

SECURITY MEASURES OF A MEDICAL NATURE IN THE CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA

Vanda Božić

Associate professor, University of Zagreb

bozic.vanda@gmail.com

Abstract

The subject of this scientific work is the legally prescribed security measures of a medical nature in the criminal legislation of the Republic of Serbia, which, objectively speaking, deeply intrude into the domain of human rights. Out of a total of eleven prescribed security measures, four security measures are of a medical nature: mandatory psychiatric treatment and custody in a health facility, mandatory psychiatric treatment at liberty, mandatory treatment of drug addicts and mandatory treatment of alcoholics. Security measures are a type of criminal sanctions that are imposed on the perpetrator of a criminal act with the purpose of eliminating conditions or conditions that may influence him not to commit criminal acts in the future. These are preventive measures that equally affect the risk of a sane perpetrator of a criminal offense not to commit a criminal offense again, as well as an insane offender not to repeat an illegal act that is prescribed as a criminal offense in the criminal law. The paper points out the legal regulation of medical safety measures in the criminal legislation of the Republic of Serbia, as well as the shortcomings of the existing legal framework. In the final considerations, *de lege ferenda* proposals were given with the aim of improving the overall system of medical security measures.

Keywords: criminal sanctions, security measures, medical character, criminal act, illegal act, criminal legislation of the Republic of Serbia.

Security measures in the criminal legislation of the Republic of Serbia

Criminal sanctions in the criminal legislation of the Republic of Serbia are punishments, suspended sentences, security measures and educational measures.⁸⁴ The general purpose of prescribing and imposing criminal sanctions is to suppress acts that violate or endanger values protected by criminal legislation.⁸⁵

Security measures are one of the criminal sanctions that can be imposed on persons who have committed a criminal offense in a state of significantly reduced sanity. They are imposed on unaccountable persons who have committed an illegal act, which is prescribed as a criminal offense in the Criminal Code.

Some security measures are imposed along with a fine,⁸⁶ and some are imposed independently. Their purpose is of a preventive nature, which means that their function is to remove situations or conditions that may have an influence so that the perpetrator does not commit a criminal offense in the future. As a

⁸⁴ art.4. par.1. Criminal Code of the Republic of Serbia, Official Gazette of the RS, no. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 (CC RS).

⁸⁵ par. 2. *Ibid.*

⁸⁶ Božić V, *Kazna zatvora u kaznenom zakonodavstvu Hrvatske i Srbije: osvrt na pojedina zakonska rješenja uz prijedloge de lege ferenda*. Zbornik radova „Pravo u funkciji razvoja društva” T. 2. Pravni fakultet Univerziteta Priština - Kosovska Mitrovica, 2019, p. 91-105.

Also: Božić V, Simović M, *Kritički osvrt na reformu krivičnog zakonodavstva u odnosu na kaznu zatvora u Republici Hrvatskoj i Republici Srbiji*, Srpska pravna misao: časopis za pravnu teoriju i praksu. 2020, no. 53, p. 129-142.

result of the above, we draw your attention to the fact that the basic condition for the imposition of security measures is the existence of a danger that the perpetrator will continue to commit a criminal offense. The above speaks in favor of the fact that security measures protect society from repeated actions by the perpetrator of a criminal act.

A total of eleven security measures are prescribed in the criminal legislation of the Republic of Serbia:

- 1- compulsory psychiatric treatment and custody in a health facility,
- 2- compulsory psychiatric treatment at liberty,
- 3- compulsory treatment of drug addicts,
- 4- compulsory treatment of alcoholics,
- 5- prohibition of calls, activities and duties,
- 6- ban on driving a motor vehicle,
- 7- confiscation of objects,
- 8- expelling a foreigner from the country,
- 9- public publication of the judgment,
- 10- prohibition of approaching and communicating with the injured party,
- 11- prohibition to attend certain sports events.⁸⁷

All security measures are of a preventive nature with different protective objects. Namely, some protect society or public order and peace from the perpetrator of a criminal or illegal act, such as the ban on driving a motor vehicle or the ban or prevention of violence at certain sports competitions.⁸⁸ Other security measures protect the security of a certain country, such as the security measure of expelling a foreigner from the country. The third security measures are aimed at the protection of specific persons in such a way that the perpetrator is prohibited from approaching and communicating with the injured party.

Each security measure is individually defined by the Criminal Code. Security measures protect the general interest, while the perpetrator is still punished in some way. An act committed in a state of insanity is not a criminal act. An offender who could not understand the significance of his act or could not manage

⁸⁷ art. 79. CC RS.

⁸⁸ See more: Božić V, Jovanovski Z, Đukić M, *Kaznenopravni prikaz i analiza zaštite od nasilja na sportskim natjecanjima u Hrvatskoj uz osvrt na međunarodnopravna rješenja*, Tematski zbornik međunarodnog značaja 33. susreta Kopaoničke škole prirodnog prava - Slobodan Perović „Unifikacija prava i pravna sigurnost“, 2020. VOL 1, p. 509-529.

