



LEGAL NATURE OF COERCIVE MEASURES OF A MEDICAL NATURE AND THEIR GOALS

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Abstract

This article sets out the issues of improving the institution of coercive measures of a medical nature and streamlining its legal basis; An analysis of regulatory legal acts in this area is carried out. The grounds for the court to impose coercive measures of a medical nature on a person who committed a dangerous act were also considered; goals, types of these measures; general grounds for their application; the procedure for appointment, extension, amendment and termination; as well as the rules for the application of coercive measures of a medical nature imposed simultaneously with punishment.

The commission of a socially dangerous act by a person in a state of insanity or by a person whose mental state is disturbed in such a way that does not exclude sanity, as well as by a person suffering from alcoholism, drug addiction or substance abuse, creates a threat to the violation of the rights and freedoms of other persons, the interests of society and the state, the environment, peace and security of mankind.

The issues of applying criminal law measures to such persons and their treatment are implemented through the use of coercive measures of a medical nature. The article substantiates the need to consider the application of the institution of coercive measures of a medical nature as a set of specific medical, social and legal problems that require special attention.

Keywords: Sanity, chronic alcoholism, persons suffering from drug addiction or substance abuse, convicts, coercive medical measures.



Modern American Journal of Business, Economics, and Entrepreneurship

ISSN (E): 3067-7203

Volume 2, Issue 2, February, 2026

Website: usajournals.org

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Introduction

In the implementation of the tasks enshrined in the Criminal Code, coercive measures of a medical nature are important. The commission of a socially dangerous act by a person in a state of insanity or by a person whose mental state is disturbed in such a way that does not exclude sanity, as well as by a person suffering from alcoholism, drug addiction or substance abuse, creates a threat to the violation of the rights and freedoms of other persons, the interests of society and the state, the environment, peace and security of mankind.

In this regard, the application of criminal law measures to such persons and their treatment are carried out through the institution of coercive measures of a medical nature. The use of this institution implies the need to take into account a set of specific medical, social and legal issues. In this regard, the institution is regulated not only by criminal, criminal procedure and penal enforcement legislation, but also by a number of international and national normative acts: the UN Convention "Standard Minimum Rules for the Treatment of Prisoners" (Nelson Mandela Rules), the laws of the Republic of Uzbekistan "On psychiatric care", "On the protection of public health", "On compulsory treatment of patients with chronic alcoholism, drug addiction or substance abuse", "On narcotic drugs and psychotropic substances", the Regulation approved by the Resolution of the Cabinet of Ministers of May 1, 1993 No. 195 "On Specialized Medical and Preventive Institutions for the Compulsory Treatment of Patients with Chronic Alcoholism or Drug Addiction", as well as the Regulation approved by the Order of the Minister of Internal Affairs of May 3, 2014 No. 65 "On the Procedure for the Application of Coercive Medical Measures to Persons Sentenced to Imprisonment and Suffering from Alcoholism, Drug Addiction or Substance Abuse". [1]

Unlike other branches of law, criminal law, as a material branch, enshrines the rules on the grounds for the imposition by the court of coercive measures of a medical nature on a person who has committed a socially dangerous act in a state of insanity or with a mental disorder that does not exclude sanity; on the purposes and types of coercive measures; on the general grounds for their application; on the appointment, extension, amendment and termination; and



also on the use of coercive measures of a medical nature imposed simultaneously with punishment.

It should be noted that on the basis of the Convention on the Protection of Mentally Ill Persons and the Improvement of Psychiatric Care, approved by the UN General Assembly Resolution No. 46/119 of December 17, 1991, the institution of coercive measures of a medical nature in the Republic of Uzbekistan was improved by Law No. 567 of September 12, 2019 "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Improvement of the System of Psychiatric Care help." [2] This Law provides for amendments and additions to thirteen laws. In particular, provisions were introduced into the Criminal Code on the liability of a person with a mental disorder that does not exclude sanity; the types of coercive measures of a medical nature have been expanded and the rules for their appointment have been optimized.

Materials and Methods

The study uses the norms of the current legislation and the scientific and theoretical views of legal scholars on the institute of coercive measures of a medical nature in criminal law; the methods of comparative legal analysis, synthesis, observation, generalization, induction and deduction were used.

Results of the Study

Although the criminal legislation does not give a legal definition of coercive measures of a medical nature, in the theory of law and law enforcement practice, this institution is one of the most widely used. Despite the fact that in the Criminal Code (hereinafter referred to as the Criminal Code) it is set out as a measure of coercion, it **is not a punishment and does not entail a criminal record**. In the legal sense of the terms used in Section Eight of the Special Part of the Criminal Code, coercive measures of a medical nature are defined as "another measure of legal influence". At the same time, article 16 of the Criminal Code stipulates: "Criminal liability for a crime is a legal consequence of the commission of a crime, expressed in the issuance by the court of a guilty verdict against the person guilty of committing a crime, and the imposition of a



punishment or other measure of legal influence." Therefore, coercive measures of a medical nature can be considered as a form of implementation of criminal liability. [3]

However, the criminal law analysis shows that these measures should be understood not only as a form of liability, but also as **a coercive measure used to treat persons who have committed a socially dangerous act without bringing them to criminal responsibility**. This requires an analysis of two key aspects of the legal nature of coercive measures of a medical nature.

