

# CONDITIONS FOR THE PROVISION OF PSYCHIATRIC CARE UNDER COMPULSION: CIVIL LAW ASPECT

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**Abstract.** The article is devoted to the issues of compulsory psychiatric care and ensuring the legitimate rights and interests of a person suffering from mental disorders and subjected to compulsory medical measures. It is noted that the level of a person's mental health is determined by the influence of many factors – social, biological and psychological. The analysis of current legislation and specialised literature are allowed the author to argue that the issue of mental health of people, the population as a whole, is relevant today also because humanity is faced with various stress factors which can negatively affect human health, and in particular, mental health, worsen the moral and psychological climate in the family due to illness or death of loved ones, devastating natural disasters with a huge number of victims, military conflicts, military operations, including in Ukraine, which entail huge human losses and cause suffering for many.

The author is substantiated the conclusion that compulsory psychiatric care is possible and necessary on the following grounds: the presence (assumption) of an acute mental illness or exacerbation of a chronic mental illness requiring inpatient treatment; danger of a mentally ill person to others or to himself/herself (psychomotor agitation with a tendency to aggressive actions, systematic delusional syndromes if they determine the patient's socially dangerous behaviour, depressive states with suicidal tendencies, epileptic status, manic and hypomanic states that cause violations of public order or aggressive behaviour towards others, etc. etc.); inpatient examination (labour, military, forensic psychiatric).

**Key words:** physical health, mental health, psychiatric care, mental disorder, mental illness, committing acts that create danger, inability to meet vital needs.

## 1. Introduction.

Physical and mental health is one of the most important human goods. The World Health Organisation defines health as a state of complete social and physiological well-being in which all human functions are balanced by the natural and social world.

This gives grounds to understand mental health as a relatively stable state of the body and personality that allows a person to consciously, taking into account their physical and mental capabilities, as well as the surrounding natural and social conditions, fulfil and meet their individual needs on the basis of the normal functioning of psychophysiological systems in the body. Among the general criteria of mental health, the following are primarily distinguished: awareness of the stability and identity of one's self; critical attitude to oneself and the results of one's mental activity; ability to self-manage behaviour in accordance with social norms, social rules and laws; ability to plan one's life and implement one's plans; ability to change behaviour depending on life situations and circumstances [1, p. 3].

Over the past decades, many countries have seen a deterioration in the state of mental health of the population, and changes in the diseases themselves. It should be noted that the level of a person's mental health is determined by the influence of many factors – social, biological and psychological.

The main determinants of the increase in mental disorders are: deterioration of the environment, increased frequency of emergencies, population density and intensive ageing, complication of educational and production technologies, growing information pressure with negative information, and poor physical health. In addition, socio-cultural trends have a significant impact. But at the same time, experts note that the most vulnerable to mental disorders are those segments of the population who find themselves in an unfavourable life situation [2, p. 35-36].

It is clear that the issue of mental health of people, the population as a whole, is relevant today also because humanity has faced various stress factors that can negatively affect human health, and in particular mental health, deterioration of the moral and psychological climate in the family due to illness or death of loved ones, devastating natural disasters with a huge number of victims, which are recorded in all parts of the world, military conflicts, military operations, including in our Ukraine, which entail huge human losses and cause suffering for many. All these stress factors have the most painful effect on the human psyche, which is not always stable, even in a relatively calm and sometimes even favourable environment.

According to the World Health Organisation, mental and behavioural disorders are extremely common and affect up to 25% of all people at some point in their lives. Each fourth family has at least one member who suffers from mental and behavioural disorders that lead to severe disability, including depressive disorders, substance use disorders, schizophrenia, epilepsy, and mental retardation [3].

As for Ukraine, the indicators of mental health of the population show, unfortunately, negative trends. In the structure of mental pathology, there is a 1.2-1.5-fold increase in the prevalence of non-psychotic mental disorders, mental disorders of organic origin, schizophrenia, and mental retardation. Out of the total number of registered patients with mental disorders, 69% are patients of working age, 23% are children [4, 69-70].

Thus, the problem of mental health is an integral part of the state's domestic and foreign policy.