Also: Jovanovski Z, Božić V, Atanasov S, *Nasilje na sportskim priredbama i uloga medija*, Časopis Pravni život, časopis za pravnu teoriju i praksu, Udruženje pravnika Republike Srbije, No. 9-2019, p. 503-520.

his actions due to mental illness, temporary mental disorder, retarded mental development or other severe mental disorder is considered incalculable.⁸⁹

Therefore, we emphasize that it is of crucial importance that natural persons are aware of their actions, which presumes their legal and criminal responsibility for committing a certain act,⁹⁰ however, we draw attention to the fact that even incalculable persons should not be allowed to harm other individuals and society as a whole. Precisely for this reason, security measures limit, cancel or change, the listed rights of the perpetrator.

Historical development of security measures

The idea of introducing security measures as a sanction stems from the 16th century, when states incorporated into their law various mechanisms that had features of security measures. Among the most significant legal documents, we mention the *Constitutio Criminalis Carolina* from 1532, which provided for the possible application of security measures to socially dangerous persons.

During colonialism, security measures were implemented through legal measures that essentially represented retaliation against certain persons from the state through various *modus operandi*. Namely, it would be about the transfer of convicted persons to certain colonies or military bases, where the convicted persons were in the function of the army or labor force that the state exploited extremely unscrupulously and inhumanely.⁹¹

The French Penal Code Amendment Act of 1885 was the first legal act that prescribed security measures as a mandatory supplementary sentence, which was imposed when the perpetrator was convicted. The security measure was imposed with a prison sentence, after the perpetrator had served it.⁹²

Stooss' draft of the Criminal Code of Switzerland from 1893 clearly separated the system of punishments from security measures, although the draft did not take root in practice, but this system was first introduced in Norway in 1902, then it was taken over by England in 1905 and Sweden in 1927, Hungary in 1928, Czechoslovakia and Yugoslavia in 1929,⁹³ Belgium, Denmark and Italy in 1930, Poland in 1932, Germany in 1933, Romania in 1936.⁹⁴ The introduction of security measures also extends to the legal systems of Latin American countries and Russia.⁹⁵

In the criminal legislation of the Kingdom of SHS, a total of nine security measures were specified, which we emphasize were very modernly prescribed even though they were adopted almost a century ago. The Criminal Code was based on a dual system of criminal - legal sanctions, in which security measures were prescribed as another type of criminal sanction.⁹⁶

The Italian positive school had a great influence on the mentioned solution concept, which led the entire society and the criminal-legal matter to progress.⁹⁷ On the basis of the aforementioned law, the court

⁸⁹ čl.23. st.2. KZ

⁹⁰ Kokolj M, Jovašević D, *Krivično pravo Republike Srpske – opšti i posebni deo*, Univerzitet Sinergija, Bijeljina, 2011, p. 218 – 225.

⁹¹ Dods E.R, *Grci i iracionalno*, Službeni glasnik, Beograd, 2005, p. 152.

⁹² See more about the prison sentence: Božić V, *Prison Sentences in the Republic of Serbia with an Analysis of Court Practice*, Proceedings Eighth International scientific conference "Social changes in the global world" Štip: Univerzitet "Goce Delčev", Faculty of Law, 2021. p. 35-50.

⁹³ Živanović T, *Dualitet krivičnih sankcija, kazne i mere bezbednosti*, Beograd, 1928, p. 4.

⁹⁴ Živanović T, *Osnovni problemi krivičnog prava i druge studije*, Službeni list SFRJ, Beograd, 1986, str. 253.

⁹⁵ Maklešov A, *Kriterijum opasnosti izvršioca u savremenom krivičnom pravu*, Arhiv za pravne i društvene nauke, Beograd, 1934, p. 4.

⁹⁶ art. 50-60. Šilović J, Frank S, *Krivični zakonik za Kraljevinu Srba, Hrvata i Slovenaca*, 27. 01.1929.

⁹⁷ Jovašević D, Mitrović LJ, Ikanović V, *Komentar Krivičnog zakonika Republike Srpske*, JU Službeni glasnik Republike Srpske, Banja Luka, 2018, p. 196.

could send the perpetrator of the criminal offense after serving the sentence to an institution where he will be employed or to an institution where he will be treated, guarded or weaned from alcohol. Among the prescribed security measures, the court could impose a ban on visiting places where alcohol is served, then a measure of protective supervision, expulsion from the country, or a ban on performing professions or trades, as well as a measure of confiscation of items.⁹⁸

Types of safety measures of a medical nature

The court can (optionally) impose one or more security measures on the perpetrator of the criminal (illegal) act. There are different perceptions and understandings of security measures, they are understood as a special type of criminal sanctions that eliminate certain dangerous situations, and they are caused by the personal characteristics of the perpetrator or some other objective circumstances,⁹⁹ and are derived from their very nature. Security measures protect society from crime.¹⁰⁰

There are two generally accepted reasons for introducing security measures. The first reason is the rehabilitation of the perpetrator, and the second reason relates to the protection of the general interest, given that there is a fear that the perpetrator will commit the same or a similar act or that he will possibly repeat it, so security measures limit his rights.

Compared to other criminal law legislation, security measures are considered the most numerous type of optional criminal sanctions that can be imposed on perpetrators of criminal acts. We emphasize that the imposition of security measures should have its own justification, namely, the court will impose a security measure only when it is in the general interest as well as in the interest of the recovery of the perpetrator of the crime. It is estimated that only 4% of the total number of committed criminal acts in the world are mentally disturbed persons,¹⁰¹ which represents a very low percentage in relation to the total number of committed criminal acts.

