, the Criminal Code introduced provisions on the responsibility of a person with a mental disorder in a way that does not exclude sanity, expanded the types of coercive medical measures, and approved the rules for the appointment of such measures [7].

Although there is no legal definition of medical coercive measures in the criminal law, medical coercive measures are one of the widely used institutions in legal theory and law enforcement practice. Despite the fact that this institution is described as a coercive measure in the Criminal Code (hereinafter referred to as the Criminal Code), it is not considered a punishment and does not result in conviction of a person. In the legal sense of the terms defined in the eighth section of the Special Part of the Criminal Code, coercive medical measures are defined as "other legal measures". However, Article 16 of the Code states that "responsibility for a crime is the legal consequence of committing a crime, which is expressed by the court's sentencing, punishment or other legal impact measure against the person guilty of the crime." Therefore, coercive medical measures can be viewed as a form of criminal liability [8].

However, if we analyze the issue from a criminal-legal point of view, it will be seen not only as a form of responsibility implementation, but also as a mandatory measure used for the purpose of treatment of persons who have committed socially dangerous acts, without holding them accountable. This requires an analysis of two important aspects of medical coercion.

The first is coercive medical measures that are not a form of criminal liability. According to Article 18 of the Civil Code, a person who was mentally deranged at the time of committing a socially dangerous act, i.e. a person who could not understand the significance of his actions (inaction) or could not control them due to his mental state being chronically or temporarily disturbed, or his mental state was impaired in some other way, is responsible [9]. It is established that coercive medical measures may be imposed by the court against a person who commits a socially dangerous act while mentally deficient. Based on the essence of this article, it should be noted that despite the fact that a person commits a socially dangerous act in the following cases, he is not held criminally liable. That is:

1) if he (she) was mentally deranged at the time of committing a socially dangerous act;

2) if the person is mentally deficient, i.e. the person is unable to understand the importance of their actions (inaction) or control them due to a chronic or temporary mental state disorder, mental weakness or mental state disorder in some other way.

The non-responsibility of a person with mental retardation comes from the provisions set forth in Article 17 of the Criminal Code. In particular, the first part of this article stipulates that sane natural persons who have reached the age of sixteen before committing a crime shall be held liable. This provision includes the signs of the subject of the crime, the lack of sanity of the person means the absence of the subject of the crime, and the absence of the subject of the crime means the absence of the composition of the crime. In particular, according to the rule of Article 16, Part 2 of the Criminal Code, which shows the factual and normative basis of the criminal structure, the commission of an act that has all the symptoms of the criminal structure provided for in the Criminal Code is considered grounds for prosecution. Therefore, it is incorrect to consider the acts designated as crimes in the Code as crimes if they were committed during the period of mental insanity. In such a case, it is necessary to apply only coercive medical measures [10].

The second is coercive medical measures, which are considered a form of criminal liability. It is established that a sane person who could not fully understand the significance of his actions (inaction) or was unable to control them due to his mental state at the time of committing a crime shall be held responsible. Such a person is defined in the law as "a person whose mental state is disturbed in a way that does not exclude sanity".

The commission of a socially dangerous act provided by the Criminal Code by a person with a mental disorder in a way that does not exclude sanity excludes the non-existence of the subject of the crime. In such a case, even if the person's mental state is disturbed, he is not considered insane and will be held criminally liable. That is, according to the principle of inevitability of responsibility (Article 10) defined in the Criminal Code, every person whose act is found to contain the elements of a crime must be held accountable.

However, in such a case, along with criminal liability, the court may impose coercive medical measures according to the second part of Article 181 of the Criminal Code. These aspects mean that coercive measures in the medical field, although they are a form of criminal liability, are not considered as a type of criminal punishment. Accordingly, medical coercive measure can be defined as follows: medical coercive measure is a person who commits a socially dangerous act in the state of mental deficiency or has a mental disorder in such a way that he cannot understand the importance of his actions or control them until the sentence is passed or during the sentence. , as well as a coercive measure prescribed by the Criminal Code, which is appointed by the court based on a medical opinion, in case of crime committed by persons who are addicted to alcoholism, drug addiction or intoxication, or whose mental state is disturbed in a way that does not exclude sanity.

