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### **About some signs of illegal placement in psychiatric hospital**

**Abstract:** It is considered from scientific-theoretic and practical points of view some issues of the crime of illegal placement in a psychiatric hospital, enshrined in Article 146 of the Criminal Code of the Republic of Azerbaijan.

Legal and illegal types of placement in a psychiatric hospital are defined, it is paid attention to such concepts as hospitalization, involuntary hospitalization and involuntary hospitalization, a mentally healthy, mental disorder, etc. An author's position on the subject of the same crime is being formed.

**Keywords:** mentally healthy; mental disorder; expert; psychiatrist; forced measures of medical natures; forensic-psychiatric examination; insanity (diminished capacity).

In the Criminal Code (hereinafter the CC), approved by the Law of the Republic of Azerbaijan of 30 December 1999 and entered into force on 1 September 2000, socially dangerous acts committed in the field of medicine are not grouped under a separate chapter. In some chapters of the Special Part of the Criminal Code, mainly in Chapter 18, entitled "Crimes Against Life and Health", responsibility is foreseen for certain types of such acts that are considered social dangerous. At the same time, in the previous criminal legislation of the Republic of Azerbaijan, responsibility for illegal medical activities was provided for in an independent criminal law norm. As an example of this, you can point to Article 224 of the Criminal Code of 1927 and Article 223 of the Criminal Code of 1960.

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At the same time, it should be emphasized that there are separate norms in the operated Criminal Code of the Republic of Azerbaijan, which provide for the responsibility of doctors as special subjects. For example, Article 142 of the Criminal Code is called “Denial of assistance to the patient”. Article 142.1 of the CC provides for liability for failure to provide medical assistance to a patient without valid reasons by a medical employee who is obliged to provide it in accordance with the law or with special rules, if this caused less serious harm to the health of the patient, Article 142.2 of the CC refers to the same act if it caused Serious harm to health, and Article 142.3 of the CC establishes criminal liability for the same acts if they entailed the death of the victim. As noted, the subject of the crime is special: medical workers who are obliged to provide medical care to the patient (doctor, paramedic, nurse).

In the current Criminal Code there is a group of norms, the subjects of which are, as a rule, medical workers. For example, the illegal artificial insemination or embryo implantation envisaged in Article 136 of the Criminal Code, medical sterilization, or the unlawful carrying out of biomedical research or the use of prohibited methods of diagnosis and treatment, as well as medicines, provided for in Article 138 of the Criminal Code.

One of the crimes in this series is a crime in the form of illegal premises in a psychiatric hospital that set in Article 146 of the Criminal Code. According to Article 146.1 of the CC, liability is provided for intentionally placing psychologically healthy person into a psychiatric hospital, under Article 146.2 of the CC the same act committed by the guilty person using his official position is punished, and Article 146.3 of the CC establishes liability for the actions provided by Articles 146.1 or 146.2 of the Criminal Code, on negligence ended with death of the victim or other serious consequences.

The establishment of responsibility for this crime has an ancient history. In part 1 of Article 500 of the Criminal Code of 1903 of Tsarist Russia, criminal



responsibility was established for the act of kidnapping persons and placing them in hospitals for mentally ill people [4]. In the Criminal Codes of the Republic of Azerbaijan of 1922 and 1927, also the act of placing healthy people in psychiatric hospitals from mercenary or from other personal motives was criminalized. However, unlike other criminal laws, the operating Criminal Code expanded the objective side of the structure of this crime, the responsibility for it is toughened.

In order for illegal placement in a psychiatric hospital considered to be illegal, it is necessary to find out the legality of the placement in this medical institution. Mental health is a person's mental state, his ability to regulate his behavior, is also characterized by the correct formation of his character under the influence of social and biological factors. Mental health is manifested not only in relation to the person to himself and others, but also to various events throughout his life, as well as in relation to social and economic difficulties. Mental health, along with socio-economic status, is closely related to the physical health of people [3]. It is clear that only people with mental illness can be placed in these institutions. According to Article 1.0.11 of the Law of the Republic of Azerbaijan on "Psychiatric Care" of 12 June 2001, under the number 142 IIQ, a mental disorder (illness) is a form of clinically expressed psychopathological behavior accompanied by a violation of social adaptation and health.

