

DIFFICULTIES IN FRAMING ARTICLES NO. 113 AND 114 CRIMINAL CODE (MEASURES OF MEDICAL SAFETY) OF THE MENTALLY DISORDERS AND CHRONICALLY ALCOHOL ADDICTED PARTIENTS

PhD Lecturer **Gabriel Mihalache**
Faculty of Medicine, Oradea
PhD **Camelia Buhas** – *head of papers*
Faculty of Medicine, Oradea

Abstract:

Based on more than 2000 forensic psychiatric examinations made in the last 10 years, the authors gradually present the risks and difficulties of the proposal of administering the measures of medical safety prevailed by articles no. 113 and 114 Criminal Code. If in article no. 114 Criminal Code, the methodology of administration is clearer, in the way that it refers only to the patients lacking judgment because of their psychiatric condition, in article no. 113 Criminal Code, things are far more complicated. Here, mentally disordered persons who also consume alcohol, is often wrong diagnosed, action that has repercussions in the law field, due to the fact that, in a wrong way, the lack of judgment may be taken in consideration.

Key words: measures of medical safety, , mentally disordered persons, patient.

The measures of medical safety prevailed by the Criminal Code are most of all stipulated in articles no. 113 and 114. Article no. 113 stipulates for the duty of the psychiatric treatment and presents the following particularities:

- The treatment must be done under severe watch, periodically, in a mental institution belonging to the Ministry of Health, most frequently in the Laboratory of Mental Health. Here, the patient receives medication treatment in accordance with the opinion of a doctor (a daily, weekly or monthly treatment, etc) and all of these are supervised and signed in a register. Due to this fact, the patient can be easily tracked whether he or she is following the precise treatment or not.

- Article no. 113, which represents the obligation to a medical treatment, can be also used on persons (patients) that are imprisoned. In this circumstance, the treatment can be applied in a penitentiary hospital or in the nursery of the imprisonment's place.

- The application of the safety measure stipulated by article no. 113 can be done on mentally disordered patients lacking judgement.

The measure of medical safety stipulated by article no. 114 refers to the duty of hospitalization in a psychiatric institution with a special profile. The particularities of these special procedures are, as follows:

- The procedure is applied only if the patient has a severe psychiatric disease.
- The procedure refers to the specific situation when the patient lacks judgement at the time that the felony was made.
- The measures of medical safety – represented by article no. 114 – lasts until the complete recovery of the patient or until a considerable improvement can be noticed.

From the juridical point of view, the following are to be noticed:

- If the patient do not correspond with the stipulations in article no. 113, the law sentence can decide the application of article no. 114, if and only if was established, based on a forensic psychiatric examination, the fact that the patient did not have, nor still has the ability to judge for himself.
- It is possible to return to the stipulations in article no. 113 after the application of article no. 114. The action is possible only after a new forensic psychiatric examination is made and a new law sentence is given.

One of the 5 psychiatric institutions in the country dealing with mentally disordered patients hospitalized under article no. 114 is in Stei, a city from the area of Bihor. The law compels for a periodical examination of these patients by the doctors. More than that, if the patient, doctor in charge of the patient other relatives ascertain a considerable improvement of the patient's health, or if the psychiatric signs are gone, a new forensic psychiatric examination can be made. If everything turns well, the measures of medical safety can be changed, substituted for another or even suspended.

Starting from the theoretical considerations mentioned before and based on more than 300 forensic examinations made annually in the Psychiatric Institution from Stei, we are able to present the difficulties and errors faced when applying the measures of medical safety. These are, as follows:

- When a patient is hospitalized in the Psychiatric Institution from Stei, his medical record arrives together with him. This medical official report contains the forensic psychiatric examination, based on which the patient was included in the stipulations of article no. 114. The forensic psychiatric examination mentions the diagnosis of the mental disorder the patient suffers from. Sometimes, the diagnosis doesn't correspond with the symptomatology of the patient or the diagnosis doesn't justify the proposal of application of article no. 114. In this situation, the doctors in charge of the patient and the new forensic and psychiatric committee have the ungrateful duty to formulate a new and correct diagnosis and to suggest another measure of medical safety. This situation might and can "transfer the patient from the hospital directly to the penitentiary".

- The symptomatology of the psychopath is often wrong diagnosed because, starting from their capacity to simulate and dissimulate, the case is diagnosed as a psychosis and the conclusion is the appliance of article no. 114. Anyway, a psychopath's place is in the penitentiary, and not in a hospital. This situation puts in danger the entire crew of doctors working in a psychiatric institution because of the patient's behavior, he is impossible to manage, and he is unable to be kept in an institution of that kind. The psychosis has no treatment and cannot be cured.

- Very often, the psychiatric symptomatology, which brought the patient into a psychiatric institution and oblige the stipulations of article no. 114, rely on alcohol consumption. Chronic ethylism at persons with mental sickness or psychoses of any kind makes the gravity of their behavior enormous; the psychic symptomatology is very impressive, of a great intensity. But, once stopped the alcohol consumption, everything vanishes with the following consequence: in the hospital, there is a patient without a symptomatology that can justify a diagnosis that led to the application of article no. 114. The Psychiatric Institution for Mental Disorders in Stei guarantee, due to the strict security, the certainty that those patients cannot bring in nor consume any alcohol. Because of this reason, numerous patients ask for their release from the hospital after a shorter or a longer period of time. Basically they are not in need of a medical treatment anymore, but, as we already said, the release from a mental institution can only be authorized by a law sentence that would replace article no. 114 with article no. 113.

- As we all know, the severe psychiatric disorder (first of all the psychoses and then the epilepsy and the Central Nervous System disorders of any kind) have no treatment and their evolution develops from bad to worse. From this point of view, article no. 114 is limited and doesn't picture the reality. It stipulates that the period of the application is until the entire recovery of the patient. In reality, we consider the disappearance of the psychotic symptomatology a consequence of the patient's response to the medical treatment. This is the situation of the mental disorder persons (a schizophrenic), which lack judgement in the acute moment of their disease, and then regain the power of self-judgement for months or even years. Basically, the patient doesn't how any symptomatology, but still has to follow the specific medical treatment. This is the ideal situation in which we can replace article no. 114 with article no. 113.

- Far more difficult is the replacement of article no. 114 with article no. 113 regarding mental debilities. No matter what a non compos mentis person treatment is, one cannot expect an improvement of his intellectual performance. But if the patient has a strong social support (parents, family, collectivity per general) and, most of all, doesn't consume any alcohol, a non compos mentis patient can easily integrate back into the community. His release from the mental institution and the replacement of the safety medical measure is justified.

- One of the most difficult situations we deal with are the patients whom evolution goes from bad to worse and then end up going mad. In this situation, the replacement of the safety medical measure is out of question, but still,

they cannot remain in the Psychiatric Institution from Stei for the rest of their lives. These kinds of patients belong to the Severe Mental Disordered Person Institution from Nucet, for example. Unfortunately, the actual legislation do not authorize the transfer of the patients subscribing article no. 114 to another clinical institution than one of the 5 psychiatric hospitals with special profile from the country, where special security measures are applied.

In conclusion, framing one of the safety medical measures prevailed by article no. 113 or no. 114 is an act of great medical responsibility. It cannot be fully sustained without a disciplinary activity. This means complaisance from the law court and help from the social services.