Medical coercive measures are applied to a mentally disturbed person or a person suffering from alcoholism, drug addiction, or intoxication, without excluding sanity, and to carry out various actions aimed at restoring his mental state. These types of measures have a mandatory nature and are assigned by the court against persons who have committed a socially dangerous act prohibited by the criminal law and pose a certain danger to themselves or others based on the requirements of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) and provide for the restriction of the freedom of such a person. holds In other words, it can be said that it is a treatment-rehabilitation and organizational-prophylactic security measures used from a criminal-legal point of view.

Specific signs of the use of coercive medical measures include:

- 1) it is assigned to a person who is demented and mentally disturbed in a way that does not exclude sanity, or is addicted to alcoholism, drug addiction or intoxication;
- 2) appointed when a person commits a socially dangerous act;
- 3) it is used by the court only according to the conclusion of the forensic psychiatric examination;
- 4) such measures are prescribed to treat individuals and prevent them from committing new socially dangerous actions;
- 5) they are implemented in the form of legal coercion, that is, based on a legal and justified decision of the court, they are used even without the consent of the person or his legal representatives.

In this case, the requirements specified in the Law of the Republic of Uzbekistan "On Psychiatric Assistance" will be observed. In particular, according to Article 27 of the law, if a person with a mental disorder can be examined or treated only in an inpatient setting, and if the mental disorder is serious and related to the following, this person may be hospitalized without his consent or without the consent of his legal representative before a court decision is issued:

- he poses a direct danger to himself or others;
- his helplessness, that is, his inability to meet his basic life needs independently;

- if the person is about to be left without psychiatric help, serious damage to his health due to deterioration of his mental state;

6) the application of these measures is manifested in the restriction of the rights and freedoms of the person. The rights and obligations of patients in psychiatric hospitals where coercive medical measures have been applied, the conditions of keeping patients, as well as the norms regarding the execution of coercive measures of this type are regulated by criminal law;

7) as a result of the use of coercive medical measures, conviction does not result and it does not imply the education of a person [11].

Article 91 of the Criminal Code defines the goals of coercive medical measures, which differ according to the medical criteria of the subject's symptoms, who committed a socially dangerous act. Firstly, based on the first part of this article, coercive medical measures may be imposed on mentally disturbed persons who have committed socially dangerous acts in order to treat these persons and prevent them from committing new socially dangerous acts. The mental state of this person is related to the factor that led to the commission of a socially dangerous act. That is, the fact that he is dangerous for the society implies the application of medical treatment measures to him and the restriction of certain rights and freedoms in order to prevent new socially dangerous manifestations during the treatment. Secondly, as mentioned in the second part of the above article, coercive medical measures can be appointed by the court in addition to punishing persons who are addicted to alcoholism, drug addiction, or mentally disturbed in a way that does not exclude sanity, for treatment and to create conditions that help to achieve the goal of punishment.

Treatment of a person should be understood as a set of processes aimed at restoring the health of a person with a disturbed mental state or suffering from alcoholism, drug addiction or intoxication by using medical tools and methods. According to Article 12 of the Law of the Republic of Uzbekistan "On Psychiatric Assistance", the diagnosis of a mental disorder is made in accordance with the generally recognized international standards and classifications, and the citizen's disagreement with the moral, cultural, political and religious values accepted in the society or for other reasons not directly related to the state of his mental health. cannot be justified. To diagnose and treat a person with a mental disorder, medical tools and methods allowed in the manner established by law are used [12].

RESULTS AND DISCUSSION

According to the Law of the Republic of Uzbekistan dated December 9, 1992 "On Compulsory Treatment of Patients Suffering from Chronic Alcoholism, Drug Addiction, or Drug Intoxication", the recognition of a person as a patient suffering from chronic alcoholism, drug addiction, or intoxication is carried out by the relevant treatment institutions in accordance with the procedure established by the Ministry of Health of the Republic of Uzbekistan [13]. Treatment should eliminate the mental and physical

dependence of prisoners on alcohol, narcotic substances and their raw materials, psychotropic substances and other substances affecting mental activity. In the process of treatment of mentally disturbed persons, alcoholics, drug addicts or persons who are considered mentally deficient, it is necessary to use proven methods of therapy, which serves to change their mental state. In addition, it allows to confirm that the social danger of the person has disappeared.

