

MEDICAL COERCIVE MEASURES AGAINST LEGALLY IRRESPONSIBLE PERSONS: COMPARATIVE STUDY OF NATIONAL AND EUROPEAN STANDARDS

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Abstract

This article examines the procedural and legal standards governing the application of medical coercive measures against offenders who are deemed legally irresponsible due to mental disorders. Focusing primarily on the Azerbaijani context, the study analyzes relevant provisions of the Criminal Code and the Code of Criminal Procedure, including judicial practice, Supreme Court decisions, and Plenum resolutions such as the 2012 therapeutic intervention guidelines. By exploring these instruments, the article highlights the mechanisms available for balancing public safety with the rights and medical needs of individuals who are not criminally responsible. In parallel, the article considers European legal frameworks, with particular emphasis on the standards established by the European Court of Human Rights and national legislations of selected European countries. This comparative approach allows for the identification of best practices, procedural safeguards, and the ways in which European states reconcile the protection of human rights with societal interests in security and crime prevention. Through a critical comparison of Azerbaijani and European approaches, the study identifies gaps in national legislation, inconsistencies in procedural implementation, and challenges faced by judicial authorities in applying medical coercive measures. The findings underscore the necessity of harmonizing Azerbaijani law with international human rights standards, ensuring both effective protection of society and respect for the fundamental rights of legally irresponsible offenders. The article concludes with policy recommendations and legal reform proposals aimed at strengthening the procedural framework, enhancing judicial oversight, and promoting a rights-compliant approach to medical coercive interventions. By bridging the gap between national practice and European standards, the study contributes to the broader discourse on human rights protection, criminal justice reform, and the ethical treatment of mentally disordered offenders.

Keywords: public dangerousness, elements of a crime, objective aspect, criminal omission, criminological characteristics, passive conduct, criminological prevention, latent crime.

1. Introduction

The intersection of criminal law and mental health represents one of the most sensitive and complex areas in contemporary jurisprudence. Offenders deemed legally irresponsible due to mental disorders present unique challenges for judicial authorities. On the one hand, society has a legitimate interest in preventing recidivism and ensuring public safety; on the other hand, the protection of individual rights, access to medical care, and the provision of therapeutic interventions remain paramount. Striking an appropriate balance between these considerations is critical for maintaining both legal legitimacy and societal trust in the justice system.

In Azerbaijan, the Criminal Code and the Code of Criminal Procedure provide specific provisions for the application of medical coercive measures to individuals who are not criminally responsible. Judicial practice, including decisions by the Supreme

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Court and Plenum resolutions such as the November 8, 2012 therapeutic intervention guidelines, plays a crucial role in clarifying the legal framework and ensuring its practical implementation [14]. Despite these mechanisms, challenges persist, including procedural inconsistencies, gaps in legislative regulation, and occasional tensions between ensuring public safety and safeguarding the rights of mentally disordered offenders [14].

From an international perspective, the practices of European countries and the jurisprudence of the European Court of Human Rights provide valuable insights. European standards emphasize the necessity of procedural guarantees, proportionality, and continuous judicial oversight when applying coercive medical measures. These principles serve as benchmarks for evaluating and improving national systems, highlighting opportunities for harmonization with international human rights norms.

This article aims to conduct a comprehensive comparative analysis of Azerbaijani and European procedural standards regarding medical coercive measures. It examines legislative provisions, judicial interpretations, and practical challenges, with a view to identifying gaps, highlighting best practices, and proposing concrete legal reforms. The study ultimately seeks to contribute to the development of a coherent, rights-compliant framework in Azerbaijan, balancing the protection of society with the fundamental rights of individuals who are legally irresponsible.

II. Legal Framework in the Republic of Azerbaijan

2.1. Concept and Significance of the Procedure for the Application of Medical Coercive Measures

According to the provisions of the criminal legislation of the Republic of Azerbaijan, medical coercive measures are applied by a court to individuals who suffer from a mental disorder and pose a danger to themselves or others, or to individuals who have committed a criminal offense and require treatment for alcoholism or drug addiction. These measures aim both to provide appropriate treatment to the individual and to ensure public safety.

Article 93 of the Criminal Code of the Republic of Azerbaijan identifies the categories of persons to whom medical coercive measures may be applied. The selection and implementation of these measures are tailored to the individual's psychiatric condition, level of mental health, and the degree of potential danger posed. The application of such measures is carried out solely on the basis of a court decision, which is guided by recommendations issued by the Plenum of the Supreme Court [2, p.456].

