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GENERAL PRINCIPLES OF COERCIVE MEDICAL MEASURE APPLICATION: CONCEPTS AND BASIC CRITERIA

The article is devoted to the study of the general principles of coercive medical measure application and formulation of the author's own generalized conclusions on this basis, aimed at further development of the scientific idea of such coercive measures of criminal law impact personalization and improvement of their practice implementation through compliance of law enforcement entities with certain rules or criteria. It has been noted that one of the shortcomings of the general principles regulatory certainty of coercive medical measures application is that the current criminal legislation of Ukraine does not have an article that would separately enshrine such general principles or rules. In this regard, the author has proposed own definition of general principles of coercive medical measures application concept and a variant of its regulatory definition in a separate article of the current criminal legislation of Ukraine.

Key words: *personalization, coercive medical measures, impact, general principles, selection of medical measures, change of medical measures.*

Original article

INTRODUCTION. Violation of the criminal law prohibitions provided for in the Special Part of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine) results in a number of criminal law measures of different severity. The leading place among them is given to the penalty (Article 51 of the CC of Ukraine). At the same time, an alternative criminal law consequence of criminal law prohibitions violation may be the application of coercive means of criminal law influence other than penalty. One of such criminal legal means is coercive medical measure applied to persons in need of psychiatric care.

The application of coercive medical measures is determined by the court's activity, which consists in making a decision in the form prescribed by law to determine one of the coercive medical measures provided for by the CC of Ukraine, to extend its implementation or to substitute one for another based on the established and assessed circumstances of the criminal proceedings and guided by the right of judicial discretion (Article 369 of the Criminal Procedure Code of Ukraine (hereinafter – the CPC of Ukraine)). In the course of such activities, the court must resolve a number of criminal law issues. These include, in particular, the issue of coercive medical measures personalization principle implementation, which is reflected in the general principles of these means of influence application.

PURPOSE AND OBJECTIVES OF THE RESEARCH. The purpose of the article is to study the general principles of coercive measures of a medical nature application and to develop, on this basis, the author's own generalized conclusions aimed at further development of the scientific idea of these coercive measures personalization and improvement of their practice application through compliance with certain rules or criteria by law enforcement entities. The implementation of this purpose implies the need to fulfill the following tasks: to define the concept of coercive medical measures personalization; to formulate the concept of these coercive means of influence general principles application; to characterize the criteria for coercive medical measures general principles application; to identify the shortcomings of the legal regulation of coercive medical measures general principles application.

LITERATURE REVIEW. In the theory of criminal law, issues related to the use of coercive medical measures are addressed in the works of S. O. Beklemishchev, A. Y. Bersh, V. M. Burdin, V. F. Hayevyi, T. A. Denysova, I. V. Zhuk, V. V. Lenya, A. V. Kanishchev, M. M. Knyga, A. A. Muzyka, A. V. Tkach, S. L. Sharenko and many other scholars. The scientific developments of the abovementioned authors undoubtedly contain a significant number of useful theoretical provisions and conclusions. In existing research, insufficient attention has been paid to the study of the general principles of the use of these coercive means of influence. Today, it can be stated that the state of scientific development of the main criteria that

should be taken into account when applying coercive medical measures at the stage of adoption or execution of a court decision is usually fragmentary or descriptive in nature. The issue of their actual regulatory certainty in the current criminal legislation does not cause any debate among representatives of the national criminal law doctrine and practitioners. This, in fact, determines the interest in the chosen topic of the scientific publication and its scientific and practical significance.

