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ЕЖЕМЕСЯЧНЫЙ НАУЧНЫЙ ЖУРНАЛ

Медицинские новости Грузии  
საქართველოს სამედიცინო სიახლენი

## GEORGIAN MEDICAL NEWS

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**GMN: Georgian Medical News** is peer-reviewed, published monthly journal committed to promoting the science and art of medicine and the betterment of public health, published by the GMN Editorial Board since 1994. GMN carries original scientific articles on medicine, biology and pharmacy, which are of experimental, theoretical and practical character; publishes original research, reviews, commentaries, editorials, essays, medical news, and correspondence in English and Russian.

GMN is indexed in MEDLINE, SCOPUS, PubMed and VINITI Russian Academy of Sciences. The full text content is available through EBSCO databases.

**GMN: Медицинские новости Грузии** - ежемесячный рецензируемый научный журнал, издаётся Редакционной коллегией с 1994 года на русском и английском языках в целях поддержки медицинской науки и улучшения здравоохранения. В журнале публикуются оригинальные научные статьи в области медицины, биологии и фармации, статьи обзорного характера, научные сообщения, новости медицины и здравоохранения. Журнал индексируется в MEDLINE, отражён в базе данных SCOPUS, PubMed и ВИНТИ РАН. Полнотекстовые статьи журнала доступны через БД EBSCO.

**GMN: Georgian Medical News** – საქართველოს სამედიცინო სიახლენი – არის ყოველთვიური სამეცნიერო სამედიცინო რეცენზირებადი ჟურნალი, გამოიცემა 1994 წლიდან, წარმოადგენს სარედაქციო კოლეგიისა და აშშ-ის მეცნიერების, განათლების, ინდუსტრიის, ხელოვნებისა და ბუნებისმეტყველების საერთაშორისო აკადემიის ერთობლივ გამოცემას. GMN-ში რუსულ და ინგლისურ ენებზე ქვეყნდება ექსპერიმენტული, თეორიული და პრაქტიკული ხასიათის ორიგინალური სამეცნიერო სტატიები მედიცინის, ბიოლოგიისა და ფარმაციის სფეროში, მიმოხილვითი ხასიათის სტატიები.

ჟურნალი ინდექსირებულია MEDLINE-ის საერთაშორისო სისტემაში, ასახულია SCOPUS-ის, PubMed-ის და ВИНТИ РАН-ის მონაცემთა ბაზებში. სტატიების სრული ტექსტი ხელმისაწვდომია EBSCO-ს მონაცემთა ბაზებიდან.

### WEBSITE

[www.geomednews.com](http://www.geomednews.com)

## К СВЕДЕНИЮ АВТОРОВ!

При направлении статьи в редакцию необходимо соблюдать следующие правила:

1. Статья должна быть представлена в двух экземплярах, на русском или английском языках, напечатанная через **полтора интервала на одной стороне стандартного листа с шириной левого поля в три сантиметра**. Используемый компьютерный шрифт для текста на русском и английском языках - **Times New Roman (Кириллица)**, для текста на грузинском языке следует использовать **AcadNusx**. Размер шрифта - **12**. К рукописи, напечатанной на компьютере, должен быть приложен CD со статьей.

2. Размер статьи должен быть не менее десяти и не более двадцати страниц машинописи, включая указатель литературы и резюме на английском, русском и грузинском языках.

3. В статье должны быть освещены актуальность данного материала, методы и результаты исследования и их обсуждение.

При представлении в печать научных экспериментальных работ авторы должны указывать вид и количество экспериментальных животных, применявшиеся методы обезболивания и усыпления (в ходе острых опытов).

4. К статье должны быть приложены краткое (на полстраницы) резюме на английском, русском и грузинском языках (включающее следующие разделы: цель исследования, материал и методы, результаты и заключение) и список ключевых слов (key words).

5. Таблицы необходимо представлять в печатной форме. Фотокопии не принимаются. **Все цифровые, итоговые и процентные данные в таблицах должны соответствовать таковым в тексте статьи**. Таблицы и графики должны быть озаглавлены.

6. Фотографии должны быть контрастными, фотокопии с рентгенограмм - в позитивном изображении. Рисунки, чертежи и диаграммы следует озаглавить, пронумеровать и вставить в соответствующее место текста **в tiff формате**.

В подписях к микрофотографиям следует указывать степень увеличения через окуляр или объектив и метод окраски или импрегнации срезов.

7. Фамилии отечественных авторов приводятся в оригинальной транскрипции.

8. При оформлении и направлении статей в журнал МНГ просим авторов соблюдать правила, изложенные в «Единых требованиях к рукописям, представляемым в биомедицинские журналы», принятых Международным комитетом редакторов медицинских журналов - <http://www.spinesurgery.ru/files/publish.pdf> и [http://www.nlm.nih.gov/bsd/uniform\\_requirements.html](http://www.nlm.nih.gov/bsd/uniform_requirements.html) В конце каждой оригинальной статьи приводится библиографический список. В список литературы включаются все материалы, на которые имеются ссылки в тексте. Список составляется в алфавитном порядке и нумеруется. Литературный источник приводится на языке оригинала. В списке литературы сначала приводятся работы, написанные знаками грузинского алфавита, затем кириллицей и латиницей. Ссылки на цитируемые работы в тексте статьи даются в квадратных скобках в виде номера, соответствующего номеру данной работы в списке литературы. Большинство цитированных источников должны быть за последние 5-7 лет.

9. Для получения права на публикацию статья должна иметь от руководителя работы или учреждения визу и сопроводительное отношение, написанные или напечатанные на бланке и заверенные подписью и печатью.

10. В конце статьи должны быть подписи всех авторов, полностью приведены их фамилии, имена и отчества, указаны служебный и домашний номера телефонов и адреса или иные координаты. Количество авторов (соавторов) не должно превышать пяти человек.

