

LEGAL REGULATION OF PROVIDING PSYCHIATRIC CARE IN UKRAINE: PROBLEMS AND PROSPECTS

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I. INTRODUCTION

The concept of “man” expresses the biosocial nature of the individual, who, as a result of evolution,

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united animal-biological and social principles, which determined his features in the biological form of the movement of matter and provided access to the highest social level of such movement. At the same time, the social principles of a person are his essence, manifested through a personality that is formed only in a social environment and characterizes a person as the bearer of the entire totality of social relations. The main tool for the formation of personality is the ability of the human brain and the entire nervous system to reflect objective reality in social practice in the form of subjective images, which leads to the formation and development of abstract thinking. The latter, together with articulate speech and the ability to work to transform objects of primary nature into a secondary one, constitutes the substantive basis of the personality, forming an individual consciousness. Therefore, one of the determining factors of social wellbeing and progress is the state of consciousness of individuals, which underlies the consciousness of social classes, groups and strata, as well as the mass consciousness of the people. Legal regulation of

social relations determines the formation of legal consciousness as an essential component of the legal culture of society. Consequently, the interconnected state of the individual, group and general psyche affects public order and legal order, the stability of the social system and the effectiveness of state power. The features of the conscious-volitional mental response of social groups in certain socio-economic and political situations indicate the prospects for the development of society and the state.

This explains the importance of mental health protection as one of the priority directions of state functioning in the field of health care.⁶ The effectiveness of such protection requires an appropriate mechanism of legal regulation of the mental health care system. The peculiarities of the actual social status of psychiatric patients and the special place of psychiatric science and practice in

⁶ European Declaration on Mental Health, “Problems and Ways to Solve Them,” WHO European Conference of Ministers of Health. Helsinki, Finland, January 12-15, 2005, https://www.euro.who.int/data/assets/pdf_file/0011/88598/E85445R.pdf.

the system of medical sciences and the entire health sector make it necessary to provide detailed legal regulation for the provision of psychiatric care and the subsequent rehabilitation of mental health, providing the corresponding guaranteed rights and freedoms to people suffering from mental disorders. The particular importance of mental health requires not only consideration of its problems at the national level, but also international coordination based on the principles and norms of international law. In the resolutions of the Council of the European Union, the recommendations of the Council of Europe and the resolutions of the World Health Organization (WHO), since 1975, the importance of mental health promotion is determined, the interdependence of mental health problems and social marginalization, unemployment, and homelessness is indicated.⁷ Effective mental health care begins with a well-

⁷ Melnik Alina Vasylivna, "On the Problem of Legal Regulation of Psychiatric Care," *Medical Law of Ukraine: The Legal Status of Patients in Ukraine and Its Legislative Support (Genesis, Development, Problems and Prospects for Improvement)*, II All-Ukrainian Scientific-Practical Conference, April 17-18, 2008, http://medicallaw.org.ua/uploads/media/02_172_01.pdf, at 72.

defined regulatory framework for law enforcement practice in this segment of health care. The Law of Ukraine “On Psychiatric Care” dated February 22, 2000 Number (No.) 1489-III, according to the Preamble,

defines the legal and organizational basis for providing citizens with psychiatric care based on the priority of human and civil rights and freedoms, establishes the responsibilities of executive authorities and local governments in organization of the provision of mental health care and legal and social protection, training of persons suffering from mental disorders, regulates the rights and obligations of specialists and other workers involved in the provision of mental health care, social protection and training of persons suffering from mental disorders.⁸

Therefore, the purpose of the Article is to study the mechanism of legal regulation of Ukraine for the provision of psychiatric care and rehabilitation of persons suffering from mental illness, to identify the problems of such regulation in connection with

⁸ On Psychiatric Care: Law of Ukraine, No. 1489-III, February 22, 2000. Vedomosti of the Verkhovna Rada of Ukraine, No. 19. art. 143 (2000), <https://zakon.rada.gov.ua/laws/show/1489-14#Text>.

overcoming their social alienation (stigmatization) and self-alienation (self-stigmatization) in the process of reforming the mental health care system as an integral part of the reform the system of Ukrainian health care, as well as ensuring the safety of people from possible socially dangerous acts of persons in a condition of mental disorders—in the context of the implementation of the constitutional right of a person and citizen to health protection.

II. THE METHODOLOGICAL BASIS.

The methodology of the Article is based on the dialectical method, which made it possible to identify the relationship of public order, legal order, well-being, and progress with the state of public consciousness, legal consciousness, and the entire legal culture of society, which is largely due to the implementation of the legal right to mental health protection and mental health care, since mental health, a person, and a citizen are in the public domain. With the help of systemic-structural and structural-functional methods, the mechanism of

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legal regulation for the provision of psychiatric care in the health care system of Ukraine has been investigated, the possibilities of expanding the range of subjects of its provision have been identified. The system-analytical method made it possible to identify the problems of the legal status of psychiatric patients suffering from temporary mental disorders in cases of socially dangerous acts committed by them, and the hermeneutic method was used to clarify the legislative terminology for determining the legal status of such patients. The instrumental legal method was used to clarify the legislative and departmental legal regulation of various legal procedures for the organization and provision of psychiatric care and rehabilitation.