METHODOLOGY. With the help of the dialectical method of cognition, the main concepts formulated in the scientific publication have been studied and substantiated. Both dogmatic and formal legal methods have been applied in analyzing the content of criminal law provisions provided for in Section XIV of the General Part of the CC of Ukraine. The comparative legal method has made it possible to determine the general principles of applying coercive medical measures, taking into account the provisions related to the consideration of certain criteria or rules when applying coercive medical care, as defined in the draft new CC of Ukraine. The use of the abovementioned methods of scientific cognition has allowed the author to: define the concept of "application of coercive medical measures"; improve the list of criteria which should guide the court in any criminal proceedings when selecting one of the types of coercive medical measures provided for by law, extending its implementation or replacing it with another; and propose a definition of the concept of personalization of coercive medical measures and the general principles of their application.

RESULTS AND DISCUSSION. In the system of state response to various manifestations of deviant behaviour of an individual, coercive medical measures are means of state coercion that are appointed, extended, changed and terminated by a court decision to a person who has committed a socially dangerous act, stipulated in the Special Part of the CC of Ukraine, in a state of insanity, as well as to a person recognized by a court as having limited sanity, and to a person who, after committing a criminal offense, has contracted a mental illness that deprives him or her of the ability to realize his or her actions (inaction) or control them. The purpose of compulsory medical measures is psychiatric treatment aimed at restoring or strengthening a person's mental health to exclude the possibility of committing a new socially dangerous act, the danger of harm to oneself or others, the possibility of causing other significant harm, as well as observance of one's rights and legitimate interests (Литвинов та ін., 2019, с. 422).

Despite the current debate in the professional scientific community on the legal nature of the above coercive measures, it should be fully agreed that they are criminal law measures by sectoral affiliation, since their types, purpose, procedure for appointment, extension, replacement and termination are determined by criminal law, and the procedure for appointment is determined by criminal procedure law. In general, the question of the necessity of their existence as a criminal law phenomenon, according to an accurate observation of some domestic scholars, is based on the fact that the need for these coercive means of influence under the law arises precisely when a person commits an encroachment on the protected spheres of human life as provided for in the Special Part of the CC of Ukraine. Such an encroachment generates certain legal relations that should be regulated and are regulated by criminal law, which is quite reasonable given the content of the main protective and regulatory function of this branch of law (Беклеміщев, 2017, с. 31–32).

It is worth noting that the mentioned purpose of coercive medical measures should be distinguished from the purpose of their application. By its very nature, application is an activity, and one or another coercive medical measure is the subject of such activity. In this regard, the purpose of applying any coercive measure of a medical nature is to assist in ensuring the state response to the manifestations of illegal or socially dangerous acts of mentally ill persons or persons recognized as having limited sanity by correctly determining, extending or replacing the relevant coercive measure provided for by law. The correct application of coercive medical measures is impossible without observing the principle of their personalization, which is not paid enough attention by domestic researchers.

A systematic analysis of the current criminal legislation of Ukraine, as well as certain doctrinal positions, primarily those of M. I. Bazhanov (2012, с. 79) regarding the personalization of criminal law punitive measures (various types of penalties), has allowed us to propose the following definition of the compulsory medical measures personalization principle concept. In particular, the personalization of these coercive measures can be understood as a requirement to take into account the severity of the socially dangerous act or criminal offense committed, the nature and severity of the disease and the degree of danger of the mentally ill person to oneself or others when choosing one of the coercive medical measures provided for by law, its extension or replacement. In other words, personalization of coercive medical measures means specifying the

type of coercive medical measure when it is chosen in relation to an insane or partially sane person, prolonging its implementation or replacing it with another depending on the characteristics of the socially dangerous act or criminal offense committed and the person who has committed it. This personalization is a type of judicial personalization, since the application of these coercive measures depends, firstly, on the peculiarities of the socially dangerous act or criminal offense committed and the person who has committed it, and secondly, on the fact that the law uses the wording "may" in relation to the court's authority to apply any type of coercive medical measures. Thus, the main requirement for personalization of coercive medical measures is that only a coercive medical measure of a medical nature should be applied to a person of partial sanity or insanity, which, taking into account the peculiarities of the socially dangerous act or criminal offense committed and the person who has committed it, would ensure protection of society from dangerous actions of mentally ill persons, improve their mental state and help prevent the commission of new criminal offenses or socially dangerous acts (Литвинов та ін., 2019, с. 422; Шаренко, 2002, с. 17; Жук, 2009, с. 94, 98–99).

