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SECURITY MEASURE OF HOSPITAL CARE. DECRIMINALIZATION OF THE OFFENCE

Mihaela Laura PAMFIL[1]

Abstract:

The aim of this paper is to analyze the legal provisions governing the procedure for checking the safety measures of a medical nature ordered in criminal cases, considering the nature and purpose of security measures, referring ourselves mainly to the measure of hospital care and also to show the manner of interpretation and application of the law by the courts of justice in a certain case.

We may say as a conclusion of your study that even if there is no special provision to that effect in the text of Article 569 Code of Civil Procedure (the text imposing as shown above, only the checking of the health status of the patient) it is necessary, in the context of legislative changes in criminal matters, decriminalizing all or part of certain facts, to verify the provision in criminal law of the offense said to be committed by the patient.

Keywords:

safety measure, measure of hospital care, decriminalization of the offence

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1. Circumstances of the case

By criminal sentence no. 2736 of September 13, 2016, Iasi District Court ordered the maintenance of the security measure of hospital care provided in Article 110 Criminal Code applied to patient S.E., admitted to the Psychiatric Hospital and for Safety Measures Pădureni - Grajduri, on the date of the sentence ruling. The court noted that in relation to patient S.E. the court ordered the taking of the safety measure of hospital care through criminal sentence no. 264/January 21, 2011 of Iasi District Court, which became final by non-recurrence on February 14, 2011 and by criminal sentence no. 1781 dated May 26, 2015 of Iasi District Court, final by non-contestation on June 3, 2015 they ruled the maintenance of the security measure of hospital care.

Following the passage of a period of 12 months from the date of the previous verification necessity of the measure, the judge for the enforcement of the Iasi Court proceeded to notification of the court to verify the measure taken to hospital care S.E. In adopting the solution for maintaining hospital care measure, the court relied primarily on the findings of forensic expertise made concerned about the health of the sick S.E., which established that S.E. presents the diagnosis "persistent delusional disorder" and recommended the maintenance of the security measure of hospital care.

Following the passage of a period of 12 months from the date of the previous verification of the necessity of the measure, the judge delegated with the enforcement within Iasi District Court proceeded to the notification of the court to verify the measure of hospital care taken in relation to S.E. In adopting the solution for maintaining the measure of hospital care, the court relied primarily on the findings of the forensic expertise made in the case on the health of the patient S.E., which established that S.E. presents the diagnosis of "persistent delusional disorder" and recommended the maintenance of the safety measure of hospital care. They also took into account the findings of the psychiatric examination according to which the patient presents emotional lability, tearfulness, low tolerance to frustration, difficulties in attention and memory in the context of an important deafness and involution, temporal-spatial disorientation, and the fact that the patient could not be brought to court due to health reasons. The court found that the initial hospital care was due to the failure to observe the security measure of obligation to medical treatment and that the patient is registered in the records of Socola Psychiatric Hospital, the last admission dating from 2006.

Considering these circumstances, taking the conclusions of the prosecutor and of the defense counsel appointed ex officio for SE, the court

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held that the healing of the patient had not occurred, and that an improvement has not been made that would remove the state of danger which she represents, so that the hospital care is still required and that the preservation of the measure must be maintained. The court held, however, that the patient discharge would have negative effects on both the patient and the members of the community in which she lives.

Against the sentence of the District Court the Prosecutor's Office made an appeal, claiming that the decision taken by the court is illegal because the offense for which S.E. was investigated in the criminal case in which the measure of hospital care was ordered and confirmed was decriminalized. The prosecutor pointed out that the deed for which it was ordered by means of criminal sentence no. 3440 of June 26, 2001 of Iasi District Court, the taking in relation to S.E. of a security measure of compulsory medical treatment, subsequently replaced with the security measure of hospital care by sentence no. 264 of January 21, 2011 of Iasi District Court, was incriminated by Article 320 of the Criminal Code of 1968 under the name of disturbing use of the housing. The Criminal Code in force no longer criminalises as an offense the manifestation of a conduct contrary to the norms of social cohabitation, so that for the offense committed by S.E. decriminalization intervened. The criticisms made by the Prosecutor's office in relation to the Court of First Instance judgment were deemed founded by Iasi County Court which, by decision no. 24 / CJ of January 17, 2017 upheld the prosecution's appeal, abolished entirely the judgment of the first instance and addressing the cause, found as ceased the safety measure of hospital care provided by Article 110 Criminal Code ruled in relation to S.E. as a result of the decriminalization of the offense, and ordered forthwith the discharge of the patient S.E.

2. Comments on the interpretation and application of the law in this case

The manner of interpretation and application of the law by the two courts aforementioned gives us the opportunity to analyze the legal provisions governing the procedure for checking the safety measures of a medical nature ordered in criminal cases, considering the nature and purpose of security measures, referring ourselves mainly to the measure of hospital care.

The safety measures of medical nature are coercive measures of the criminal law, by means of which it is achieved the removal of the state of danger that the perpetrator mentally ill or chronic consumer of psychoactive substances poses to society in general, and for him/herself in general,

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particularly following that disease, and the creation of a state of safety in which the risk of committing a new crime by the sick perpetrator shall be removed or minimized.