It is not allowed to carry out treatment procedures other than medical means and methods against a person who has been subjected to coercive medical measures.

The goal of preventing a person with a mental illness from committing new socially dangerous acts means that as a result of the use of coercive medical measures, such persons will lose their social danger to themselves and others, their mental attitude to commit socially dangerous acts in the future, and they will not be left with a physical opportunity. The means of realization of this goal involves the implementation of various organizational-prophylactic and medical measures, separating them from society, on the basis of the medical means and methods prescribed for such persons.

According to Article 40 of the Law of the Republic of Uzbekistan "On Prevention of Offenses" dated May 14, 2014, when a person suffering from chronic alcoholism, drug addiction or intoxication violates public order, the rights of other persons, or threatens the safety, health and morals of the population, the internal affairs authorities It is determined to take measures to send him to compulsory treatment in accordance with the "On Compulsory Treatment of Patients Suffering from Alcoholism, Narcotics or Poisoning" and other legal documents [14].

The creation of conditions that facilitate the achievement of the goal of punishment of coercive medical measures means that medical measures against a person are carried out together with the execution of punishments imposed by the court. In such a case, medical means and methods are applied to the person in full compliance with the procedure and conditions of serving the punishment provided by the criminal law [15]. That is, the prescribed type of punishment and coercive medical measures are executed together.

CONCLUSION

In particular, in accordance with Article 182 of the Criminal-Executive Code, medical coercive measures against prisoners who are addicted to alcoholism, drug addiction or intoxication and whose mental state is disturbed in a way that does not exclude sanity are imposed by the medical institutions of health authorities on persons sentenced to punishments not related to complete isolation from society [16]. It is established that the punishment in the form of deprivation of liberty shall be applied to persons sentenced to imprisonment.

REFERENCES

- [1]. Constitution of the Republic of Uzbekistan. [Online]. Available: <http://www.lex.uz/acts/20596>. Accessed: Aug. 18, 2024.