The personalization of coercive measures of a medical nature, as we have already noted, is manifested in the general principles of their application. An analysis of the provisions of Section XIV of the General Part of the CC of Ukraine shows that there is no article that would separately enshrine such general principles at the stage of making or executing a court decision. At the same time, part 1 of Article 94 of the CC of Ukraine declares that depending on the nature and severity of the act, taking into account the degree of danger of the mentally ill person to oneself or other persons, the court may apply the following coercive medical measures: 1) compulsory psychiatric outpatient care; 2) hospitalization in a psychiatric institution with regular care; 3) hospitalization in a psychiatric institution with enhanced care; 4) hospitalization in a psychiatric institution with strict care. These coercive measures of criminal legal influence do not include the placing of a mentally ill person to relatives' or guardians' supervision with compulsory medical care, since such "placing" can only be carried out in cases where the court, in accordance with Part 6 of Article 94 of the CC of Ukraine, does not find it necessary to apply any of the coercive medical measures provided for by law, as well as in case of termination of their application.

It should be noted that the vast majority of domestic scholars believe that Part 1 of Article 94 of the CC of Ukraine actually contains three criteria that the court should take into account when determining a certain type of coercive medical measures such as:1) medical (nature and severity of the disease); 2) legal (severity of the committed act); 3) social (degree of danger of the mentally ill person to oneself or other persons) (Книга, 2009, с. 105). Therefore, Part 1 of Art. 94 of the CC of Ukraine is in fact the rule that actually establishes the general principles of application of coercive medical measures, which, again relying on the scientific heritage of M. I. Bazhanov (2012, с. 81), can be understood as those criteria established by law that should guide the court when choosing in each criminal proceeding one of the coercive medical measures provided for by law, prolonging its implementation or replacing one with another.

The main provisions regarding these criteria, which, in fact, constitute the general principles of application of coercive medical measures, are considered below. For instance, one of the scientific and practical commentaries of the CC of Ukraine states that the *nature and severity of the disease* are determined by the clinical form of mental illness, its depth and persistence, the dynamics of the disease process, the prognosis of its course and some other circumstances related to the person's disease state. The nature of the mental illness, its form, depth, persistence, peculiarities of the mental state and behaviour during the period of committing a socially dangerous act are the signs that determine the social danger of a mentally ill person. *The severity of the committed act* is based on the provisions of Article 12 of the CC of Ukraine on the classification of criminal offenses. *The degree of danger of a mentally ill person to oneself or others* includes an assessment of the mental state of the person at the time of the court proceedings and the danger of this patient to others, which follows from the nature of the disease (Мельник та ін., 2018, с. 276–277; Жук, 2009, с. 111–112; Андрушко та ін., 2008, с. 222–223).

In addition to the above, it is appropriate to add that the *nature and severity of the disease* are assessed by the court on the basis of a forensic psychiatric examination, which is mandatory, since the decision on the mental state of a person requires the use of special knowledge. In this case, experts are not only entitled but also obliged to assess the mental state of the subject. An expert opinion is one of the evidences that does not take precedence over other evidences and, like all other evidences, is subject to evaluation by the judges' internal conviction based on a comprehensive, complete and objective consideration of all the circumstances of the case in their totality (Гаєвий, 2013, с. 15). At the same time, the severity of

the act is assessed not only by analyzing the provisions of Article 12 of the CC of Ukraine, but also other circumstances, such as the nature, method of the act, the number of episodes of socially dangerous activity, the nature and severity of possible socially dangerous consequences or those that have occurred. In addition, according to Part 3 of Art. 501 of the CPC of Ukraine, the criminal law assessment of a socially dangerous act committed in a state of insanity should be based only on information characterizing the social danger of the actions committed. This does not take into account the previous criminal record, the fact of committing a criminal offense for which the person was released from liability or punishment, the fact of applying coercive medical measures to the person.

