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Zhumanbaeva N.A.[1], Alimkulov E.T. [2]

[1]candidate of Law, Associate Professor «Turan» University,
Kazakhstan, Almaty, e-mail: nonna.aldabergen@mail.ru
[2]candidate of Law, Al-Farabi Kazakh National University,
Kazakhstan, Almaty, e-mail: alimkulov1980@gmail.com

PROCEEDINGS ON THE APPLICATION OF COMPULSORY MEDICAL MEASURES TO THE INSANE

In this article, the authors examined the issue of the application of compulsory medical measures to the insane. The use of compulsory medical measures in relation to the insane is a complex procedural act, since this section of the criminal procedure code considers the rights and legitimate interests of the insane person. In this article, the authors, having investigated the world and native opinions concerning this problem, try to give their own opinion on this problem. Also, the authors investigated and disclosed the features of the application of compulsory medical measures to the insane.

The decision of the court on forced outpatient monitoring and psychiatric treatment is not only announced to the person, but also the court decision must be sent to the justice authorities, as well as to psycho-neurological clinics. The convicted is examined by a doctor at intervals determined by the psychiatrist. The person performs the diagnostic and therapeutic measures suggested by the psychiatrist. If the punishment is not related to imprisonment, social assistance will be provided to the person in the process of comprehensive medical and social rehabilitation. In the case of an increased risk of mental disorders of a person, the court may forcibly conduct compulsory outpatient treatment in a psychiatric clinic (usually, on the recommendation of the Commission, in a general hospital).

The purpose of this article is, based on the theoretical and practical knowledge already accumulated in this field, as well as the norms of the current Code of Criminal Procedure, to investigate the problem, and on its basis to work out proposals for improving the criminal procedure legislation and law enforcement practice.

The relevance of the research topic is due to the fact that, in the science of the criminal process the main thing is to ensure the right to defense of the suspect, the accused and the defendant, as well as to ensure the efficiency and economy of the criminal process.

Based on the study, the authors attempted to analyze the application of coercive measures of a medical nature to the insane in native and international practices.

Key words: compulsory medical measures, accused, guilt, criminal process, insane.

Жұманбаева Н.А.[1], Алимкулов Е.Т. [2]

[1]заң ғылымдарының кандидаты, «Тұран» Университеті, доцент,
Қазақстан, Алматы қ., e-mail: nonna.aldabergen@mail.ru
[2]заң ғылымдарының кандидаты, доцент, әл-Фараби атындағы Қазақ ұлттық университеті,
Қазақстан, Алматы қ., e-mail: alimkulov1980@gmail.com

Есі дұрыс емес адамдарға медициналық сипаттағы мәжбүрлеу шарасын қолдану туралы істер бойынша іс жүргізу

Бұл мақалада қылмыстық іс жүргізудегі күрделі мәселелердің бірі есі дұрыс емес адамдарға медициналық сипаттағы мәжбүрлеу шараларын қолдану мәселелері қарастырылып кетеді. Есі дұрыс емес адамдарға қатысты медициналық сипаттағы мәжбүрлеу шарасын қолдану – күрделі процессуалдық шара, себебі бұл жерде біз қылмыстық іс жүргізу ғылымындағы адам құқықтарын қорғау мәселесіне үлкен мән беріп кетеміз. Бұл мақалада авторлар процестік келісімнің дүниежүзілік және отандық ғалымдардың ой-пікірлерін салыстыра отырып өзіндік түсінікті ашып кетуге тырысады. Сонымен қатар қылмыстық процестік кодексте есі дұрыс емес

адамдарға қатысты мәжбүрлеу шараларын қолдану ерекшеліктерін және нысандарын мейлінше қарастырып, зерттеу жұмысын жүргізеді.

