

Abuse of right during application of coercive medical measures in criminal proceedings

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ABSTRACT

Aim: To determine the problematic issues of ensuring the rights and freedoms of persons suffering from mental disorders and to whom CMM are applied in criminal proceedings under the legislation of Ukraine and the legislation of the states that adhere to the modern concepts of international standards of human rights ensuring to a person the CMM are applied to

Materials and Methods: Legal positions of the ECHR, criminal procedural legislation of a number of states, and a survey of scientists and practitioners conducted by the authors are used in this paper (total number of respondents was 168). A set of general scientific and special methods are used to achieve the aim of the study.

Conclusions: The practice of applying CMM to persons suffering from mental disorders in criminal proceedings in Ukraine and other states does not fully meet international standards and needs improvement. It was suggested to make changes to the legal acts on the use of CMM in criminal proceedings.

KEY WORDS: criminal proceedings, mental disorders, coercive medical measures, abuse of rights, the practice of the European Court of Human Rights, collisions and gaps in legislation

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INTRODUCTION

Applying coercive medical measures in criminal proceedings requires detailed legal regulation, as they apply to persons who have committed a socially dangerous act and suffer from mental disorders. However, according to the legislation of Ukraine and other countries, the legal regulation of criminal proceedings in which issues regarding the application of CMM to persons needs improvement. Although the legislators in all states, without exception, justifiably provide such persons with additional procedural guarantees, in some countries, particularly in Ukraine, these persons are deprived of certain rights, including limited opportunities to defend their interests independently in criminal proceedings, which does not comply with the European Convention on Human Rights (hereinafter – the Convention).

AIM

The paper aims is to determine the problematic issues of ensuring the rights and freedoms of persons suffering from mental disorders and to whom CMM are applied

in criminal proceedings under the legislation of Ukraine and the legislation of the states, which correspond to the modern concept of international standards for ensuring the rights of persons to whom the CMM applies; to highlight and analyze the ECHR's key positions in the context of respect for the right to liberty and security of person (Article 5 § 1 (e) of the European Convention on Human Rights (hereinafter – the Convention) in criminal proceedings concerning the use of CMM; to suggest proposals for improving Ukrainian legislation and the legislation of the states that adhere to the modern concepts of international standards of human rights ensuring to a person the CMM are applied to; to minimize situations in which the rights and legitimate interests of persons with mental disorders may be unreasonably limited.

MATERIALS AND METHODS

The study is based on scientific works concerning medical law and criminal procedure. The normative basis of this work is the legal acts of a number of states that profess modern legal values and are based on the concept

of human rights. The criminal procedural legislation of Ukraine, which is intensively developing and improving, in particular, in connection with the tasks that have arisen due to the future accession of Ukraine to the European Union, was taken as bases. The legislation of other states that have achieved success in regulating the application of CMM was used for comparison and taking into consideration the best practices, in particular, the Republic of Moldova, the Republic of Armenia, the Republic of Estonia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Federal Republic of Germany, the Czech Republic and Canada. In addition, during this study, the relevant practice of the ECHR and some resolutions of the UN General Assembly were analyzed.

In the preparation of the article, a complex of philosophical, general scientific and special scientific methods of scientific knowledge was applied in connection. The basis of the analysis is the method of idealistic dialectics, as a fundamental philosophical method of scientific research, with the use of which the application of CMM is considered as a dynamic phenomenon that is in constant motion, development and is characterized by a complex of interrelated elements, which together constitute a complex and systemic phenomenon. Observance of civilized principles of justice and realization of human rights for all participants in the process is an indispensable component of legal regulation and application of the CMM. At the same time, in the study of the given problem, general scientific methods were used, including observation and counting (for collecting empirical data and calculating quantitative results, in particular, surveying respondents and materials of law enforcement practice), abstraction (for imaginary departure from insignificant differences in the legislation and law enforcement practice of individual states and selection of essential features that determine the essence of the CMM and its difference from related institutions, as well as law-making decisions and law-enforcement positions), induction (to establish the characteristic features of the application of the CMM from the point of view of observing human rights), analysis and synthesis (thanks to the use of this method, the application of the CMM is considered as a holistic phenomenon and, at the same time, as a component of the application of other legal means), systemic (the use of which made it possible to consider the elements of the CMM application and the connections between them), idealization (to build an ideal an impeccable model of the application of the CMM, which includes the best elements of all the national models taken for comparison and study). In addition, special scientific research methods were used, which is legal in its content. Among them: the dogmatic method (thanks to

which the content of legal norms and law-enforcement positions was established), the method of comparative jurisprudence (for comparing the common and different in the legislation of individual states), legal forecasting (the use of this method made it possible to predict how the proposed changes to the legislation will be applied in practice and will ensure compliance with human rights and the ideals of modern justice). These and other methods were used in their relationship and mutually complement each other.