Analyzing the nature of security measures as well as their criminal law provisions, it should be emphasized that these are curative measures or, more precisely, medical security measures that can be of an institutional or non-institutional nature.¹⁰² As for responsibility, the essential elements of the act are consciousness and will, the manifestation of which is related to reasoning and the individual's ability to make decisions in a proper (healthy) way, while in the case of guilt, it depends on the circumstance whether there is intent or negligence. We warn that significantly reduced sanity has differences in relation to sanity and insanity. The main distinction between sanity and substantially reduced sanity is reflected in the biological and psychological components of the face.

Sanity implies a normal (healthy) state of mind characterized by the unhindered development of psychological functions. In the case of the perpetrator, this means that he is capable of understanding the significance of the act and that he is capable of managing his actions. On the other hand, significantly reduced reasoning, from the biological aspect, implies a mentally disturbed state. Therefore, in the case of a sane and substantially reduced sane perpetrator, there is an ability to realize the relevant psychological functions, however, it is significantly reduced.

⁹⁸ Jakšić D, Davidović D, *Razvoj kaznenog sistema u krivičnom pravu Srbije, Specijalna edukacija i rehabilitacija*, Beograd, 2013, p. 525.

⁹⁹ See more: Jovašević D, *Uloga mera bezbednosti u suzbijanju kriminaliteta*, Zbornik Instituta za kriminološka i sociološka istraživanja (IKSI) godina XXIX/ broj 1-2 /2010, p. 51.

¹⁰⁰ More: Jovašević D, Mitrović LJ, Ikanović V, *Krivično pravo – opšti dio*, Panevropski Univerzitet APEIRON, Banja Luka, 2017, p. 299.

¹⁰¹ See: Batričević A, *Obavezno psihijatrijsko lečenje prestupnika u Srbiji, zakonski okviri, trenutno stanje i preporuke*, Zbornik Instituta za kriminološka i sociološka istraživanja, Beograd, 2014, /Vol. XXXIII /2/p. 89.

¹⁰² More: Bogojević A, *Mere bezbednosti medicinskog karaktera prema neuračunljivim licima u sistemu krivičnih sankcija -nedostaci u srpskom zakonodavstvu i moguća alternativa*, Sveske za javno pravo, 2018, p. 1-15.

The risk of re-committing an offense (a criminal offense or an illegal offense defined as a criminal offense in the Criminal Code) can occur for two reasons. The first reason refers to the mental disorder of the perpetrator of the criminal act, excessive use of alcohol or psychoactive substances, and the second reason may arise from certain specific circumstances that may encourage a certain person to repeat the crime.

An expert psychiatrist gives a finding and opinion on the mental state of the person, while the competent judge makes a decision on the (in)sanity of the person if the conditions for imposing a medical security measure are met, although the court is not completely bound by the expert's finding and opinion.

The Administration for the Execution of Criminal Sanctions organizes, implements and supervises the execution of security measures for compulsory psychiatric treatment and custody in a health institution, compulsory treatment for drug addicts and compulsory treatment for alcoholics.¹⁰³

Compulsory psychiatric treatment and custody in a health facility

The absence of safety measures in modern national legislation is unthinkable, although there are different approaches to understanding and understanding the content of safety measures that are of a medical nature. As we have already drawn attention in the paper, there is a very low percentage of perpetrators of illegal acts by persons with mental disorders, however, this category of perpetrators requires a specific response from the state in the context of curative measures, such as compulsory psychiatric treatment and care in a health institution and compulsory psychiatric treatment at liberty.¹⁰⁴

According to the Law on the Protection of Persons with Mental Disorders, a psychiatric institution is an inpatient health institution or an organizational part of an inpatient health institution where specialist-consultative examinations and hospital treatment of persons with mental disorders are performed.¹⁰⁵

The Act on the Protection of Persons with Mental Disorders enables the implementation of the safety measure of mandatory psychiatric assistance, i.e. treatment. However, the legal provisions relating to special forms of treatment of persons with mental disorders do not fully regulate this legal matter.¹⁰⁶

The perpetrator is punished in order to protect the general interest, as well as to provide assistance to the individual. The court imposes the measure of mandatory psychiatric treatment and custody in a health institution when the act was committed at a time when the perpetrator was mentally retarded or when he was insane, which is why he committed the illegal act. The court will impose mandatory psychiatric treatment and custody in an appropriate health facility on the perpetrator who committed the criminal offense in a state of significantly reduced sanity, if, in view of the committed criminal offense and state of mental disorder, it is determined that there is a serious danger that the perpetrator will commit a more serious criminal offense and that in order to eliminate this danger, his treatment in such an institution is necessary.¹⁰⁷

Compulsory psychiatric treatment and custody in a health facility and compulsory psychiatric treatment on the loose are imposed on an insane offender independently, with the fact that, in addition to the above measures, the offender may also be imposed a ban on making calls, activities and duties, a ban on driving a motor vehicle and confiscation of objects.¹⁰⁸ The aforementioned measures can also be imposed on the perpetrator of a criminal offense whose sanity has been significantly reduced, provided that he has been sentenced to a sentence or suspended sentence.

¹⁰³ art.12. par.1. Zakon o izvršenju krivičnih sankcija, Sl. glasnik RS, no. 55/2014 i 35/2019.

