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THEORETICAL APPROACHES OF FORMATION AND DEVELOPMENT OF CRIMINAL LAW ON A PROBLEM OF SANITY

Constitutional law on freedom and security of the person implies that each citizen has an opportunity to be own master. The principle of free and informed consent on the intrusion into the human's health sphere is focused on the protection of this independence of the person. Quite often the individuals with mental illnesses are dangerous to life and health of other persons. Therefore compulsory medical measures can be applied. Rules of law and investigative jurisprudence relating to the isolation of individuals with mental illnesses in asylum, their treatment and protection are one of the most difficult issues that have become a subject of contentious debate nowadays¹.

Ancient Greeks accumulating the wisdom of centuries had articulated the idea which is still relevant: Laws have to be fair. First of all it concerns the censure of criminal with psychophysical defects. The question about biological and social influence on human's behavior is urgent because flouting or underestimation of it complicates the originally scientific interpretation and justification of the Principle of the guilty responsibility which is inseparably attached to the Principle justice².

The United Nations emphasizes that ethical, legal and medical guarantees of safety of the persons with mental illnesses have to be developed within the international community, in regional and national legislations; this includes different treatments, using the latest scientific achievements of the science providing modification of person's behavior during the implementation of compulsory measures of medical character etc.

In many countries the national legislation recognizes the possibility of governmental agency to intervene into the private life if it's forward to the protection of persons with mental illnesses, care-taken personnel (f.e. in medical institutions) on behalf of population's health and safety. It is also fixed in the Principles of protection of the persons with mental illnesses and improvements of mental health service (the UN, 17 December, 1991), Recommendations R (83) of 21 Committee of ministers of Council of Europe to the participating states on legal protection of the persons with mental illnesses who has been hospitalized forcefully (the Council of Europe, 22 February, 1983).