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## **THE STAGES OF FORMATION THE LEGISLATION REGULATING PROCEEDINGS IN CASES OF INSANE AND LIMITEDLY SANE PEOPLE**

In modern terms of realisation the court legal reform, the issues regulating proceedings in cases of insane and limited sane people become very actual. This is due primarily to the fact that such persons are socially dangerous because of their propensity to commit crimes and socially dangerous acts, however, they are the least protected in the legal aspect of the categories of the population, as the proceedings in such cases shall be made to ensure proper provision of all criminal procedural guarantees of their rights and interests for the further application of compulsory medical measures to cure them. However, in the valid legislation, these issues are not clearly resolved, resulting in investigative and judicial errors in law enforcement.

The purpose of this article is also research the historical development of the institution of insanity and diminished responsibility, proceedings of those who will compare the achievement of psychiatry and law at various stages of the state, and to determine the possibility of the legislator justified and fully secure this institution in legal norms.

Definition and procedure for proceedings insane persons in the national legislation established relatively recently - in the first half of the nineteenth century. However, attempts to resolve the basic principles and fundamental principles that are directly related to restricted sane and insane persons were made in Kyiv Rus. Thus, Ecclesiastical Charter of Prince Volodymyr the Great 996, the mentally ill were administered in the church. Was barred examination of [1, p. 53]. Instead Ruska Pravda did not contain provisions for mentally ill persons. Since the text is clear is that the offender recognized individual (except slaves) [2]. However, the regulations of the time make it impossible to determine exactly how a question of sanity and insanity person in general, and, in the case of such persons offenses in particular.

Russian law rules are applicable in the territory of Ukraine in the period of Galicia-Volyn principality, the Volodymyr the Great of Lithuania and Poland. In this period there has been much development of standards for mentally ill persons. However, it is known that mental disorders were compared with witchcraft, mentally ill recognized as being obsessed with evil spirits and used them severe punishment.

However, there is inconsistency in the treatment of the mentally ill who have committed socially dangerous acts. On the one hand, they are not subject to criminal liability for certain crimes, on the other - they are attracted to liability in the event of infringement of the interests of the state or the church.

The legal aspect of determining the position of mentally ill persons in law for the first time was singled out in the seventeenth century. Thus, the Cathedral code from 1649 and Novoukasni statti (Newpointed articles) about theft, robbery and murder in 1669 contained provisions that were released mentally ill from liability for murder [3, p. 27]. For all other offenses, such persons would be subject to liability. Forbidden to use mental as witnesses, conduct their questioning. During this period, known attempts to establish the mental state of a person by a forensic psychiatric examination. Thus, from the seventeenth century. mental illness are subject to medical supervision and treatment.

With the adoption of Military Items in 1716 by Peter I mental illness was the basis for mitigation of sentence or release from it in case of theft (article 195) [4, p. 363]. Mandatory treatment of such persons is not established, although they are forcibly kept in monasteries, often shackled in chains. The paper traces the emergence of diminished responsibility. Yes, Item 152 pointed to a special mental state of the person who softened responsible for verbal abuse in the absence of such a mental state, a crime stipulated six-month prison [4, p. 322, 354-355]. Punishment of the mentally ill, in contrast to medieval Europe, were not widespread.

Given that mental illness could be a ground for exemption from criminal liability, as well as performing various duties at the beginning of the eighteenth century. Simulations are cases of such disorders. These facts were the original reason for the further development of forensic psychiatry and therefore legislation. Thus, due to evasion children of the nobility of teaching and the civil service under the pretext of dementia from birth, Peter in 1722 issued a decree "On review of fools in the Senate." Subsequently, December 6, 1723 issued another decree was set not only the form and method of examination, but were given criteria for evaluating mental status experimental [5, p. 301, 305].

In 1722 issued a decree according to which persons with mental disorders, and condemned to perpetual servitude, but for health reasons cannot serve this penalty, you must keep in monasteries. Within a year the new decree ordered direct mentally ill people in hospital. Senate decree in 1742 [5, p. 305, 308], establishes indefinite detention of mentally ill persons monasteries in the prison regime. Investigational stage of legislation proceedings insane persons characterized by rather high regulations of problems mentioned in the legislation.

