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THE IMPORTANCE OF THE PARTICIPATION OF A LEGAL REPRESENTATIVE IN THE IMPLEMENTATION OF PROCEEDINGS ON THE APPLICATION OF COMPULSORY MEASURES IN A MEDICAL WAY AND IMPROVING ITS PLACE IN THE CRIMINAL CASE

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ABSTRACT

This article can be seen as a meaningful continuation of the reforms that have been implemented in mamalakatimiz in recent years, the policy in our country for the protection of human rights and legitimate interests, the position of each person as a person in the country and, in our president's words, the idea of "first man – then state bodies". In article, some proposals and recommendations have been developed in order of the constitution of the republic of Uzbekistan adopted in a new edition to provide a legal representative counsel who can adequately protect the rights and freedoms of people in cases when a socially dangerous act is committed by mentally retarded or mentally disturbed people or persons whose mental state is temporarily disturbed after committing a socially dangerous act, as well as that, some problematic issues arising in connection with the participation of the legal representative counsel in the judicial investigation practice were studied in detail. The proposals and recommendations cited in the article will contribute to the appropriate protection of their rights and interests and the provision of a legal representative in the application of medically enforced measures against persons who committed a socially dangerous act in a state of mental disorder in the future.

KEYWORDS

Constitution, legal representative counsel, participation of legal representative counsel, coercive medical measures, mental retardation, mental disorder, rights and obligations of the legal representative counsel, waiver of the legal representative counsel, provision of rights and freedoms.

INTRODUCTION

One of the essential guarantee of the rights, freedoms and legal interests of the persons involved in the application of coercive medical measures is the participation of a legal representative in the case. Criticizing the Code of Criminal Procedure of the Republic of Uzbekistan, we would like to point out that there is no mandatory requirement of the law on the participation of a legal representative in proceedings on the application of coercive medical measures. Mandatory participation of the legal representative in the cases of the application of coercive medical measures is limited not only with Articles 570 and 571 of the Code of Criminal Procedure of the Republic of Uzbekistan, but also with the phrase “recognized as incompetent according to the fixed procedure”, which is not clearly reflected in Article 60 of the Code of Criminal Procedure, where the concept of legal representative is presented in turn, it remained abstract without giving a complete understanding. In addition, Section 3 of Part 1 of Article 580 of Code of Criminal Procedure, which deals with the extension, modification or termination of coercive measures in the medical direction, and the restoration of proceedings in general order, indicates the right to “file a petition”. In our point of view, the scope of the involvement of a legal representative in Chapter 61 of the Code of Criminal Procedure of the Republic of Uzbekistan is not really perfect, and this leads to criticism among procedural scholars, because criminal-procedural legislation, more than any other thing that is included in the sphere of personal interests and involves the restriction of the human and civil rights and freedoms, it should be clear in its rules and not open to ambiguous interpretation. Due to the fact that the participation of a legal representative in this category of cases is not established in the Code of Criminal Procedure, the study of several criminal cases showed that in all cases, legal representatives did not

participate in the proceedings on the application of coercive medical measures. This indicates that practitioners understand that it is not necessary to involve this participant in the process in cases of the category under consideration.

A.S.Dezhnev noted “participation of a legal representative in the criminal proceedings is an additional guarantee of ensuring the rights and freedoms of vulnerable levels of the population, that is, minors and mentally disturbed persons. Legal representative call to fill their missing capacity” , accordingly, despite the importance of the participation of a legal representative in proceedings on the application of coercive medical measures, the definition of this participant does not exist in the criminal procedural legislation. Article 549 of the Code of Criminal Procedure on “prosecution of criminal cases of a special category” defines the participation of the legal representative of minors in the case, and it is incomprehensible that legal representatives of persons suffering from mental illnesses are not involved in this category of cases. In Chapter 5 of the Code of Criminal Procedure of the Republic of Uzbekistan, among the participants in the criminal proceedings on the part of the defense, only the legal representatives of the minor suspect, the accused, and the representatives of the person subject to the application of coercive medical measures are indicated, without indicating that representatives can participate. In Chapter 61, which is devoted to proceedings on the application of coercive medical measures, this participant is not defined, at the same time, Articles 570 and 571 of the Code of Criminal Procedure of the Republic of Uzbekistan do not mention representatives’ participation in the case. As can be seen, the representatives are ignored as a participant of this type of criminal proceedings. In this

regard, we consider it necessary to supplement Article 5701 of the Code of Criminal Procedure of the Republic of Uzbekistan and title it in the following version: “Participation of a legal representative in the cases of applying coercive medical measures”. The supplement to this article as follows:

“The participation of a legal representative is mandatory in cases with coercive medical measures.

