LEGAL SUPPORT OF MENTALLY ILL PEOPLE IN THE RUSSIAN EMPIRE AT THE END OF THE 19TH – IN THE BEGINNING OF THE 20TH CENTURY

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Summary

The article deals with the study of the legal support for mentally ill people in the Russian Empire at the end of the 19th of century – in the beginning of the 20th century. The basic fields of law regulating the rights of people with psychical and intellectual development disorders were defined. The role of the normative legal acts for mentally ill people of that time was analyzed.

Key words: legal support, mentally ill, disabled persons, court, Russian Empire.

Аннотация

Статья посвящена исследованию правового обеспечения душевнобольных в Российской империи в конце XIX века – начале XX века. Определены основные отрасли права, которые влияют на права душевнобольных инвалидов. Проанализирована роль нормативно-правовых актов для душевнобольных того времени.

Ключевые слова: правовое обеспечение, душевнобольные, инвалиды, суд, Российская империя.

Topicality of the research subject. Psychical health and psychical well-being is one of parameters that determine the life quality level. These categories make people consider their lives valuable and meaningful, and enable them to be active and creative members of the society.

Ukraine has been the country with the highest number of mental disorders in Europea for years. This inconsolable information was published by the World Health Organization. According to this respected organization, 1.2 million of Ukrainians suffer from psychical diseases. Every third, as specialists estimate, suffers from nervous stresses. Thus, the experts forecast that by 2020 the diseases of the nervous system will be among five top illnesses by the number of human remuneration and outrun cardiovascular diseases [1].

It should be noted that study of the legal support of mentally ill patients at the end of the 19th – in the beginning of the 20th century will allow better understanding of the place of the mentally ill people in the society and primarily, in what way their rights were protected by the government. It is necessary to mark that the chosen subject is not enough studied in the national historic and legal literature. Understanding of formation and development of the laws that regulated the rights of the mentally ill people in the Russian Empire at the end of the 19th– in the beginning of the 20th century will enable to realize which place the mentally ill people took in the society.

The objective of research is enabling to trace the ways of formation, the features of development, content, forms and methods of adjusting the legal position of mentally ill people in the Russian Empire at the end of the 19th – in the beginning of the 20th century on the basis of complex study and retrospective analysis of regulatory legal material, as well as study and analyze of the problem of the legal support of mentally ill people in the Russian Empire at the end of the 19th – in the beginning of the 20th century at the example of the Russian and Ukrainian provinces.

Analysis of the latest studies. The development of legal support of mentally ill people in the Russian Empire at the end of the 19th – in the beginning of the 20th century became the object of study, mainly, in the period of the Russian Empire. It should also be emphasized that this problem has not been properly studied by the modern researchers, but there are only a few works of researchers, such as O.O. Malyshev [11], O.V. Shershel [12], M.M. Yasynok [13].

Presentation of basic material. One of the important tasks put before the public in the Russian Empire at the end of the 19th – in the beginning of the 20th century definitely was the issue of the proper protection of rights of mentally ill people. In the Code of Criminal and Correctional Punishment Laws 1845 there was the position that clearly acknowledged and specified on the fact which people can be released from the responsibility for a crime or misconduct. In this category there were separately reckless, mentally ill and those having attacks of illness that resulted in privation of mind or complete loss of memory [2, article 92].

To admit a person mentally incompetent and to take off the responsibility for the act done, the person who committed the crime must have had attacks of loss of mind or complete loss of memory, and those attacks were to be exactly proven in a legal method and recognized by the court decision. However, this rule was not applied to those mentally ill people who had already been recognized mentally ill. The sickly state had to be well-proven and could not be built on suppositions and phenomena.

In every new crime, even committed by the person recognized mentally ill, the repeated examination for the loss of mind for the purpose of legal responsibility was obligatory, even though previous examination remained valid in relation to their civil legal capacity. Therefore a prosecution could take place as to the person that was officially recognized insane and was at the moment of the crime in establishment for the mentally ill people. In order to recognize a person mentally incompetent, the witnesses' evidence was not enough to the court, it was necessary to listen to the explanation of the doctors.