III. THE INFORMATION AND EMPIRICAL BASE.

The information and empirical base of the study includes the norms-prescriptions contained in legislation and bylaws governing the legal relationship for the provision of psychiatric medical

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care and the implementation of rehabilitation in the field of mental health, clarification of the legal status of persons suffering from mental illness; provisions of interpretative legal acts in the form of decisions of the Constitutional Court of Ukraine; and statistical information from the World Health Organization.

Such legislative acts are the following: Constitution of Ukraine, Article 49; Civil Code of Ukraine dated January 16, 2003; Civil Procedure Code of Ukraine dated March 18, 2004 (No.) 1618-IV; Family Code of Ukraine dated January 10, 2002 No. 2947-III; Housing Code of the Ukrainian Socialist Soviet Republic (SSR) dated June 30, 1983 No. 5464-X; Criminal Code of Ukraine dated April 5, 2001 No. 2341-III; Criminal Procedure Code of Ukraine dated April 13, 2012 No. 4651-VI; Law of Ukraine “Fundamentals of Ukrainian legislation on health care” dated November 19, 1992 No. 2801-XII; Law of Ukraine “On Psychiatric Care” dated February 22, 2000 No. 1489-III; Law of Ukraine “On Information” dated October 2, 1992 No. 2657-XII; Decisions of the Constitutional Court of Ukraine in

the case of the official interpretation of Articles Three, 23, 31, 47, 48 of the Law of Ukraine “On Information” and Article 12 of the Law of Ukraine “On the Prosecutor’s Office” (the case of K. Ustimenko) of October 30, 1997 (Official Herald of Ukraine 1997. No. 46. page 126); Order of the Ministry of Health of Ukraine “On approval of the Instruction on the conduct of mandatory preliminary and periodic psychiatric examinations” dated February 1, 2002; Order of the Ministry of Health of Ukraine “On Approval of the Procedure for Conducting a Forensic Psychiatric Expertise” dated October 8, 2001; Order of the Ministry of Health of Ukraine “On approval of the Procedure for the application of compulsory medical measures to persons who suffer from mental disorders and have committed socially dangerous acts in a psychiatric hospital with strict supervision” dated October 8, 2001; Order of the Ministry of Internal Affairs of Ukraine and the Ministry of Health of Ukraine “On Approval of the Instruction on the Procedure for Organizing the Protection of Premises and

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Territories of Departments of Forensic Psychiatric Examination and the Regime of Detention of Persons in Custody and Referred for Forensic Psychiatric Examination” dated November 4, 1996. Empirical data on the prevalence of mental illness and extreme states of the psyche in the modern world and, in particular, in Ukraine, are obtained from the statistical information of the World Health Organization; court practice on the problems of applying compulsory medical measures in connection with compulsory hospitalization and compulsory psychiatric examination are considered on the examples of the materials of decisions of the Moscow District Court of Kharkov and the Shevchenko District Court of Zaporozhye.

IV. DISCUSSION AND RESULTS.

Statistics from the World Health Organization put the number of people suffering from mental illness in the world today at approximately 450

million. More than 282,000 of them are in Ukraine.⁹ According to statistics, this is four to five percent of the total population of the country. The prevalence of extreme conditions of the psyche reaches a level of about 20%.¹⁰

People with mental disorders tend to be separated from society and are either in hospitals or at home due to inadequate behavior and increased aggressiveness. At the same time, they are actually isolated not only from the public with limited contacts and rights, but often from their own family, which seeks to isolate a person with mental disorders, avoiding psychological discomfort. Such rejection leads such people to ignorance of their rights and inability to use and defend them, and the state of mental disorder complicates the proper

⁹ R. I. Sibirnaya & A. V. Sibirny, *Protection of the Rights of Persons with Mental Disorders in Ukraine*, 1 SCI. BULL. LVIV ST. UNIV. INTERNAL AFR. 57 (2016) at 57, available at http://dspace.lvduvs.edu.ua/bitstream/1234567890/609/1/%D0%9F%D1%81%D0%B8%D1%85%D0%BE%D0%BB%D0%BE%D0%B3%D1%96%D1%87%D0%BD%D0%B8%D0%B9_%D0%B2%D1%96%D1%81%D0%BD%D0%B8%D0%BA_1_2016.pdf.

¹⁰ A. Korotenko, *Specificity of Legal Protection of the Mentally Ill*, Utah Psychiatric Association (UPA), <http://upa-psychiatry.org.ua/articles/ZahystPsychichHvoryh.pdf>.

assessment of situations. Persons with mental illness are endowed with the same rights and responsibilities as all citizens, but the course of such diseases requires the establishment of certain legal restrictions or legal benefits.

All legal aspects of establishing guardianship and custody of persons with mental disorders and guarantees for the protection of their property rights are regulated by the Civil,¹¹ Family,¹² Housing,¹³ and Civil Procedure¹⁴ Codes of Ukraine. The main document regulating the provision of psychiatric care in Ukraine is the Law of Ukraine “On Psychiatric Care.” It defines the legal and organizational basis for providing citizens with psychiatric care based on the priority of human and

¹¹ Civil Code of Ukraine, No. 435-IV, Vedomosti of the Verkhovna Rada of Ukraine Nos. 40-44, art. 356, January 16, 2003, <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

¹² Family Code of Ukraine, No. 2947-III, January 10, 2002, Vedomosti of the Verkhovna Rada of Ukraine (2002), Nos. 21-22, art. 135, <https://zakon.rada.gov.ua/laws/show/2947-14#Text>.