Мәжбүрлеп емханалық бақылау және психиатрда емдеуді тағайындау туралы соттың шешімі адамның өзіне жарияланып қана қоймайды, сонымен қатар соттың шешімін орындауға міндетті әділет органдарына, сондай-ақ психоневрологиялық диспансерге жолданады. Сотталған адам психиатр белгілеген мерзімділікпен дәрігерге көрінеді. Адам психиатр ұсынған емдеу-диагностикалық шараларды орындайды. Егер берілген жаза бас бостандығынан айырумен байланысты болмаса, онда кешенді медициналық-әлеуметтік оңалту процесі барысында адамға әлеуметтік көмек беріледі. Психиканың бұзылуы асқынып, адамның қоғамға қауіптілігі артқан жағдайда психиатр дәрігерлер комиссиясының ұсынысымен сот мәжбүрлеп емханалық емдеуді психиатриялық диспансерде (әдетте, жалпы үлгідегі психиатриялық стационарда) мәжбүрлеп емдеуге өзгертуі мүмкін.

Мақаланың мақсаты – осы саладағы жинақталған теориялық және тәжірибелік білімге, сондай-ақ қазіргі ҚПК нормаларына сәйкес, қылмыстық істер бойынша қылмыстық іс жүргізу заңдарын және құқық қолдану тәжірибесін жетілдіру жөнінде ұсыныстар жасау және процессуалдық теориялық тұрғыдағы мәнісін ашу болып табылады.

Зерттеу тақырыбының өзектілігі қылмыстық іс жүргізу ғылымында есі дұрыс емес адамдарға қатысты медициналық мәжбүрлеу шараларының тиімділігін, үнемділігін қамтамасыз етумен айқындалады.

Талдау негізінде авторлар есі дұрыс емес адамдарға қатысты медициналық мәжбүрлеу шараларын саралау барысында отандық және халықаралық тәжірибені талдау жасауға тырысты.

Түйін сөздер: медициналық сипаттағы мәжбүрлеу шаралары, айыпталушы, кінә, қылмыстық процесс, есі дұрыс емес.

Жұманбаева Н.А.[1], Алимкулов Е.Т.[2]

[1]кандидат юридических наук, доцент, Университет «Туран»,
Казахстан, г. Алматы, e-mail: nonna.aldabergen@mail.ru
[2]кандидат юридических наук, доцент, Казахский национальный университет
имени аль-Фараби, Казахстан, г. Алматы, e-mail: alimkulov1980@gmail.com

Производство по делам о применении принудительных мер медицинского характера к невменяемым

В данной статье авторами расмотрены вопросы применения принудительных мер медицинского характера к невменяемым. Применение принудительных мер медицинского характера в отношении невменяемых – это сложное процессуальное действие, так как в данном разделе уголовно-процессуального кодекса расматриваются права и законные интересы невменяемого человека. В данной статье авторы, исследовав мировые и отечественные мнения, касающиеся данной проблемы, пытаются дать свое авторское мнение данной проблемы. Также, авторами исследованы и раскрыты особенности применения принудительных мер медицинского характера к невменяемым.

Решение суда о принудительном амбулаторном наблюдении и психиатрическом лечении не только объявляется лицу, но также решение суда должно быть отправлено в органы юстиции, а также в психо-неврологические клиники. Осужденный осматривается у врача с периодичностью, определяемой психиатром. Человек выполняет диагностические и терапевтические меры, предложенные психиатром. Если наказание не связано с лишением свободы, социальная помощь будет оказана лицу в процессе комплексной медицинской и социальной реабилитации. В случае повышенного риска психических расстройств лица суд может в принудительном порядке провести принудительное амбулаторное лечение в психиатрической клинике (как правило, по рекомендации Комиссии, в стационаре общего типа).

Цель этой статьи заключается в том, чтобы, опираясь на теоретические и практические знания, уже накопленные в данной области, а также нормы действующего УПК, исследовать проблему, и на основе этого выработать предложения о совершенствовании уголовно-процессуального законодательства и правоприменительной практики.

Актуальность темы исследования обусловлена тем, что в науке уголовного процесса основным является обеспечение права на защиту подозреваемого, обвиняемого и подсудимого, а так же обеспечение эффективности и экономности уголовного процесса.