¹⁰⁴ *Op.ct. in note* 17. p. 89.

¹⁰⁵ Zakon o zaštiti lica sa mentalnim smetnjama, Sl. glasnik RS, no. 45/2013.

¹⁰⁶ art. 55-57. Zakona o zaštiti lica sa mentalnim smetnjama.

¹⁰⁷ art. 81. st.1. CC RS

¹⁰⁸ art. 80. st.2. *Ibid.*

In order to impose this security measure, it is necessary that there is a justified suspicion or that it can be reasonably assumed that the perpetrator will repeat or commit another act, which implies compliance with the principle of proportionality. The court suspends the measure of mandatory psychiatric treatment and custody in a health facility when it finds that its further implementation is no longer necessary, that is, when it determines that there is no longer a need for treatment and custody of the perpetrator in a health facility, with the fact that this security measure, imposed with a prison sentence, can last even longer than the imposed sentence.

For an offender who committed a criminal offense in a state of significantly reduced sanity, and was sentenced to prison, the time he spent in a health institution will be counted towards the duration of the imposed sentence, however, if the time spent in a health institution is shorter than the duration of the imposed sentence, the court will, after the end of the security measure, order that the convicted person be sent to serve the rest of the sentence or be released on parole. When deciding on parole, the court will assess his behavior during the sentence, the performance of his work duties with regard to his ability to work, as well as other circumstances that indicate that the convicted person will not commit a new criminal offense while on parole,¹⁰⁹ then the success of the convict's treatment, his state of health, the time spent in a health facility and the remainder of the sentence that the convict did not serve.¹¹⁰

Referral of a person to the execution of a measure of compulsory psychiatric treatment and custody in a health institution is carried out by the competent court that imposed the measure in the first instance, while the said measure is carried out in the Special Prison Hospital, and exceptionally in another health institution.¹¹¹ If the security measure of mandatory psychiatric treatment and custody in a health facility is imposed along with a prison sentence, the convicted person is first referred to the execution of the security measure of mandatory psychiatric treatment and custody in a health facility.

At the proposal of the Special Prison Hospital or other health institution where the said measure is carried out, the court may, during the duration of the measure, and based on the previously obtained opinion of the execution judge, decide that the person against whom the measure is being carried out is transferred from one to another health care facility.¹¹²

In the EU member states, the idea of deinstitutionalization is increasingly advocated, that is, the separation of hospitals for the mentally ill from penitentiary institutions. This implies that insane persons are subject to the system of public health, not criminal law. Our Legislator provided that based on the proposal of the prison hospital (or some other specialized institution) in which the perpetrator is located, he can be transferred from one to another. This makes it possible for a person sentenced to treatment in a health institution to be replaced with treatment at liberty.

If the person to whom the security measure of treatment at liberty has been imposed does not report to the institution for execution, the court can order her to be brought or issue a warrant. Arresting a person is the responsibility of the police in whose territory the person is located, accompanied by a health worker.

The health institution is obliged to regularly inform the court about the state of health of the person to whom this security measure is applied.

When implementing the security measure of mandatory psychiatric treatment and custody in a health facility, the biggest problems stand out: accommodation facilities, lack of professionals and staff, as well as the lack of financial resources allocated by the state for the implementation of this measure. Levels of cooperation from primary to tertiary health care are also missing. Sometimes people are placed in health

¹⁰⁹ art. 46. CC RS

¹¹⁰ art. 81. par. 5. *Ibid.*

¹¹¹ art.195. par.1, par.2. Zakona o izvršenju krivičnih sankcija, Sl. glasnik RS, no. 55/2014 i 35/2019.

¹¹² art.195. st.4. *Ibid.*

institutions more for social reasons than medical reasons would require, thus neglecting the basic activity and purpose.

Health institutions are overloaded, material conditions are often unsatisfactory, and the connection between health institutions and social protection institutions is also insufficient. There are not enough centers for the protection of mental health and other psychiatric institutions, there is no IT support, there are no unique databases. For the development of further strategies and plans to improve the work of the mentioned health institutions, a connection with clear statistical indicators is necessary.

The public has a distorted image and a completely wrong perception of persons undergoing medical treatment, they are portrayed as patients who cannot be helped, which leads to stigmatization and isolation of such persons, instead of providing them with adequate and necessary support. Stigmatization is associated with mental disorders, which is also contributed to by the sensationalist approach of the media and inadequate public information.¹¹³

The Program on the Protection of Mental Health in the Republic of Serbia for the period from 2019 to 2026 lists the system of measures, conditions and instruments of public policy that the Republic of Serbia should implement in order to protect mental health by preventing the onset of mental disorders, improving mental health, analysis and diagnosis mental state of persons, treatment and rehabilitation of persons with mental disorders, as well as suspicions of the existence of mental disorders, while respecting human rights and strengthening the dignity of persons with mental disorders and applying the least restrictive forms of treatment.