¹³ Housing Code of the Ukrainian SSR, No. 5464-X, June 30, 1983, Vedomosti of the Verkhovna Rada of Ukraine (1983). Supplement to No. 28, art. 57, <https://zakon.rada.gov.ua/laws/show/5464-10#Text>.

¹⁴ Civil Procedure Code of Ukraine, No. 1618-IV, March 18, 2004, Vedomosti of the Verkhovna Rada of Ukraine, No. 40-41, 42 (2004), art. 492, <https://zakon.rada.gov.ua/laws/show/5464-10#Text>.

civil rights and freedoms, establishes the responsibilities of executive authorities, and local governments in organizing the provision of psychiatric care and legal and social protection of persons suffering from mental disorders, regulates the rights and obligations of specialists, and other workers involved in the provision of mental health care.¹⁵.

According to Article 13 of the Law, a person is hospitalized in a psychiatric institution voluntarily—at his request or with his informed consent, with the exception of the circumstances provided for in Article 14: committing or revealing a real intention to commit actions that are directly dangerous for him or those around him; and inability independently to satisfy his basic vital needs at a level that ensures his life. In such cases, a person suffering from a mental disorder may be hospitalized in a psychiatric institution without his consent or without the consent of his legal representative pending a court decision,

¹⁵ On Psychiatric Care: Law of Ukraine, No. 1489-III, February 22, 2000. Vedomosti of the Verkhovna Rada of Ukraine, No. 19. art. 143 (2000), <https://zakon.rada.gov.ua/laws/show/1489-14#Text>.

if his examination or treatment is possible only in a hospital setting, and the mental disorder is severe.¹⁶

According to the Law, the diagnosis of a mental disorder is established in accordance with generally recognized international diagnostic standards and the International Statistical Classification of Diseases, Injuries and Causes of Death, adopted by the Ministry of Health of Ukraine for use in Ukraine. The diagnosis of a mental disorder cannot be based on a person's disagreement with the political, moral, legal, religious, or cultural values existing in society, or on any other grounds not directly related to his state of mental health. Diagnostic and treatment methods and medicines authorized by the Ministry of Health of Ukraine are used only for diagnostic and therapeutic purposes in accordance with the nature of mental disorders, and they cannot be prescribed to punish a person suffering from a mental disorder, or in the interests of other persons.¹⁷ Organizational and

¹⁶ Articles 14 and 16 of the Law Ukraine "On Psychiatric Care."

¹⁷ SEMEN G. STETSENKO, *MEDICAL LAW OF UKRAINE* (2008) at 400, 507, *available at* <https://medcoledg.ucoz.ru/Likspr/pravo/medpravoua2008.pdf>.

legal state guarantees of psychiatric treatment, in accordance with Article Five of the Law of Ukraine “On Psychiatric Care” include: financing the provision of mental health care in the amount necessary to ensure its guaranteed level and appropriate quality; gratuitous provision of medical care to persons suffering from mental disorders in state and communal health care institutions and provision of medicines and medical products to them gratuitously or on preferential terms in accordance with the procedure established by the Cabinet of Ministers of Ukraine; monetary assistance in the manner prescribed by the Cabinet of Ministers of Ukraine to a low-income person living with a disabled person of group I or II due to a mental disorder, who, according to the conclusion of the medical commission of a medical institution, needs constant outside care, for caring for him in the amount of ten percent of the subsistence minimum established by law for an able-bodied person; provision of free diagnostic, consultative, medical, rehabilitation assistance in outpatient and inpatient

conditions in state and communal psychiatric institutions; implementation of all types of examination of the mental state of the individual; protection of the rights, freedoms and legitimate interests of persons suffering from mental disorders; decision in the manner prescribed by law of issues of guardianship and trusteeship in relation to such persons; social welfare of disabled and elderly people suffering from mental disorders, as well as caring for them; receiving free of charge appropriate education for persons suffering from mental disorders in state and communal educational institutions; and the establishment of mandatory quotas for jobs at enterprises, institutions and organizations for the employment of persons with disabilities due to mental disorder in the manner prescribed by law.

The legislative provision of the rights of persons suffering from a mental disorder and receiving psychiatric care is detailed in Article 25 of the Law of Ukraine “On Psychiatric Care.” They have the rights and freedoms of citizens provided for by the

Constitution of Ukraine and the laws of Ukraine, and the corresponding restrictions are strictly regulated by law. These persons can take care of the protection of their rights and freedoms personally or through their representatives in the manner established by the Civil Code of Ukraine,¹⁸ the Civil Procedure Code of Ukraine and other laws of Ukraine.¹⁹

The regulations clearly define the rights of persons receiving mental health care, including their stay in a mental health facility. The decision to restrict the patient's rights in the provision of psychiatric care is recorded in the medical documentation indicating the period of its validity, and it can be appealed in court. Along with concern for mental health, society needs to provide adequate protection against aggressive, illegal, socially dangerous behavior of mentally ill people.

¹⁸ Civil Code of Ukraine, No. 435-IV, Vedomosti of the Verkhovna Rada of Ukraine Nos. 40-44, art. 356, January 16, 2003, <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

¹⁹ Civil Procedure Code of Ukraine, No. 1618-IV, March 18, 2004, Vedomosti of the Verkhovna Rada of Ukraine, No. 40–41, 42 (2004), art. 492, <https://zakon.rada.gov.ua/laws/show/5464-10#Text>.