На основании исследования авторы попытались провести анализ применения принудительных мер медицинского характера к невменяемым в отечественной и международной практиках.

Ключевые слова: принудительные меры медицинского характера, обвиняемый, вина, уголовный процесс, невменяемый.

Introduction

When choosing coercive measures of a medical nature, it is necessary to ensure treatment and improvement of the mental state of the person and insurance against the Commission of new actions specified in the Special part of the Criminal code. The decision of the court in the choice of coercive measures of a medical nature is based on the conclusion of a forensic psychiatric examination (criminal code of the Republic of Kazakhstan, 2014: Art. 89).

So, on the one hand, appointed forced measures of medical nature in cases of failure of the other achievements referred to in article 88 of the Criminal code of the Republic of Kazakhstan the purpose of «treatment» or «improve their mental state, as well as prevention of committing new actions envisaged in the special part of the criminal law» (criminal code of the Republic of Kazakhstan, 2014: article 88). On the other hand, the form of compulsory treatment should not exceed the degree of rigidity necessary and sufficient to achieve these goals. If what type of correctional institution of the corresponding order is chosen, depends on criminal activity and the criminal legal assessment appropriated to the personality of the criminal, the choice of coercive measures of medical character depends on severity of the committed by the deranged socially dangerous act.

The legality and validity of the court's choice of the type of compulsory treatment are ensured by the obligation to conduct investigative actions and judicial review of the case, taking into account the peculiarities provided for by the procedural law. Important is the conclusion of the forensic psychiatric examination of the mental state of the person and the forecast of his behavior. The court assesses the expert's opinion together with other evidence.

Main part

Section 11 of the code of criminal procedure provides for a separate section "special production". This section provides for four chapters on the rules and procedure for the proceedings in certain categories of cases that differ from the proceedings in the General procedure (criminal code of the Republic of Kazakhstan, 2014).

As a rule, there is a perception of the universality and stability of the Criminal procedure law as one of the authorities. Universality of the provisions of the law, social status, property status, education, position. T. S. S. regardless of such factors as the impact of the action. Stability was expressed by the permanence and excellence of the provisions of the law. Nevertheless, as practice of law-making and law-enforcement practice shows, now the activity of special procedural process on some categories of criminal cases increases. The cause of this phenomenon is complex. As one of the important reasons we consider the situation: along with the sovereignty of the Republic of Kazakhstan, values have changed, in particular – the priority of state interests, the predominance of human interests. As a result, taking into account the peculiarities of the subjects of criminal law relations, based on the peculiarities of legal relations of criminal law and Procedural law subjects, led to the qualification of criminal proceedings. These processes have led to changes in the laws of some States of the former Soviet space

T.V. Trubnikova noted that one of the distinctive manifestations of the code of criminal procedure (18.12.2000). 3) a large level of differentiation of the procedure in criminal cases. Thus, in the criminal process, it is possible to distinguish the proceedings in complex procedural forms of several proceedings, different from the usual proceedings, consisting in a broader level of criminal procedural forms and dispositive beginnings (criminal proceedings against minors).

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The content of the differentiation of the Criminal procedure object is currently aimed at creating additional guarantees of the constitutional protection of the rights and freedoms of the individual. The exclusion and aggravation of the General procedure of proceedings in any cases have a strictly targeted focus, in particular – separate consideration of criminal procedural legal relations without violating the model of national Criminal procedural law.

In accordance with the structure of section 11 of the code of criminal procedure, special production is divided into four types:

1) proceedings for the application of compulsory medical measures;

2) Features of proceedings on criminal offenses;

3)proceedings on criminal offences of minors;

4) Peculiarities of proceedings in cases of persons with privileges and immunity from criminal prosecution (code of Criminal procedure of the Republic of Kazakhstan, 2014).