Regarding the assessment of the signs of the degree of danger of a mentally ill person to oneself or others, it, in comparison with the criteria already described, remains largely controversial in the professional scientific community. In particular, V. V. Len (2010, c. 122–123, 131–132) and M. M. Knyha (2009, c. 127–128) distinguish *not social, but socio-psychological* criteria among the ones that constitute the general principles of coercive medical measures application. Researchers include the description of a person in terms of negative moral and psychological traits, antisocial orientation, social disadaptation (lack of employment, material insecurity, housing and domestic problems, family disadvantage, antisocial influence of the environment, etc.), as well as the level of his or her spiritual development.

While expressing the attitude to the abovementioned position, it is appropriate to note that it is not devoid of logic, since the mentioned characteristics of the socio-psychological criterion fully comply with the characteristics of a wider group of information describing the person who committed a criminal offense or socially dangerous act (for example, this includes the information specified in part 3 of Article 501 of the CPC of Ukraine: previous criminal record, the fact of committing a criminal offense for which the person was released from liability or punishment, the fact of applying coercive medical measures to the person, etc.) It is also worth noting that the general principles of applying coercive medical measures are not limited to the three criteria mentioned above. The analysis of scientific literature and interpretations of the highest court shows that the application of coercive medical measures provided for in paragraphs 2–5 of Article 94 of the CC of Ukraine depends on the presence of insanity or limited sanity. Thus, insane and partially sane persons cannot be subjected to the same coercive medical measures provided for in paragraphs 3–5 of Article 94 of the CC of Ukraine based on medical criteria. Due to the fact that the provision of compulsory outpatient psychiatric care is applied to persons with mental disorders, the presence of which is a criterion for limited sanity (part 1 of Article 20, part 2 of Article 94 of the CC of Ukraine), courts should take into account that only this type of coercive medical measures can be applied to persons recognized as having limited sanity, if necessary. The peculiarity of this psychiatric care is that it is provided to convicted persons on a limited basis under a compulsory order simultaneously with serving a sentence imposed by a court verdict (Мельник та ін., 2018, с. 277; Джужа та ін., 2017, с. 223; Берш, 2017, с. 162). Therefore, we tend to believe that the court applies one of the coercive medical measures provided for by law, taking into account the state of insanity or limited sanity of the person, especially when it comes to deciding whether to apply these means of influence to minors (Гриндей, Боднарук, 2014). At the same time, if it is a case of limited sanity, then, according to S. O. Beklemishchev (2017, c. 158), when deciding on the appointment of compulsory outpatient psychiatric care, special attention should be paid to the "positive prognosis" of doctors, that is, the possibility of a mental disorder of limited sanity in the future to acquire a more complex form and depth, which will indicate an increased social danger of such a person. It is relevant to note that some researchers substantiate the position that it is generally unlawful to apply any type of coercive medical measures to persons of limited sanity. In particular, it is noted that the substantive description of the mental activity of a person in a state of so-called limited sanity does not give grounds to state that he or she is deprived of the ability to adequately realize the surrounding reality, his or her mental state and behaviour. On the contrary, since it is a type of sanity, a person in this state has the ability to exercise conscious and volitional control over his or her behaviour. In such circumstances, taking into account international principles of involuntary psychiatric care, a person should be able to decide of his or her own free will whether to seek psychiatric care (Бурдін, 2011, с. 20; Каніщев, 2007). However, this position requires further scientific reflection, since it is unlikely that compulsory psychiatric care, taking into account the relevant international principles, can depend on the ability to decide whether to seek psychiatric care of one's own free will. In other words, the term “compulsory provision of psychiatric care” indicates that a person of limited sanity is forced to

undergo treatment by the authorized bodies. If it is the right of such a person to seek psychiatric care, then it is obvious that this care is not coercive.