Prevention of socially dangerous actions of mentally ill patients is one of the most pressing and socially important problems of forensic psychiatry.²⁰ According to forensic psychiatrists, most of the socially dangerous actions the mentally ill commit are against the background of chronic mental disorders, and most serious (murder, grievous bodily harm)—during short-term psychotic disorders of mental activity. Practice and scientific works on forensic psychiatry indicate that most often among the short-term psychotic disorders of mental activity, during which persons commit socially dangerous acts and in respect of which they are recognized as

²⁰ V.I. Melnik, *On the Issue of Termination of Compulsory Medical Measures in a Psychiatric Hospital with Strict Supervision*, 7 VINNITSA ST. MED. UNIV. BULL. 70, 70–72 (2003); V.I. Melnik, *About the Application of Compulsory Medical Measures in a Psychiatric Hospital with Strict Supervision to Persons Who Have Committed Socially Dangerous Acts During the Period of Temporary Mental Disorders*, 2 BULL. PSYCHIATRY & PSYCHOPHARMACOLOGY 54, 54–59 (2003); V.I. MELNIK, FORENSIC PSYCHIATRIC ASPECTS: CLINIC, FORENSIC PSYCHIATRIC ASSESSMENT, PREVENTION (2005) at 343; S.I. TABACHNIKOV, V.I. MELNIK, & A.M. KUSHNIR, TERMINATION AND CHANGE OF COMPULSORY MEDICAL MEASURES IN RELATION TO MENTALLY ILL WHO HAVE COMMITTED SOCIALLY DANGEROUS ACTS AND ARE IN A PSYCHIATRIC HOSPITAL WITH STRICT SUPERVISION: METHOD. RECOMMEND (2003) at 20.

insane, there are twilight clouding of consciousness of organic genesis and acute alcoholic psychoses.

In general psychiatry, a temporary disorder of mental activity is not singled out as an independent nosological unit in the tenth revision of the International Classification of Diseases (ICD-10).²¹ Such allocation is not scheduled in the 11th revision (ICD-11), approved by the WHO General Assembly in May 2019 for use by WHO members for statistical purposes from January 1, 2022—it is assumed that from January 1, 2022, WHO member countries will begin to use ICD-11 for statistical purposes.²² At the same time, in forensic psychiatric practice and in criminal law, it is used in drawing up a formula for insanity in accordance with Article 19 of the Criminal Code of Ukraine.²³ In fact, this concept is

²¹ INTERNATIONAL CLASSIFICATION OF DISEASES OF THE 10TH REVISION (ICD-10), MENTAL AND BEHAVIORAL DISORDERS (F00-F99), <https://mkb-10.com/index.php?pid=4001>.

²² *ICD-11 for Mortality and Morbidity Statistics* (May 2021), <https://icd.who.int/browse11/lm/en#/http%3a%2f%2fid.who.int%2fid%2fentify%2f334423054>.

²³ The Criminal Code of Ukraine, No. 2341-III (Apr. 5, 2001). *Vedomosti of the Verkhovna Rada of Ukraine*, No. 25-26, art. 131 (2001), <https://zakon.rada.gov.ua/laws/show/2341-14#Text>; V. Ya. Tatsia, V. P. Pshonka, V. I. Borisov & V. I. Tyutyugin, et al., *Vol. 1:*

based on a chronological parameter and is more legal than medical, since the time factor is of decisive importance in a specific legal situation.

According to Part Two of Article 19 of the Criminal Code of Ukraine (CC of Ukraine), not subject to criminal liability is a person who at the time of the commission of a socially dangerous act was in a condition of insanity, that is, could not realize his act or control it due to a chronic mental illness, temporary mental disorder, dementia, or another painful state of mind. Compulsory medical measures may be applied to such a person by a court decision.²⁴

The criminal legislation of Ukraine determines that a person who has committed a socially dangerous act in a state of insanity is not a subject of a crime and therefore does not bear criminal

General Part, CRIMINAL CODE, SCIENTIFIC AND PRACTICAL COMMENTARY (5TH ED.) (2013), at 376, *available at* https://shron1.chtyvo.org.ua/Tatsii_Vasyl/Kryyminalnyi_kodeks_Ukrainy_Naukovo-praktychnyi_komentar_u_dvokh_tomakh_Tom_1_Zahalna_chastyna.pdf.

²⁴ V.Ya. Tatsia, et al., *CRIMINAL CODE, SCIENTIFIC AND PRACTICAL COMMENTARY* (2013).

responsibility. The fact of establishing the insanity of a person is only within the competence of the court and concerns only specific socially dangerous acts. There is no insanity, in general, as a stable or permanent condition inherent in a person.

Set out in Part Two of Article 19 of the CC of Ukraine, the criteria for insanity constitute a formula for insanity and consist of a medical (biological) and legal (psychological) component. One of the signs of the medical criterion is that a person has a temporary disorder of mental activity, by which the legislator understands a wide range of mental disorders with varying duration and ending in recovery. Taking into account the clinical content, these include: a) exceptional conditions (pathological intoxication, pathological affect, pathological subsleep state, short-circuit reaction, and twilight states); b) intoxication and symptomatic psychoses (delirium, acute hallucinosis, acute paranoid, etc.); c) reactive psychoses (post-traumatic, psychogenically caused temporary disorders of mental activity); d) decompensation, exacerbation of the underlying

disease with the inclusion of short-term psychotic states (organic brain damage, epilepsy, etc.); and e) independent temporary disorders of mental activity that have arisen within the framework of other nosological forms (reactive psychoses in patients with schizophrenia, etc.). The main symptom of temporary disorders of mental activity is a temporary nature and complete recurrence of clinical manifestations.