11. Редакция оставляет за собой право сокращать и исправлять статьи. Корректур авторам не высылаются, вся работа и сверка проводится по авторскому оригиналу.

12. Недопустимо направление в редакцию работ, представленных к печати в иных издательствах или опубликованных в других изданиях.

**При нарушении указанных правил статьи не рассматриваются.**

## REQUIREMENTS

Please note, materials submitted to the Editorial Office Staff are supposed to meet the following requirements:

1. Articles must be provided with a double copy, in English or Russian languages and typed or computer-printed on a single side of standard typing paper, with the left margin of 3 centimeters width, and 1.5 spacing between the lines, typeface - **Times New Roman (Cyrillic)**, print size - 12 (referring to Georgian and Russian materials). With computer-printed texts please enclose a CD carrying the same file titled with Latin symbols.

2. Size of the article, including index and resume in English, Russian and Georgian languages must be at least 10 pages and not exceed the limit of 20 pages of typed or computer-printed text.

3. Submitted material must include a coverage of a topical subject, research methods, results, and review.

Authors of the scientific-research works must indicate the number of experimental biological species drawn in, list the employed methods of anesthetization and soporific means used during acute tests.

4. Articles must have a short (half page) abstract in English, Russian and Georgian (including the following sections: aim of study, material and methods, results and conclusions) and a list of key words.

5. Tables must be presented in an original typed or computer-printed form, instead of a photocopied version. **Numbers, totals, percentile data on the tables must coincide with those in the texts of the articles.** Tables and graphs must be headed.

6. Photographs are required to be contrasted and must be submitted with doubles. Please number each photograph with a pencil on its back, indicate author's name, title of the article (short version), and mark out its top and bottom parts. Drawings must be accurate, drafts and diagrams drawn in Indian ink (or black ink). Photocopies of the X-ray photographs must be presented in a positive image in **tiff format**.

Accurately numbered subtitles for each illustration must be listed on a separate sheet of paper. In the subtitles for the microphotographs please indicate the ocular and objective lens magnification power, method of coloring or impregnation of the microscopic sections (preparations).

7. Please indicate last names, first and middle initials of the native authors, present names and initials of the foreign authors in the transcription of the original language, enclose in parenthesis corresponding number under which the author is listed in the reference materials.

8. Please follow guidance offered to authors by The International Committee of Medical Journal Editors guidance in its Uniform Requirements for Manuscripts Submitted to Biomedical Journals publication available online at: [http://www.nlm.nih.gov/bsd/uniform\\_requirements.html](http://www.nlm.nih.gov/bsd/uniform_requirements.html)  
[http://www.icmje.org/urm\\_full.pdf](http://www.icmje.org/urm_full.pdf)

In GMN style for each work cited in the text, a bibliographic reference is given, and this is located at the end of the article under the title "References". All references cited in the text must be listed. The list of references should be arranged alphabetically and then numbered. References are numbered in the text [numbers in square brackets] and in the reference list and numbers are repeated throughout the text as needed. The bibliographic description is given in the language of publication (citations in Georgian script are followed by Cyrillic and Latin).

9. To obtain the rights of publication articles must be accompanied by a visa from the project instructor or the establishment, where the work has been performed, and a reference letter, both written or typed on a special signed form, certified by a stamp or a seal.

10. Articles must be signed by all of the authors at the end, and they must be provided with a list of full names, office and home phone numbers and addresses or other non-office locations where the authors could be reached. The number of the authors (co-authors) must not exceed the limit of 5 people.

11. Editorial Staff reserves the rights to cut down in size and correct the articles. Proof-sheets are not sent out to the authors. The entire editorial and collation work is performed according to the author's original text.

12. Sending in the works that have already been assigned to the press by other Editorial Staffs or have been printed by other publishers is not permissible.

**Articles that Fail to Meet the Aforementioned  
Requirements are not Assigned to be Reviewed.**

## ავტორთა საქურაღებოლ!

რედაქციაში სტატიის წარმოდგენისას საჭიროა დაიცვათ შემდეგი წესები:

1. სტატია უნდა წარმოადგინოთ 2 ცალად, რუსულ ან ინგლისურ ენებზე დაბეჭდილი სტანდარტული ფურცლის 1 გვერდზე, 3 სმ სიგანის მარცხენა ველისა და სტრიქონებს შორის 1,5 ინტერვალის დაცვით. გამოყენებული კომპიუტერული შრიფტი რუსულ და ინგლისურენოვან ტექსტებში - **Times New Roman (Кириллица)**, ხოლო ქართულენოვან ტექსტში საჭიროა გამოვიყენოთ **AcadNusx**. შრიფტის ზომა – 12. სტატიას თან უნდა ახლდეს CD სტატიით.

2. სტატიის მოცულობა არ უნდა შეადგენდეს 10 გვერდზე ნაკლებს და 20 გვერდზე მეტს ლიტერატურის სიის და რეზიუმეების (ინგლისურ, რუსულ და ქართულ ენებზე) ჩათვლით.

3. სტატიაში საჭიროა გაშუქდეს: საკითხის აქტუალობა; კვლევის მიზანი; საკვლევი მასალა და გამოყენებული მეთოდები; მიღებული შედეგები და მათი განსჯა. ექსპერიმენტული ხასიათის სტატიების წარმოდგენისას ავტორებმა უნდა მიუთითონ საექსპერიმენტო ცხოველების სახეობა და რაოდენობა; გაუტკივარებისა და დაძინების მეთოდები (მწვავე ცდების პირობებში).