Compulsory psychiatric treatment at liberty

Compulsory psychiatric treatment at liberty is a security measure that was implemented in our criminal legislation in 1976, considering that the treatment of mentally disturbed persons is much more effective through medical treatment of persons at liberty than through treatment in closed institutions. The recommendations were that it is better to impose a milder security measure, in this case the measure of compulsory psychiatric treatment at liberty, than the measure of compulsory psychiatric treatment and custody in a health institution. Therefore, it was suggested that in situations where it is possible and acceptable, it is desirable to avoid closed institutions.¹¹⁴

The court will impose compulsory psychiatric treatment on the offender who, in a state of insanity, has committed an illegal act specified in the law as a criminal offense, if it determines that there is a serious danger that the offender will commit an illegal act that is defined in the law as a criminal offense and that it is for the purpose of eliminating this danger enough to treat him at liberty.¹¹⁵ Compulsory psychiatric treatment at liberty can also be imposed on an insane offender who has been ordered to undergo compulsory psychiatric treatment and care in an appropriate health facility when the court, based on the results of the treatment, determines that his care and treatment in such an institution is no longer necessary, but only his treatment at freedom, as well as the perpetrator whose sanity is significantly reduced, if he has been given a suspended sentence or has been released on parole.¹¹⁶

¹¹³ Program o zaštiti mentalnog zdravlja u Republici Srbiji za period 2019-2026. godine, Sl. glasnik RS, no. 84/2019.

¹¹⁴ Rauchfleisch U, *Die ambulante psychiatrische Behandlung nach Sir GB Art. 43 im Urteil von Richtern und Psychotherapeuten*, Schweizerische Zeitschrift für Strafrecht, Bern, 1985, p.189.

Krstic B, *Psihijatrijski aspekt pripreme, sprovođenja i prekida mera bezbednosti medicinskog karaktera*, Tečaj za usavršavanje iz forenzičke psihijatrije, Zagreb, 1980, p. 99.

¹¹⁵ art. 82. par. 1. CC RS

¹¹⁶ par.2, par.3. *Ibid.*

If it is estimated that for the sake of more successful treatment, it is necessary to occasionally carry out the treatment in freedom and in the appropriate health institution, it can be determined on the condition that it lasts continuously for a maximum of 15 days, i.e. up to two months in total.¹¹⁷

Compulsory psychiatric treatment at liberty lasts as long as there is a need for treatment, but it can last for a maximum of three years.¹¹⁸

The court can impose mandatory psychiatric treatment and custody in a health facility if the perpetrator does not undergo treatment in prison or voluntarily leaves it, or despite the treatment there is a danger that he will again commit an illegal act provided for in the law as a criminal offense, so that he needs treatment and custody in to the appropriate health facility.¹¹⁹

The purpose of the security measure of compulsory psychiatric treatment at liberty is to achieve the highest possible quality recovery of the perpetrator of the illegal (criminal) act, as well as for society to control and prevent possible harmful consequences that would arise for society itself. This primarily refers to the danger to society, and it is indicative that the perpetrator will repeat the act. The possibility or likelihood that the perpetrator will commit a criminal act, or show certain delinquent behavior, is assessed by the court based on the findings and opinions of experts.

For reasons of general good or public interest, the legislator gave the possibility to the court to assess, in a specific case, whether a person has made positive progress in treatment, and if he finds that positive steps have been taken, to replace the measure of treatment in a health institution with the measure of treatment at liberty for that person.

The security measures of compulsory psychiatric treatment in a health institution are applied when there is a danger of the perpetrator to the environment, so inpatient type measures are applied when there is a danger to the environment of a "severe" degree.

From today's aspect of the understanding of security measures, the concept according to which it is assumed that the perpetrator is destined by birth to commit an illegal act or a criminal offense has been rejected.¹²⁰

We emphasize that in practice it is very difficult to determine the probability of future delinquent behavior and what is the moment when we can talk about the content and determination of the danger to the environment. We would like to say that there is no probability of reliability of the criteria for determining the mentioned danger, as a general condition by which a security measure would be imposed. We emphasize that it is not precisely clear when there is a greater or lesser danger to the environment, on the basis of which criteria it is possible to determine when it is necessary that the perpetrator should be treated at liberty, and when in a health institution. Therefore, the task of the court is to assess the individual characteristics of the perpetrator with the help of experts in each specific case. However, judicial practice has shown that in many cases, experts are uncertain when they need to assess whether a certain perpetrator needs to be given the security measure of compulsory psychiatric treatment at liberty, given that the expert's decision to treat a potential person at liberty was covered by the fear of his own responsibilities as well as the fact that they are faced with a complex and very difficult task.¹²¹

¹¹⁷ par. 4. *Ibid.*

¹¹⁸ par. 5. *Ibid.*

¹¹⁹ par. 6. *Ibid.*

¹²⁰ Musco E, *Massregeln der Besserung und Sicherung im strafrechtlichen Rechtsfolgensystem Italiens, Zeitschrift für die gesamte Strafrechtswissenschaft*, Heft 2, Berlin -New York, 1990, p. 428.

¹²¹ Tomić Z, *Mjere bezbjednosti u jugoslovenskom krivičnom pravu*, Beograd, doktorska disertacija, 1990, p. 242.

The degree of insanity and the fact that the perpetrator is dangerous, which means that if he does not undergo medical treatment, he will commit a more serious, new or the same crime, are required in order to impose a security measure of mandatory psychiatric treatment.