It can specify the following types of premises of a person in a psychiatric hospital, which can be considered legitimate:

- 1) The presence of a disorder in a person and its diagnosis and treatment under hospital conditions;
- 2) Appointment by investigative or judicial authorities of forensic - medical psychiatric examination in respect of a person;
- 3) The appointment by the court of forced measures of medical nature procedures in respect of a person;



4) Issuing direction about conscript for military service by the military medical commission on the stationary psychiatric examination for expert survey in compulsory order with respect to him, etc.

The placement of a person in a psychiatric institution (in a psych neurological institution) for the purpose of diagnosis and treatment is considered hospitalization. There are involuntary hospitalizations and forced hospitalization. Involuntary hospitalization is the placement of a person who has not committed a serious crime who has a serious mental disorder (illness), regardless of his will to enter a psychiatric institution for the purpose of diagnosis and treatment in accordance with the procedure established by law with a court decision. Compulsory hospitalization (forced measures of medical nature) is the placement in a psychiatric institution of persons who committed a crime in a state of insanity (diminished capacity) or who fell ill with a mental disorder after committing a crime or who are in a state of mental disorder that does not exclude responsibility, in the manner established by the Criminal Code of the Republic of Azerbaijan and the Criminal Procedural Code of the Republic of Azerbaijan for the purpose of diagnosis and treatment by a court decision. The state of insanity (diminished capacity) is due to the presence of mental illness that is a violation of mental activity in a person. In this case, the person is unable to give himself an account of his actions or to supervise them. There are different medical (biological) and legal (psychological) criteria for insanity (diminished capacity). According to Article 21 Diminished capacity of the Criminal Code of the Republic (hereinafter the CCP) of Azerbaijan, Article 21.1 of the CCP the person, who at the time of committing publicly dangerous act (action or inaction), was in a condition of diminished responsibility, and could not realize actual nature and public danger of the acts (actions or inaction) or supervise over them in order to chronic mental disease, timed infringement of mental activity, dementia or other mental disease shall not be subjected to the criminal liability, Article 21.2 of the CCP. To the person, who



has committed publicly dangerous act (action or inaction) in a condition of diminished responsibility, court can appoint the forced measures of medical nature provided by Article 21.3 of the CCP. To the person, who has committed a crime in a condition of legal capacity, but before adopting by court of a decision, he has become emotionally diseased, and depriving opportunity to realize actual nature and public danger of his acts (actions or inaction) or supervise over them, court can appoint forced measures of medical nature as it provided by the present Code.

According to Article 22 of the CCP, “Criminal liability of persons with the mental frustration” is not excluding legal responsibility. The Article 22.1 of the CC says that “person with legal responsibility, who at the time of committing a crime by virtue of mental frustration could not fully realize actual nature and public danger of the acts (action or inaction) or to supervise them, shall be subjected to the criminal liability” [6].

However, in judicial practice, the mental state of the accused person is sometimes not taken into account. Let us give an example. By the verdict of the Ganja Court on Grave Crimes of 8 February 2013, Aliyev Fariz Faig oglu was found guilty under Articles 126.2.4, 221.1 and 221.3 of the Criminal Code of the Republic of Azerbaijan and was sentenced of imprisonment under Article 126.2.4. of the Criminal Code for the term to six (6) years, Article 221.1 of the Criminal Code – for the term to 3 (three) years, and under Article 221.3 of the Criminal Code –for the term to 3 (three) years of imprisonment. According to Article 66.3 of the Criminal Code, a sentence for the term to 6 years and 6 months of imprisonment with serving in an institution for the execution of general regime by partial addition of the appointed punishments shall be appointed final punishment.

As it follows from the court sentence, Aliyev Fariz Faig oglu on 11 May , 2011 at 17:00 in front of building no. 10, backstreet no. 4 on the U. Hajibeyov Street in Ganja city, for no reason, made a noise only because his acquaintance



Aliyev Ulvi Fizuli oglu stated that he went home from the yard where he stood, struck the latter with his hand in the face, causing him with bruises under his left eye and bruises, physical injuries, the extent of which cannot be determined for the reason that they did not cause harm to health, perpetrate hooliganism, committed acts violating public order and expressing clear disrespect for society, accompanied by the use of violence against citizens. In addition, Aliyev F.F. on 20 October, 2011 at 11 o'clock in front of the teahouse, located on the first floor of a residential house no. 17, located in the U. Hajibeyov Street, without any reasons having started to argue, used foul language about his acquaintances Khalilov Yusif Ahmed oglu and Aliyev Parvin Sabir oglu, and then snatched available a knife and threatened them, as a result of having made a deliberate action, a cause of concern to others, grossly violating public order, expressing clear disrespect for society, accompanied by use of violence against citizens and the use of a knife as a weapon. Then, Aliyev F.F., who carried a knife with him, without any good reason, that is, for hooligan reasons, struck Yusif Khalilov, who had retired from him and going to the water tap, causing deliberately serious harm to his health in the form of a life-threatening injury, accompanied by a stabbed-cut wound of the right thigh, damage to the femoral vein and sciatic nerve, which caused a hemorrhagic shock of grade 3-4, and thus committed criminal acts stipulated by Articles 126.2.4, 221.1 and 221.3 of the Criminal Code of the Republic of Azerbaijan.