In addition, it should be noted that other types of records management have distinctive features. For example, the conciliatory form of production with the participation of jurors may be classified as proceedings in a special manner, due to the fact that there is a significant distinguishing feature from production, which occurs in the usual manner. However, the legislative structure of the CPC does not allow a broader understanding of the concept of "special production". Therefore, a number of cases will only be dealt with under these four sections.

We decided to focus on the issues of legal proceedings on the application of coercive measures of a medical nature to the insane.

Offences arising from the Commission by a person of an act prohibited by criminal law in a state of insanity are regulated by articles 509-524 of the code of criminal procedure(code of the Republic of Kazakhstan, 2014).

The peculiarity of these legal relations is that in these categories of criminal cases there is no subject of a criminal offense, respectively, there will be no subjective side of the activity. This circumstance means the absence of the composition of the action. In this regard, the code of criminal procedure draws attention to the fact that a person suffering from mental disorders has not committed a criminal offense (this requires the presence of all elements of the act), and the criminal law has committed a prohibited act.

It is known that guilt of the person in Commission of a criminal offense demands that the personality was without fail imputed.

The criminal law content of the concept of" human loyalty " is a normal mental state of a healthy person and the ability to report and manage their behavior. Sanity is a necessary condition for guilt and criminal responsibility. In accordance with article 16 of the criminal code, a person who at the time of committing a socially dangerous act was in a state of insanity, that is, could not realize the actual nature and social danger of his actions (inaction) due to chronic mental illness, temporary mental disorder, dementia or other mental illness or could not have criminal behavior(criminal code of the Republic of Kazakhstan, 2014: article 16). In addition, according to part 1 of article 75 of the criminal code, after committing a criminal offense, a person who has a mental disorder that deprives him / her of the opportunity to realize the actual nature and social danger of his / her actions (inaction) or to possess it, is released from punishment by the court, and the person serving the sentence is released from further serving by the court(criminal code of the Republic of Kazakhstan, 2014: Art. 75).Compulsory medical measures are applied to persons provided for in articles 16 and 75 of the criminal code. In accordance with article 93 of the criminal code, these measures include the following types of compulsory medical measures:

1) outpatient compulsory supervision and treatment by a psychiatrist;

2) compulsory treatment in a General psychiatric hospital;

3) compulsory treatment in a psychiatric hospital of a specialized type;

4) compulsory treatment in a psychiatric hospital of a specialized type with intensive care;

5) compulsory treatment in the form of chemical castration.

Thus, the grounds for the proceedings on the application of compulsory medical measures are:):

(1) a person has committed an act prohibited by law in a state of insanity;

(2) when a person has become mentally ill after committing an act prohibited by law.

But any mental illness is not the basis for the application of compulsory medical measures. The legal conditions for such coercion are established by law:

1) patients with mental disorders are associated with a threat to themselves or others;

2) the possibility of causing other significant property damage.

The procedure for the application of compulsory medical measures is determined by the General rules approved by the code of criminal procedure, as well as the features provided by the provisions of Chapter 54 of the code of criminal procedure

SP Correctly shows that coercive measures of a medical nature, imposed by a court sentence under criminal law, are not the size of the criminal penalty. They do not seek to restore social justice or prevent convicted persons from committing new crimes, as they apply to mentally ill persons who have committed socially dangerous acts. They are used to heal such persons and improve their mental state, to prevent the repetition of these persons socially dangerous acts specified in the criminal code. The coercive nature of such measures consists in the appointment, regardless of the patient's wishes or the wishes of his relatives or legal representatives. They are appointed only by the court, and are associated with a certain restriction of personal freedom of the disease during the time of compulsory treatment (Shcherba, 2005: 90 P.).

In cases of compulsory medical measures.

The subject of evidence in these cases is complex. The General discipline of evidence is determined in accordance with the provisions of article 113 of the CPC. In addition, a special subject of evidence is considered. In accordance with part 2 of article 510 of the code of criminal procedure, the following circumstances must be established during the preliminary investigation:

1) the Commission of the action, time, place, method and other circumstances;

2) the Commission by the person of an act prohibited by criminal law;;

3) the Nature and extent of the damage caused by the act;

4) the behavior of the perpetrator is prohibited by the criminal act before it occurs and after it;

5) the degree and nature of mental illness in the Commission of an act prohibited by criminal law, or in the consideration of a case, in the presence of a person previously mental disorder (Criminal procedure code of the Republic of Kazakhstan, 2014).