The measure of compulsory psychiatric treatment at liberty is carried out in a health facility determined by the court that imposed this measure, and it is obliged to refer the person to whom the measure was imposed to a health facility within eight days from the date of finality of the decision by which the measure was imposed.¹²²

A person who has been ordered to undergo compulsory psychiatric treatment at liberty is obliged to report to a health institution for treatment within the period determined by the court, and no later than within 15 days from the delivery of the decision on referral for treatment.¹²³

When a person referred for treatment in a health care facility does not submit to a court decision or leaves treatment on his own, as well as in the case where it is certain that the person will be a danger to the environment regardless of the treatment, the person must be taken care of in a health care facility, which is institution obliged to inform the court.

Compulsory drug addiction treatment

In the general understanding, drug addiction is the enjoyment of taking intoxicants. The Criminal Code of the Republic of Serbia does not provide a general definition of drug addicts and narcotics. Of the international documents that define the concept of narcotic drugs, we highlight the *Single Convention on Narcotic Drugs* (1961),¹²⁴ which was amended by the Protocol from 1972,¹²⁵ the *Convention on Psychotropic Substances* from 1971,¹²⁶ and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* from 1998.¹²⁷

World Anti-doping Agency (WADA) exhaustively lists prohibited substances in sports, among which narcotics include opium, morphine, heroin, methadone, pethidine and codeine.¹²⁸ A narcotic drug is any substance of natural or synthetic origin that is included in Tables I and II of the *Single Convention on Narcotic Drugs*, i.e. a substance that acts primarily on the central nervous system by reducing the sensation of pain, causing drowsiness or wakefulness, hallucinations, disturbances in motor functions, as well as other pathological or functional changes of the central nervous system.

A drug addict can be considered a person who is addicted to intoxicating drugs and has an insatiable need to consume them. With drug addicts, it is about the absence of moral and social norms, and they can be closely related to the commission of criminal acts. Dependence that develops through continuous use of narcotics leaves traces on psycho-physical health, which is reflected in behavioral disorders, disorders of cognitive functions and changes on the physiological level.

¹²² art. 202. par.1, par. 2. Zakon o izvršenju krivičnih sankcija, Sl. glasnik RS, no. 55/2014, 35/2019.

¹²³ art. 202. par.3. *Ibid.*

¹²⁴ Uredba o ratifikaciji Jedinствене konvencije o opojnim drogama, Sl. list SFRJ - Međunarodni ugovori i drugi sporazumi, br. 2/64, Sl. list SFRJ - Međunarodni ugovori, no. 3/78 - dr. zakon.

¹²⁵ It entered into force on August 8, 1975.

¹²⁶ It entered into force on August 16, 1976.

Zakon o ratifikaciji Konvencije o psihotropnim supstancama, Sl. list SFRJ no. 40/73.

¹²⁷ Zakon o ratifikaciji Konvencije Ujedinjenih nacija protiv nezakonitog prometa opojnih droga i psihotropnih supstanci, Sl. list SFRJ - Međunarodni ugovori, no. 14/90.

¹²⁸ Božić V, Đukić M, *Krivičnopravna odgovornost za doping u sportu*, Zbornik radova 34. susreta Kopaoničke škole prirodnog prava - Slobodan Perović "Primena prava i pravna sigurnost", Beograd, 2021, Tom 1, p. 362-363. (357-376).

The Act on Psychoactive Controlled Substances exhaustively lists psychoactive controlled substances: 1) narcotic drugs, i.e. narcotics; 2) psychotropic substances; 3) products of biological origin that have a psychoactive effect and 4) other psychoactive controlled substances.¹²⁹

In relation to previous legal decisions in 2006, the security measure of treatment of drug addicts was separated from the measure of treatment of alcoholics.

In order to impose this security measure, it is necessary to fulfill several conditions prescribed by law. First, the perpetrator must be addicted to narcotic drugs, second, there must be a correlation between the act and the perpetrator's addiction, and third, there must be a serious danger that the perpetrator will repeat or commit a new crime. In order for the court to pronounce the security measure of mandatory treatment of drug addicts, the existence of a causal nexus is required, namely, the perpetrator must have committed one or more criminal offenses due to addiction to intoxicating substances.

To an offender who has committed a criminal offense due to addiction to the use of narcotic drugs and in whom there is a serious risk that he will continue to commit criminal offenses due to this addiction, the court will impose mandatory treatment, a measure that is carried out in a correctional institution or in an appropriate health or another specialized institution, and lasts as long as there is a need for treatment, but not longer than three years.¹³⁰

If the security measure of mandatory treatment of drug addicts is imposed with a fine, suspended sentence, court warning or exemption from punishment, it shall be carried out at liberty and may not last longer than three years.¹³¹

If the perpetrator, without justifiable reasons, does not undergo treatment at liberty or abandons the treatment arbitrarily, the court will order that the measure be enforced in an appropriate health or other specialized institution.¹³²

When the security measure of mandatory drug addiction treatment is imposed together with a prison sentence, it can last longer than the time of the imposed sentence, however, its total duration cannot exceed three years, while the time spent in a treatment facility is included in the prison sentence.¹³³

The security measure of mandatory treatment of drug addicts is carried out in an institution designated for the execution of the sanction or in an institution where it is possible to implement the measure, provided that it is specialized, such as a psychiatric institution or institute. It is carried out in the correctional institution when it is imposed with a prison sentence, and it can also be imposed with a measure of execution at liberty, with the proviso that in that case it is carried out at liberty, but with the obligation of the convicted person to occasionally undergo appropriate treatment in a health institution, on the way the court said in the verdict.¹³⁴

The safety measure of compulsory treatment of drug addicts has its origin, which is seen as the elimination of delinquent behavior and the state of addiction to intoxicants, so it is a matter of medical treatment of drug addicts.¹³⁵

¹²⁹ Zakon o psihoaktivnim kontrolisanim supstancama, Sl. glasnik RS, no. 99/2010, 57/2018.