By the decision of the investigator or interrogator, the participation of the legal representative is allowed from the time of appointment of the forensic psychiatric expertise, and the rights shall be explained according to Article 61 of this Code”.

Representation is not an institution that came into being yesterday or today, but has developed in a certain way in all periods of human development. The representative institution sees its role in the implementation of rights and duties and the protection of their legal interests in the following cases:

- ensures the timely implementation of rights and obligations of subjects in society;
- helps individuals to exercise their rights and obligations;
- prevents violation of legal rights and freedoms of individuals;
- It is important in the development of the society related to ensuring the stability of mutual legal relations between subjects and performing other tasks

According to Article 66 of the Code of Civil Procedure of the Republic of Uzbekistan, “the rights and legally protected interests of incompetent or disabled persons are protected in court by their legal

representatives, parents, adopters, guardians, and sponsors”. In connection with the consolidation of the main functions of legal representatives in civil law – the protection of the rights and interests of guardians, many authors conclude that these functions are the same in criminal-legal and criminal procedural relations. The rules established in civil law apply to other relations in the sphere of law, including criminal-legal and criminal proceedings.

Y.B.Samoilova and V.L.Sogoyan consider the procedural process involves hospitalization of a person who has committed a socially dangerous, not only restricting a person’s freedom, but also restricting the full protection of their rights during the preliminary interrogation and trial, they emphasized that the person’s defender and legal representative should participate in the preliminary interrogation and trial .

E.V.Sukhoverkhova believes that in this type of criminal cases, before the conclusion of the forensic psychiatric expertise, it is necessary to ensure the participation of a legal representative, starting from the fact that the interrogator and the investigator have documents indicating that the mental state of the person is disturbed (medical institution certificate, medical history, etc.). Agreeing with this opinion, A.Y.Koptyaev said that “as soon as the investigator and interrogator receive the first information about the mental state of the suspect or the accused, they should provide the person with a defender and a legal representative in the criminal case” .

E.Z.Troshkin and A.S.Zakharov believes that the function of protecting the rights and legal interests of people is not a special authority and is not only related to the field of civil-legal relations, but also to criminal-legal and criminal procedural relations, in this regard, the authors conclude on the procedure for attracting legal representatives, determining the fact of the

participation of a certain person as a legal representative in a criminal case by issuing an appropriate decision . We also support this point of view, “It should not be about making a decision to recognize a person as a legal representative (he is recognized as such due to the law), but about allowing him to participate in criminal proceedings”.

According to A.Y.Koptyaev, it is necessary to make a decision on the participation of a legal representative, because this procedure is traditional in criminal proceedings, and in addition, “the decision on the participation of a legal representative contains information about the person, participation as a legal representative and the time when he entered the criminal case. “Questions about the permission of the legal representative of a mentally disabled person to participate in a criminal case, that is, making a decision in the form of an authorized document, must remain within the authority of the interrogator and the court” .

We support the opinion of the majority of authors and believe that it is necessary to issue a decision on the involvement of a legal representative in the case of the application of coercive medical measures, because this document determines the stage at which this participant was involved in the criminal case, which can play a decisive role in the criminal case, later in the process of evaluating the evidence. However, such a decision should not be called “on the recognition of a person as a legal representative”, but “on the involvement of a legal representative in the cases of applying coercive medical measures”. In practice, in most of the cases we have studied, the following words appear: “the person as a legal representative”, which, in our opinion, is not at all correct in relation to the arguments presented earlier about the need for medical enforcement proceedings in the relevant circumstances.