According to V. V. Chorna, its overcoming depends on the implementation (solution) of the following tasks: ensuring the patient's constitutional rights to respect, confidentiality, quality treatment, rehabilitation and compliance with sanitary and hygienic requirements for safe stay in mental health care institutions; ensuring and gaining access to health insurance in the private and public sectors; taking all necessary measures to preserve and strengthen the mental health of the population [5, p. 447]. Following the author's position we are convinced that only a comprehensive approach to solving these problems will lead to the result expected by society – improving the quality of mental health of citizens, and thus – to improving the overall health of the Ukrainian nation.

We believe that preserving a person's mental health primarily depends on neutralising the negative factors and phenomena that produce mental illness, and in case of mental health damage – on timely and high-quality psychiatric care.

## **2. The purpose of the article**

is presented a theoretical and legal analysis of the conditions for providing psychiatric care under compulsion from the perspective of private law regulation of these relations, to identify the main problematic issues which are typical for the use of compulsory hospitalisation and to suggest ways to resolve them with a view to optimising civil legislation.

## **3. Analysis of recent research and publications.**

The issue of involuntary psychiatric care, as well as related issues of legal, social protection and protection of personal non-property and property rights of persons subject to such a forced but necessary medical measure, is widely discussed in the scientific literature. Among the domestic scholars who deal with the above issues are: Arlamov O.Yu., Berezovska Ye.O., Dzera O.V., Dzera I.O., Diachenko L.O., Zaika Yu.O., Kornatskyi V.M., Kryzyna N.P., Kuznetsova N.S., Maidanyk R.A., Mykhalchuk V.M., Nazarovska K.B., Otradnova O.O., Sybirna R.I., Sybirnyi A.V., Spirina I.D., Khomiv O.V. and others.

#### 4. Summary of the main material.

According to Art. 1 of the Law of Ukraine “On Psychiatric Care”, psychiatric care is defined as a set of special measures aimed at examining the state of mental health of persons, prevention, diagnosis of mental disorders, treatment, supervision, care, medical and psychological rehabilitation of persons suffering from mental disorders, including those resulting from the use of psychoactive substances [6].

Improving the mental health of the population and providing psychiatric care to those who need it is not the least important in the healthcare system as a whole. However, non-compliance with the law, and sometimes its direct violation, leads to the emergence of other kinds of obligations that already fall within the scope of legal regulation of civil law. In particular, we are talking about possible violations in the area of personal non-property rights of an individual subject to compulsory medical measures. This may also include violations of the person’s property rights, since involuntary placement in a medical institution, and as a possible consequence, the recognition of a person as having limited legal capacity or incapacity, creates “conditions” for the guardian or trustee to decide the fate of the person’s property. Or we are talking about damage caused directly to a person who is placed in a medical institution under compulsion by illegal actions of a guardian or trustee or abuse of their rights. Unfortunately, there are countless examples of such abuses.

The legal literature notes that compulsory medical measures are not a form of liability, but a means of state coercion, the use of which is caused by considerations of public safety. According to V. F. Haievyi, such coercion should be minimal and sufficient to achieve the goal, which is: first, to protect society from illegal actions of socially dangerous persons due to the disease state of their psyche and, second, to eliminate this danger through effective treatment of such persons and their resocialisation [7, p. 6-7]. As we can see, compulsory medical measures consist not only in isolating persons dangerous to society due to their unsatisfactory mental state, but also in eliminating this danger by treating the patient, alleviating his or her suffering, etc.

Without questioning this conclusion of the author, we would like to add that a mentally ill person, without committing a socially dangerous act (criminal offence), may cause serious damage to the property or health of a third party, which in turn may cause, and usually does cause, certain problems related to compensation for such damage.

However, in our opinion, cases of forced placement of a person in a psychiatric institution may have no less negative consequences, both legal and factual, and may be no less negative. After all, there are not always legal grounds for this, or it is not done in accordance with the law.

Therefore, we’ve concluded that the provision of psychiatric care under compulsion should be considered as part of private law relations, since it is a case of unlawful placement of a person in a psychiatric institution, and therefore a violation of both personal and property rights of that person.