REVIEW AND DISCUSSION

Peculiarities of conducting criminal proceedings against persons with mental disorders are fixed at the level of international legal acts. Despite this, in the legislation of some countries, the legal provisions regulating the procedure for applying CMM in criminal proceedings are formulated in contradiction or incorrectly with each other. It, in turn, gives grounds for the subjects conducting the criminal trial to abuse the rights granted to them, using them not for their intended purpose but contrary to the tasks set before these subjects in the criminal trial. Great attention is paid to the issues of ensuring the rights and legitimate interests of persons who have committed acts prohibited by the national Criminal Codes, being partially sane, insane or who fell ill with a mental illness already after committing a criminal offence and to whom the question of the application of CMM is being decided [1-3]. However, we have to state that the legal regulation of proceedings conducted against such categories of persons needs to be improved to prevent dual interpretation of the relevant norms by law enforcement authorities since it leads to a restriction of the rights of these participants in the trial. Sometimes it is difficult or almost impossible to criticize such limits directly. Still, they are committed to evading the persons conducting the criminal trial from fulfilling their duties, resorting to this to reduce the workload or for other illegal reasons. Such behavior, under certain conditions, is an abuse of rights. Still, it is impossible to bring these persons to one or another type of legal liability due to the absence of direct prohibitions violated by them. Thus, by abusing the right, a person exercises the right granted to him under the clearly defined limits of the law. Still, at the same time, he exercises this right in the absence of or contrary to his interest and the purpose of the right itself. In this case, there is no expressed illegality in the behavior of such a person. Such behavior formally "fits" into the framework of the law and only creates a semblance of legality. Therefore, as an excuse, pre-trial investigation bodies or judges can always refer to the fact that at least

one of two or more conflicting regulatory acts/one of the provisions of the same act, between which there are disagreements and contradictions, yet gives them such an opportunity.

Such a conclusion is the result of a questionnaire conducted by the authors of the article. We conducted a survey among representatives of the legal professions from Ukraine (lawyers, prosecutors and judges), representatives of juridical higher educational institutions from Ukraine and from other countries, such as: the Republic of Moldova and the Slovak Republic, as well as medical staff of regional and district centers from Ukraine. It was conducted to find out the opinion of individual representatives of the legal and medical professions about the reasons for the possible abuse of procedural rights in the criminal proceedings within applying the CMM. The survey was conducted during April - July 2023, through an anonymous questionnaire using Google Forms (the total number of respondents - 168, 40.5% of which at the age of 20 to 35, 50% - of 36 to 45, and 9.5% - of 45 to 65; out of all 83.33% hold a position related to legal professions, the rest 16.77% - medical staff; among the respondents - 23.38% are persons whose work experience in the relevant specialty is more than 20 years, 29.76% are persons, whose work experience is less than 10 years and 46.86% - persons with work experience from 10 to 20 years). Thus, 90.5% of the participants in the questionnaire, conducted by the authors of the article, claim that the main reason for the abuse of procedural rights in criminal proceedings on the application of the CMM (both by private participants in criminal proceedings and by bodies conducting criminal proceedings) is unclear legislative regulation. A slightly smaller number of respondents (82.14% out of all respondents) indicate that abuse of rights by participants in such criminal proceedings may have a negative impact on its course and results.

Both legislation and law enforcement practice in the field of mental health care need improvement and development, taking into account the recommendations and experience of international organizations, relevant state bodies and institutions, and the positions of practical workers. Inadequate legal protection of persons to whom the issue of the application of CMM is being decided, as well as the possible highly negative consequences of the illegal and unjustified application of these measures for the health, reputation and further fate of persons, precisely determine the undoubted relevance of the topic itself and the attention of researchers to it.