Important historical and legal document which, though not received approval, but you can see how it was a question of sanity and insanity person is draft Code 1743. In p. 2, Article 44 stated that the person who lost mind and congenital stupid if causing them injury or murder, are not subject to execution. In such cases, these persons could be jailed for up to five years, and their parents or guardians had to pay

damages [6, p. 383-384]. In addition, Section 3, Article 44 was predicted that if the person again commits the same act, it is subject to a lifetime of isolation, regardless of its subsequent recovery [6, p. 384]. Note that in this paper for the first time clearly identified legal implications of the mental state of a person while committing a crime and mental state of a person after having done so. Thus, in accordance with paragraph 4 of Article 44, if a person fell ill with mental illness after it committed murder or injury caused, it was subject to execution, but the execution was carried out only after her recovery [6, p. 384]. Criminal proceedings conducted after examining the defendant's mental capacity. Setting mental health conducted psychiatrist or physician County. Review process usually ends need to send a statement of the defendant to the department for the mentally ill. After obtaining the views of doctors coroner, in proceedings which was the case, the prosecutor sent the latest, after which it considered the District Court.

Certain provisions contained in the collection of Malorus rights in 1807 Thus, in paragraph 77 stated that fools shall not be criminally liable for their committed socially dangerous acts, but their parents or guardians had to pay damages [7, p. 122, 128].

Laws of the Russian Empire in 1832 foresaw no liability mentally ill not only for murder but also for other crimes (Article 136) [8, p. 63]. These people began to use compulsory treatment, the essence of which was to detention and treatment of mentally ill persons in special houses offices for the insane.

In the nineteenth century. Claims of insanity, which contained two criteria - medical and legal, in Russian legislation for the first time enshrined in the Penal Code and criminal penal in 1845 during the nineteenth century. it operated without any significant changes. Criteria insanity of this formula were distributed to several articles, including: Madness of age (Article 95), old age or infirmity (Article 97), sleepwalking (Article 98), etc. [9, p. 32-35]. Its disadvantage can be considered fragmentation, which in turn formalized jurisprudence. Legal test of insanity characterized by vague list of mental disorders, which exclude sanity. Penal Code criminal and penal in 1845 not only maintained a differentiated approach, but also expanded the reasons why committed could not be put to blame, but, unlike the Laws of 1832, all causes were combined within a single section [10, p. 193]. It should be noted that the 1845 Code was the first piece of legislation, which lawmakers not only the most differentially suited to reasons of insanity, given previous historical experience, but also systematically and structurally placed them correctly, effectively creating a separate institute legislation. It was the development of the legal act attributed the emergence of concepts of sanity and insanity and appropriate terminology to designate them.

Statute of criminal justice in 1864 somewhat regulate the procedural issue proceedings insane persons. First introduced following the general principles of the process as transparency and competition, equality of the parties and so on. In the century. 356 was envisaged that the prosecution may be terminated due to insanity or

madness accused, who eventually removed the his criminal responsibility [5, p. 156, 301-302]. However, the Act of April 27, 1882, this provision was elaborated. Thus, the prosecution terminated only in cases where the person was crazy fools or at the time of the offense, and when she fell ill after having done the investigation stopped in its recovery, then continued in the usual manner [5, p. 302].

The end of the XIX -the beginning of the XX century was marked by the rapid development of psychiatry, which actually in this period was singled out into an independent branch of knowledge. However, effective legislation in this area of criminal proceedings has not been established. Yet the legislation, which regulated certain issues, little ad hoc in nature, laws were issued with detailed comments which contain some contradictions, which in turn enabled the officers discretion, so in practice almost 1910 grossly ignored by the courts forensic psychiatric examinations, especially in the political processes - even people with strong mental disorders meant imprisonment. The situation changed in 1910, when the Third Congress of Russian Psychiatrists adopted a resolution which contained provisions on the inadmissibility of the use of shackles in psychiatric hospitals. Also suggested the creation of psychiatric departments of hospitals in prisons [11, p. 35].

The first piece of legislation of the Soviet government, which directly concerned the proceedings insane was NKY<sup>1</sup> Guide 1918 "On expertise of mentally ill" (On testimony of mentally ill), which determines the order of examination of persons with mental disorders, and included the use of the findings given the People's Courts [12, p. 49]. Later, in 1919 approved the "Regulations on the psychiatric examination", which determined the order given and the mentally ill persons [12, p. 49]. Regulations also provide for the maintenance of the mentally ill in psychiatric hospitals or transfer them to bail and parole of prisoners suffering from mental disorders. However, these regulations do not contain definitions of sanity and insanity, and the causes of insanity, it is essentially a matter of just one - mental illness. The same trend in approaches to order proceedings insane, was observed in Guiding principles of criminal law in 1919 [13, p. 58-59]. Guiding principles not only refused to differentiate the causes of insanity, but did not distinguish between the mental state of a person during the commission of a socially dangerous act, and after having done so. Similarly resolved the issue in the article. 17 CC<sup>2</sup> of USSR 1922 [14, p. 454, 460].