Comparison of General and special disciplines of evidence shows that parts 1), 2), 3) of article 510 of the code of criminal procedure correspond to subparagraphs 1), 2), 7) of part 1 of article 113 of the code of criminal procedure. That is, these elements of the General discipline of evidence are renewed in the list of elements of the special discipline of evidence (Criminal procedure code of the Republic of Kazakhstan, 2014).

The importance of providing evidence of actual data related to the solution of questions about the availability of the grounds mentioned in article 17 of the criminal code. The word consciousness, not excluding ristilahti, criminal responsibility of persons with mental illness. At the same time such person may be subject to compulsory measure of a medical nature.

Given the nature and degree of mental illness of the insane, the following security measures may be applied:

1) transfer the patient under the supervision of relatives, Tutors, guardians with notification of the health authorities;

2) placement in a special medical organization providing psychiatric care.

Preventive measures cannot be applied to persons suffering from mental illness.

The transfer of the patient under the supervision of relatives, Tutors, guardians is governed by the provisions of article 512 of the criminal procedure code (Criminal procedure code of the Republic of Kazakhstan,2014).

The body conducting the criminal process (the body of inquiry, the judge), since the establishment of the fact of mental illness to negate the application of the previously chosen measure of restraint and to immediately adopt a decision on the application to it of security measures. It should be borne in mind that the security measures provided for in article 511 of the code of criminal procedure are not related to the security measures of persons participating in criminal proceedings under Chapter 12 of the code of criminal procedure.

The patient can be placed under the supervision of relatives, guardians, Trustees, if it is not a danger to themselves and others. In this case, it is necessary to obtain the written consent of relatives, guardians, Trustees of the patient for his examination (Shishkovka 1983: 43).

In case of refusal of relatives, guardians, Trustees from implementation of detention, the sick can be placed in the medical organization.

Placement in a specialized medical organization is governed by the provisions of article 513 of the code of criminal procedure.

The basis of this type of security measures are the rules of the minimum standards for the treatment of prisoners of the UN (1955). (Standard minimum rules for the treatment of prisoners, 1955). In accordance with article 22, 24, 83 of this provision, persons suffering from mental disorders may not be

subjected to forced arrest. If it is found that a person's illness is under arrest, it is necessary to immediately take measures to transfer it to the organization for persons suffering from mental disorders, take them for examination and treat in special psychiatric organizations under the guidance of a doctor.

Algorithm of actions for the application of security measures in the form of premises in a special medical organization:

1) the body carrying out pre-trial investigation petitions for placement of the person in the special medical organization in connection with need of application of security measures;;

2) the specified petition is coordinated with the Prosecutor;

(3) the application shall be submitted to the investigating judge for an order to that effect.;

4) the investigative judge at the petition in its order specifies: a) a medical organization providing psychiatric care in respect of which the person is placed, to which is applied the measure of security; b) abolish a previously applied preventive measure.

This security measure is applied for a period of not more than one month. If necessary, the period of validity may be extended by the investigating judge at the request of the Prosecutor for a period not exceeding one month.

During the trial, this security measure is maintained until the entry into force of the court's decision on the use of compulsory medical measures imposed on the criminal case.

Taking into account the specifics of the proceedings on the application of compulsory measures of a medical nature, the legislator provides for the proceedings with the allocation of the case against a person who committed a prohibited act in a state of insanity or who became ill after committing a criminal offense with a mental disorder.

Distribution of materials of such case in separate proceedings is carried out in the General order provided by article 44 of the code of criminal procedure. However, the distribution of the case is possible only at the stage of pre-trial investigation.