Analysis of the Study Results

1) Coercive measures that are not a form of implementation of criminal liability

Article 18 of the Criminal Code establishes that a person who, when committing a socially dangerous act, was in a state of insanity (that is, due to a chronic or temporary mental disorder, dementia or other morbid state of mind, could not realize the significance of his actions (inaction), or direct them), is **not subject to criminal liability**; In relation to such a person, the court may impose coercive measures of a medical nature. It follows from the meaning of this provision that a person, although he has committed a socially dangerous act, is not held criminally liable if the following conditions are met: [4]

1. At the time of the commission of the act, he was in a state of insanity;
2. Insanity was expressed in the fact that due to a chronic or temporary mental disorder, dementia or other morbid state of mind, a person could not realize the significance of his actions (inaction) or direct them.

Non-prosecution of an insane person follows from the rules of Article 17 of the Criminal Code. In particular, part one of this article establishes that individuals who have reached the age of sixteen at the time of the commission of the crime and are of sound mind are subject to criminal liability. This rule includes the features of the subject of the crime; Lack of sanity means the absence of the subject of the crime, and the absence of the subject of the crime means the absence of corpus delicti. According to Part 2 of Article 16 of the Criminal Code (the norm reflecting the factual and normative grounds for the corpus delicti), the basis for bringing to responsibility is the commission of an act containing all



the elements of the corpus delicti provided for by the Criminal Code. Therefore, if an act that is defined by law as a crime is committed by a person in a state of insanity, it is incorrect to assess it as a crime. In such cases, only coercive measures of a medical nature should be applied.

2) Coercive measures as a form of implementation of criminal liability

A different situation occurs when a person, being sane, due to a mental disorder, **could not fully** realize the significance of his actions (inaction) or direct them at the time of the commission of the crime. Such a person is subject to criminal liability; in the law, he is defined as "a person with a mental disorder that does not exclude sanity".

The commission of a socially dangerous act by such a person does not exclude the presence of the subject of the crime. Even in the presence of a mental disorder, a person is not recognized as insane and is prosecuted. In other words, by virtue of the principle of inevitability of liability (Article 10 of the Criminal Code), any person in whose act the corpus delicti is established must be held liable.

However, along with the imposition of criminal liability, the court has the right to impose coercive measures of a medical nature in accordance with the rule provided for in Part 2 of Article 181 of the Criminal Code. This provision confirms that although coercive measures of a medical nature can be a form of implementation of criminal liability, **they are not evaluated as a type of criminal punishment.**

In this regard, a coercive measure of a medical nature can be defined as follows: **a coercive measure of a medical nature is a** coercive measure provided for by the Criminal Code, imposed by the court on the basis of a medical report:- a person who has committed a socially dangerous act in a state of insanity;- or a person who, before sentencing or while serving a sentence, has developed a mental disorder, as a result of which he cannot to be aware of the significance of their actions or to direct them; — as well as to a person suffering from alcoholism, drug addiction or substance abuse, or to a person with a mental disorder that does not exclude sanity, if the crime was committed in such a state.



Coercive measures of a medical nature are applied to insane persons, persons with mental disorders that do not exclude sanity, as well as to persons suffering from alcoholism, drug addiction or substance abuse, in order to carry out various measures aimed at restoring the mental state. These measures are coercive: they are imposed by the court on persons who have committed a socially dangerous act prohibited by criminal law and pose a certain danger to themselves or others, on the basis of the requirements of the Criminal Procedure Code (hereinafter referred to as the CPC), and involve the restriction of the freedom of such a person. In other words, they can be characterized as criminal law treatment and rehabilitation and organizational and preventive security measures. [5]

Specific signs of the use of coercive measures of a medical nature

The features of these measures include:

1. are prescribed to persons in a state of insanity, persons with a mental disorder that does not exclude sanity, as well as persons suffering from alcoholism, drug addiction or substance abuse;
2. are imposed when committing a socially dangerous act;
3. are applied exclusively by the court on the basis of the conclusion of a forensic psychiatric examination;
4. are prescribed for treatment and prevention of new socially dangerous acts;
5. are implemented as legal coercion – on the basis of a lawful and substantiated court decision, including without the consent of the person or his legal representative. [6]

At the same time, the requirements of the Law of the Republic of Uzbekistan "On psychiatric care" are observed. In particular, according to Article 27 of the said Law, if the examination or treatment of a person with a mental disorder is possible only in an inpatient setting, and the disorder is severe and is associated with one of the following circumstances, the person may be placed in a hospital without his consent or the consent of a legal representative until a court decision is made:- the presence of an immediate danger to himself or others;- helplessness, That is, the inability to independently satisfy basic life needs;- the likelihood of causing significant harm to health due to the deterioration of the mental state in the absence of psychiatric care.