Procedural order of proceedings is limited to sane and insane part was determined CPC<sup>3</sup> of USSR 1922 Specifically, he obliged the investigator to collect data to establish the mental state of the accused in the presence of the file information that pointed to mental illness, testimony accused by a psychiatrist . In particular, the establishment subject to the following factors: whether he had committed the crime or attempted suicide, whether there was in his childhood abnormalities on health and

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<sup>1</sup> NKY – People's Commissariat of Justice (HKIO)

<sup>2</sup> CC – Criminal Code

<sup>3</sup> CPC – Criminal Procedural Code

education, established the conditions of his life and work, carried disease, whether the person was in Psychiatric Hospital (the history of illness was demanded in the hospital). It established as whether the defendant took military service, or participated in battles or had injuries and concussion. As for the accused women was determined whether observed them mental disorders during pregnancy, childbirth and postpartum period [15, p. 145]. The proceedings are carried out with the prosecutor, who supported prosecutions, civil plaintiff and his representatives, the accused and his legal representatives and counsel, as well as the victim in cases where it was entitled to maintain the charge. Central during the proceedings of such cases conduct the examination given mental state defendant.

If during the proceedings it was established that the defendant committed the crime in a state of insanity, be imposed by a court decision to dismiss the case and the question about the need for mentally ill persons to social protection measures. If the defendant suffered a mental illness after the crime, the court bore the decision to suspend the proceedings for recovery of such person or the decision to close the case if the disease is recognized incurable.

The legal status of mentally ill persons who have committed crimes were more regulated instruction NKY RSFSR of 17 February 1935 "On the procedure of appointment and the compulsory treatment of mentally ill persons who have committed crimes." It was expected requirement for forensic psychiatric examination that preceded the decision of the court [16, p. 66-68]. Compulsory measures of treatment by the court could be applied to persons who committed a crime in a state of mental disorder, sick with mental illness after committing a crime, or ill with mental illness while serving their sentence. The abolition of compulsory treatment was carried out by order of the medical commission, which was created under the direction of the chief doctor of medical institutions with the subsequent approval of this resolution by the court.

As of diminished responsibility, in some cases, the legislator has provided legal significance of mental states that were making weak the intellectual and volitional activity of an individual. Thus, in Section 1, Art. 25 CC USSR in 1922 among the circumstances which were taken into account by the court in sentencing, pointed to a "state of temper", and Articles 144 and 151 was found criminally responsible, respectively, for murder and grievous or less grievous bodily harm committed in the heat of passion, if this condition was caused by unlawful violence or severe abuse from the victim [14, p. 455, 480-481].

Basic Principles of Criminal Legislation of the USSR and Union Republics in 1924 brought further misunderstanding. Thus, in Art. 7 Basic principles stated that medical measures applied to those who committed crimes in a state of chronic mental illness or temporary disturbance of mental activity, whether in this painful condition when they could not realize his actions or control them, as well as to those which, although they were in a state of composure, but by the time the judgment rendered ill with mental illness. All activities penal effects were combined into one generic term -

social protection measures. So between the concept and the concept of insanity which defines the mental state of a person after committing an offense completely disappeared difference. After all, regardless of whether the person has lost the opportunity to provide conscious and volitional control over their acts during the commission of the act or after its commission, are criminal enforcement measures that could be applied to it, did not change as a whole did not change their use [17, p. 201, 203, 205].

The provisions of the Criminal Code of USSR in 1927 [18, p. 4-5, 23] differed little from similar provisions of the Criminal Code in 1922 and the basic principles in 1924, dealing with insanity. Thus, p. 10 CC of USSR in 1927, fully repeated the aforementioned Art. 7 Basic principles of criminal legislation of the USSR and Union Republics. Other provisions are similar to a duplicate of the spacecraft SSR 1922 Thus, the legislator did not make further distinction between the insanity and mental state of a person after committing an offense, nothing new is introduced and the procedure for reviewing such matters or application of medical measures.

Fundamentals of Criminal Legislation of the USSR and Union Republics in 1958 separated the provision on insanity and mental condition of the person posting them in the same article, however, in different parts, which emphasized their different legal nature [19]. Criminal Code 1960, Art. 12 essentially duplicate the provisions Essentials 1958 [20]. Was established and a system of measures that could be applied by the court to the insane, as well as to persons who become ill after the crime to mental illness. According to the Decree of the Presidium of the Supreme Soviet from 10 February 1988 the system of these measures has been changed. These included: 1) a referral to a mental hospital with the usual observation, 2) referral to a mental hospital with increased supervision, and 3) referral to a psychiatric hospital with strict supervision. [21] Formally, was left able to transfer the care of relatives or carers, but this is not seen as a compulsory measure of medical character.