4. სტატიას თან უნდა ახლდეს რეზიუმე ინგლისურ, რუსულ და ქართულ ენებზე არანაკლებ ნახევარი გვერდის მოცულობისა (სათაურის, ავტორების, დაწესებულების მითითებით და უნდა შეიცავდეს შემდეგ განყოფილებებს: მიზანი, მასალა და მეთოდები, შედეგები და დასკვნები; ტექსტუალური ნაწილი არ უნდა იყოს 15 სტრიქონზე ნაკლები) და საკვანძო სიტყვების ჩამონათვალი (key words).

5. ცხრილები საჭიროა წარმოადგინოთ ნაბეჭდი სახით. ყველა ციფრული, შემაჯამებელი და პროცენტული მონაცემები უნდა შეესაბამებოდეს ტექსტში მოყვანილს.

6. ფოტოსურათები უნდა იყოს კონტრასტული; სურათები, ნახაზები, დიაგრამები - დასათაურებული, დანომრილი და სათანადო ადგილას ჩასმული. რენტგენოგრაფიების ფოტოასლები წარმოადგინეთ პოზიტიური გამოსახულებით **tiff** ფორმატში. მიკროფოტოსურათების წარწერებში საჭიროა მიუთითოთ ოკულარის ან ობიექტივის საშუალებით გადიდების ხარისხი, ანათალების შედეგების ან იმპრეგნაციის მეთოდი და აღნიშნოთ სურათის ზედა და ქვედა ნაწილები.

7. სამამულო ავტორების გვარები სტატიაში აღინიშნება ინიციალების თანდართვით, უცხოურისა – უცხოური ტრანსკრიპციით.

8. სტატიას თან უნდა ახლდეს ავტორის მიერ გამოყენებული სამამულო და უცხოური შრომების ბიბლიოგრაფიული სია (ბოლო 5-8 წლის სიღრმით). ანბანური წყობით წარმოდგენილ ბიბლიოგრაფიულ სიაში მიუთითეთ ჯერ სამამულო, შემდეგ უცხოელი ავტორები (გვარი, ინიციალები, სტატიის სათაური, ჟურნალის დასახელება, გამოცემის ადგილი, წელი, ჟურნალის №, პირველი და ბოლო გვერდები). მონოგრაფიის შემთხვევაში მიუთითეთ გამოცემის წელი, ადგილი და გვერდების საერთო რაოდენობა. ტექსტში კვადრატულ ფხიხლებში უნდა მიუთითოთ ავტორის შესაბამისი N ლიტერატურის სიის მიხედვით. მიზანშეწონილია, რომ ციტირებული წყაროების უმეტესი ნაწილი იყოს 5-6 წლის სიღრმის.

9. სტატიას თან უნდა ახლდეს: ა) დაწესებულების ან სამეცნიერო ხელმძღვანელის წარდგინება, დამოწმებული ხელმოწერითა და ბეჭდით; ბ) დარგის სპეციალისტის დამოწმებული რეცენზია, რომელშიც მითითებული იქნება საკითხის აქტუალობა, მასალის საკმაობა, მეთოდის სანდოობა, შედეგების სამეცნიერო-პრაქტიკული მნიშვნელობა.

10. სტატიის ბოლოს საჭიროა ყველა ავტორის ხელმოწერა, რომელთა რაოდენობა არ უნდა აღემატებოდეს 5-ს.

11. რედაქცია იტოვებს უფლებას შეასწოროს სტატია. ტექსტზე მუშაობა და შეჯერება ხდება საავტორო ორიგინალის მიხედვით.

12. დაუშვებელია რედაქციაში ისეთი სტატიის წარდგენა, რომელიც დასაბეჭდად წარდგენილი იყო სხვა რედაქციაში ან გამოქვეყნებული იყო სხვა გამოცემებში.

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## MEDICAL AND LEGAL ISSUES OF OBSERVING THE RIGHTS OF A PERSON WITH A MENTAL ILLNESS WHO HAS BECOME A PARTICIPANT IN CRIMINAL PROCEEDINGS

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### Abstract.

There is no health without mental health. The rich links between mind, body and the environment have been well-documented for decades. As the third decade of the millennium begins, nowhere in the world has achieved parity between mental and physical health and this remains a significant human development challenge. An important message within that collective failure is that without addressing human rights seriously, any investment in mental health will not be effective. Attacks on universal human rights principles threaten the physical, political, social, and economic environment, and actively undermine the struggle for positive mental health and well-being. Mental health systems worldwide are dominated by a reductionist biomedical model that uses medicalization to justify coercion as a systemic practice and qualifies the diverse human responses to harmful underlying and social determinants (such as inequalities, discrimination, and violence) as “disorders” that need treatment. In such a context, the main principles of the Convention on the Rights of Persons with Disabilities are actively undermined and neglected. This approach ignores evidence that effective investments should target populations, relationships, and other determinants, rather than individuals and their brains. How that dominance is overcome requires transformative human rights action. However, action that focuses only on strengthening failing mental health-care systems and institutions is not compliant with the right to health. The locus of the action must be recalibrated to strengthen communities and expand evidence-based practice that reflects a diversity of experiences. Such community-led recalibration enables the necessary social integration and connection required to promote mental health and well-being more effectively and humanely.

**Key words.** Mental health, mental disorder, rights and freedoms of a person, restriction of rights and freedoms, providing psychiatric care, criminal proceedings, pre-trial investigation, procedural preventive measures, compulsory medical measures.

### Formulation of the problem.

The right to mental health is best enabled through the convergence of human rights and health determinants, where research and action on the structural, political, and social determinants of distress, including poverty, inequality, discrimination, and violence, are considered vital. There is thus a need for more nuanced research in the field and a resource shift from the dominance of a biomedical paradigm towards the social sciences, emphasizing interdisciplinarity, intersectionality and the role of contextual factors. The biomedical approach to mental health conditions still has an important role to play, but

it must be understood as one of many complex pieces in the rights-based transformation ahead.