However, the doctors' conclusion about the mental state of the defendant was not determinative for a court and was estimated on the internal persuasion.

The issue of insanity of the mentally ill person could only rise if it was stated as one of the reasons in the indictment or the suspect during the investigation [3, article 93].

A mentally ill or born insane person was not pleaded guilty for the crime or misconduct, when there was no doubt that the mentally ill or born insane did not know about the illegality and content of their action because of their state. However, if a mentally ill person committed the murder or attempted to kill others or himself/herself, or committed arson, he or she was placed in

the house for the demented and insane. In he/she had parents or relatives who wished to look after the insane person, they became responsible for care and treatment of the mentally ill person.

Discharge from the house for the insane of those recognized insane who committed a crime in the insane state and the reduction of the set terms of surveillance of two years after their recovery depended on the regional courts and trial chambers in the jurisdiction [4, article 95].

In the case of Fedorov accused of arson who suffered from the falling sickness, the following questions should be answered for exact determination of measure of guilt and responsibility of the defendant: 1. Was the defendant recognized as imbecile in accordance to the legal procedure? 2. To what degree does his imbecility belong? 3. Did he only act because of his foolishness or under other persuasions? Upon considering these questions by the Medical justice, Kalina Fedorov was not positively recognized an imbecile or insane. As to the degree of imbecility, the materials of the case contains no proof confirming the insufficiency of mental development or belonging to the category of persons acting unconsciously and requiring special attitude. Besides, his brother and 17 peasants confirm that the defendant was not noticed in imbecility, and the defendant himself acknowledged all his actions. Consequently As it followed, Fedorov committed arson in complete sense of his actions and with malicious persuasions and by the considered intention and must bear punishment in accordance with the law [5].

During enforcement of law there remained the problem issue of the procedure of examining the mentally ill, confession of person being mentally sick and establishment of the custody for much time was spent for that, and the state could not attain a primary purpose – to protect and provide the rights of the mentioned category of people. It happened quite often, that people were recognized "mentally ill" after many years of suffering that resulted in the non-property relations. While the fact of mental disease was recognized for a person, the considerable interval of time passed, and the person was on "probation". The issues as to the custody could remain unsolved for years.

In practice, long time passed before the matter of recognized insane began to be handled in the Senate. Before that moment, the examined persons were recognized insane at the local level, their property was temporally passed to the relatives interested in disposition of that property. This substantial point provoked frequent abuses from the side of potential guardians, usually future heirs.

The persons who were finally recognized insane were given to their relatives under supervision, or (if there were no such persons or in case of refuse to look after) placed in the specialized establishments for the mentioned category of people.

The property of the persons who were recognized insane was passed to their heirs. The following issues were thus stipulated: it was forbidden to sell or mortgage the property during the life of the proprietor, the duty to keep the profits was assigned. The legislator additionally noted the presentation of the report from the trustees about management of the property and assumed the possibility to get the fee for realization of custody over the person and property of the mentally ill.

The legislator separately set the rules of custody over the person and property of the mentally ill who was in a foreign country in case of absence of relatives and close people that agreed to undertake these powers. In such case, caring after a person and property of a mentally ill patient depended directly upon the Russian consul in the district of which that person was [6].

A few directions in which the limitations of rights of mentally ill people were exercised can be conditionally distinguished.

Family rights. Marrying "delirious and insane" was forbidden, marriage relationship with the mentioned category of persons was not recognized valid. The legislator entrenched the impossibility of being married to a mentally ill person as a separate norm for the persons of "The New Testament and Lutheran Sermon". Marriage was dissolved upon the request of one of the parties if it was proven that the other party "lost his/her mind and had the attacks of madness".