The legal criterion of the formula for insanity includes two features: intellectual—inability of a person to be aware of his actions or inaction; and volitional—inability to control them. For the existence of a legal criterion, one of these signs is sufficient. In addition, the Criminal Code of Ukraine determines that in order for a court to establish a state of insanity in a person who has committed a socially dangerous act during a temporary mental disorder, it is necessary in a procedural order to prove the presence of a set of conditions: to establish the fact of the commission of an act containing signs of a crime, provided for in Article 11 of the CC of

Ukraine; establishment of the fact of its implementation by this particular person; and the establishment of a mental disorder in a person when committing a socially dangerous act, including a temporary disorder of mental activity.

At the same time, the legislation of Ukraine protects persons who have committed socially dangerous acts in a morbid state from the illegal application of corrective labor to them. If it is established that such an action was committed in a state of insanity, then the person is not criminally liable, and compulsory measures of a medical nature may be applied to him under Articles 19, 92–95 of the CC of Ukraine and Articles 416–424 of the Criminal Procedure Code of Ukraine (CPC Ukraine).²⁵ They are not a criminal record, they cannot be regarded as punishment, since they are fundamentally different from the latter in their

²⁵ V.Ya. Tatsia, et al., CRIMINAL CODE, SCIENTIFIC AND PRACTICAL COMMENTARY (2013); S.V. KIVALOV, S.M. MISHCHENKO, & V.YU. ZAKHARCHENKO, CRIMINAL PROCEDURE CODE OF UKRAINE: SCIENTIFIC AND PRACTICAL COMMENTARY (2013), at 1104, *available at* <http://kizman-tehn.com.ua/wp-content/uploads/2017/09/KPK-komentar.pdf>.

purpose and methods. Accordingly, Article 92 of the CC of Ukraine, clause two of the commentary to Article 92 of the CC of Ukraine, in essence, compulsory measures of a medical nature are a measure of state coercion in the form of various medical and rehabilitation measures prescribed by the court in the framework of the criminal process for dual purposes. On the one hand, these are exclusively medical measures aimed at treatment, psychological correction of the personality, rehabilitation, and, accordingly, the reduction and elimination of the social danger of the mentally ill. On the other hand, compulsory measures of a medical nature pursue the goal of protecting society from socially dangerous acts committed by persons for painful reasons. Therefore, compulsory measures of a medical nature are one of the defining components of the system of preventive measures in relation to the socially dangerous mentally ill, and they should be attributed to measures of public protection.

Paragraph three of the Commentary on Article 92 of the CC of Ukraine indicated that the application of

compulsory measures of a medical nature is not mandatory, is the right of the court, and is possible only if the person is in such a state that poses a danger to himself or others under clauses one and two of the commentary of Article 416 of the CPC of Ukraine.²⁶ Thus, in each specific case, when choosing the type of compulsory measures of a medical nature, the court must assess the social danger of the patient, determined by the risk of the patient committing a repeated socially dangerous action. At the same time, clause ten of the Resolution of the Plenum of the Supreme Court of Ukraine “On the practice of using by courts compulsory medical measures” No. two dated March 19, 1982, it is clarified that compulsory medical measures cannot be applied to a person who has committed a socially dangerous act in a state of insanity or to a person who fell ill with a mental illness after committing a crime, before a court ruled whether the person has recovered or whether his mental state has changed so much that it ceased to be

²⁶ S.V. KIVALOV, ET AL., CRIMINAL PROCEDURE CODE OF UKRAINE (2013).

dangerous for himself or others. This provision was further reflected in paragraph three of the Resolution of the Plenum of the Supreme Court of Ukraine dated June 4, 1993 and in paragraph 16 of the Resolution of the Plenum of the Supreme Court of Ukraine No. seven dated June 3, 2005, as well as in paragraph three of the commentary to Article 92 of the CC of Ukraine, clause nine of the commentary to Article 416 of the CPC of Ukraine.²⁷ That is, over the past 39 years, the provision on medical measures in relation to persons with temporary mental disorders was revised at least three times, but did not undergo any significant changes. The application of compulsory medical measures to persons with

²⁷ Resolution of the Plenum of the Supreme Court of Ukraine “On the Practice of Applying by Courts of Compulsory Measures of a Medical Nature” No. 2 (March 19, 1982), http://search.ligazakon.ua/l_doc2.nsf/link1/VS82001.html; Resolution of the Plenum of the Supreme Court of Ukraine “On the Practice of Applying Compulsory Measures of a Medical Nature by Courts” No. 3 (June 4, 1993), http://search.ligazakon.ua/l_doc2.nsf/link1/VS93001.html; Resolution of the Plenum of the Supreme Court of Ukraine “On the Practice of Applying by Courts of Compulsory Medical Measures and Compulsory Treatment” No. 7 (June 3, 2005), http://search.ligazakon.ua/l_doc2.nsf/link1/VS05050.html.

temporary mental disorders is illegal in accordance with the current legislation.