A person as an individual, a member of human society, a citizen, a participant in civil, political, and social processes in developed rule-of-law states has a fairly high level of normative guarantees of a number of important rights and fundamental freedoms granted to him or her and ensured by the state. At the same time, there are many negative manifestations in modern society that can weaken or even neutralise the effectiveness of the proclaimed constitutional and internationally recognised principles of respect, recognition, and observance of human rights. The reasons that cause or complicate the overcoming of such negative factors may be social upheavals, including external interference in the life of a particular country. A vivid example of this is Russia's unprovoked large-scale military aggression against an independent neighbouring state, which led to massive deaths of civilians and combatants from both warring sides, numerous destructions of industrial and residential facilities, transport infrastructure, and forced relocation of residents of the occupied and frontline areas to other regions of the country and even abroad.

That is why today, more than ever, the issues of proper protection of the rights and personal interests of a person, which must be ensured by constitutional provisions and laws, bylaws and departmental normative acts developed on their basis, are relevant in Ukraine. The mental sphere of a person should also have appropriate legal protection, and interference with it is prohibited without the consent of the person. The issues of providing adequate medical care to people who show signs of mental disorders, the problems of legislative regulation of responsibility for socially undesirable consequences of their actions, temporary short-term or even quite long restrictions of their individual constitutional, some civil and citizen rights are quite complex and require close attention and respectful attitude from both state structures, officials of various levels, law enforcement bodies and the courts, as well as from society in general and individual citizens.

**Objective:** The author substantiates the expediency and legitimacy of temporary restriction of certain rights and freedoms of a person with mental health problems and who is suspected of committing a criminal socially dangerous act based on the analysis of current Ukrainian legislation and regulations of individual states, as well as national and foreign criminal justice practice.

**Findings:** The article discusses the problematic issues of protection of fundamental rights and freedoms of persons with mental disorders or suffering from mental illnesses who have come to the attention of law enforcement agencies and courts.



Based on the analysis of legislation of certain states, as well as national and foreign judicial practice, the author substantiates the expediency and legitimacy of temporary restriction of certain rights and freedoms of a person with mental health problems and who is suspected of committing a criminal socially dangerous act. It is argued that a decision to restrict the rights and freedoms of such a person may be made exclusively by a court at the request of pre-trial investigation authorities and on the basis of a relevant medical opinion. Attention is drawn to the peculiarities of conducting and completing criminal proceedings on imposing compulsory medical measures on a person.

### **Materials and Methods.**

The study of observing the rights of persons with mental illness involves a multidisciplinary approach that encompasses legal, ethical, medical, and social perspectives. Here's a methodology that could be employed: Literature Review: Begin by conducting a comprehensive review of existing literature, including academic research, legal frameworks, international conventions, and reports from governmental and non-governmental organizations, focusing on the rights of persons with mental illness. This review will provide a foundation for understanding key concepts, legal principles, and debates in the field. Legal Analysis: Examine national and international legal frameworks governing the rights of persons with mental illness, including mental health laws, disability rights legislation, human rights conventions, and case law. Analyze the extent to which these laws protect the rights of individuals with mental illness and identify gaps or areas for improvement. Quantitative Analysis: Utilize quantitative research methods to collect and analyze data on the implementation of mental health laws, policies, and practices in a specific jurisdiction or context. This may involve surveys, interviews, or structured observations to assess compliance with legal standards and the impact on individuals' rights. Qualitative Research: Employ qualitative research methods, such as focus groups, case studies, or in-depth interviews, to explore the experiences, perspectives, and needs of persons with mental illness, as well as their families, caregivers, and mental health professionals. This qualitative data can provide insights into the lived experiences of individuals and inform policy and practice. Comparative Analysis: Compare the rights of persons with mental illness across different jurisdictions, taking into account variations in legal frameworks, cultural norms, and healthcare systems. Identify best practices and lessons learned from other countries that may be applicable to the context under study. Policy Recommendations: Based on the findings of the study, develop policy recommendations aimed at promoting and protecting the rights of persons with mental illness. Advocate for legislative reforms, policy changes, and interventions that uphold human rights principles, enhance access to mental health services, and combat stigma and discrimination.

By employing a rigorous methodology that integrates legal analysis, ethical reflection, empirical research, and stakeholder engagement, researchers can contribute to the advancement of knowledge and the protection of rights for persons with mental illness.

### **The current state of studying the problem.**

In a scientific article on the topic: «Patterns of Mental Health Service Contacts for Young People Deemed Eligible for Court Diversion» the authors found the past research suggests that diverting young people away from the criminal justice system and into mental health services can reduce subsequent reoffending, but the impact of such programs on the rates of timely mental health service contact are largely unknown. In this study, we examined a sample of 523 young people who were deemed eligible for mental health diversion between 2008 and 2015. Around half (47%) of these young people were granted diversion by a Magistrate. Overall, the levels of timely mental health service contact after court finalization, even for those who were granted diversion, appeared low given that the purpose of diversion is to facilitate such contact for all those diverted. Specifically, only 22% of those who were granted community-based diversion and 62% of individuals granted inpatient-based diversion had mental health service contact within 7 days of court finalization. Rates of health contact were much lower for those who were not granted either type of diversion (8% and 23%, respectively). Diversion was associated with a significant reduction in reoffending rates, but the impact of early mental health service contact was less clear. There is a need to understand the reasons why many young people are not accessing appropriate mental health services following diversion in order to improve outcomes and fully realize the intended benefits of mental health court diversion [1-4].