In accordance with article 515 of the code of criminal procedure, a person against whom proceedings are conducted in the case of the use of coercive measures of a medical nature, has the right:

1) know what actions he is accused of;

2) give explanations;

(3) presentation of evidence;

4) submit petitions and challenges;

5) understand in your own language or a language you know;

6) use the free assistance of an interpreter;

7) the presence of the defender and a date with him alone and in secret;

8) to participate with the permission of the investigator in the investigative actions carried out at his request or at the request of the defender;

9) get acquainted with the protocols of these actions and give comments on them;

10) get acquainted with the resolution on appointment of examination and the conclusion of the expert;

11) at the end of the preliminary investigation to get acquainted with all the materials of the case and write out any information in any volume, make copies of documents, including through scientific and technical means, except for information constituting state secrets and other secrets protected by law;

12) to bring complaints against the actions and decisions of the person conducting pre-trial proceedings, the Prosecutor and the court;

13) a copy of the decision on the termination of the criminal case or on the referral of the case to the court for the application of coercive measures of a medical nature.

However, the understanding of these rights to persons suffering from mental illness does not always occur. For the implementation of this procedure requires the conclusion it is judicial-psychiatric examination concluded that the nature and extent of the disease entity do not prevent the understanding of that person the rights attributed to him. If the above-mentioned conditions exist, the investigator is obliged to explain to the person his / her rights and to submit a list of them in writing (On judicial practice on the use of compulsory medical measures, 1999).

The participation of the legal representative is governed by the provisions of article 516 of the CPC.

Mental illness is characterized by inability or inability to control the meaning of their actions. Mental illness can be both temporary and permanent, that is, long-term chronic. A person is in a state of mental illness or insanity without the right to independently exercise his rights and perform the duties of a participant in the criminal process (for example, to appear in a criminal prosecution body on the call of an authorized person), as well as to protect his legitimate interests.

Taking into account these features, if necessary, the application of a compulsory medical measure against a person as a result of a disease is ensured by the participation of his legal representative in the process.

In accordance with subparagraph 13 of article 7 of the code of criminal procedure to the legal representatives are the parents (parents), adoptive parents, guardians, Trustees of insane persons, representatives of organizations and individuals engaged in adoption (adoption) of the child.

The participation of the legal representative in the proceedings in such cases is mandatory. The legal basis for the participation of the legal representative is the decision of the prosecuting authority or the court.

The legal representative of the person against whom proceedings on application of compulsory measures of medical character are conducted, has the right to:

1) to know what act prohibited by the criminal law is charged by the represented person;

2) submit petitions and challenges;

3) presentation of evidence;

4) with the permission of the person conducting the pre-trial investigation, to participate in the actions of the investigation conducted at his request or at the request of the defender;

5) get acquainted with the protocols of investigative actions in which he participated, and make written comments on the reliability and completeness of the records made in them;

6) at the end of the preliminary investigation, get acquainted with all the materials of the case, write out any information from it and in any volume, make copies of documents, including using scientific and technical means, except for information constituting state secrets and other secrets protected by law;

7) to receive a copy of the decision on the termination of the criminal case or the referral of the case to the court for the application of coercive measures of a medical nature;

8) participate in the proceedings;

9) to bring complaints against the actions and decisions of the person conducting the pre-trial investigation, the Prosecutor and the court;

10) appeal of the court decision and receipt of copies of the appealed decisions;

11) to know about the complaints filed in the case, the petitions and protests of the Prosecutor and to object to them;

12) to participate in the judicial examination of the complaints, petitions and protests of the Prosecutor.

Upon entering into the process of legal representative drawn up a Protocol to clarify the procedural rights under article 516 of the code of criminal procedure, in accordance with the rules specified in article 199 of the code of criminal procedure

The participation of defence counsel is subject to the provisions of article 517 of the criminal procedure code.

