

RESEARCH ARTICLE

The Production of The Application of Forced Measures of a Medical Nature Under the Laws of The People's Republic of China

ZAKHARENKOVA V.V.

Saint Petersburg State University, Faculty of Law, E-mail: zakharenkovavera@mail.ru

ABSTRACT

In the article presented, the author examines the specifics of the use of forced medical measures under the legislation of the People's Republic of China after the introduction of changes in the criminal procedure legislation of the PRC in 2018.

KEYWORDS:

criminal procedure, criminal procedure of the People's Republic of China, forced, medical measures, forced medical treatment, mental patient, psychiatric examination, use of forced medical measures in the PRC.

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INTRODUCTION

In recent years, the Criminal Procedure Law of the People's Republic of China (further - PRC) has been significantly updated. At the moment, the PRC is undergoing a judicial and legal reform, which has influenced many spheres of state life, including the criminal process. The latest amendments to the Criminal Procedure Code of the PRC (further - CPC of the PRC), were introduced on October 26, 2018.

Undoubtedly, the modern CPC of the PRC is more advanced in comparison with its earlier version of 2012. This is evidenced not only by the expansion of the volume, the change in the structure (now the CPC of the PRC consists of 6 sections, which include 308 articles), but also the qualitative "filling" of this normative act.

If we compare the version of the 2012 Law with the previous version, then it is necessary to indicate that Chapter 4 of

Section 5, appeared in the CPC of the PRC 2012, which contains the rules governing the procedure for applying compulsory medical treatment to mentally ill persons, we will commit acts falling under the objective side of the corpus delicti. The very fact of the introduction of such regulation indicates a transition to a higher and just standard of justice in relation to the named category of persons who did not previously have a special procedural status. In the 2018 version of the CPC of the PRC, this chapter is located under the number 5 of section 5.

Persons who have committed violent crimes against others are not considered to have committed a crime if they are recognized as mentally ill. Although such individuals are not considered to be criminally liable, the state nevertheless imposes on them the obligation to undergo medical treatment. So, according to Art. 302 of the Criminal Procedure Law of the PRC, mentally ill persons who have

committed violent acts posing a threat to public safety or persons who have caused serious harm to the personal safety of citizens are subject to compulsory medical treatment if the danger of harm to society persists.

According to the provisions of this chapter, the People's Court determines the measure of compulsory medical treatment for the mentally ill based on the results of court hearings (Article 303 of the CPC of the PRC). Public security authorities who have determined that a person they are investigating is mentally ill and in need of compulsory medical treatment must write a report and refer it to the people's prosecutor's office. If the People's Prosecutor's Office, based on the results of the examination of the report handed to her (or according to the results of its own investigation of the criminal case), finds that the mentally ill really needs compulsory medical treatment, then she (her representative) must file a corresponding petition with the People's Court. When, in the course of the proceedings in the case, the People's Court comes to the conclusion that compulsory medical treatment of a mentally ill person is necessary, it must decide on the application of a specific medical measure to this person (Article 303 of the CPC of the PRC).

If the actions of the mentally ill were of a violent nature, then before a court decision on compulsory medical treatment is issued, public security bodies have the right to take temporary protective measures to restrict his freedom. At the same time, the public security organs must notify the mentally ill person suspected of the crime, as well as the victim (in order to ensure the protection of their legitimate interests) of the expert's conclusion, which will serve as evidence (Article 148 of the CPC of the PRC). And also notify about the possibility of conducting an additional or repeated examination, in the event of a submission of an appropriate petition by a suspect in a crime, a victim.

In addition, it must be borne in mind that the period of establishing mental illness of a suspect in a crime is not included in the period of criminal proceedings (Article 149 of the CPC of the PRC).

In order to balance the rights of mentally ill people with the need to maintain public safety, the legislature has created a special procedure for considering involuntary treatment when requested by the prosecutor.

After accepting an application for compulsory medical treatment, the people's court must organize a court with the participation of people's assessors and consider the case on the merits. When considering a case for compulsory medical treatment, the people's court must notify the appearance of the legal representative of the defendant or the accused. In cases where the defendant or the accused did not authorize a legal representative, the people's court must notify the legal aid body of the allocation of a lawyer to provide legal aid (Article 304 of the CPC of the PRC).

When, in the course of the consideration of the case, the people's court comes to the conclusion that the defendant or

the accused really needs compulsory medical treatment, then within one month it is necessary to prepare a decision on compulsory medical treatment. In case of disagreement with the decision on compulsory medical treatment, the person in respect of whom this decision was made, the injured party, as well as their legal representatives, close relatives, may apply for revision to the people's court of a higher level (Article 305 of the CPC of the PRC).

Compliance with the legality and justification of the implementation of compulsory treatment is ensured by the imposition of certain duties on the people's prosecutor's office and the corresponding medical institution, as well as by the granting of certain rights to interested persons.

The People's Procuratorate, if compulsory treatment is authorized by a court, bears overall responsibility for its proper application and timely termination (Article 307 of the CPC of the PRC).

A medical institution for compulsory treatment must establish the period for the diagnosis and assessment of his mental state for the person in respect of whom the decision on compulsory medical treatment has been made. If such an institution comes to the conclusion that the person undergoing compulsory treatment no longer poses a danger and there is no need for him to be in this institution, then it (institution) must promptly formulate its opinion (official opinion) on this and submit supporting documents for approval to the national court (Article 306 of the CPC of the PRC).

Persons undergoing compulsory medical treatment, as well as their close relatives, have the right to apply for the cancellation of compulsory medical treatment.

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