Under the Criminal Procedure Code, medical coercive measures may take the following forms: compulsory outpatient supervision and psychiatric treatment; compulsory treatment in general or specialized psychiatric hospitals; and compulsory treatment under intensive supervision in specialized psychiatric institutions. For individuals suffering from alcoholism or drug addiction, these measures are designed to facilitate therapeutic and social rehabilitation.

Articles 467.1–467.11 of the Criminal Procedure Code regulate the duration, extension, and termination of medical coercive measures, as well as their judicial enforcement. The duration of measures is determined on an individual basis, and may be extended or terminated every six months based on the opinion of a medical-psychiatric commission. Time spent under inpatient treatment is credited toward any subsequent custodial sentence [1, p. 176].

Azerbaijani legislation regulates the application of medical coercive measures in accordance with the principles of both protecting individual rights and ensuring public

safety. Nevertheless, certain gaps and procedural ambiguities exist in the law, which create challenges in practical implementation and underscore the necessity for additional legal measures to align with international standards.

2.2. Pre-trial and judicial procedure for the application of medical coercive measures

The pre-trial procedure for applying medical coercive measures, particularly for individuals who committed a crime while mentally incapacitated, is established under Articles 469 and 480 of the Criminal Procedure Code. This procedure is conducted in the form of a preliminary investigation and is intended to protect the rights of mentally incapacitated offenders and to determine the specific subject matter of evidence.

During the pre-trial stage, the investigator or prosecutor makes decisions regarding the application of medical coercive measures. Persons entitled to participate in the proceedings include the individual subject to the measures, their defense counsel, and legal representative. If the individual's mental state prevents participation, this is documented, and the matter is referred to the court for resolution [6, 263].

The specific subject matter of evidence includes: details of the criminal act, the individual's mental state, behavior at the time of the act, and analysis of any harm caused. If the act was committed jointly with others, medical coercive measures are addressed in a separate proceeding.

In court, the public prosecutor presents the case for the application of medical coercive measures, the parties submit evidence, and the views of the defense counsel and legal representative are considered. The court assesses the degree of public danger posed by the individual and the necessity of the medical measures before issuing a decision.

Medical coercive measures are not criminal punishments; they are criminal-law-related measures aimed not at punishing or rehabilitating the individual but at providing treatment and ensuring public safety. Decisions regarding the extension, modification, or termination of such measures are made by the court of the jurisdiction where the measures were initially applied.

III. European legal standards and the procedural framework for medical coercive measures

The regulation of medical coercive measures in the context of criminal law and mental health is defined not only within national legislation but also under European and international legal norms. The Council of Europe and the European Court of Human Rights (ECtHR) play a pivotal role in shaping these standards, striving to balance individual rights protection with societal interests, particularly public safety and the prevention of harm. Articles 5 and 8 of the European Convention on Human Rights establish fundamental principles for the application of medical coercive measures: Article 5 permits deprivation of liberty only when legally justified, necessary, proportionate, and accompanied by procedural safeguards; Article 8 ensures that interference with private life—including involuntary medical treatment—is permissible only on a lawful basis, according to necessity and proportionality.

Case law from the European Court of Human Rights (ECtHR), notably *Stanev v. Bulgaria* (2012) and *Winterwerp v. Netherlands* (1979), highlights the fundamental importance of judicial oversight, individualized assessment, medical necessity, and the right to appeal in the implementation of medical coercive measures. In *Stanev v. Bulgaria*, the Court condemned the prolonged detention of a person with a mental disorder

without sufficient periodic review and individualized justification, emphasizing that the lack of continuous judicial supervision constitutes a violation of Article 5 of the European Convention on Human Rights [8]. Similarly, in *Winterwerp v. Netherlands*, the ECtHR stressed that institutionalization based on mental illness must rely on proper medical diagnosis, continuous evaluation, and safeguards against arbitrariness. These cases collectively demonstrate that insufficient procedural protections, including inadequate individualized evaluation or failure to respect informed consent, infringe upon fundamental human rights [9].

Moreover, the Council of Europe's Committee of Ministers has recommended that member states harmonize national legislation with European standards by ensuring robust protection of individual rights, periodic review of compulsory measures, adherence to medical and ethical principles, and the availability of effective appeal mechanisms. Integrating these jurisprudential principles into domestic legal frameworks is essential to balance public safety concerns with the protection of the rights and dignity of persons subjected to medical coercive interventions [15, p. 1230].