In addition to article 517 of the code of criminal procedure, the mandatory participation of a defender in cases of the use of compulsory medical measures is also provided for in subparagraph 3) of part 1 of article 67 of the code of criminal procedure. The principle of the protection of all persons detained or arrested in any form, in the aggregate of the principles enshrined in UN General Assembly resolution 43/173 of 9 December 1988 (principle 5.2), has been adopted on the basis of the mandatory participation of the defence counsel.

Procedural inaction of the deranged is the basis of the mandatory participation of the defender in the case. The admission of counsel to the case is compulsory from the moment of establishing the fact of insanity or mental disorder of the person against whom the proceedings are conducted. In addition, the defence counsel may be sent to the case on other grounds and in an earlier period (for example, in the case of suspicion of a crime in which a person may be sentenced to imprisonment for more than ten years. S. AFR.)

The defender who has started the case has the rights provided for in article 70 of the code of criminal procedure, and also has the right to meet with the defendant alone, if this does not interfere with the health of the defendant.

A person suffering from mental illness, in accordance with part 1 of article 69 of the code of criminal procedure, may not be refused a defender, as in such cases the participation of a defender is mandatory.

The end of the preliminary investigation is governed by the provisions of article 518 of the code of criminal procedure.

In cases of the use of coercive measures of a medical nature, as mentioned earlier, the conduct of a preliminary investigation is mandatory.

At the end of the preliminary investigation, the person conducting the pre-trial investigation shall make one of the following decisions in the form of a decision:

1) in the cases provided by article 35 and part of the fifth article 288 of the criminal procedure code and also in the cases when mental disorder is not associated with the risk to himself or other persons or possibility of causing other significant harm-the termination of the case in the production of;;

2) on the direction of the case to the court for the application of coercive measures of a medical nature.

Article 35 of the code of criminal procedure provides for conditions excluding proceedings. These circumstances, which served as the procedural basis for the termination of the case, are divided into two groups: 1) justifying; 2) unjustified. Justifying grounds are the absence of signs of a criminal offense, which caused the beginning of the pre-trial investigation, or the innocence of a person to the illegal action. Non-rehabilitating grounds include the presence in the actions of a person of signs of a specific criminal offense.

The materials of the completed investigation established that a person has committed an act prohibited by criminal law in a state of insanity, or after the Commission of an act, actions committed as a result of a disease, mental illness of a person, threaten themselves or other persons, as well as in establishing the circumstances that caused significant harm to other persons, the body carrying out criminal prosecution shall order to send the case to the court to take a coercive measure of a medical nature.

The decision of the prosecuting authority shall be communicated to that person, his / her legal representative and defence counsel, if the person is able to understand the meaning of the decision on his / her mental state.

The General provisions referred to in article 288 of the code of criminal procedure shall apply to the drafting of a decision to dismiss a case. The resolution sets out the following circumstances specified in article 510 of the code of criminal procedure, which are subject to proof, in particular:

1) the Commission of the action, time, place, method and other circumstances;

2) the Commission by the person of an act prohibited by criminal law;

3) the Nature and extent of the damage caused by the act;

4) the behavior of the perpetrator is prohibited by the criminal act before it occurs and after it;

5) the degree and nature of mental illness in the Commission of an act prohibited by criminal law, or in the proceedings, in the presence of the person previously mental disorder.

A copy of the decision to dismiss the case or to send the case to the court for the application of compulsory medical measures shall be sent to the participants in the process and the person against whom the proceedings are conducted, and his legal representative.

Proceedings in court on the application of compulsory medical measures are governed by articles 519-521 of the code of criminal procedure.

Cases in this category are usually dealt with by a single judge. However, for particularly serious crimes, the composition of the court is complex. In accordance with the provisions of article 52 of the code of criminal procedure, such cases are heard by jury. Such cases are subject to the jurisdiction of district and equivalent courts. The court of appeal may also consider the application of compulsory medical measures in the appeal of the verdict of the court of first instance in a criminal case (Malikova 2018: 85).

If cases of particularly serious crimes are considered on appeal, or the case of the first instance is considered with the participation of jurors, then the case is considered on appeal collectively in the composition of the Chairman and at least two judges of the Collegium.