1. PROBLEMS OF PROTECTING THE RIGHTS OF PERSONS WITH MENTAL ILLNESS IN CRIMINAL PROCEEDINGS.

The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, adopted by the United Nations General Assembly, state the need for priority study of the issues of protection of persons to whom proceedings are being conducted to apply CMM in connection with the presence of mental illness[4]. That is why developing effective mechanisms for protecting the rights of persons with mental disorders in criminal proceedings is one of the most relevant scientific directions. In this context, the case-law practice of the ECHR concerning the lawful detention of persons with mental illness in accordance with subparagraph "e" of Article 5 §1 of the Convention (The lawful detention of persons of unsound mind) becomes of great importance. Deprivation of the right to freedom and personal inviolability of individuals with mental illness is considered lawful in compliance with three conditions, which the ECHR first established in the case of *Winterwerp v. the Netherlands*[5]:

1) if the person is reliably proven, by the opinion of a medical expert, to be of unsound mind;

2) the deprivation of liberty must be proven to have been necessary for specific circumstances, i.e. mental disorder is such that the person is forced to be kept in a psychiatric hospital;

3) the mental disorder, confirmed by the necessary medical evidence, must persist throughout the period of detention (persistence of mental illness).

Based on the analysis of the case-law practice of the ECHR, a fourth criterion can be identified – a particular connection must be proven between the reason on which the decision to deprive of liberty is based and the place and conditions of detention. Theoretically, the "detention" of a person as a mental-health patient will be "lawful" in the sense of subparagraph "e" of Article 5 §1 of the Convention only if it is effected in a hospital, clinic or other appropriate institution authorized for that purpose. Such persons should not be kept in prisons where proper treatment and care are unavailable[6]. It is important to note that according to the case-law practice of the ECHR, the requirement of placement of mentally ill persons in an institution suitable for the detention applies both to preventive detention (stay in custody) and to the length of a term of imprisonment[7] (Case of *W.A. v. Switzerland*).

1.1. A person's right to be acquainted with a request to apply coercive medical measures. It must be stated that in the legislation of Ukraine, there are many contradictory provisions, which lead to violations of the rights of persons to whom the question of application of CMM is being decided or has already been applied. An example of a contradictory legislative regulation, which allows the abuse of rights by professional participants in

criminal proceedings, is the provision of part 1 of Article 293 of the Criminal Procedure Code (hereinafter – the CPC) of Ukraine[8]. Accordingly, a copy of the petition for applying CMM is handed over only to its defender. At the same time, part 2 of Article 317 of this Code states that the participants in the court proceedings (which, of course, include the person to whom the issue of the application of the analyzed measures is being decided) should be allowed to familiarize with the materials of the criminal proceedings, subject to a request for this. However, to make such a request, the participants in the criminal trial must be aware of: 1) that the proceedings are being conducted for them, 2) for what reasons they were involved in it, and 3) their legal status. At the same time, it is impossible to do this thoroughly without first being acquainted with the request to apply CMM to them.

Therefore, it seems that since the person against whom the proceedings are being conducted is not indicated in the list of persons who are provided with copies of the petition for the application of CMM and the register of materials of the pre-trial investigation, the prosecutor may not provide such documents to him without violating the requirements of Article 293 the CPC of Ukraine. However, it does not ensure the right to protection of such a person, which is directly established as the basis of criminal proceedings. In addition, 64.28 participants of survey participants agree with the conclusion of the paper's authors.

In this regard, the approach is reflected in the CPC of several states, such as in clauses 1, 11 and 13, part 1, part 2 of Article 515, part 2 of Article 518 of the CPC of Kazakhstan[9], part 2 of Article 570, part 3 of Article 459 of the CPC of the Republic of Moldova[10], Article 456 of the CPC of Armenia[11], Article 473 of the CPC of Azerbaijan[12] (the positive experience of which should be adopted by the Ukrainian legislator as well), where the person to whom the issue of the application of CMM is being decided is called an independent subject (along with his defender and legal representative) of the right to familiarize himself with all the materials of the criminal proceedings.

1.2. The right of a person to give testimony and its probative value.

Concerning the normative regulation, the participants conducting the criminal trial may limit the exercise of the right of persons with mental disorders to defend their rights and legitimate interests regarding the independent defense of their claims by ensuring only the formal presence of such persons, do not allow them to express considerations and arguments regarding the circumstances of the investigated act. The legislator provides a hypothetical opportunity for

these abuses due to the inconsistency of some norms of the CPC of Ukraine.