In addition, the time when the legal representative of a mentally ill person enters the criminal process is a controversial issue.

In J.A.Bajukova’s opinion, if the legislation acts contain the necessary materials about the impossibility of a person’s participation in criminal proceedings due to mental illness and health, the involvement of a legal representative should be carried out by the interrogation at the initial stage of the interrogation. The author proposes to resolve the issue of further participation of this participant in the criminal proceedings, depending on the results of the forensic psychiatric expertise .

L.G.Tatyanina proposes to solve the issue of the possibility of participation of a legal representative in determining whether a person has severe mental illness or not. Meantime, if a person suffering from a mental illness is found to be mentally disabled or partially sane, which makes it difficult for him to express his interests independently, his legal representative shall participate in the case with consent. If this participant is introduced late in the proceedings, the evidence collected shall be deemed inadmissible . A similar point of view is, also, stated in R.I.Shageeva’s research .

M.Sh.Bufetova considers it necessary to involve a legal representative of a person suffering from a mental illness from the moment of the appearance of documents indicating the presence of a mental illness (medical certificate, medical history, testimony of witnesses) .

A.Y.Koptyaev noted “the time of compulsory participation of the legal representative of a mentally ill person in a criminal case is the time to obtain relatively reliable information about the mentally ill person’s mental illness (reference, medical

documents) before a decision is made to appoint a forensic psychiatric expertise and, accordingly, before receiving an expert opinion” .

E.Z.Troshkin, A.S.Zakharov connects the time of involvement of a legal representative in cases of this category with the interrogator’s decision to appoint a forensic psychiatric expertise .

We support the position of scientists who believe that there is no need to wait for the conclusion of a forensic psychiatric expertise to involve a legal representative in the process. Before the decision to involve a person as a legal representative, a decision on the appointment of a court psychiatric expertise, information about the possible mental illness of a person, confirmed by other materials of the criminal case (data from medical institutions, medical history, medical information, testimony of witnesses, relatives, acquaintances, etc.) should be accepted as they appear.

The legal representative of the person who is being investigated for the application of coercive medical measures against him shall protect the rights and legal interests of the person, he represents through the rights granted by Article 61 of the Code of Criminal Procedure of the Republic of Uzbekistan.

In our opinion, the legal representative of the person subject to the application of coercive medical measures should be given a complete list of the rights of this person, because often the state of mental disorder deprives the participants of this category of criminal proceedings from independent exercise of their rights. In this regard, we propose to supplement the existing list of rights of a legal representative with the right to testify. In the criminal cases we studied, legal representatives were questioned by interrogators as witnesses, and the rights granted to a

particular participant in the criminal process were explained to them. In our opinion, the status of witness and legal representative are incompatible. The interests of the participants in this category are different and the range of rights granted to them is also fundamentally different in proceedings for the application of coercive medical measures. The legal representative should have the right to refuse to testify against the person he or she is representing if the testimony given by the legal representative could form the basis of evidence that would require the use of medical coercive measures in the future. Based on Article 66 of the Code of Criminal Procedure of the Republic of Uzbekistan, it is clear that a legal representative may refuse to testify against a person who is not a spouse or a close relative of the representative, but it is not clear what to do. It seems logical to give this class of participants the option not to testify against the person they represent.

In our opinion, according to the above, expanding the list of evidence provided in Part 2 of Article 81 of the Code of Criminal Procedure of the Republic of Uzbekistan with the instructions of the legal representative is appropriate and has a positive effect on the protection of the legal interests of persons suffering from mental illnesses.

Taking into account that the person he represents has the right to use the procedural rights he has in accordance with the Code of Criminal Procedure, provided with in Part 1 of Article 61 of the Code of Criminal Procedure of the Republic of Uzbekistan, the legal representative has the right to present evidence, in our opinion, this rule is declaratory in nature because the legislature did not specify the method of collection of such evidence. In addition, the legal representative does not have the right to study the evidence presented in court. E.V.Sukhoverkhova, in her research, studied S.V.Gusevani’s opinion, according to

this, S.V.Guseva “proposes to give the legal representative the right to check the evidence” . L.G. Tatyana noted “the legal representative should have the right to examine the evidence, because during the investigation, questions may arise that can be resolved by filing a petition” .