- [2]. United Nations Convention on Minimum Standards of Treatment of Prisoners (Nelson Mandela Rules). [Online]. Available: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-R-ebook.pdf. Accessed: Aug. 18, 2024.
- [3]. United Nations, "Principles for the Protection of Mentally Ill Patients and Improving the Quality of Psychiatric Care," approved by the United Nations General Assembly Resolution 46/119, Dec. 17, 1991. [Online]. Available: https://www.un.org/ru/documents/decl_conv/conventions/mental_health_care.shtml. Accessed: Aug. 18, 2024.
- [4]. Law of the Republic of Uzbekistan, "On Psychiatric Assistance," Aug. 31, 2000, Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 2000, no. 7-8, art. 215; Collection of Legal Documents of the Republic of Uzbekistan, 2011, art. 51.542. [Online]. Available: <http://lex.uz/docs/27082#27425>. Accessed: Aug. 18, 2024.
- [5]. Law of the Republic of Uzbekistan, "On Health Care of Citizens," Aug. 29, 1996, Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 1996, no. 9, art. 128; 1999, no. 5, art. 124; 2001, no. 5, art. 89; Collection of Legal Documents of the Republic of Uzbekistan, 2006, no. 41, art. 405; 2007, no. 40, art. 411; 2010, no. 20, art. 148; 2016, no. 52, art. 597; 2017, no. 24, art. 487. National Database of Legal Documents, 05.01.2018, no. 03/18/456/0512; 2019, no. 2, art. 47, 05/23/2019, no. 03/19/540/3167, 09/05/2019, no. 03/19/564/3690, 09/13/2019, no. 03/19/567/3737. [Online]. Available: <http://lex.uz/docs/26013#26444>. Accessed: Aug. 18, 2024.
- [6]. Law of the Republic of Uzbekistan, "On Compulsory Treatment of Patients Suffering from Chronic Alcoholism, Drug Addiction or Poisoning," Dec. 9, 1992, Bulletin of the Supreme Council of the Republic of Uzbekistan, 1993, no. 1, art. 36; Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 1995, no. 6, art. 121; 1996, no. 9, art. 146; 1997, no. 2, art. 69; 1998, no. 1, art. 17; 1999, no. 1, art. 5; 2001, no. 1-2, art. 23. National Database of Legal Documents, 24.05.2019, no. 03/19/542/3177. [Online]. Available: <http://lex.uz/docs/110156>. Accessed: Aug. 18, 2024.
- [7]. Law of the Republic of Uzbekistan, "On Narcotic Drugs and Psychotropic Substances," Aug. 19, 1999, Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 1999, no. 9, art. 210; 2001, no. 1-2, art. 23; 2003, no. 1, art. 8; Collection of Legal Documents of the Republic of Uzbekistan, 2006, no. 41, art. 405; 2015, no. 33, art. 439; 2017, no. 16, art. 265, no. 24, art. 487. National Database of Legal Documents, 23.10.2018, no. 03/18/503/2080; Bulletin of the Chambers of the Oliy Majlis of the Republic of Uzbekistan, 2019, no. 2, art. 47; National Database of Legal Documents, 05/24/2019, no. 03/19/542/3177, 09/13/2019, no. 03/19/567/3737. [Online]. Available: <http://lex.uz/docs/86044#91616>. Accessed: Aug. 18, 2024.
- [8]. Decision No. PQ-3606 of the President of the Republic of Uzbekistan, "On Measures to Fundamentally Improve the Psychiatric Care System," Mar. 16, 2018. [Online]. Available: <http://lex.uz/docs/3588130>. Accessed: Aug. 18, 2024.
- [9]. Regulation "On Specialized Treatment-Prophylactic Institutions for Compulsory Treatment of Patients Suffering from Chronic Alcoholism or Drug Addiction,"

- approved by the Decision of the Cabinet of Ministers of the Republic of Uzbekistan No. 195, May 1, 1993. [Online]. Available: <http://lex.uz/docs/521411>. Accessed: Aug. 18, 2024.
- [10]. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 23, "On Judicial Practice on the Application of Coercive Medical Measures to Mentally Ill Persons," Dec. 12, 2008. [Online]. Available: <http://lex.uz/docs/1601125#1601698>. Accessed: Aug. 18, 2024.
- [11]. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 07, "On Court Verdict," May 23, 2014. [Online]. Available: <http://lex.uz/docs/2413562#2413715>. Accessed: Aug. 18, 2024.
- [12]. Regulation of the Minister of Internal Affairs of the Republic of Uzbekistan No. 65, "On the Procedure for Applying Coercive Medical Measures to Persons Sentenced to Deprivation of Liberty, Addicted to Alcoholism, Drug Addiction and Intoxication," May 3, 2014. [Online]. Available: <http://lex.uz/docs/2399320#3556847>. Accessed: Aug. 18, 2024.
- [13]. R. Kabulov and A. A. Otajonov, "Criminal Law. General Part: Textbook," 2nd ed., Ministry of Internal Affairs Academy of the Republic of Uzbekistan, Tashkent, Uzbekistan, 2012.
- [14]. M. Rustamboev, "Review of the Criminal Code of the Republic of Uzbekistan," 2nd ed., Justice, Tashkent, Uzbekistan, 2016, 608 p.
- [15]. M. Kh. Rustambaev et al., "Course of Criminal Law of the Republic of Uzbekistan. Volume II. General Part. The Doctrine of Punishment," 2nd ed., Ministry of Internal Affairs Academy of the Republic of Uzbekistan, Tashkent, Uzbekistan, 2018, 281 p.
- [16]. Criminal Code of the Republic of Uzbekistan. [Online]. Available: <http://lex.uz/docs/111453>. Accessed: Aug. 18, 2024.