Thus, part 1 of Article 512 of the CPC of Ukraine states that the criminal trial is carried out with the mandatory participation of the natural person to whom the issue of the application of CMM is being resolved. Under the provisions of clause 5, part 3 of Article 42 and part 1 of Article 506 of the CPC of Ukraine, a person has the right to give testimony and explanations to the extent determined by the nature of the disorder of mental activity/mental illness. However, the procedure for interrogating the participants in the criminal trial was not mentioned in the domestic CCP, and the status of evidence was never given to the testimony, explanation or other information provided by such a person. It must be stated that similar shortcomings of legal regulation occur when the legislator formulates the relevant provisions very half-heartedly and inconsistently. Because on the one hand, it seems that the legislator allows such subjects to express their position in the form of testimony or explanations (clause 4, part 2 of §398 of the CPC of Estonia[13], Article 456 of the CPC of Armenia[11], Article 473 of the CPC of Azerbaijan[12], clause 3 of §415 of the CPC of Germany[14]), but does not give it probative value, which is also characteristic of other countries.

This approach goes counter to the provisions of the UN General Assembly Resolution "The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care"[4], according to which the patient can be entitled to attend, participate and be heard personally in any hearing. In addition, such a situation contradicts the provisions of Article 6 of the Universal Declaration of Human Rights (hereinafter – the UDHR) of December 10, 1948, which states that everyone has the right to recognition everywhere as a person before the law[15]. Many researchers (including 84.52 of the participants in the questionnaire conducted by the paper's authors) come out in favor of such persons being interrogated about the circumstances of the committed illegal act. After all, the person against whom proceedings are being conducted regarding the application of CMM enjoys the rights of a suspect/accused, one of which is, in particular, the right to testify. In addition, supporters of the possible interrogation of such persons and the provision of information with probative value (the paper's authors are among them) refer to the decisions of the ECHR (Case of *I.N. v. Ukraine*"[16], and Case of *D.R. v. Lithuania*"[17]. The Court drew attention to the importance of the formal presence of a person with mental disorders at court hearings and, if possible, his active participation in criminal proceedings (if his mental state allows it and

he wants to do it). Given the above case-law practice of the ECHR, Ukrainian courts usually provide such a participant in the proceedings with the opportunity to take part in the trial and sometimes even listen to him in criminal proceedings, and the information he provided is recorded in the relevant decisions.

However, this approach seems insufficient because, from a legal point of view, these are not identical things: 1) give a person the opportunity to express his position in the proceedings and 2) provide the information reported by him with probative value. He can use the information for his defense, evidence of non-involvement in the investigated act, and law enforcement officers – to propose new theories of the investigated act and their verification. Because of this, the provisions of the criminal procedural laws of Ukraine, Estonia, Uzbekistan, Kazakhstan, Germany and Armenia should be formulated in such a way that there is no doubt that the testimony of the person against whom the proceedings regarding the application of CMM are being conducted is one of the procedural sources of evidence.

In addition, here, it is also worth noting that the necessity of conducting a trial with the mandatory participation of the person to whom the issue of the application of CMM is being decided is due to the provision of his right to give testimony and explanations for his defense. The right to defense includes the ability to defend oneself by all means and methods, both proscribed and not proscribed by law, but do not contradict it. However, this in no way means that the person to whom the issue of the application of CMM is being resolved has the right to testify against a person known to him to be innocent of the commission of a criminal offence by him. Such a protection method will violate an innocent person's legitimate rights and interests, which goes against the norms established in international legal acts. Therefore, every person is obliged not to infringe on or violate other people's rights and freedoms. Accordingly, the right to defense is limited, and its implementation cannot violate the rights and interests of others. One of the methods, which is not directly prohibited by the legislation of Ukraine and can be used to exercise a person's right to defense, is a false report about the commission of a criminal offence by a knowingly innocent person. For example, it is a penal act in the Federal Republic of Germany. However, false reporting appears to infringe on the rights of another (innocent) person and is inherently an abuse of the right to defense.

1.3. The right of a person to appeal a decision on the application of CMM. The right of a person to appeal a court decision is one of the components of the right to a fair trial, guaranteed by Article 6 of the

Convention. The absence of provisions in the criminal procedural law that ensure the right of the person to whom the issues of applying CMM are being resolved makes the possibility of personally appealing the decisions concerning this person inadmissible. Despite this, such norms are enshrined, particularly in clause 5, part 1 of Article 393 and clause 5, part 1 of Article 425 of the CPC of Ukraine. Accordingly, the person to whom the question of the application of CMM was decided independently (without the assistance of a defense attorney or legal representative) cannot appeal the court decision in the appeal and cassation procedure. This approach seems unreasonable. Every person shall be deemed not to have a mental disorder until such a disorder is established in the manner prescribed by law. Only when the court's decision on applying the specified measures enters into legal force such a presumption is refuted. In addition, not every disorder of mental activity automatically indicates a person's unfitness to plead[18, 407 – 410].