The appeal complaint of the defender of the convicted person to the sentence of the Ganja Court of Grave Crimes dated 8 February 2013 was not satisfied with the decision of Chamber on criminal cases (criminal board) of Baku Court of the Appeal of 11 April 2013, sentence was left unchanged. The lawyer filed a cassation appeal against this decision, justifying it by arguing that since Aliyev F. F. committed criminal acts due to his mental retardation, because he was not fully aware of the significance of his actions, to regard these actions as hooliganism and



causing serious harm to health from hooligan motives, and also the punishment of Aliyev F.F. without taking into account this factor and other mitigating circumstances, is incorrect.

As can be seen from the case-file, according to the conclusion of a forensic – medical psychiatric examination of 10 December 2012, Aliyev F.F. was found to have mild dementia in the form of “oligophrenia in mild morbidity with psychopathic behavior”. The mental retardation observed by Aliyev F.F., a mental disorder that deprived him of the ability to fully understand the actual nature and the public danger of the actions attributed to him during their commission and during the examination, was assessed by experts as the basis for applying Article 22.1 of the Criminal Code in respect of Aliyev F.F.

According to the conclusion of the cassation chamber, F.F. Aliyev’s complete morbidity of his actions due to mental retardation, including those cited in the conclusion of the expert commission, connected with a subjective attitude to his behavior and deed, especially against the background of his assessment of actions, not in the context of universally recognized values, and as a response, retribution against wrong behavior committed against him, cannot be regarded as a conclusion received by the courts on the evaluation of F.F. Aliyev’s actions as conditioned by hooligan motives, with compliance being demanded of Articles 145 and 146 of the Code of Criminal Procedure of Azerbaijani Republic. Thus, Article 145 of the Code of Criminal Procedure of Azerbaijani Republic stipulates that all evidence collected in criminal prosecution in their entirety should be assessed for resolution of the charges on the basis of their sufficiency. According to Article 146.1 of the CCP, the sufficiency of evidence collected in criminal prosecution is understood as such a volume of admissible evidence for the circumstances to be established, which makes it possible to draw a reliable final conclusion for determining the subject of proof. And according to the requirements of Article 145.3 of the CCP, if the doubts that arise in proving a charge cannot be eliminated by other evidence,



they are interpreted in favor of the suspect or the accused. Due to the fact that the motive of hooliganism, which is an important subject of proof in the case under consideration, was not established reliably, without leaving any room for doubt, the sentence of the first court on the qualification of F.F. Aliyev's actions under Articles 221.1, 221.3 and 126.2.4 of the Criminal Code cannot be adopted as a judicial act that meets the criteria of legality and motivation of the court verdict, enshrined in Articles 349.4 and 349.5 of the Code of Criminal Procedure. However, despite these shortcomings, the Criminal Chamber of the Ganja Court of Appeal, leaving the sentence unchanged, thus did not properly fulfill the obligations arising from the requirements of Articles 398, 399.1.3 and 399.1.4 of the CCP. Thus, the cassation appeal of the defense counsel regarding the cancellation of the decision of the Court of Appeal was found to be justified, the decision of the Ganja Court of Appeal against Aliyev F.F. on 11 April, 2013 was cancelled, the criminal case was sent for a second trial in appeal order [1, p. 9-13].

Regarding the subject of this crime, there is no single position in legal literature. Some scholars believe that the main subject of this crime is relatives or legal representatives of the injured person [5, p. 208; 6, p. 307]. However, we cannot agree with this position on the grounds that the psychiatrist is the main subject of this crime, since it is the psychiatrist who is a specialist engaged in psychiatric activity in the manner prescribed by law and without his conclusion putting a person in a psychiatric hospital is impossible. Other persons, including relatives, acquaintances of the victim and others, can participate in this crime not as performers, but as accomplices, putting pressure on the psychiatrist, acting with him together and in other ways.

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