It should be emphasised that compulsory treatment (examination, examination, supervision, hospitalisation) is a right restriction that affects a very important area of social relations related to the exercise by a person of personal non-property rights that ensure his/her natural existence and social existence, namely the right to life; the right to healthcare; the right to medical care; the right to eliminate danger to life and health; the right to information about one’s health; the right to secrecy about one’s health; the right to personal integrity; the right to liberty; the right to freedom of movement [8].

In the sense of the above, we join the position of K. B. Narovska, who emphasises that such a right restriction should be implemented only in exceptional circumstances, when it is the only way to protect personal and public health, universal human values. This is how the principle of responsibility of the subject of law will be observed, since the limit of exercise of any right is the absence of damage to the rights and legitimate interests of other persons [9, p. 48].

A similar point of view is shared by H.B. Solomchak, who emphasises that any forced interference in a person’s life, unreasonable restriction of his or her freedom and personal integrity, by providing

psychiatric care under compulsion is a gross violation of human rights and fundamental rights of the patient.

Therefore, such interference requires special grounds, clearly defined criteria and established guarantees for the protection of the rights of the person to whom the relevant coercive measures are applied [10, p. 380].

According to Art. 14 of the Law of Ukraine "On Psychiatric Care", a person is suffering from a mental disorder may be hospitalised to a mental health care facility under compulsion and without his/her informed written consent or without the written consent of his/her legal representative, if his/her examination or treatment is possible only in a hospital setting, and if the person is diagnosed with a serious mental disorder, as a result of which he/she commits or reveals real intentions to commit acts that pose an immediate danger to him or others, or is unable to independently satisfy his basic life needs at a level that ensures his life's activity [6].

Thus, one of the circumstances that may indicate the need to provide an individual with compulsory psychiatric care is the commission or manifestation of real intentions to commit acts that pose an immediate danger to him or her or others.

Traditionally, in the specialised literature, security is defined as the state of protection of vital interests of an individual and society from potential and actual threats, or the absence of such threats; a state of a complex system in which the action of internal and external factors does not lead to deterioration of the system or to the impossibility of its functioning and development [11, p. 2]. According to V. P. Tsyhanov, "security" is the activity of people, society, the state, the world community, peoples to identify, prevent, weaken, and avert threats that can deprive material and spiritual values, cause irreparable damage, and block the way for progressive development [12, p. 32].

Thus, security aspects are inherent in all spheres of life of society as a whole, and especially in the sphere of protection of all, without exception, legitimate rights and interests of citizens and other subjects of legal relations.

While the concept of "security" is interpreted by determining the level of protection of the rights and interests of a person, including the right to life and health, other non-property and property benefits, the concept of "danger" should be considered from the opposite perspective. That is why, we are talking about different types of threats that can cause damage to property, health or life.

However, and this is important to note, in the case under consideration, the danger cannot be caused by a phenomenon, process or object that can, under certain conditions, cause certain adverse consequences for a person, and in particular, even factors incompatible with his or her life.

The most significant area for legal entities is private law relations, which include civil, family, housing, land, labour and other rights and obligations of a person. Any sphere is valuable for a person's life in society, and any violation can cause serious damage to his or her rights and legally protected interests.

Investigating the civil-legal aspect of danger, Yu. O. Zaika notes that it can consist in creating a threat to both public and private interests [13, p. 332–333]. In order to raise the question of identifying real intentions to commit actions that represent a direct danger to a person or others, it is necessary to establish the following conditions: the presence of illegal actions (or inaction) of third parties, as a result of which a threat to the subjective right arises, that is, such harmful behavior that threatens property or personal non-property interests, respectively, there is a danger to the life, health or property of a person; the danger must be real, that is, associated with a specific threat of negative impact on a person's life, health, and property, and not exist only in the person's imagination; the possibility of harmful consequences must depend precisely on the activity of the person whose actions must be stopped or who must perform certain actions; causal relationship between actions (inaction) that create danger and damage that may occur as a result of such actions or inaction; the danger must threaten the legal rights and interests of the person; absence of any contractual relations between the potential causer of damage and the potential victim [14, p. 25-26].