In this regard, the approach of the legislator of some states is justified. Accordingly, the independent subject of the right to appeal and cassation of court decisions is the person to whom the issue of the application of CMM is being resolved (clause 6, part 1 of Article 401, Article 421 of the CPC of the Republic of Moldova[10], Article 376 of the CPC of the Republic of Armenia[11], part 1 of Article 318 and part 1 of Article 344 of the CPC of Estonia[13], clause 1, part 4 of Article 383, clause 1.4 of Article 409 of the CPC of the Republic of Azerbaijan[12]). Therefore, the person to whom the issue of the application of CMM was decided has the right to independently file an appeal and a cassation complaint against the court's decision, which concerns his interests. This position, defended by the paper's authors and supported by 60.71 participants of the survey conducted by the authors, is entirely consistent with several decisions of the Court, such as *Anatoliy Rudenko v. Ukraine*[19] and *Plakhteev and Plakhteeva v. Ukraine*[20].

2. PROBLEMS OF LEGAL REGULATION OF CONTINUATION, MODIFICATION AND TERMINATION OF APPLYING CMM.

It must be stated that in the legislation of various countries (Article 95 of the Criminal Code (hereinafter – CC) of Ukraine, part 3 of Article 19 of the Law of Ukraine "On Psychiatric Assistance"[21], part 2 of Article 514 of the CC of Ukraine[8], §403 of the CC of Estonia[13], part 1 of Article 503 of the CC of the Czech Republic[22], Article 672.22 of the CC of Canada[23], part 4 of Article 523 of the CC of Kazakhstan[9]) the grounds for the court's adoption of a decision on changing and terminating the application of CMM are vaguely formulated. Unfortunately, the analysis of the provisions of the CC

and the CPC of the specified countries does not make it possible to confidently and unequivocally prove that the grounds for termination of applying CMM or amendment to a less strict type cannot be a significant deterioration of the patient's mental state, for which he is objectively unable to cause any damage. In addition, the provisions of the specified legislative acts of some countries do not provide grounds for a definite conclusion about whether it is possible for *a change in the physical condition* of a person to whom the issue of applying CMM is being decided to be a reason for terminating their application or changing them to more or less strict ones.

Quite often, the legislators of foreign countries, speaking about changes in the state of health of a mentally ill participant in criminal proceedings, do not specify whether such changes are related to improving health and ignore whether they concern only mental or physical health.

The researcher V. Navrotska claims that the change of a coercive medical measure to a less severe one or the termination of the use of such a measure can be caused by a significant deterioration of the mental state of the patient, as a result of which his social danger becomes extremely low, sharply decreases (sometimes so much that the vital activity of such persons without third-party care becomes impossible) [24]. A similar situation can happen, for example, with the development of senile dementia in a mentally ill person, the progression of profound dementia.

The decision to change CMM to a less severe one or to stop its use can be made even if only *the physical health* of a person with a mental illness changes (61.9% of the respondents interviewed by the paper's authors agree with this statement). Such a decision can be made in the case when, according to the conclusion of the therapist, the patient's life, to whom the specified measures were previously applied, is not possible without third-party care or is very complicated (for example, a mentally ill person fell into a coma or he developed complete paralysis) and because of this he is not capable of harming either others or himself. CMM can be applied only to those persons with mental disorders who are *socially dangerous*. Therefore, if the person to whom such measures were applied, over time, ceased to be dangerous to himself and/or others (and the paper's authors are convinced that from the point of the law, it should not matter whether the loss of this danger occurred as a result of changes in the mental state or physical health, as well as the nature of these changes), then such measures should be terminated. If, after the decision to stop the use of CMM, the person's mental illness/mental disorder (who has ceased to be socially

dangerous) has not yet passed, and because of this, he needs further psychiatric treatment, then the relevant decision can be made at the request of interested persons in civil proceedings.

A situation in which a decision to modify a coercive medical measure to a *stricter type* (de lege ferenda) could be based on only changes in a person's physical health (when the mental disorder remained unchanged) also appears to be acceptable. For example, for a wholly paralyzed insane person, the court admitted him to a psychiatric institution with regular supervision. The patient's physical condition may improve significantly in the future because of proper treatment and care. His motor activity will be fully restored (theoretically allowing him to continue committing illegal acts), but the level of aggressiveness caused by the mental disorder has not changed. Therefore, it is more likely that such patients will cause harm to public goods, and it is necessary to apply stricter CMM to them.