The amendments to the Law of Ukraine “On Psychiatric Care,” introduced in 2017, revised the procedure for hospitalizing incapacitated persons. According to the decision of the Constitutional Court of Ukraine, the procedure for hospitalizing an incapacitated person with the consent of the guardian was declared unconstitutional. Now hospitalization of an incapacitated person is carried out on the basis of a court decision.²⁸ According to the amendments to Article 13 of the Law of Ukraine “On Psychiatric Care,” entered into force on June 10, 2018, an incapacitated person may be hospitalized with his consent, or if it is impossible to obtain such consent, by decision of the *guardianship and trusteeship* authority, which is accepted no later than 24 hours from the moment of appeals to this body of the legal

²⁸ Decision of the Constitutional Court of Ukraine on Case No. 1-1 / 2016 (June 1, 2016), <http://zakon3.rada.gov.ua/laws/show/v002p710-16>; Decision of July 30, 2021, No. 643/13937/21, Moscow District Court of Kharkov, <https://verdictum.ligazakon.net/document/98767211>.

representative of the specified person and can be appealed to the court.²⁹

From a clinical point of view, forensic psychiatrists include the spontaneity of occurrence, the severity of development, the presence of psychotic inclusions (delusions, hallucinations, etc.), the intensity of affect, psychomotor agitation with unmotivated, generalized aggression toward others, the severity committed socially dangerous act and mental illness.³⁰ In clinical practice, as a rule, with recovery from a temporary disorder of mental activity, either practical recovery is observed, for example, reactive psychoses, exceptional conditions, or a return to the soil on which the mental disorder arose, for example, twilight clouding of consciousness in patients with organic brain damage, in patients with epilepsy etc. Taking into account the

²⁹ On Psychiatric Care: Law of Ukraine, No. 1489-III, February 22, 2000. Vedomosti of the Verkhovna Rada of Ukraine, No. 19. art. 143 (2000), <https://zakon.rada.gov.ua/laws/show/1489-14#Text>.

³⁰ Melnik Alina Vasylivna, "On the Problem of Legal Regulation of Psychiatric Care," Medical Law of Ukraine: The Legal Status of Patients in Ukraine and Its Legislative Support (Genesis, Development, Problems and Prospects for Improvement), II All-Ukrainian Scientific-Practical Conference, April 17-18, 2008, http://medicallaw.org.ua/uploads/media/02_172_01.pdf, at 74.

basis for the occurrence of a mental disorder determines the prognosis, the choice, or not, of the type of compulsory medical measures with subsequent medical and rehabilitation measures.³¹ Therefore, the attribution of such short-term psychotic disorders as twilight clouding of consciousness in epilepsy or in organic brain damage seems to be rather arbitrary and does not fully meet the criteria of the law on recovery. Moreover, the criteria of potential social danger must necessarily include the personality traits and micro-/macrosocial factors that contributed to the commission of a socially dangerous action.

As noted above, for the courts to apply compulsory medical measures, it is necessary to establish that the person who has committed a socially dangerous act is in a mental state that poses a danger to himself and others. Currently, people who have suffered temporary disorders of mental activity, such as exceptional conditions, symptomatic psychosis, reactive states, and

³¹ *Id.*

psychotic symptoms when these persons are admitted to an expert institution are completely absent. During the period of forensic psychiatric examination, regardless of the nature of the act committed during the period of psychosis, in terms of their mental state, these persons do not pose a public danger either to themselves or to those around them. Moreover, according to the literature, this contingent of persons has almost no tendency to repeat psychotic states, which became the cause of a socially dangerous act. Therefore, it is quite expedient and reasonable not to recommend the court to prescribe compulsory medical measures in these cases, and the cases of their appointment in practice are illegal.

For example, by the decision of the Moscow District Court of Kharkov in case No. 643/13937/21 proceedings No. 2-o / 643/622/21 dated July 30, 2021 in connection with the statement of the representative of the communal non-profit enterprise of the Kharkov Regional Council “Regional Clinical Psychiatric Hospital No. 3” it was denied the

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application of compulsory hospitalization in a psychiatric hospital,

since the hospital's representative did not prove the criteria that can serve for compulsory treatment of a person: it must be reliably proved that the person is mentally ill; the mental disorder must be of the type or degree that serves as the basis for compulsory confinement in a mental hospital; the validity of long-term confinement in a psychiatric hospital depends on the persistence of the respective disease. Also, the representative of the hospital has not proven the existence of such a criterion for involuntary hospitalization in accordance with Article 14 of the Law of Ukraine 'On Psychiatric Care' as committing or revealing real intentions to commit actions that are helplessness and the inability to independently satisfy basic vital needs, since it was on this basis that the hospital referred in its statement as the basis for involuntary hospitalization.³²

³² Decision of the Constitutional Court of Ukraine on Case No. 1-1 / 2016 (June 1, 2016), <http://zakon3.rada.gov.ua/laws/show/v002p710-16>; Decision of July 30, 2021, No. 643/13937/21, Moscow District Court of Kharkov, <https://verdictum.ligazakon.net/document/98767211>.