The practical implementation of medical coercive measures varies across European countries due to differences in legal traditions, healthcare systems, and human rights protection frameworks. In Germany, involuntary psychiatric treatment is regulated under the Mental Health Acts, requiring judicial authorization and regular evaluation, guided by the principle of the "least restrictive intervention." In France, the law permits compulsory hospitalization only when an individual poses a real danger to themselves or others, considering medical, legal, and social factors; during implementation, family members are informed, and judicial review is periodically ensured. In the United Kingdom, the Mental Health Act allows involuntary treatment solely on grounds of necessity, with applications reviewed by Mental Health Tribunals. In Italy, community-based alternatives, regular judicial supervision, and proportionality principles play a central role; compulsory measures require court authorization and systematic individualized assessment. Other European countries, such as Spain, the Netherlands, and Sweden, adopt similar procedural safeguards, emphasizing judicial oversight, periodic review, proportionality, and individualized evaluation as core principles.

Comparative research indicates that the effective regulation of medical coercive measures requires several essential conditions. Measures must serve security and preventive objectives; the purpose and duration of application should be clearly defined; treatment and monitoring procedures must be accompanied by safeguards against abuse, including judicial oversight, periodic review, appeals, and compensation mechanisms. Experiences from countries such as Australia, Japan, China, South Korea, Brazil, and Nicaragua provide additional insights, including age-specific safeguards regarding criminal responsibility, legal regulation of specialized institutions for compulsory treatment, and precise application of proportionality and necessity principles [6]. These international and comparative experiences offer valuable guidance for aligning national legislation with European and international human rights standards, enhancing procedural transparency, and strengthening the legitimacy and effectiveness of medical coercive measures within the context of criminal law.

IV. International experience in the application of compulsory medical measures for mentally ill offenders

The history of international cooperation, particularly in the field of criminal and criminal-procedural law, including the responsibility and treatment of individuals with mental health issues who have committed crimes, spans a considerable period. A critical analysis of how different countries address this issue has enabled the identification of how national legislation regulates the application of compulsory medical measures for mentally ill or disordered offenders. The application of such compulsory medical measures remains highly relevant today, as the international community monitors this area, taking into account certain abuses of authority that occurred during the former USSR era [13, p. 205].

International legal instruments governing the investigation of criminal proceedings involving the application of compulsory medical measures generally conform to widely accepted principles and norms of international law. These norms are enshrined, in particular, in the 1948 Universal Declaration of Human Rights, the 1950 European Convention on Human Rights and Fundamental Freedoms, the 1955 Standard Minimum Rules for the Treatment of Prisoners, the 1966 International Covenant on Civil and Political Rights, the 1985 UN Beijing Rules on juvenile justice, and other international treaties and instruments.

UN General Assembly Resolution 46/119 of 18 February 1992 emphasized that national legislation should provide ethical, legal, and medical safeguards for the protection of mentally ill individuals. These safeguards include treatment methods, protection against the uncontrolled use of advanced scientific techniques in psychiatry that modify human behavior during the implementation of compulsory medical measures, and other forms of treatment.

It is noted that many countries' national legislation considers state intervention in the private lives of individuals permissible only when it aims to protect the health of mentally ill persons and the personnel providing care. This approach is further reinforced by the Council of Europe Committee of Ministers Recommendation R(83)2 of 22 February 1983.

Azerbaijani legislation also takes these international standards into account by incorporating provisions in Articles 93–99 of the Criminal Code that establish liability for violations of legal and medical principles governing psychiatric care. These provisions serve as preventive measures against potential abuses, ensuring that physically healthy individuals are not wrongfully subjected to psychiatric institutions.

The right to mental health is intrinsically linked to the right to life and legal capacity. Mental illness does not deprive a person of these rights. However, mental disorders can sometimes pose a threat to the life and health of others, thereby justifying the application of compulsory medical measures. The isolation, treatment methods, and legal protection of mentally ill individuals within the criminal-procedural framework remain subjects of intense debate in contemporary practice.

The purpose of this research is to improve national legislation and law enforcement practices. To this end, the experiences of various countries, particularly regarding the application of compulsory medical measures, have been analyzed. In most jurisdictions, such measures are considered security measures and are applied to individuals exempted from criminal responsibility.