Incidentally, we note that in its practice, the ECHR considers the deprivation of liberty of a mentally ill person legitimate when not only such a person needs treatment but also when he needs control and supervision to prevent harm to himself or others, i.e. the social danger of such a person is taken into account. In the case *Strazimiri v. Albania*[25], ECHR emphasized that irrespective of the facility in which those persons are placed, they are entitled to be provided with a suitable medical environment accompanied by actual therapeutic measures, with a view to preparing them for their eventual release. Regarding the amount of treatment provided, the ECHR considers that the level of care required for this category of detainees should go beyond basic care.

In turn, in the practice of the ECHR, mentally ill persons enjoy the guarantee of mandatory periodic review of the decision on the continuation of compulsory treatment in special psychiatric institutions. In such cases, the ECHR establishes whether the decision of the national courts to continue the forced deprivation of a person's liberty was based on relatively new expert opinions (sufficiently recent). In the case *Miklić v. Croatia*[26], the ECHR established a violation of the rule of paragraph 1 of Article 5 of the ECHR due to non-compliance with the procedure for deprivation of liberty established by law. As was found out in this case, the domestic courts ignored the applicant's request, who had previously been diagnosed with mental disorders, to obtain a new opinion from an independent expert. In particular, the special procedure established by Article 37(2) of the National Law on the Protection of Persons with Mental Disorders was not observed. Accordingly, when deciding on the periodical prolonging of the

period of the forced internment of a person at the motivated request of the relevant person, the national court, as a rule, is obliged to obtain a new expert opinion from a person who does not work in the relevant institution. In similar cases, the ECHR stresses that the possibility for patients to obtain a different opinion from independent psychiatric experts is a principle that is also included in the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. It is an essential guarantee against possible arbitrariness when deciding whether to continue compulsory treatment (Case of *Anatoliy Rudenko v. Ukraine*) [19].

CONCLUSIONS

The mechanism for ensuring the rights of the person to whom the issue of applying CMM is being decided needs improvement. The legal regulation of criminal proceedings conducted against such persons leads to the abuse of their rights by participants in criminal proceedings. Therefore, to avoid such abuses, it would be necessary to improve the procedure for acquainting these persons with the materials of criminal proceedings to provide for their right to appeal court decisions on the issue of the application of CMM and to regulate the procedure for giving testimony and explanations by such persons.

One of the effective ways to protect persons who suffer from mental disorders would be to avoid law enforcement errors and prevent the abuse of rights in criminal proceedings. For this purpose, it is necessary to eliminate contradictions in the provisions of the Criminal Procedural Code of Ukraine and in the procedural codes of other states and improve law enforcement practice in this area. To this end, we suggest that in the legal acts of the states that adhere to the modern concepts of international standards of human rights ensuring to a person the CMM are applied to, provide:

- the provision that, simultaneously with the submission

of a petition for the application of CMM to the court, the prosecutor is obliged to file a copy of it and a copy of the register of the criminal proceedings materials to the person to whom the question of the application of CMM is being decided;

- a norm that would regulate the procedure of interrogation of the person to whom the question of the application of CMM is being decided;
- the right of a person to whom the question of the application of CMM is being decided to appeal the court's decision on the application of CMM.

At the same time, in the course of the analysis of the problems of legal regulation of the continuation, modification and termination of the application of CMM, conclusions were drawn:

- improvement of the mental state of the patient is not mandatory for stopping the use of coercive medical measures or changing them;
- such a change in a person's mental state is sufficient for changing or stopping the use of CMM, as a result of which his potential danger is reduced in the event of a deterioration of his mental state, which results in the loss of the ability for conscious volitional behavior. Such a decision can also be made in case of a change in the physical health of a mentally ill person, although the mental disorder has remained at the previous level;
- deterioration of the patient's mental state should not always be the reason for the appointment of a stricter CMM. The social danger of the person should be decisive (in case of its growth, a stricter type of CMM should be applied, and, conversely, when the danger is reduced, a softer type of them should be applied);
- when deciding to continue the use of CMM, it is necessary to take into account the lack of positive dynamics of a mental disorder, the data on the mental state of the person at the time of the study, the forecast of experts, in which the specialists consider the stability of the effect obtained from the compulsory treatment and the possible course of the mental disorder.

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CONFLICT OF INTEREST

The Authors declare no conflict of interest

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