The procedure for taking safety measures during the criminal trial is included in Article 247-248 Code of Civil Procedure, In accordance with these provisions, the judge of rights and freedoms, during prosecution, the judge of preliminary chamber during the procedure of preliminary chamber or the court during the trial, may order the provisional medical admission of the suspect or defendant who is mentally ill or chronic consumer of psychoactive substances, if the taking of the measure is necessary for removing a concrete and present danger for the public safety. The measure consists of the involuntary medical admission of the suspect or defendant in a specialized medical unit, until he/she recovers or until a relief that removes the danger that led to the state of taking the measure. The taking of the measure is obligatory preceded by the performance of a forensic psychiatric expertise.

According to Article 569 Code of Civil Procedure, the security measure of hospital care taken by a final judgment is enforced by serving a copy of the device and a copy of the report of the forensic expertise to the authority of public health in the county in which the person in relation to whom this measure was taken lives. The judge delegated with the enforcement which operates at the executing court communicates to the district court in the jurisdiction of which the health unit that performed the hospitalization finds itself, the date on which it was made, for supervision purposes. After receiving the notification, the judge delegated with the enforcement from the district court in the jurisdiction of health unit finds itself checks periodically, but not later than 12 months if the medical admission is required. To this end, the judge delegated with the enforcement orders the performance of a forensic examination on the health of the person against whom the action of hospital care has been taken and after receiving it, he/she notifies the district court in the jurisdiction of which the health unit finds itself to rule the maintenance, replacement or termination of the measure.

Analyzing the sentence adopted by Iasi District Court in this case, through the procedure laid down by Article 569 Code of Civil Procedure, we find that the court invested with the settlement of the referral made by the judge delegated with the enforcement, cannot be accused of the breach any rules of criminal procedure. However, the solution adopted is unlawful in terms of the criminal law provisions which require as a precondition for the taking of a safety measure committing an offense under criminal law.

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According to Article 107 Criminal Code, safety measures are taken against the person who committed an offense provided by the criminal law, unjustified.

According to Article 4 Criminal Code, the criminal law does not apply to the offenses committed under the old law, if they are not provided by the new law, in which case the enforcement of safety measures issued under the old law and all penal consequences of judicial decisions concerning these deeds cease by the entry into force of the new law.

From the pooled analysis of the legal texts previously mentioned it follows, without a doubt, that the health condition is the one that prevails in making and maintaining a safety measure of medical nature, the forensic expertise being a means of evidence required to be managed both when taking the measure and at each check carried out on the need to maintain the measure. However, being a measure of criminal nature it can only exist if the person against whom the action was taken committed an offense under the criminal law and unjustified. As a result, even if there is no special provision to that effect in the text of Article 569 Code of Civil Procedure (the text imposing as shown above, only the checking of the health status of the patient) it is necessary, in the context of legislative changes in criminal matters, decriminalizing all or part of certain facts, to verify the provision in criminal law of the offense said to be committed by the patient.

The question is to determine who is competent and at the same time required to check the provision in the criminal law of the offense for which a safety measure of medical nature was taken or if we refer to the judge delegated with the enforcement in whose jurisdiction the health unit where the admission was made finds itself or the court notified by him to decide on the maintenance, replacement or termination of the measure every 12 months. Starting from the provisions of Article 569 Code of Civil Procedure, they provide that the judge delegated with the enforcement in whose jurisdiction the health unit that made the admission finds itself, is the one who has the obligation to keep the records of admissions and inform the court in order to verify the measure, after having previously ordered the performance of a psychiatric forensic expertise in order to determine the health condition of the patient, we note that he is obliged to ensure for the court he will notify the documents based on which it will proceed to examine the need of maintenance, replacement or termination of the measure. The analysis of the facts in the light of the conclusions of the forensic expertise, of the conclusions made by the prosecutor, the patient and his/her defense counsel, considering the other data from the documents submitted in the file, is the responsibility of the notified court. Therefore, we consider that the judge delegated with the enforcement is the one who needs

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to ensure the attachment to the notification made of a copy of the decision ordering the taking of the safety measure, so that the court can check if the deed incriminating the patient when taking the measure is or is no longer under the criminal law. In case of non-attachment of the copy of the judgment, the court is obliged to proceed with its request, so as to determine whether the termination as of right of the security measure intervened or not as a result of decriminalization. It should be emphasized that the analysis of decriminalization occurrence must be made by taking account of the legal classification and description of this deed in the judgment which initially ruled the taking of the measure, a check or a reinterpretation of the rules of evidence being neither necessary nor admissible.

One should notice that in the present case, the measure of hospital care virtually ceased after the entry into force of the current Criminal Code on February 1, 2014, but this aspect was not observed by the courts which proceeded to check the measure exclusively in terms of patient health and taking into account the conclusions of the forensic examination, which showed a state of danger to the community through the patient's discharge. Thus, it was was necessary therefore, after the entry into force of the current Criminal Code to verify all criminal sentences by means of which safety measures with a medical nature where taken in order to assign practical effectiveness to the cessation as of right of the safety measures arranged for deeds that are no longer provided by the new law. The removal of the state of danger and the insurance of the appropriate treatment for curing or for ameliorating the disease can be made outside the criminal proceedings by resorting to the voluntary or involuntary admission of people suffering from mental disorders that affect their judgment or which are deemed a danger of harm to self or to others, under Law no. 487/2002 on mental health and the protection of people with mental disorders. In relation to the findings of the forensic psychiatric expertise performed, the use of involuntary admission appears to be a necessity in the present case.

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