In a scientific article on the topic: «Psychiatric Illness and Criminality» the authors Noman Ghiasi, Yusra Azhar, and Jasbir Singh found the to break the links between mental illness and criminality requires an inter-professional team of psychiatrists, social workers, and patient advocates to detect and reduce or eliminate risk factors that lead persons with mental illness to commit a crime. This team approach includes a multi-tiered system that would identify at-risk patients early on and provide resources to prevent situations that bring the persons with mental illness in contact with the criminal justice system such as medical non-compliance and lack of food and shelter. For those individuals already inside the criminal justice system, there needs to be a targeted approach that includes rehabilitation, education, and empowerment. Finally, a concerted effort is required to educate the public at large and those in the criminal justice system, in particular, to dispel misperceptions and prevent mischaracterization, mislabeling of criminals as persons with mental illness and vice versa [5].

In a scientific article on the topic: «Associations between antipsychotics and risk of violent crimes and suicidal behaviour in personality disorder» the authors found the primary outcomes were violent crime suspicions (also described as violent crimes/criminality in this paper) and suicidal behaviour. Data on suspected crimes were extracted from the Administrative System of the National Police including data on all crimes with the dates of the suspected crimes reported to police, also including those not pursued after being reported. A suspected crime follows an initial investigation where a decision is made to pursue a charge. The outcome of suspected crimes instead of convictions is more

sensitive as a proportion of such suspicions are dropped on the basis of offenders' mental health concerns [6].

In a scientific article on the topic: «Depression and violent crime: is there a relationship?» the authors found a statistically significant association between depression and violent crime, with an effect size even stronger than that found between depression and self-harm. However, implications for changes in clinical practices and guidelines are still limited, since generalisability of findings is restricted to patients with more severe symptoms living in a high-income population with low level of criminality. Furthermore, possible impact on self-stigma and public stigma still strongly associated with mental illness, including depression, need to be evaluated in order to modify guidelines [7].

Evaluation of the minimum age for consent to mental health treatment with the minimum age of criminal responsibility in children and adolescents: a global comparison the authors Mona Noroozi, Ilina Singh and Mina Fazel investigated analysis demonstrates the non-uniformity of CAMH policies internationally, as only a few of the countries in Groups A–C had established consistent age markers for competency for both criminal responsibility and mental health consent. The maintenance of different legal thresholds for the age of medical and legal consent within a majority of countries is not aligned with the emerging evidence-base for the development of moral judgement, decision-making and responsibility.<sup>6</sup> Responsibility for a crime requires an individual to have the capacity to make moral judgments, to understand social and legal norms and to weigh risks and consequences both for themselves and for others.<sup>47</sup> Responsibility for medical decision-making requires the capacity to understand and to weigh information about the risks and benefits of a procedure and to engage in a reasoned decision-making process. While criminal responsibility entails another set of evaluative criteria, such as intent and motivation, the first order decision-making competencies in criminal acts and in medical decision-making are arguably sufficiently similar to warrant closer examination of the globally widespread differences in MACR and MAMHC legislation. We suggest this examination is particularly important in the context of mental health treatment, where the benefits of early intervention to treatment are significant and the barriers to accessing services are already high [8].

## Results and Discussion.

Medical aspects the problems of ensuring the rights of persons showing signs of mental disorders are the most social in terms of their subject matter, research methodology and implementation practice. This is due to the peculiarities of patients in practical psychiatry, the difficulties of psychiatric diagnosis of altered mental states and the wide range of mental disorders diagnosed by specialists: from borderline (related) adaptation disorders with signs of early dementia to severe chronic psychosis and profound dementia. In some cases, psychiatrists deal with the diagnosis of conditions of practically healthy people in terms of the risk of developing a mental illness or simulating the latter as a conscious image of non-existent signs of mental disorder. The importance of solving such problems increases significantly if a person finds himself or herself in a situation that requires

a criminal law solution. This may be the case when a person with signs of mental health disorders becomes a participant in criminal proceedings as a suspect, victim or even a witness, which necessitates a clear definition of their procedural status.

It is worth noting that there is a risk of an expanded interpretation of mental pathology, overdiagnosis of mental illness, mechanical transfer of clinical assessments and terms to the multiplicity of variants of individual personality and behaviour of an individual in unusual or even seemingly simple situations. In the context of the variability of clinical concepts and diagnostic criteria for mental states, the danger of not only erroneous judgements, but also deliberate distortions of reality, and the establishment of incorrect conclusions by psychiatric experts under the pressure of social circumstances or subjective bias, is growing. The cost of such an expert error in criminal or even civil proceedings can be prohibitive. That is why forensic psychiatric diagnostics has a clearly defined legal aspect, which subordinates this activity to certain rules that guarantee, on the one hand, the rights of the individual, and, on the other hand, the scientific validity of the psychiatric opinion. The formal side of this activity is provided for by criminal and civil procedural legislation, and the principles of forensic psychiatry should help protect the rights of mentally ill persons who have committed socially dangerous acts or have been involved in criminal proceedings as a suspect, victim, witness or participated in the commission of a transaction [9]. At the same time, the existing mental illness or pathological mental conditions make it difficult for a person to socially adapt, cause disturbances in their behaviour, create a risk of committing dangerous actions or omissions not caused by the situation, which can cause physical harm to both the person and others, and lead to material damage.

Thus, the interests of each mentally ill person or person with mental health problems, as well as the state, society, and each of its citizens, require legal protection. The contradictory nature of this requirement stems from the existing divergence of personal and public interests. But this does not mean that they are completely and absolutely opposed. The general moral basis on which any medical and legal science, including psychiatry, criminal law, criminal procedure, forensics, and psychiatric and legal practice, is based is the recognition of human life and health as the highest social value. Preserving the life and health (including mental health) of every person is in the interests of the individual, society, and the state as a whole. Such circumstances necessitate the legislative establishment of certain social restrictions for persons with mental disorders. However, the size and nature of such restrictions should correspond to the nature and severity of mental disorders, the type and degree of social danger of a mentally ill person. At the same time, it should always be borne in mind that in any case, the rights, and freedoms of a person with signs of mental disorders remain inalienable and are subject to comprehensive protection by the state and its bodies.