Therefore, when providing psychiatric care in a compulsory manner, it is necessary to establish: whether the act has been committed (or there is a real intention to commit it); whether the actions constitute a real (potential) danger; whether these actions are dangerous for the person or others.

By committing or revealing real intentions to commit actions that represent an immediate danger to the person himself or others, it is proposed to understand the performance by a person who is presumed to have a mental disorder (disease) of active (sometimes passive) actions that create danger for the person who acts for other persons and can lead to damage to property, health or life.

The next circumstance, which is considered reasonably necessary for the application of coercive measures, is the inability of a person to independently satisfy his basic life needs at a level that ensures his life activity.

In the literature, the concept of “need” is mostly understood as the subject’s objective vital need for means sufficient for his normal existence. In general, such a need is formed due to a certain set of external conditions of the subject’s existence, arising from its essential qualities, from its nature, the need for something that is necessary for the creation and maintenance of normal conditions of human life and functioning, or a possible feeling of physiological, social or psychological discomfort due to the lack of something [15, p. 156].

In the opinion of the prominent American psychologist, humanist Abraham Maslow, the highest human need is his need for self-actualization, where several levels (the so-called pyramid) of urgent human needs are distinguished: the first level is physiological; the second level – safety and security; the third level is social; the fourth level is respect; the fifth level is cognitive; the sixth level – aesthetic needs; the seventh level is self-expression [Psychological interpretation]. In turn, satisfaction with life acts as the most important internal factor of a person, which determines his social activity, relationships with other people, attitude towards himself as an individual [16, p. 140].

One of the urgent human needs is the biological (natural) need for survival, i.e. the need to maintain the life of the human body through the consumption of food, water, etc. At the same time, any person, regardless of age, state of health, property status, etc., naturally needs to satisfy not only physiological needs for normal existence and development. Satisfying creative, social, safety, spiritual, and aesthetic needs, as well as the need for respect and recognition, remain topical issues on the agenda. It is quite obvious that the absence of such components (or even one of them) has a detrimental effect on the personality and can lead to depressive states and other negative consequences.

However, the lack of an opportunity to provide a means of livelihood is not always connected with the presence of a mental disorder, which blocks the possibility of receiving a stable income and proper organization of one’s life. Today’s realities show that the inability to meet one’s household and other needs does not depend on the mental state of a person, but on the circumstances in which he found himself in a given period of time. And these circumstances are not caused by subjective, but exclusively objective factors.

Nowadays, millions of Ukrainian citizens are left without their own housing, without work, and, accordingly, without means of livelihood. Essentially, these individuals cannot meet their own needs, the needs of their families, and others whom they are required by law to support.

Incapacity (Inability) to satisfy one’s life needs due to circumstances that should be considered as difficult life conditions, and which are caused by the consequences of the current situation in our country – a feeling of constant danger and insecurity, being under occupation, forced departure from one’s permanent place of residence, real threats to life and health ‘yu, lack of a roof over the head, lack of work and income, loss of values and despair for the future, should not be interpreted as a sign of mental disorder. Perhaps, and undoubtedly, such a state of the person needs psychological help (correction), but, of course, without placement in a medical institution, especially in a forced manner.

Therefore, under the inability of a physical person to independently satisfy his basic life needs at the level that ensures his life activity, it is proposed to understand the state of the person, which is independent of external factors, but caused by internal factors related to the instability of mental health and which affect the person’s awareness of the meaning their actions and their management.



In order to recognize the inability of a natural person to independently meet his basic life needs, it is necessary to have an appropriate diagnosis established by a medical institution based on the results of a forensic medical or forensic psychiatric examination.