6. The application of these measures is manifested in the restriction of the rights and freedoms of a person. The rights and obligations of patients, the conditions of their detention in psychiatric institutions, as well as the rules for the execution of coercive measures of a medical nature are regulated by penal enforcement legislation;

7. The use of coercive measures of a medical nature does not entail a criminal record and does not pursue the purpose of educating a person.

Purposes of coercive measures of a medical nature

Article 91 of the Criminal Code defines the goals of coercive measures of a medical nature, which differ in the medical criterion of the subject.

First, according to the first part of this article, coercive measures of a medical nature may be prescribed to persons with mental disorders who have committed a socially dangerous act, **in order to treat them and prevent the commission of new socially dangerous acts.** [7] The mental state of such persons is related to the factor that caused the commission of the act; Their public danger implies the need to apply medical measures and restrict certain rights and freedoms to prevent new dangerous manifestations during treatment.

Secondly, as noted in Part 2 of the same Article, coercive measures of a medical nature may be imposed by the court **simultaneously with punishment** on persons suffering from alcoholism, drug addiction or substance abuse, or persons with a mental disorder that does not exclude sanity, **for treatment and the creation of conditions conducive to the achievement of the goals of punishment.**

Treatment should be understood as a set of processes aimed at restoring the health of a person with a mental disorder or addiction through the use of medical means and methods. Under article 12 of the Psychiatric Care Act, the diagnosis of a mental disorder is established in accordance with generally accepted international standards and classifications and cannot be based on a citizen's disagreement with the moral, cultural, political or religious values accepted in society, or on other reasons not directly related to the state of mental health. For diagnosis and treatment, only those medical means and methods that are permitted in accordance with the procedure established by law are used. [8]



***Modern American Journal of Business,
Economics, and Entrepreneurship***

ISSN (E): 3067-7203

Volume 2, Issue 2, February, 2026

Website: usajournals.org

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Under the Compulsory Treatment of Patients with Chronic Alcoholism, Drug Addiction or Substance Abuse Act of 9 December 1992, a person may be recognized as suffering from chronic alcoholism, drug addiction or substance abuse by the relevant medical institutions in accordance with the procedure established by the Ministry of Health. Treatment should eliminate mental and physical dependence caused by the use of alcohol, narcotic drugs and their raw materials, psychotropic and other substances that affect consciousness. In the process of treating mentally ill persons, alcoholics, drug addicts or substance abusers, as well as persons recognized as insane, it is necessary to use proven methods of therapy that contribute to changing their mental state. [9] In addition, this makes it possible to confirm the loss of social danger of a person.

A person against whom coercive measures of a medical nature have been applied shall not be allowed to undergo medical procedures that are not related to medical means and methods.

Conclusions

The purpose of preventing a new mentally ill person from committing socially dangerous acts means that as a result of the application of a coercive medical measure, the social danger of such persons to themselves and others is eliminated, their mental attitude, which predisposes them to commit socially dangerous acts in the future, disappears, and there is no physical possibility to commit them. [10]

The means of achieving this goal is the establishment of a certain regime on the basis of prescribed medical means and methods, providing for the implementation of various organizational, preventive and medical measures, including in conditions of isolation from society.

Article 40 of the Law of the Republic of Uzbekistan of May 14, 2014 "On the Prevention of Offenses" states: if a person suffering from chronic alcoholism, drug addiction or substance abuse has violated public order or the rights of other persons, or created a threat to the safety of the population, health or public morals, the internal affairs bodies shall take measures to refer such a person to compulsory treatment in accordance with the Law "On Compulsory Treatment



*Modern American Journal of Business,
Economics, and Entrepreneurship*

ISSN (E): 3067-7203

Volume 2, Issue 2, February, 2026

Website: usajournals.org

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of Patients with Chronic Alcoholism". drug addiction or substance abuse" and other acts.

The creation by coercive measures of a medical nature of conditions conducive to the achievement of the goals of punishment means that measures of a medical nature are carried out **simultaneously** with the execution of the punishment imposed by the court. [11] In such cases, medical means and methods are used in strict compliance with the procedure and conditions for serving the sentence provided for by the penal legislation. In other words, the imposed type of punishment and coercive measures of a medical nature are executed jointly. [12] In particular, according to Article 182 of the Penal Enforcement Code, coercive measures of a medical nature are applied to convicts suffering from alcoholism, drug addiction or substance abuse, as well as those with a mental disorder that does not exclude sanity:- by health authorities (medical institutions) - in relation to persons sentenced to punishments not related to complete isolation from society;- at the place of serving the sentence - in relation to persons sentenced to deprivation of liberty.

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***Modern American Journal of Business,
Economics, and Entrepreneurship***

ISSN (E): 3067-7203

Volume 2, Issue 2, February, 2026

Website: usajournals.org

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