A few conditions were prerequisite for this purpose, such as the duration of stay of person in such state exceeding a year, and a competent doctor's conclusion that there was no hope for the recovery of the mentally ill was required. In that case the party that required the dissolution of the marriage was obliged to provide the custody of the other party, if the latter did not own the property sufficient for independent living [7].

Some restrictions concerned the law of inheritance. All spiritual testaments had to be concluded in "good sense and light memory". In this connection those testaments that were made in violation of this norm were recognized invalid. The witnesses that were present during the conclusion of the testament, had to confirm, that in the moment of conclusion of testament they were in "a healthy mind and light memory". However, it should be noted that the people who had mental weaknesses were not denied the right for the inheritance. But in such case, expression of consent or abandonments from entering into an inheritance depended upon a guardian that was appointed for a mentally ill person.

Rights on disposing of property were suspended in connection with "mental affections".

Concluding any agreements on the behalf of "delirious and insane" was forbidden. Namely, sales, loan, deposit, pledge, property receipt for custody contracts concluded by a mentally ill person were recognized invalid. Strictly speaking, that category of people could not be witnesses during realization of civil agreements, for they themselves could not on a law conclude such agreements. They could not testify at executing of the notarized civil acts. Validity of the power of attorney was cancelled by the recognition of the principal or attorney to be "delirious and insane".

The limitations in a trial had their features. On the discretion of the judge or on the request of the parties, the "delirious and insane" were not allowed to testify, and to the imbecile who did not understand the holiness of the oath could not testify under oath. Those who were under the custody could not be an attorney in court. The persons who lost their mind could not be members of the jury in court. The defendants for this category of people were their law guardians. Those persons who were forbidden to freely dispose of their property could not also be the participants of a trial. The mentioned people were now allowed to give an oath. People who lost their mind and those confined to independently express their will were equated with the minors by the legislation. The term of limitation of actions in such cases was calculated from the moment of recognition then healthy on the results of examining, according to Articles 378 and 383 of volume X of the Statute Book. The prohibition was separately set for

the consideration of the cases that coincided with the interests of persons that were on a care, by the court of arbitration.

It should be noted that the legislators provided the protection of the personal rights of mentally ill persons not only by means of limitations, but also under the penalty of criminal punishment to the persons who would violate the rights of this category of people. For such unlawful action, as declension of the mentally ill person to marriage, a person was deprived all rights and subjected to deportation. Those accused of "sodomy committed over an imbecile" could be sentenced for hard labour at penal servitude for ten to twenty years [8].

In 1889, the supplement was added to third collection of the Statute Books of the Russian Empire on establishment of the custody over mentally ill people. The procedure was clearly described as follows: the custody establishments that gave powers to the guardians were obliged to publish the data in the Senate announcements free of charge, clearly presenting personal data of a person under custody, their title or rank, also indicating the reason why that custody was established, and the name of the institution that took such a decision. Such lists were published as appendixes to the Senate announcements. Sometimes the custody was taken off a certain category of people, then such changes should also have been published in the Senate announcements referring to the number of the primary publication. What did that mean in practice? That norm simplified the notarial control of entering into civil legal contracts and repealing [9].

The legislation mostly equalized mentally ill patients with the minors. In this connection, the custody over persons suffering psychical disorders was built by the analogy to that of the minor. Thus, in practice a guardian completely replaced the person being under the custody in all cases, when the will of the mentally ill person was necessary, namely participating in court, as a participant of trial, giving consent or refusal to marry or come into inheritance.

It should be emphasized that the Draft Civil Code of Law 1905 contained no substantial changes concerning the mentally ill people in the civil and domestic law. Like previously, the ward's profits could only be used for his or her treatment and maintenance. The Draft Civil Code of Law there contained the provision that the payment for the guardian for realization of guardianship was set in a percentage ratio from annual earnings of ward's property. This norm could stimulate the guardians to increase profits from property of the person under the custody, for their earnings depended on that. People could be appointed guardians if their moral internals and property state gave hope that the mentally ill persons would get proper care and their property would be kept in safety.