Thus, in the proceedings of the Vinnytsia City Court of the Vinnytsia Region, there was a civil case based on the application of the Municipal non-commercial enterprise "Vinnytsia Regional Clinical Psychoneurological Hospital named after Acad. O.I. Yushchenko of the Vinnytsia Regional Council" about forced hospitalization of PERSON\_1 without his consent. The court found that the submitted application for compulsory hospitalization was motivated by the fact that PERSON\_1 was hospitalized on the referral of the family doctor of the General Practice Ambulatory of family medicine in village. Novozhyvotiv, PERSON\_2, who, after a personal examination of PERSON\_1, concluded that he needed to be hospitalized in a psychiatric hospital for examination and treatment due to the presence of a mental disorder in him. The above was the basis for applying to the court with a demand for compulsory hospitalization of PERSON\_1 without his consent. At the court hearing, the representative of the hospital supported the stated demands and argued them with the reasons stated in the statement. I asked to satisfy the application. The prosecutor did not object to the application being granted. PERSON\_1 did not give informed consent to hospitalization. The legal representatives did not object to the application. PERSON\_1 was examined by a committee of psychiatrists of the hospital, as a result of which it was established that PERSON\_1 shows signs of a mental disorder in the form of profound mental retardation with significant behavioral disturbances requiring care and medical measures. PERSON\_1 in accordance with Art. 14 of the Law of Ukraine "On Psychiatric Care" is unable to independently satisfy his basic life needs at a level that ensures his vital activities (significantly retarded in mental development, speech does not develop, excitable, disinhibited, does not take care of himself, has convulsive attacks once every 6 months), and therefore needs forced hospitalization without his consent. Article 14 of the Law of Ukraine "On Psychiatric Care" establishes that a person suffering from a mental disorder can be hospitalized in a psychiatric institution without his informed consent or without the consent of his legal representative, if his examination or treatment is possible only in inpatient conditions, and establishment of a severe mental disorder in a person, as a result of which he: commits or shows real intentions to commit actions that represent an immediate danger to him or others, or is unable to independently satisfy his basic life needs at a level that ensures his vital activities. The application of the Communal non-profit enterprise "Vinnytsia Regional Clinical Psychoneurological Hospital named after Acad. O. I. Yushchenko of the Vinnytsia Regional Council" about the forced hospitalization of PERSON\_1 without his consent was fully satisfied [17].

It should be noted that the possibility of forced hospitalization is provided not only by national, but also by international legal documents, among which it is necessary to single out the Principles for the Protection of Mentally Ill Persons and Improvement of Psychiatric Care, approved by the UN General Assembly (Resolution 46/119 of December 17, 1991). According to principle 16 of the said resolution, not just any person can be committed to a psychiatric institution, but only when a qualified specialist working in the field of psychiatry authorized for this purpose (according to the law) establishes that the person is suffering mental illness, and will also determine that, as a result of this illness, there is, in particular, a serious threat of direct or unavoidable damage to this person or other persons [18].

## 5. Conclusions.

1. Compulsory provision of psychiatric care should be considered as a part of private legal relations, since we are talking about cases of illegal placement of a person in a psychiatric institution, and therefore – a violation of both personal and property rights of this person, and in certain cases, compensation for damage, caused by such persons before the moment of forced hospitalization.
2. When providing psychiatric care in a compulsory manner, it is necessary to establish: whether an act has been committed (or there is a real intention to commit it); whether these actions constitute a real (potential) danger; whether these actions are dangerous for the person or others.
3. Committing or revealing real intentions to commit actions that represent an immediate danger to the person or others is suggested to be understood as the performance by a person who is presumed to have a mental disorder (disease) of active (and sometimes passive) actions that create danger for



the person as well, which also commits them for other persons and can lead to damage to property, health or life.

4. Under the inability of a physical person to independently satisfy his basic life needs at the level that ensures his life activity, it is proposed to understand the state of the person, which is independent of external factors, but caused by internal factors related to the instability of mental health and which affect the person's awareness of the meaning their actions and their management. In order to recognize the inability of a natural person to independently meet his basic life needs, it is necessary to have an appropriate diagnosis established by a medical institution based on the results of a forensic medical or forensic psychiatric examination.

5. Compulsory provision of psychiatric care is possible and necessary on the following grounds: presence (presumption) of an acute mental illness or exacerbation of a chronic mental illness requiring inpatient treatment; the danger of a mentally ill person to others or to himself (psychomotor excitement with a tendency to aggressive actions, systematized delusional syndromes, if they determine the patient's socially dangerous behavior, depressive, manic states with suicidal tendencies, causing a violation of public order or aggressive manifestations in relation to others and etc.); conducting an inpatient examination (labor, military, forensic psychiatric).

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