¹³⁰ art. 83. par. 1. i 2. CC RS

¹³¹ par. 5. *Ibid.*

¹³² par. 6. *Ibid.*

¹³³ par. 3, par. 4. *Ibid.*

¹³⁴ Lazarević LJ, *Komentar Krivičnog zakonika Republike Srbije*, Beograd, 2006, p. 265.

¹³⁵ Drakić D, *Svrha mera bezbednosti kao krivičnih sankcija*, Zbornik radova Pravnog fakulteta u Novom Sadu, 2005, p. 127.

Compulsory treatment of alcoholics

Alcoholism is classified as a disease, if it is consumed for a long period of time due to which a physical person develops an addiction to alcohol. Alcohol use leads to health, family and social problems. In order to be able to talk about alcohol dependence, the generally accepted view is that there must be several symptoms such as the need to consume alcohol (constant desire to consume alcohol) whereby the person cannot stop consuming alcohol. The significant consequences of excessive alcohol consumption are reflected in the fact that even when a person stops using alcohol, he has increased symptoms of sweating and tremors, a high degree of tolerance to alcohol consumption, an increased amount of alcohol that he still consumes, neglects his family and neglects his obligations to the workplace.

According to the definition of the World Health Organization, "an alcoholic is a person who excessively uses or uses alcohol in a way that harms his health, endangers his social and economic condition, and there are indications that there could be damage to his health."¹³⁶

The security measure of compulsory treatment of alcoholics is imposed by the court on the perpetrator who committed a criminal offense due to addiction to alcohol and in whom there is a serious risk that he will continue to commit criminal offenses due to this addiction, and is carried out in a prison institution or in an appropriate health or to another specialized institution and lasts as long as there is a need for treatment, but not longer than the imposed prison sentence, with the fact that the time spent in the institution for treatment is included in the prison sentence.¹³⁷

The safety measure of compulsory treatment of alcoholics can be imposed together with a fine, a conditional sentence, a court warning or exemption from punishment, in which case it is carried out at liberty and cannot last longer than two years.¹³⁸ When the perpetrator, for reasons that cannot be justified, does not submit to the treatment measure, either at liberty or voluntarily decides to leave the institution, then the court will order the compulsory execution of this measure in an appropriate health or other specialized institution.¹³⁹

Concluding considerations

In the Republic of Serbia, there is a modern and adequate legal framework regarding safety measures of a medical nature, however, there is a problem of applying the law in practice. We draw attention to the fact that the mentioned security measures are very rarely imposed on the perpetrators of an illegal act or a criminal act due to the lack of a systemic solution, among which we can point out the disconnection of relevant institutions, insufficient financial resources, a small number of health institutions, lack of education of experts and staff who provide medical and other treatment.

The positive side of the imposition of security measures is reflected in the fact that their application in practice increases the level of security and confidence of citizens in the legal system of the state.

It is indispensable to prescribe very precisely the conditions for the imposition and application of medical safety measures. Likewise, we indicate that security measures should be of limited duration with mandatory control of their application by the court in the time period provided by law.

¹³⁶ See more: Sedić B, *Zdravstvena njega psihijatrijskih bolesnika*, Zdravstveno veleučilište, Zagreb, 2006.