As the CPC of the USSR in 1961 [22], then it was assigned a separate chapter "The proceedings on the application of compulsory medical measures", which is more regulated the criminal judicial process for persons who have committed crimes in a state of insanity or ill with mental illness after crime, excluding the possibility of punishment for them. Determined the grounds for the application of compulsory medical measures and criminal procedural guarantees for mentally ill persons for whom carried the proceedings.

The final stage of union law was the basis of criminal law and the Republics of the USSR in 1991, which did not take effect. The concept of insanity defined by the Principles in 1991, is no different from that set out in the Criminal Code in 1960, however, in Art. 12 Principles of 1991, which revealed the concept of insanity, there was no provisions on the mental state of a person after committing an offense. In the article 15 Principles for the first time in the history of Soviet criminal law was formalized concept of diminished responsibility, which is now used almost unchanged

in centuries. 20 Criminal Code of Ukraine in 2001 [23, p. 27]. So the Soviet period, development of legislation concerning proceedings restricted sane and insane persons, there is, on the one hand, the lack of continuity was pre-revolutionary law provisions, and on the other hand, their specific heredity.

The modern period of development and improvement of the legal framework governing the proceedings in respect of restricted sane and insane persons closely associated with fixing the fundamental principles of mental health care insane persons in international instruments. Ukraine, leaving behind the status of European states could not stay away, and therefore started the legislative process. Thus, the Criminal Code of Ukraine in 2001 [24] states clearly distinguished between sanity, insanity and diminished responsibility (Articles 19, 20), both during and after the commission of an offense committed before it has rendered its verdict. So that in law the concept of diminished responsibility was confirmed only in 2001 with the adoption of appropriate amendments Criminal Code of Ukraine in 2001 and was introduced to the CPC of Ukraine. Currently in Chapter 34 "Application of compulsory medical measures" fixed order of proceedings against the insane and sane people is limited.

Regarding regulation of compulsory medical measures applied by the courts to insane and sane people is limited to their effective implementation, the year before, namely February 22, 2000 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Psychiatric Care." Actually this law also defined the legal and institutional framework of public psychiatric care [25]. However, the issue appears to be a number of issues that are investigated, to date remain problematic in some moments not regulated, or even those that are not settlements legislation, and therefore also require thorough research and analysis.

Thus, the analysis of the history of legislation governing proceedings and limited insane sane people we came to the conclusion about the possibility of making several stages, depending on the degree of certainty of concepts, their division, the order of proceedings in cases restricted sane and insane persons and the application of compulsory medical measures: 1) the origin of the Institute and its development since ancient law until the second half of the XVII century. (Church Statute of Grand Prince Volodymyr in 996, Judgment Act of Prince Volodymyr Monomakh in 1117, Stoglav 1551), 2) development of the Institute in the legislation of the Russian Empire in the second half of the XVII century - the beginning of XIX century (Catholic Code of 1649, Novoukazni articles about theft, robbery and murder in 1669, military part Peter I 1715, Peter Decree "On review of fools in the Senate" in 1722, "Orders social care" Catherine 1775 - 1776 GG and others), and 3) development of the Institute in the legislation of the Russian Empire in the early XIX - the beginning of the twentieth century. (Laws of the Russian Empire in 1832, the Penal Code criminal and penal in 1845, the Statute of criminal justice in 1864), 4) development of the Institute in the legislation of the RSFSR and the USSR since the early 20-ies XX century. the end of 50-ies Twentieth century. (Instruction of NKJ "On testimony of insane" 1918 "Regulations on psychiatric examination" in 1919, Guiding Principles of Criminal

Law in 1919, Red SSR 1922 and 1927, the CCP SSR 1922 and 1927, Instruction of NKJ "On the appointment and conduct of compulsory treatment of mentally ill persons who have committed crimes" of February 17, 1935, and others), and 5) development of the Institute in the legislation of the USSR from the late 50 th century. the adoption of the Criminal Code of Ukraine in 2001 (Fundamentals of Criminal Legislation of the USSR and Union Republics in 1958, the Criminal Code in 1960, the CPC of the USSR in 1961), 6) Development Institute in Ukraine's legislation with the adoption in 2001 of the Criminal Code of Ukraine, making amendments to the Code of Ukraine to this day. The introduction of the conceptual workings out of the institute of proceedings in cases of insane and limited sane persons in the course of work on the new Code of Ukraine and its adoption will begin a new stage of the development of the Institute.

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