For instance, in European civil law countries such as Germany, Poland, Spain, Italy, Greece, Portugal, Belgium, Austria, Switzerland, Russia, post-Soviet states, Israel,

Australia, Brazil, Nicaragua, and Argentina, as well as in common law countries such as England and the United States, these measures are applied. In contrast, in Japan, China, South Korea, and Thailand, although compulsory medical measures are recognized, they are regulated outside criminal law, often through civil or administrative law frameworks.

Under Article 39 of the Japanese Criminal Code, acts committed by persons with mental disorders are exempt from punishment. Australian legislation exempts individuals from criminal responsibility if, due to mental illness, they could not comprehend the nature and wrongfulness of their actions; however, specific provisions apply to children aged 10–14 regarding subjective awareness of wrongdoing [10, p.208].

Similarly, legislation in China, South Korea, and Brazil establishes specific rules on the criminal liability of mentally ill persons. In Nicaragua, specialized medical institutions are established to implement compulsory medical measures [4].

Thus, examining the experience of foreign countries regarding compulsory medical measures highlights both the positive and negative aspects of this legal institution. It also confirms the importance of: (a) treating such measures as a form of security measures, (b) standardizing the terminology of compulsory medical measures, (c) clarifying the objectives of these measures, and (d) combining compulsory measures with guardianship, judicial restrictions on alcohol access, use of medications to reduce sexual potential, and other control mechanisms.

V. International legal framework for the application of compulsory medical measures

The primary international legal instruments regulating the application of compulsory medical measures include the Universal Declaration of Human Rights (1948), the European Convention on Human Rights and Fundamental Freedoms (1950), the Standard Minimum Rules for the Treatment of Prisoners (1955), the International Covenant on Civil and Political Rights (1966), and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985).

It has been established that the legislation of many countries incorporates provisions in line with the Principles for the Protection of Persons with Mental Illness and the Improvement of Psychiatric Care. These principles are also reflected in Recommendation R(83)2 of the Committee of Ministers of the Council of Europe regarding the legal protection of involuntarily hospitalized individuals with psychiatric disorders, as well as in other international instruments, taking into account negative practices by law enforcement authorities in the former socialist bloc [3, p. 280].

Comparative legal research has allowed for the analysis of several legal systems, identifying both common and divergent features. This approach supports the argument for introducing specific norms into national criminal law and procedural legislation, consistent with the practices of foreign countries concerning the application of compulsory medical measures.

In most foreign jurisdictions, cases involving compulsory medical measures are treated as a type of other criminal-legal or procedural measure, that is, preventive state measures applied to mentally ill individuals deemed dangerous, and are generally considered security measures. Such measures are reflected in the legislation of European Union countries, Nicaragua, and Brazil.

In contrast, in countries such as the People's Republic of China, Japan, the Republic of Korea, and other jurisdictions, compulsory medical measures have been removed from criminal law and are instead regulated by civil or administrative law frameworks [5, p.

276]. Their implementation is conducted under civil or administrative, rather than criminal, proceedings. From a doctrinal perspective, this approach raises concerns regarding: (1) establishing the guilt of a specific person for a specific criminal offense; (2) confirming through forensic psychiatric expertise that the individual was legally insane at the time of committing the offense; and (3) ensuring that the court, rather than another authority, decides on the application of compulsory medical measures. These requirements, in our view, can only be adequately addressed within the framework of criminal law and criminal procedure, rather than through other branches of law.

The international community actively monitors these issues regarding the implementation of corresponding international legal instruments in Ukraine. In particular, the European Court of Human Rights (ECtHR) ensures compliance with human rights and fundamental freedoms under the Convention and pays special attention to complaints arising in criminal proceedings of this category.

For instance, in the case of *Haidn v. Germany* (Application No. 6587/04, decision of 13 January 2011, final decision of 13 May 2011) and *H. v. Finland* (Application No. 34806/04, decision of 3 July 2012), the Court established that, to achieve the objectives of subparagraph “e” of paragraph 1 of Article 5 of the Convention, a person may be deprived of liberty or detained as a mentally ill individual for psychiatric examination only if three minimum conditions are met: (1) a competent authority, based on objective medical expertise, reliably determines that the individual is mentally ill; (2) the mental disorder requires mandatory isolation; and (3) the continuation of isolation depends on the persistence of the mental condition [11, p. 178].

The Court further specified that such detention or hospitalization is considered lawful for the purposes of subparagraph “e” of paragraph 1 if it is carried out in a hospital, clinic, or other suitable treatment facility. These ECtHR decisions complement and clarify the existing national legal framework and the practices of investigators, prosecutors, and courts regarding the issues raised in this study, and contribute to the development of Ukrainian criminal law theory, criminal procedure, and law enforcement practices. Nevertheless, the questions raised are not fully resolved and require further consideration.