¹³⁷ art. 84. par. 1-3. CC RS

¹³⁸ par. 4. *Ibid.*

¹³⁹ *Ibid.*

REFERENCES LIST

1. Batrićević A, *Obavezno psihijatrijsko lečenje prestupnika u Srbiji, zakonski okviri, trenutno stanje i preporuke*, Zbornik Instituta za kriminološka i sociološka istraživanja, Beograd, 2014, /Vol. XXXIII /2/p. 89-114.
2. Bogojević A, *Mere bezbednosti medicinskog karaktera prema neuračunljivim licima u sistemu krivičnih sankcija -nedostaci u srpskom zakonodavstvu i moguća alternativa*, Sveske za javno pravo, 2018, p. 1-15.
3. Božić V, Đukić M, *Krivičnopravna odgovornost za doping u sportu*, Zbornik radova 34. susreta Kopaoničke škole prirodnog prava - Slobodan Perović "Primena prava i pravna sigurnost", Beograd, 2021, Tom 1, p. 357-376.
4. Božić V, Jovanovski Z, Đukić M, *Kaznenopravni prikaz i analiza zaštite od nasilja na sportskim natjecanjima u Hrvatskoj uz osvrt na međunarodnopravna rješenja*, Tematski zbornik međunarodnog značaja 33. susreta Kopaoničke škole prirodnog prava - Slobodan Perović „Unifikacija prava i pravna sigurnost“, 2020. VOL 1, p. 509-529.
5. Božić V, *Kazna zatvora u kaznenom zakonodavstvu Hrvatske i Srbije: osvrt na pojedina zakonska rješenja uz prijedloge de lege ferenda*. Zbornik radova „Pravo u funkciji razvoja društva“ T. 2. Pravni fakultet Univerziteta Priština - Kosovska Mitrovica, 2019, p. 91-105.
6. Božić V, *Prison Sentences in the Republic of Serbia with an Analysis of Court Practice*, Proceedings Eighth International scientific conference "Social changes in the globalworld" Štip: Univerzitet "Goce Delčev", Faculty of Law, 2021. p. 35-50.
7. Božić V, Simović M, *Kritički osvrt na reformu krivičnog zakonodavstva u odnosu na kaznu zatvora u Republici Hrvatskoj i Republici Srbiji*, Srpska pravna misao: časopis za pravnu teoriju i praksu. 2020, no. 53, p. 129-142.
8. Criminal Code of the Republic of Serbia, Official Gazette of the RS, no. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 (CC RS).
9. Dods E.R, *Grci i iracionalno*, Službeni glasnik, Beograd, 2005.
10. Drakić D, *Svrha mera bezbednosti kao krivičnih sankcija*, Zbornik radova Pravnog fakulteta u Novom Sadu, 2005, p. 121-128.
11. Jovašević D, Mitrović LJ, Ikanović V, *Komentar Krivičnog zakonika Republike Srpske*, JU Službeni glasnik Republike Srpske, Banja Luka, 2018.
12. Jakšić D, Davidović D, *Razvoj kaznenog sistema u krivičnom pravu Srbije, Specijalna edukacija i rehabilitacija*, Beograd, 2013.
13. Jovanovski Z, Božić V, Atanasov S, *Nasilje na sportskim priredbama i uloga medija*, Časopis Pravni život, časopis za pravnu teoriju i praksu, Udruženje pravnika Republike Srbije, No. 9-2019, p. 503-520.
14. Jovašević D, *Uloga mera bezbednosti u suzbijanju kriminaliteta*, Zbornik Instituta za kriminološka i sociološka istraživanja (IKSI)godina XXIX/ broj 1-2 /2010, p. 51-70.
15. Jovašević D, Mitrović LJ, Ikanović V, *Krivično pravo – opšti dio*, Panevropski Univerzitet APEIRON, Banja Luka, 2017.
16. Kokolj M, Jovašević D, *Krivično pravo Republike Srpske – opšti i posebni deo*, Univerzitet Sinergija, Bijeljina, 2011, p. 218 – 225.
17. Krstic B, *Psihijatrijski aspekt pripreme, sprovođenja i prekida mera bezbednosti medicinskog karaktera*, Tečaj za usavršavanje iz forenzičke psihijatrije, Zagreb, 1980.
18. Lazarević LJ, *Komentar Krivičnog zakonika Republike Srbije*, Beograd, 2006.
19. Maklecov A, *Kriterijum opasnosti izvršioca u savremenom krivičnom pravu*, Arhiv za pravne i društvene nauke, Beograd, 1934, p. 4.

20. Musco E, *Massregeln der Besserung und Sicherung im strafrechtlichen Rechtfolgensystem Italiens*, Zeitschrift für die gesamte Strafrechtswissenschaft, Heft 2, Berlin -New York, 1990.
21. Program o zaštiti mentalnog zdravlja u Republici Srbiji za period 2019-2026. godine, Sl. glasnik RS, br. 84/2019.
22. Rauchfleisch U, *Die ambulante psychiatrische Behandlung nach Sir GB Art. 43 im Urteil von Richtern und Psychotherapeuten*, Schweizerische Zeitschrift für Strafrecht, Bern, 1985.
23. Tomić Z, *Mjere bezbjednosti u jugoslovenskom krivičnom pravu*, Beograd, doktorska disertacija, 1990.
24. Sedić B, *Zdravstvena njega psihijatrijskih bolesnika*, Zdravstveno veleučilište, Zagreb, 2006.
25. Šilović J, Frank S, *Krivični zakonik za Kraljevinu Srba, Hrvata i Slovenaca*, 27. 01.1929.
26. Uredba o ratifikaciji Jedinstvene konvencije o opojnim drogama, Sl. list SFRJ - Međunarodni ugovori i drugi sporazumi, br. 2/64 i Sl. list SFRJ - Međunarodni ugovori, br. 3/78 - dr. zakon.
27. Zakon o ratifikaciji Konvencije o psihotropnim supstancama, Sl. list SFRJ br. 40/73.
28. Zakon o ratifikaciji Konvencije Ujedinjenih nacija protiv nezakonitog prometa opojnih droga i psihotropnih supstanci, Sl. list SFRJ - Međunarodni ugovori, br. 14/90.
29. Zakon o psihoaktivnim kontrolisanim supstancama, Sl. glasnik RS, br. 99/2010, 57/2018.
30. Zakon o izvršenju krivičnih sankcija, Sl. glasnik RS, br. 55/2014, 35/2019.
31. Zakon o zaštiti lica sa mentalnim smetnjama, Sl. glasnik RS, br. 45/2013.
32. Živanović T, *Dualitet krivičnih sankcija, kazne i mere bezbednosti*, Beograd, 1928.
33. Živanović T, *Osnovni problemi krivičnog prava i druge studije*, Službeni list SFRJ, Beograd, 1986.