Legal aspects. An important achievement of legal and psychiatric thought in modern Ukrainian society is the legislative recognition of the presumption of mental health, proclaimed in Article 3 of the Law of Ukraine "On psychiatric care", according to which every person is considered to be free of mental disorder until the presence of such a disorder is

established on the grounds and in the manner prescribed by this Law and other laws of Ukraine (Law of Ukraine "On psychiatric care" [10]. Persons who may have signs of mental disorders, and even those who are provided with psychiatric care, are endowed with the rights and freedoms provided for by the Constitution and relevant other laws and by-laws of Ukraine. Restriction of their rights and freedoms is allowed only in cases provided for by the Constitution of Ukraine and in accordance with the requirements of the laws of Ukraine. One of such important rights of a person that may be restricted is his/her right to protection of his/her personal data.

According to the Law of Ukraine "On personal data protection", personal non-property rights to personal data that every individual has are inalienable and inviolable (Article 8). Personal data may be classified as confidential information about a person by law (Article 5) (Law of Ukraine "On personal data protection", 2010) [11]. It should be borne in mind that the diagnosis of a mental disorder established for a particular person and recorded in the relevant documents as such reflects personal data about a particular person and has a distinct social and ethical burden. Today, unfortunately, many people associate psychiatry with the inevitable restriction of patients' freedom or with repressive measures that can be applied to patients. In psychiatry, there is even talk of the "stigma of mental illness" as a kind of mark, the main aspects of which are considered to be the singling out of a person with a psychiatric diagnosis from other members of society as a deviant, abnormal and socially potentially dangerous person, with the attribution of negative everyday perceptions of the mentally ill to them. This leads to further discrimination against mentally ill people in society. Stigma is a social symptom of mental illness, an ontological difference between mentally ill and healthy people. Sometimes it even comes down to a socio-cultural ban on certain relationships in society, which prevents a person with mental health problems from adapting to certain desirable and meaningful living conditions.

On the other hand, the possibility of direct or indirect coercion that can be applied to a mentally ill person creates a frightening aura around psychiatry as a branch of medicine, causes public distrust not only of persons with mental disorders, but also of psychiatrists, and this causes a natural desire to protect oneself from psychiatric interference in one's personal life. Therefore, the task of the legislation that regulates the procedure for interference in the mental sphere of a person, involves the restriction of his or her rights and regulates the behaviour of persons with mental health problems is to minimise coercion to the limits determined by medical necessity. This should serve as a guarantee of ensuring the observance of human rights and personal interests. At the same time, Article 6 of the Law of Ukraine "On psychiatric care" establishes confidentiality of information about the state of mental health of a person and the providing of psychiatric care (Law of Ukraine "On psychiatric care", 2000) [10]. This means that the right to receive and use confidential information about the state of mental health of a person and the providing of psychiatric care to him/her has the person himself/herself or his/her legal representative. It is allowed to transfer such information without the consent of the

person or without the consent of his or her legal representative only for the following purposes: organising the providing of psychiatric care to a person suffering from a serious mental disorder; conducting a pre-trial investigation or a court hearing of criminal proceedings - at the written request of an investigator, prosecutor, investigating judge or court.

Equally important is the establishment of the principles of psychiatric care, which in Ukraine recognise the legality, humanity, respect for human and civil rights, voluntariness, accessibility, and compliance with the current level of scientific knowledge, the need for and sufficiency of treatment measures with minimal social and legal restrictions. The last of these principles - minimum social and legal restrictions - is directly related to the application of such restrictions in criminal proceedings. That is why the legal provisions of the criminal and criminal procedure legislation of Ukraine and departmental bylaws regulating the procedure for conducting forensic psychiatric examination, if they establish regulations that may affect the rights and interests of persons showing signs of mental disorders, must necessarily take into account the need to ensure not only the basic constitutional rights and freedoms of man and citizen, but also the basic principles of psychiatric care.

In psychiatry, obtaining a patient's consent to any medical intervention in the area of their health, in particular, hospitalisation, prescription of treatment or research, is considered in several aspects. First of all, information about the disease, the significance of the clinical symptoms, regarding plans, prognosis of the duration of treatment and associated risks, etc. are considered to be information of ethical and legal significance. From this perspective, an individual's informed consent is a legal right of competent patients, and therefore their consent must be voluntary, conscious, obtained without threats and violence, and refusal to receive the proposed psychiatric care should not affect the patient's situation. However, certain aspects of the right of persons with mental disorders to refuse psychiatric care are linked to the problem of their responsibility for socially dangerous acts. That is why the voluntariness of receiving psychiatric care as one of its principles has certain legislative restrictions. For example, in accordance with the provisions set out in Art. 14 of the Law of Ukraine "On psychiatric care", a person suffering from a mental disorder may be hospitalised by a psychiatrist's decision to a psychiatric institution without his/her informed consent or without the consent of his/her legal representative, if his/her examination or treatment is possible only in a hospital setting and if the person is diagnosed with a serious mental disorder, as a result of which he/she commits or reveals real intentions to commit acts that pose an immediate danger to him or others, or is unable to independently meet his basic life needs at a level that ensures his life's activity. The same law (Article 19) provides for the possibility of applying, prolonging, changing, or terminating the use of compulsory medical measures without the person's consent. At the same time, the fact that the requirements of Article 16 of the said law require the head of a psychiatric institution to immediately notify family members, other relatives, or their legal representative of a person's involuntary hospitalisation in a psychiatric institution should be considered a manifestation

of concern for the observance of human rights. If there is no information about them or their place of residence, the internal affairs authorities at the place of residence of the person are obliged to inform the person about the hospitalisation (Law of Ukraine "On Psychiatric Care", 2000) [10]. The rights, freedoms and legitimate interests of a person in need of compulsory medical measures are protected by the relevant criminal and criminal procedural norms, which set out the grounds, types, procedure for the application of compulsory medical measures, the special order of criminal proceedings in this category during pre-trial investigation and court proceedings, the basic rights and obligations of participants in criminal proceedings and, separately, the rights of a person with signs of mental disorders.