VI. Conclusion

The comparative analysis of national practices regarding compulsory medical measures clearly demonstrates that their effective and lawful application requires careful integration within the criminal law framework. Jurisdictions that retain these measures within the framework of criminal law, supported by independent judicial oversight and comprehensive forensic psychiatric assessments, strike a careful balance between safeguarding public safety and protecting the rights of individuals with mental health disorders. Conversely, systems that remove compulsory medical measures from the criminal law context and place them under civil or administrative jurisdictions risk undermining procedural safeguards, weakening transparency, and increasing the potential for arbitrariness or misuse.

A key finding from the analysis is that compulsory medical measures should serve dual objectives: preventive and therapeutic. As preventive tools, they ensure that individuals who pose a risk to themselves or others are appropriately managed, thereby protecting society. Simultaneously, as therapeutic interventions, these measures aim to address the offender’s mental health needs through evidence-based treatment protocols.

Countries such as Germany, Australia, and the United States exemplify this integrated approach, combining judicial authorization with medical oversight, structured treatment plans, and ongoing evaluation to ensure proportionality and necessity.

Standardization is another essential aspect highlighted by the comparative review. Clear and uniform terminology, procedural rules, and assessment criteria across cases and jurisdictions reduce legal ambiguities, prevent inconsistent application, and strengthen alignment with international norms [9, p. 7]. This includes establishing objective criteria for determining legal insanity, the necessity of compulsory medical intervention, and the duration and scope of such measures. Furthermore, age-specific provisions and tailored approaches for minors are critical, recognizing their limited capacity to comprehend criminal responsibility and the need for developmentally appropriate interventions, as exemplified by Australian legislation and similar provisions in other jurisdictions.

Effective implementation also relies on robust oversight and monitoring mechanisms. Regular judicial review, independent psychiatric evaluation, transparent documentation of treatment progress, and reporting systems are crucial to prevent abuse, ensure proportionality, and uphold the rights of mentally ill offenders. Lessons from jurisdictions such as China, Japan, and South Korea underscore the risks of regulating these measures outside the criminal law framework, where procedural protections may be insufficient, and the evaluation of mental health and criminal responsibility may lack consistency or legal authority.

In addition, the comparative study demonstrates that judicial authority must remain central to the decision-making process. Only courts, rather than administrative or civil authorities, can guarantee that the application of compulsory medical measures adheres to legal standards, respects fundamental human rights, and maintains legitimacy. Forensic psychiatric expertise should form the cornerstone of judicial decisions, ensuring that measures are based on reliable medical evidence regarding the offender's mental condition and the necessity of intervention.

Recommendations based on the comparative analysis include:

1. Integration within criminal law: Compulsory medical measures should remain embedded within the criminal law system to ensure proper establishment of guilt, application of forensic psychiatric evaluation, and judicial authorization. Removing them to civil or administrative domains risks weakening procedural safeguards and undermining legitimacy.
2. Judicial oversight: All compulsory interventions must be subject to independent court approval, ensuring transparency, legality, proportionality, and protection of human rights. Judicial review guarantees that measures are necessary and properly applied.
3. Standardization of procedures and terminology: Countries should adopt uniform legal definitions, procedural rules, and assessment criteria to minimize inconsistencies and ensure predictable and fair implementation.
4. Integration of therapeutic and preventive objectives: Compulsory medical measures should simultaneously address public safety concerns and the offender's mental health needs through structured, evidence-based treatment protocols.
5. Oversight and monitoring mechanisms: Clear mechanisms for reporting, supervision, and review should accompany compulsory measures to prevent misuse, maintain accountability, and protect the rights of individuals. These mechanisms may

include periodic judicial review, independent psychiatric oversight, and systematic documentation of progress.

In conclusion, maintaining compulsory medical measures within criminal law, coupled with rigorous judicial and medical oversight, provides a balanced, ethical, and effective approach. By integrating preventive and therapeutic functions, standardizing procedures, ensuring judicial authorization, and implementing transparent oversight mechanisms, states can protect public safety, uphold human rights, and enhance the legitimacy and effectiveness of compulsory medical interventions for mentally ill offenders. This approach ensures that the criminal justice system addresses both societal and individual needs, creating a comprehensive framework for responsible and humane management of offenders with mental health disorders.

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