Consequently, it can be stated that the general principles of application of a certain type of coercive medical measures are the following criteria: 1) medical (nature and severity of the disease); 2) legal (severity of the act committed, the state of insanity or limited sanity of the person); 3) social and psychological (degree of danger of the mentally ill person to oneself or other persons and other information characterizing the social danger of the mentally ill person, i.e. a wide range of information that allows characterizing the mentally ill person who committed a criminal offense or socially dangerous act). The said position to some extent clarifies the opinion previously expressed regarding the quantitative composition of the criteria for the general principles of application of coercive medical measures (Ященко, 2014, с. 250). The last socio-psychological criterion is the one that not only influences the choice of a certain type of coercive medical measure, but is actually decisive for the question of applying any such coercive means of influence, since these means can be used only against persons who are socially dangerous (part 4 of Article 503 of the CPC of Ukraine). Therefore, the determining place of the social danger of a mentally ill person in the mechanism of application of any coercive medical measure should lead to the following logical conclusion: coercive medical measures are not applied to persons who have mental disorders and have committed a socially dangerous act, but have lost their social danger at the time of the case consideration. The public danger of an insane or partially sane person has an objective expression (objective character), since it is primarily determined by the type (kind) of mental illness and the severity of the mental disorder or disease (Беклеміщев, 2017, с. 178).

At the same time, we are inclined to support those scholars who emphasize that the content of the provisions of Part 4 of Article 94 of the CC of Ukraine raises objections from the standpoint of their compliance with Part 4 of Article 503 of the CPC of Ukraine, and therefore, hospitalization in a psychiatric institution with enhanced care cannot be applied to a person who, by his or her mental state, does not pose a threat to society, i.e. is not socially dangerous (Гаєвий, 2013, с. 20). It should also be noted here that the risk of a patient committing a criminal offense or a socially dangerous act necessary to decide whether to apply one of the types of coercive medical measures provided for by law is assessed using a risk evaluation scale in a special mental health care facility[1]. In particular, the most widely used risk assessment tool, HCR-20 Version 3, is designed to measure the risk of violence among mentally unstable offenders. Moreover, it works equally well with non-mentally stable offenders. It includes three subscales: "Historical Factors" (10 items), "Clinical Factors" (5 items), and "Risk Management Factors" (items), consisting of 20 items, each rated on a scale from 0 to 2 (Яковець, 2014, с. 102). However, the analysis of the studies on the procedural activities of the prosecutor in criminal proceedings on the application of coercive medical measures shows that among the reasons for returning the prosecutor's requests for the application of coercive medical measures, the main one is the uncertainty of the specific coercive medical measure proposed for application by the court, taking into account the general principles of their selection (74 %). Therefore, in the relevant request, the prosecutor must make sure that it is necessary to apply coercive medical measures to the person, propose a specific type of such measures, and determine whether it is possible to ensure the participation of the person who committed a socially dangerous act in the court proceedings for health reasons. (Ткач, 2021, с. 150).

In this regard, we understand that the general principles of application of coercive medical measures may be represented by the following possible provisions. Thus, the court applies for an indefinite period one of the coercive medical measures provided for by the CC of Ukraine, taking into account the nature and severity of the act, the state of insanity or limited sanity of the person, the nature and severity of the disease, the degree of danger of the mentally ill person to oneself or other persons, as well as other information about the person who committed the criminal offense or socially dangerous act, and the provisions of the CC of Ukraine. Each of these criteria has its own impact on the choice of a particular type of coercive medical measure, and each of them must be independently established and evaluated by the court.