The current legislation of Ukraine provides for the possibility of applying by the court not only compulsory medical measures related to the determination of mental health problems or damage to the mental sphere, but also compulsory treatment for diseases of other etiologies. Compulsory treatment of a person for an illness that does not affect a person's mental health also to some extent violates the principles of voluntary medical care and is a manifestation of a temporary restriction of a person's rights and freedoms, and therefore is carried out only on the basis of a substantiated court decision. In accordance with the provisions of Article 96 of the Criminal Code of Ukraine, compulsory treatment may be imposed by a court, regardless of the punishment imposed, on persons who have committed a crime (criminal offence) and have a disease that poses a threat to the health of others. To confirm that a person has a certain disease, it is sufficient for the court to obtain a relevant medical report. Such compulsory treatment is carried out at the place of serving a sentence of deprivation or restriction of liberty or in special medical institutions in case the perpetrator is sentenced to another type of punishment. Danger to the health of other persons is posed by diseases classified as socially dangerous diseases by the Fundamentals of Ukrainian legislation on healthcare, which, according to the provisions of Article 53 of the Fundamentals, include tuberculosis, mental illness, venereal diseases, AIDS, leprosy, chronic alcoholism, drug addiction. The legislator does not consider the consequences of any disease on the person sentenced to punishment, who may be subject to compulsory treatment. However, if it is a case of the established presence of a mental illness, its consequences should not affect the ability or the full extent of the convicted person's ability to understand or control their actions (inaction) both during the commission of a criminal offence and at the time of sentencing and appointment of compulsory treatment. The procedure for hospitalisation and compulsory treatment of patients with such diseases is established by law, and the provision of compulsory medical care, although associated with the commission of socially dangerous acts by a person, criminal proceedings, and the imposition of a sentence for a criminal offence by a court, is not considered to be compulsory medical measures.

The following measures cannot be applied to a person in respect of whom compulsory medical measures are envisaged or the issue of their application is being considered: personal commitment, personal guarantee, pledge, house arrest, detention, as well as temporary detention as a preventive measure. It is

believed that a person's current mental state deprives him or her of the ability to understand the essence, meaning and purpose of such procedural coercive measures. They can only be subjected to preventive measures whose purpose and grounds are determined by the nature and characteristics of the person's mental state, such as transferring them to the care of guardians, adult close relatives or family members with mandatory medical supervision or placing them in a psychiatric institution in conditions that exclude their dangerous behaviour in view of their mental state. Such preventive measures are applied only by the court and from the moment the fact of mental disorder or existing mental illness is established, if the person's stay without appropriate supervision by third parties may harm the interests of criminal proceedings or cause damage to the person or other people or enterprises, institutions, etc. If, prior to the diagnosis of a person's mental health condition during the pre-trial investigation in the general procedure, such a suspect was subject to any preventive measure under Article 176 of the CPC of Ukraine, the investigator or prosecutor, when deciding to change the pre-trial investigation procedure, must immediately consider cancelling or replacing it with an appropriate preventive measure under Article 508 of the CPC of Ukraine. The application of the changed preventive measures is carried out in a general and appropriate manner for each of them. At the same time, for persons whose preventive measure was chosen to be detention, the prosecutor or investigator, in agreement with the prosecutor, must request the court to impose a preventive measure of placing the person in a psychiatric institution with detention in conditions that exclude his or her dangerous behaviour.

The special procedure for the termination of pre-trial investigation of criminal proceedings on the application of compulsory medical measures is that such proceedings can be terminated only in two clearly defined forms: either by closing them or by filing a petition for the application of compulsory medical measures by the court. The provision of medical care to persons to whom compulsory medical measures have been applied by a court is carried out in accordance with departmental rules established by the "Procedure for the application of compulsory medical measures in psychiatric institutions to persons suffering from mental disorders and who have committed socially dangerous acts", approved by Order of the Ministry of Health of Ukraine of 8 October 2001 No. 397 (On Approval of Regulatory Documents on Certain Issues Concerning the Application of Compulsory Medical Measures to Persons Suffering from Mental Disorders, 2001) [12]. The purpose of these measures is to protect the rights of such persons, their mandatory treatment, and to prevent them from committing any socially dangerous acts.

It is important to note that in Ukraine, the requirements of not only Article 19 of the Law of Ukraine "On Psychiatric Care", but also the normative provisions of the national criminal and criminal procedure legislation, indicate that the application, change or termination of compulsory medical measures to persons suffering from mental illness and who have committed socially dangerous acts or have fallen ill after committing them, is exclusively a judicial procedure. However, it should be borne

in mind that compulsory medical measures are applied to a particular person only if there is evidence of the public danger of that person at the time the court makes a decision on the application of such measures.

International legal aspects. Today, the application of compulsory medical measures to persons suffering from mental disorders is provided for in the legislation of most countries. The compulsory treatment of mentally ill criminals is provided for in international legal acts. For example, the Standard Minimum Rules for the Treatment of Prisoners, adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 30 August 1955), provide that persons who are recognised as mentally ill should not be imprisoned and that measures should be taken to transfer them to institutions for the mentally ill as soon as possible. Prisoners suffering from other mental illnesses or disabilities should be placed under supervision and treated in special institutions under the guidance of doctors. At the same time, prison medical services should identify all physical and mental disabilities of prisoners and take care of their treatment, and such prisoners should be under special medical supervision during their stay in prison (UN Standard Minimum Rules for the Treatment of Prisoners, 1955) [13].