Summarizing the above, we propose to state part 1 of Article 61 of the Code of Criminal Procedure of the Republic of Uzbekistan as follows: “Legal representative shall have following rights: to be informed that the person he represents has been summoned to the inquiry, interrogator, prosecutor’s office or court; free meeting with the incarcerated person he represents; the person he represents has the right to exercise the procedural rights he has in accordance with this Code and to collect evidence by obtaining materials, documents and other information, to present it to the interrogator and the court, as well as to conduct additional research in court cases”.

L.G.Tatyana draws attention to the need to give legal representatives the right to freely communicate with the participant in the criminal process whom they represent, without limiting the number and duration of interviews (taking into account medical instructions). Agreeing with this point of view, we note that such visits can have a positive effect on the investigative process (a person suffering from mental illness can provide his legal representative with the information necessary for a criminal case), as well as contribute to the recovery of a person’s health while continuing to use coercive medical measures.

In addition to granting rights, we impose certain duties on the legal representative of a person suffering from a mental disorder, including: the obligation to appear when summoned by the interrogator and the court; exclusion of negative influence on the specified person, both from our side and from the outside; we

mean not to disclose information known in a criminal case.

A legal representative participating in proceedings on the application of coercive medical measures is an independent participant in the criminal proceedings, who protects the rights and legal interests of a person suffering from a mental illness. It should be remembered that in most cases, the legal representative acts as the representative’s guardian or sponsor, and according to Articles 996, 998 of the Civil Code of the Republic of Uzbekistan, committed by an incapacitated citizen or an able-bodied person, because he assumes material responsibility for the damage caused by his inability to understand the meaning of his actions or to guide them. Thus, the legal representative is a person who has an interest in the production process and can try to protect his rights and prove the innocence of the person for whom they are responsible in order not to pay for the damage caused. On this basis, legal representatives may influence the representative adversely, try to persuade him to give false testimony, or harm the representative.

It is known that a legal representative should not only harm the interests of the person represented, but also take an active position in protecting his rights and interests. “The legal representative cannot be indifferent to the progress and result of the process, the interrogator and the court should take this fact into account. The person who is interested in providing real assistance to the mentally retarded, specified in Article 60 of the Code of Criminal Procedure of the Republic of Uzbekistan, should act as a legal representative, otherwise his participation is a simple formality . In this regard, we suggest that, in case the personal interests of the legal representative are disclosed, it is necessary to provide for the possibility of excluding him from participation in the criminal case in the law.

If there is sufficient evidence that the actions of the legal representatives in the case may harm the rights and property interests of the mentally deficient and mentally ill suspects and defendants, or may prevent the discovery of the truth in the case, then the interrogator, prosecutor and the court are sufficient to resolve and prevent them.

We should recognize that there are no means of holding the legal representative of the person subject to medical coercive measures to account for improper performance of his duties, which may lead to the violation of the rights of people who are already vulnerable in the legal sense of the category of persons suffering from mental disorders.

According to the above, we believe that it is possible to determine the cases and procedure for exclusion of a legal representative from participation in the case on the application of coercive medical measures in Article 437 of the Code of Criminal Procedure of the Republic of Uzbekistan, and we suggest that Part 4 of this article should be supplemented with the following content: “Medical coercive measures (criminal case), if there is a reason to believe that his actions will harm the interests of the person against whom medical coercive measures are applied, whose application is being considered. The interrogator shall make a decision on this. In this case, another legal representative of the person who is being investigated for the application of coercive medical measures against him shall be allowed to participate in the criminal case”.

Thus, the legal representatives of the persons who are subject to the application of coercive medical measures against them are mandatory participants in this category of cases. Therefore, the list of rights of the legal representative should be completed and clarified. There is a practical need to supplement it with the right to testify, as well as to expand the right to

present evidence. It is necessary to ensure the possibility and procedure of excluding the legal representative from participation in the proceedings. These measures help to strengthen the criminal-procedural status and guarantees of the persons who are being processed for the use of coercive medical measures.

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