It is worth noting that the draft of the new CC of Ukraine presents coercive medical measures as compulsory medical care, which is a type of security

[1] Про затвердження Правил застосування примусових заходів медичного характеру в спеціальному закладі з надання психіатричної допомоги : Наказ МОЗ України від 31.08.2017 № 992 // БД «Законодавство України» / ВР України. URL: https://zakon.rada.gov.ua/laws/show/z1408-17 (Accessed 14 December 2022).

measures. Art. 3.6.2 of the draft CC of Ukraine separately declares the general rules for the application of security measures, which can only be supported: one or more security measures may be applied to a person who has committed an act under the CC of Ukraine, regardless of the punishment (part 1); security measures are applied by the court taking into account the criminal law qualification of the act committed by the person, information about the person and in accordance with the rules provided for in the articles of this Section (part 2).

According to Part 2 of Article 3.6.3 of the draft CC of Ukraine, when determining the type of coercive psychiatric care (outpatient psychiatric care or placement in an institution providing inpatient psychiatric care) for a person who has committed an unlawful act, the court, in addition to the information specified in Part 2 of Article 3.6.2 of this Code, takes into account his or her mental state and the probability of committing a new unlawful act.

According to Art. 3.6.4 of the draft CC of Ukraine, compulsory psychiatric care may be applied to a person who: 1) is declared insane; 2) after committing a criminal offense, due to a mental disorder, is unable to serve his or her sentence; 3) is declared by a court to be of limited capacity. The period during which a person was placed in an inpatient psychiatric care facility (*this applies to insane persons and persons whose state of insanity arose after committing a criminal offense*) is counted towards the term of the sentence at the rate of one day in an inpatient psychiatric care facility for one day of imprisonment for a certain period or arrest.

A systematic analysis of the above provisions of the draft new CC of Ukraine allows us to conclude that, firstly, in contrast to the current criminal law, the general principles (rules) for the use of coercive medical care in the draft new criminal law are defined in a separate article. Secondly, when determining one of the two types of coercive medical care, the court should be guided by the following criteria: to take into account the criminal law qualification of the act, information about the person who committed it, in particular his or her mental state and the probability of committing a new illegal act. The above criteria for determining coercive medical care in the draft new CC of Ukraine are to some extent similar to those possible criteria that, in our opinion, could meet a separate regulatory definition in the current criminal legislation of Ukraine. This demonstrates that the study of the general principles of application of coercive medical measures and the development of scientifically sound recommendations aimed at improving the regulatory certainty in criminal law of the criteria which the court should be guided by when choosing one of their types, based on scientific research in various formats, is undoubtedly a relevant and timely area of scientific research and is at the same time interesting not only from a theoretical but also from a practical point of view.

CONCLUSIONS. The application of coercive medical measures results in the court's activity, which consists in making a decision in the form prescribed by law to determine one of the coercive medical measures provided for by the CC of Ukraine, to extend its implementation or to replace it with another based on the established and assessed circumstances of the criminal proceedings and guided by the right of judicial discretion.

Personalization of coercive medical measures is the specification of the type of coercive medical measure when it is chosen in relation to an insane or partially sane person, its continuation or replacement with another depending on the characteristics of the socially dangerous act or criminal offense committed and the person who committed it.

The general principles of application of coercive medical measures should be understood as those criteria established by law that should guide the court when choosing one of the coercive medical measures provided for by the CC of Ukraine in each criminal proceeding, extending its implementation or replacing one with another.

One of the shortcomings of the regulatory certainty of the general principles of application of coercive medical measures at the stage of making or executing a court decision is that the current criminal legislation of Ukraine does not contain an article that would separately enshrine such general principles or rules. At the same time, part 1 of Article 94 of the CC of Ukraine, which is called “Types of coercive measures of a medical nature”, still indicates their certain “presence” in the law. The issue that requires further scientific reflection, at least in view of the provisions of the law that are currently in force, is the definition of a list of criteria that should guide the court in choosing one of these coercive measures, extending its implementation or replacing one with another. In this regard, we believe that in the current criminal legislation of Ukraine, the general principles of application of coercive medical measures could be represented by the following possible provisions: the court applies for an indefinite period one of the coercive medical measures provided for by the CC of Ukraine, taking into account the nature and severity of the act, the state of insanity or limited sanity of the person, the nature

and severity of the disease, the degree of danger of the mentally ill person to oneself or other persons, as well as other information about the person who committed the criminal offense or socially dangerous act and the provisions of this Code. To a certain extent, they only complement and, at the same time, in some aspects detail the key criteria for the general rules of application of such coercive criminal legal measures defined in the relevant articles of the draft new CC of Ukraine.