The Principles for the Protection of Mentally Ill Persons, approved by the UN General Assembly on 17 December 1991, state that all persons suffering from or presumed to be suffering from mental illness shall be treated humanely and with respect for the inherent dignity of the human person, and that in respect of persons who have committed acts prohibited by criminal law and are detained in the course of a trial or investigation, if they are presumed or established to be suffering from mental illness, the general principles of protection shall be applied in full with the following minimum requirements, necessary changes and exceptions in the circumstances that will not prejudice their rights. Provisions of domestic law may authorise a court or other competent authority, on the basis of an independent medical opinion, to order the placement of such persons in psychiatric institutions for isolation for the purpose of providing psychiatric care. The confidentiality of information concerning such persons must be respected (Principles for the Protection of the Mentally Ill and the Improvement of Mental Health Care, 1991) [14].

At the same time, the legislation of the Republic of the United States of Brazil, in particular § 1 of Art. 22 of the Criminal Code, provides for the possibility of mitigation by the court of punishment in the range of one to two thirds of the sanction of the relevant article of the criminal law in respect of persons who, due to mental disorders, could not fully understand the criminal nature and consequences of their act or make decisions independently in accordance with such understanding (Criminal Code (Decree-Law No. 2.848 of 07.12.1940, as amended by Law No. 14.344 of 24.05.2022), Brazil) [15].

In the vast majority of cases, national legislative norms consider compulsory medical measures as a type of other criminal law measures, but in some countries, for example, in the People's Republic of China, France, Japan, and the Republic of Korea, such measures are not included in criminal law institutions and are applied within the framework of civil or administrative law rather than criminal law.

## Conclusions.

The issue of compulsory medical measures is controversial in the criminal science of many countries. In some of them, these measures are an alternative punishment and have a criminal nature. This feature is inherent, for example, in the criminal law of Switzerland. When the court imposes such measures, it adheres to the principle of proportionality, which means that the court imposes an equivalent compulsory measure in accordance with the crime committed by the sick person.

The need to ensure the rights of persons showing signs of mental disorders determines the procedural features of criminal proceedings on the application of compulsory medical measures. They include: mandatory and full pre-trial investigation and certain rules on the procedure for its implementation and identification of participants in such investigation; mandatory establishment of certain circumstances related to the commission of socially dangerous acts and involvement in their commission of a particular person who has signs of a mental disorder present at the time of the pre-trial investigation or in the past; mandatory involvement of an expert for forensic psychiatric examination; possibility of consolidation and selection of materials of criminal proceedings during pre-trial investigation carried out in a special manner; special procedure for completion of pre-trial investigation; special procedure for trial and certain requirements for court rulings; establishment of a court procedure for extension, change or termination of compulsory medical measures; possibility of resumption of criminal proceedings after termination of application of compulsory medical measures.

Persons suffering from mental illness in Ukraine have the same rights and freedoms as citizens of other states and can use them to the fullest extent. The fact that such persons come to the attention of law enforcement agencies or courts does not deprive them of the opportunity to fully exercise their rights in person or with the assistance of others. Certain cases of temporary restriction of such rights are solely due to the peculiarities of the course of the disease and the mental state of the patient caused by it and are based solely on the provisions of the relevant laws of Ukraine. Compliance with these laws is the responsibility of everyone. Temporary restriction of the rights and freedoms of a mentally ill person is due to the need to protect him or her and other members of society from the possible harmful effects of mental illness on the patient's behaviour. The use of such restrictive measures is in line with European and global practice and the main provisions of the European Convention on Human Rights. Rights and obligations enshrined in the relevant laws and bylaws, additional requirements for the activities of pre-trial investigation bodies and courts in conducting criminal proceedings on the application of compulsory medical measures, strict adherence to the procedural procedure for the application of such measures and all procedural actions and procedural decisions, proper training of law enforcement, pre-trial investigation bodies, judges and lawyers, improvement of their general legal culture and professional competence are important means and ways to ensure the rights and interests of persons with mental disorders or other mental health problems in criminal proceedings.

If the peculiarities of a person's mental disorder or mental illness prevent the conduct of procedural actions with his/her participation, the prosecutor has the right to decide to conduct certain procedural actions during the pre-trial investigation without the participation of such a person. The legislator does not grant the investigator such a right. However, the investigator may file a relevant petition with the prosecutor, who, by his/her decision, allows certain investigative (detective) actions or procedural actions for a certain period of the pre-trial investigation without the participation of a person with a mental disorder or mental illness, or refuses to satisfy such a petition. If such circumstances arise during the trial, the relevant decision is made by the court. However, in all cases, even in the absence of the person in respect of whom the issue of applying compulsory medical measures is being decided, the participation of the person's defence counsel in the procedural actions where the person would have to participate is mandatory. This serves as an additional guarantee of ensuring the rights of a person suffering from a mental illness or other mental disabilities.

Everyone, regardless of their diagnosis, the voices they hear, the substances they use, their race, nationality, gender, sexual orientation or gender identity, or other status, is guaranteed the right to non-discrimination in accessing care and support for their mental health. However, discrimination de jure and de facto continues to influence mental health services, depriving users of a variety of rights, including the rights to refuse treatment, to legal capacity and to privacy, and other civil and political rights.

Integrate public health evidence, lived experience and rights-based research to guide decision-making on global and national public policy strategies. That should include prioritizing a shift away from medicalization in the development of mental health, criminal justice, and public welfare-related reforms. Promote mental health by increasing financial support to sustainable, cross-cutting programmes that reduce poverty, inequalities, discrimination on all grounds and violence in all settings, so that the main determinants of mental health are effectively addressed. Modernize medical education and integrate mental health and human rights into medical education and research, with a special focus on the need to radically reduce coercion, over-medicalization, institutionalization, all forms of discrimination against persons with mental health conditions and other human rights violations.

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