In addition, the court also decides the issues referred to in paragraphs 10), 11) and 12) of part 1 of article 390 of the code of criminal procedure:

- whether the civil claim in whose favor and in what size is satisfied is subject to satisfaction;
- what to do with the seized property to secure a civil claim or possible confiscation;
- what to do with the physical evidence.

As a result of the case, the court makes one of the following decisions:

1) On the application of compulsory measures of a medical nature – if a person has committed an act prohibited by criminal law in a state of insanity;

2) on the application of compulsory measures of a medical nature – if the psyche of the person has been violated after the Commission of a criminal offense.

Articles 16 and 75 of the criminal code of the Republic of Kazakhstan are the basis for the court to make the above decisions.

If the insane person does not pose a danger due to his / her mental state, the court shall order the dismissal of the case and the non-application of compulsory medical measures.

The court, in recognition of the participation of the person in the Commission of an offence is not proved, as well as the establishment of the circumstances stipulated in items 1)-12) of part 1 of article 35 of the criminal procedure code ("circumstances precluding the proceedings"), the court established the basis they adopt a decision on termination of the case, irrespective of the nature of the disease from the person.

Upon termination of the case without the use of coercive measures of a medical nature, a copy of

the court's decision within five days is sent to the health authorities to resolve the issue of treatment or referral to a psychoneurological institution of persons in need of psychiatric care.

A court decision on the application of a compulsory medical measure may be appealed on appeal. In turn, the decision of the court of appeal on the abolition of the conviction and the termination of the case on the grounds provided for in article 439 of the code of criminal procedure may be appealed in cassation (article 522 of the code of criminal procedure). Persons entitled to appeal in this manner include the defence counsel, the victim and his / her representative, the legal representative or a close relative of the person against whom the case is being considered, as well as the Prosecutor, who has the right to appeal.

The use of compulsory medical measures may be terminated, amended and extended (article 523 of the code of criminal procedure). The adoption of a specific decision is based on the proposal of the organization engaged in compulsory treatment, provided for by the provisions of article 96 of the criminal code. Also the offer is made on the basis of the conclusion of psychiatrists.

A person who has been subjected to a compulsory medical measure shall be examined by a psychiatrist at least once every six months. As a result of the examination, the issues of the existence or absence of grounds for making a submission to the court to terminate or change such a measure are resolved. If there are no such grounds, the head of the organization engaged in compulsory treatment shall submit to the court an opinion for the extension of compulsory treatment.

To extend the first treatment is enough to pass six months after the start of such treatment. Further extension is carried out, if necessary, once a year.

The court shall terminate or alter the compulsory measure of a medical nature, when the mental condition of a person subjected to coercive measures of a medical nature, will be eliminated the necessity of using the previously assigned measures.

If a compulsory measure of a medical nature cancelled in connection with the recovery of the convict, which is not fully served his sentence, the court is not Statute of limitations of execution of the conviction, will send a copy of the decision to the institution or body executing punishment, to resume serving the remainder of the punishment that person.

The time spent in the medical organization is counted in the term of serving the sentence.

Conclusion

Summing up the above, we can come to the following conclusions: during the trial, it is necessary to study and resolve the following issues:

1) whether there has been an act provided for by criminal law;

2) the Commission of the act by the person whose case is under consideration has not committed;

3) the Commission by the person whose case is being examined of acts in a state of insanity;

4) the disease of a person with a mental disorder in which the imposition of punishment or its execution is impossible after the Commission of an act prohibited by criminal law is not painful.;

5) does the mental disorder of a person cause the possibility of causing danger to himself or other persons or other significant harm;;

6) compulsory medical measure and what kind of it is applied.

The application of compulsory medical measures against the insane is a complex process, so the court will pay great attention to many issues, as it contributes to the solution of many issues raised before the criminal process. It can also be seen as one of the ways to protect the rights of the insane, as one of the tasks of criminal procedure is to guarantee the protection of human rights.

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