The legal grounds for such a court decision, along with national legislation and judicial practice of the Supreme Court of Ukraine, were also international legal sources. One, Subparagraph (e) of clause one of Article Five of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms,

everyone is guaranteed the right to liberty and security of person. No one may be deprived of his liberty, except for the lawful detention of persons, inter alia, for the lawful detention of the mentally ill, in accordance with a procedure established by law.³³

According to the practice of the European Court of Human Rights (ECHR) on the application of subparagraph (e) of paragraph 1 of Article Five of the Convention, a person cannot be deprived of liberty as “mentally ill” if three minimum conditions are not met: first, it must be reliably proved that the person is mentally ill; secondly, the mental disorder must be

³³ Decision of July 30, 2021, No. 643/13937/21, Moscow District Court of Kharkov,
<https://verdictum.ligazakon.net/document/98767211>.

of the type or degree that serves as the basis for compulsory confinement in a mental hospital; and thirdly, the validity of long-term confinement in a psychiatric hospital depends on the persistence of the corresponding disease. Two, in paragraph 39 of the *Winterwerp v. The Netherlands* judgment of October 24, 1979, the ECtHR notes that, unless absolutely necessary, a person should not be deprived of liberty until it has been conclusively proven that he is indeed mentally ill.³⁴ The very essence of what must be convinced of the competent state authorities—the presence of a mental disorder—requires an objective medical examination.³⁵

By the ruling of February 26, 2021 No. 336/1217/21 of the Shevchenkivskyi District Court of Zaporozhye, statement of a separate proceeding of

³⁴ *Winterwerp v. The Netherlands*: Judgment of the European Court of Human Rights of October 24, 1979 (application no. 6301/73) (extract), available at <https://europeancourt.ru/resheniya-evropejskogo-suda-na-russkom-yazyke/vinterverp-protiv-niderlandov-postanovlenie-evropejskogo-suda/>.

³⁵ European Convention on Human Rights, as amended and supplemented by Protocols No. 11 and No. 14, which entered into force on June 1, 2010. Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, November 4, 1950, available at <https://www.coe.int/ru/web/compass/the-european-convention-on-human-rights-and-its-protocols>.

a psychiatrist of the municipal non-profit enterprise “Regional Clinical Institution for the Provision of Psychiatric Care” of the Zaporozhye Regional Council on a compulsory psychiatric examination of a person was left without movement due to inconsistency with the requirements of Article 339 and h.(1), (2) of Article 340 of the Civil Procedure Code of Ukraine and Article 11 of the Law of Ukraine “On Psychiatric Care.”³⁶ The court found the ambiguity in the definition of the diagnosis, indicated only by the disease code, the absence of any previous requests from this person regarding mental illness for medical assistance, as well as the uncertainty of other information taken only from the words of an unknown person who did not confirm family ties with the alleged mentally ill. The statement and the attached documents did not indicate the grounds for conducting a psychiatric examination of a person precisely in a compulsory manner, since his deliberate refusal to examine him

³⁶ Determination, No. 336/1217/21 (Shevchenko Dist. Ct. Zaporozhye, Feb. 26, 2021), *available at* <https://verdictum.ligazakon.net/document/95188398>.

was not confirmed. The court granted the applicant a five-day period from the date of receipt of a copy of the ruling to eliminate the above deficiencies, otherwise the application should be considered not submitted and returned to the applicant.³⁷

At the same time, the practice of using compulsory medical measures against persons who have suffered temporary mental disorders as a result of alcohol intoxication testifies to their being carried out in a psychiatric hospital with strict supervision. One of the reasons for the recommendation of compulsory medical measures by forensic psychiatrists-experts are the residual effects of past psychosis, as well as psychopathic disorders characteristic of chronic alcohol intoxication. However, even with the admission of such persons to an expert institution, a sufficiently long period of time passes for leveling the phenomena of the transferred psychosis. The psychopathic disorders

³⁷ Winterwerp v. The Netherlands: Judgment of the European Court of Human Rights of October 24, 1979 (application no. 6301/73) (extract), available at <https://europeancourt.ru/resheniya-evropejskogo-suda-na-russkom-yazyke/vinterverp-protiv-niderlandov-postanovlenie-evropejskogo-suda/>.

that many of these persons have, as a manifestation of chronic alcoholism, are not a sign of mental illness and are not subject to Article 19 of the CC of Ukraine. Therefore, if we are guided exclusively by the sources of criminal law and procedure in the current edition, Articles 19, 92-95 of the CC of Ukraine, Articles 416-424 of the CPC of Ukraine, clause three of the commentary of Article 92 of the CC of Ukraine, pages one, two, and nine of the commentary to Article 416 of the CPC of Ukraine, Resolution of the Plenum of the Supreme Court of Ukraine No. seven of June 3, 2005, etc., then the appointment of compulsory measures of a medical nature to such persons is illegal and legally unjustified.

However, the recommendations of forensic psychiatrists on the practice of using compulsory medical measures are logical and justified from a medical point of view, because the likelihood of a recurrence of a temporary mental disorder as a result of alcohol intoxication is quite high, since it directly depends on chronic alcohol intoxication. Thus,

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according to the legal (chronometric) parameter, alcoholic psychoses belong to the category of temporary disorders of mental activity, at the same time, their recurrence, by its nature, directly depends on chronic alcoholism. With further abuse of alcoholic beverages by this person, there is a high probability of repeated recurrence of psychosis, in which a new, serious crime will be committed. A complex legal conflict arises here, due to the fact that, on the one hand, a person who has committed a socially dangerous act in a state of alcoholic psychosis is insane, that is, he does not bear legal responsibility for his actions, and on the other hand, according to the current legislation, compulsory medical measures cannot be applied to him, and on the third, according to the clinical patterns of the course of chronic alcoholism, this person is potentially socially dangerous—high risk of recommitting a socially dangerous act.