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ОБЩИЕ НАЧАЛА ПРИМЕНЕНИЯ ПРИНУДИТЕЛЬНЫХ МЕР МЕДИЦИНСКОГО ХАРАКТЕРА: ПОНЯТИЕ И ОСНОВНЫЕ КРИТЕРИИ

Статья посвящена исследованию общих начал применения принудительных мер медицинского характера и формулировке на этом основании собственных обобщающих выводов, направленных на дальнейшее развитие научного представления об индивидуализации таких принудительных мер уголовно-правового воздействия и усовершенствования практики их правоприменения вследствие соблюдения судами отдельных правил или критериев. Отмечено, что одним из недостатков нормативной определенности общих начал применения принудительных мер медицинского характера является то, что в действующем уголовном законодательстве Украины отсутствует статья, которая отдельно закрепляла бы такие общие критерии или правила. Предложено авторское определение понятия общих начал применения принудительных мер медицинского характера, а также их нормативное определение в отдельной статье действующего уголовного законодательства Украины.

Ключевые слова: *индивидуализация, принудительные меры медицинского характера, воздействие, общие начала, избрание мер медицинского характера, изменение мер медицинского характера.*

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ЗАГАЛЬНІ ЗАСАДИ ЗАСТОСУВАННЯ ПРИМУСОВИХ ЗАХОДІВ МЕДИЧНОГО ХАРАКТЕРУ: ПОНЯТТЯ Й ОСНОВНІ КРИТЕРІЇ

Статтю присвячено дослідженню загальних засад застосування примусових заходів медичного характеру та формулюванню на цій основі власних узагальнених висновків, спрямованих на подальший розвиток наукового розуміння персоналізації таких примусових засобів кримінально-правового впливу та вдосконалення практики їх застосування через дотримання судами певних правил чи критеріїв. Зазначено, що застосування примусових заходів медичного характеру передбачає діяльність суду, яка полягає в ухваленні рішення в передбаченій законом формі про приначення одного з примусових заходів медичного характеру, передбачених Кримінальним кодексом України, його продовження або заміну одного на інший на підставі встановлених та обґрунтованих обставин кримінального провадження та права судової дискреції. Встановлено, що одним із недоліків нормативної визначеності загальних засад застосування примусових заходів медичного характеру є відсутність у чинному кримінальному законодавстві України статті, яка б окремо закріплювала такі загальні засади чи правила. У зв'язку з цим висунуто наукову гіпотезу про те, що загальні засади застосування примусових заходів медичного характеру в чинному кримінальному законодавстві України можуть бути представлені такими можливими положеннями. Так, «суд застосовує безстроково один із примусових заходів медичного характеру, передбачених цим Кодексом, з урахуванням характеру і тяжкості вчиненого діяння, стану неосудності або обмеженої осудності особи, характеру і тяжкості захворювання, ступеня небезпечності психічнохворого для себе чи інших осіб, а також інших даних про особу, яка вчинила кримінальне правопорушення або суспільно небезпечне діяння, та положень цього Кодексу». Наголошено, що вони певною мірою лише доповнюють і водночас в окремих аспектах деталізують ключові критерії загальних правил застосування таких примусових засобів кримінально-правового впливу, які визначені у відповідних статтях проєкту нового Кримінального кодексу.

Ключові слова: *персоналізація примусових заходів медичного характеру, загальні засади застосування, вибір примусових заходів медичного характеру, зміна примусових заходів медичного характеру.*

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