A similar situation arises with regard to the twilight darkening of consciousness. In the criminal legislation of Ukraine, it is noted that temporary

mental disorders also include twilight clouding of consciousness, during which a person committed a socially dangerous act, but by the period of forensic psychiatric examination, he completely left this state. On this basis, compulsory medical measures cannot be applied to him.

Apparently, twilight stupefaction is only one of the clinical manifestations of a long-term painful process. Therefore, such a state is natural for the phenomenon of this pathology, and getting out of it does not mean recovery from the disease, for example, epilepsy, organic brain damage, which does not exclude its recurrence if adequate treatment is not applied. This contingent of patients poses a potential public danger and requires individual rehabilitation and treatment programs in medical institutions of a special type. The same applies to persons who have undergone alcoholic psychoses if they have a pathological craving for alcohol.

By order of the Ministry of Health of Ukraine dated August 31, 2017 No. 992, new Rules for the application of compulsory medical measures in a

special institution for the provision of psychiatric care were approved. This order defines the rights and obligations of persons to whom coercive measures of a medical nature have been applied, provides for the development of individual plans for the social and psychological rehabilitation of patients, and regulates the social conditions of patients' stay in institutions for the provision of psychiatric care.³⁸

The prospects for improving the legal status of persons with mental illness and the legal regulation of the provision of psychiatric medical care to them are defined in the Concept for the Development of Mental Health Care for the Period up to 2030 approved by the Cabinet of Ministers of Ukraine, which proposes to reduce discrimination and violations of the rights of people with mental health problems by bringing national legislation in accordance with the provisions of international legal acts on human rights, the implementation of

³⁸ Order of the Ministry of Health of Ukraine, No. 992, August 31, 2017, "On Approval of the Rules for the Application of Compulsory Medical Measures in a Special Institution for the Provision of Psychiatric Care," <http://zakon2.rada.gov.ua/laws/show/z1408-17>.

programs to support the employment of persons with mental and intellectual disabilities, social integration, education, involvement of patients and their families, as well as public associations that protect patients' rights in planning and implementation of programs in the field of mental health, the introduction of an effective mechanism for monitoring the observance of human rights in the provision of assistance to people with mental health problems and mechanisms, and of holding accountable for actions that have signs of discrimination on the basis of mental health. Counteracting stigmatization, overcoming the social isolation of persons with mental and intellectual disabilities will be carried out by including them in social societies, providing support for their residence at the level of the territorial community, social support during employment, and improving the system of providing rehabilitation and social services.³⁹

³⁹ Concept for the Development of Mental Health Care in Ukraine for the Period up to 2030, Approved by the Order of the Cabinet of

Since many corruption risks arise in the process of providing psychiatric care, psychiatric medical institutions should widely use both the already known tools of anti-corruption management in health care institutions and work on the creation and implementation of their own special mechanisms.⁴⁰ The issue of regulating the provision of psychiatric care is also a philosophical issue, since philosophers were interested in psychiatric disorders even before the word “psychiatry” itself appeared, and before psychiatry as a discipline appeared.⁴¹

V. CONCLUSION.

Normative support in the field of mental health care is quite developed in Ukraine. At the same time, the mechanisms for the implementation of some laws and other normative legal acts concerning the

Ministers of Ukraine (Dec. 27, 2017) No. 1018-r,
<http://zakon2.rada.gov.ua/laws/show/1018-2017-%D1%80>.

⁴⁰ Mykhailo A. Anishchenko, *Anti-corruption Management in the Health Care System: The Legal Aspect*, 12 CURRENT ISSUES IN PHARMACY & MED.: SCI. & PRAC. 209 (2019).

⁴¹ S. Bardina, PHILOSOPHY OF PSYCHIATRY, available at <https://postnauka.ru/video/74837>.

protection of the rights of persons with mental disorders remain imperfect. This is what complicates the process of legal regulation of the sphere of psychiatric care.

Equally important, society excludes people with mental health problems from their daily routine. Accordingly, this limits their ability to get a job, have a safe place to live, have medical care, family, and friends, and be a full part of society or any social group. Because of social exclusion as a consequence of stigma and discrimination, people with mental health problems are even more oppressed. Their self-esteem decreases, self-stigma increases, and they become even more limited in their actions and rights, because they do not know them or, knowing them, stop using or fight for them—as the public ignores the interests of people with mental disorders.

The application of compulsory medical measures to persons who committed socially dangerous acts during a temporary mental disorder requires taking into account not only the mental state of the individual and the severity of the act committed, but

also social factors and personal attitudes in each case. Consequently, the current criminal and criminal procedural legislation of Ukraine does not provide for the possibility of eliminating at the proper level the public danger of persons with temporary mental disabilities by observing the requirements of the laws. Therefore, it is necessary to revise the regulatory legal acts with the participation of doctors, including forensic psychiatrists-experts, and to introduce appropriate additions and amendments to the current criminal and criminal procedural legislation. The considered issues of state regulation of psychiatric care are also philosophical problems, since they consider existential questions of human existence, which is also part of the subject of philosophy as a science.