The persons who could not be guardians were those who:

1) were convicted to hard labour, deportation to the settlement or maintenance in the house of corrections, incorporated with debarring imprisoned;

2) were released from the duties of a guardian for abuse of guardian's rights,

3) conducted the amoral way of life;

4) were under age of twenty years old, except for an adult husband and adult persons appointed guardians by the testament or to other act (article 526);

5) mentally ill, deaf-mute, mute and blind, that were on care or custody;

6) were declared incompetent as a result of wastefulness or usual drunkenness;

7) were declared helpless, and persons who were declared helpless, careless or malicious;

8) monks [10, article 531].

Supervision over the activity of guardians was assigned to a special official – "guardian's supervisor" who could at any time check the actions of the guardian and the way of ward's life. The guardian was obliged to give a report for the previous year till 1st January as to the disposal of ward's funds and property. It should be noted that there the possibility to file a lawsuit in civil order on reimbursement of material losses that were caused by the guardian to the ward was provided.

Thus, it is necessary to pay attention that in the second half of the 19th century the legislators provided protection of rights of the people that had mental disorders and the members of their families already.

The approach of the legislators of that time was just enough on the issue of criminal responsibility of mentally ill people. Those mentally ill people whose guardians refused from the care were automatically placed into the houses for demented.

Conclusion. Considering the issue of the legal support in the Russian Empire at the end of the 19th – in the beginning of the 20th century, it is necessary to emphasize that in the Statute Book of the Russian Empire 1857 not only the rights and duties of mentally ill people were provided, but also the rights of mentally ill people were considerably limited as to legal capacity and vital functions. The basic was that lifetime guardianship was set for such people, in many cases they were equalized in rights with the minor, mentally ill people were acknowledged legally incapable, limited in legal capacity, over the guardians were appointed for such disabled people, in case of absence of guardians mentally ill people were placed in the establishments that carried out the custody over such a category of people.

Another negative factor was that mentally ill people in the Russian Empire at the end of the 19th – in the beginning of the 20th century were repeatedly examined, if they committed a criminal offence, even though at the moment of the crime a person was already acknowledged mentally ill. However, it should be noted that a number of positive changes already took place in a that period, for example, the government tried to carry out the custody over the mentally ill, the issue of responsibility for that category of disabled persons was discussed, a clear procedure of treatment with a term of two years was developed. A guardian was responsible by the law both for the mentally ill person and for his or her property he was obligated to take care of. Mentally ill people were released from corporal punishment and had no right to enter into marriage relations.

Thus, it should be underlined that taking measures to protect the rights of mentally ill people was an objectively existing social challenge of that period.

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ПОНЯТИЕ И ФОРМЫ ГОСУДАРСТВЕННОЙ ФИНАНСОВОЙ ПОДДЕРЖКИ НАУЧНЫХ УЧРЕЖДЕНИЙ В УКРАИНЕ: ПРАВОВОЙ АСПЕКТ

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Summary

The author discusses the concept of public financial support for academic institutions in Ukraine and its form. As a result of the scientific analysis of regulations and scientific views on the concept and forms of financial support it formulated the author's approach to the definition of public financial support for academic institutions in Ukraine and it is determined that the forms of state support of scientific institutions in Ukraine include: 1) government funding, 2) granting tax benefits; 3) financing participation in international scientific and technological cooperation.

Key words: state financial support, academic institutions.

Аннотация

В статье рассматриваются понятие государственной финансовой поддержки научных учреждений в Украине и ее формы. В результате научного анализа нормативных актов и научных взглядов на понятие и формы финансовой поддержки сформулирован авторский подход к определению государственной финансовой поддержки научных учреждений в Украине и определено, что к формам государственной поддержки научных учреждений в Украине относятся 1) бюджетное финансирование, 2) предоставление налоговых льгот; 3) финансирование участия в международном и научно-техническом сотрудничестве.

Ключевые слова: государственная финансовая поддержка, научные учреждения.

Постановка проблемы. Уровень развития науки и техники является определяющим фактором прогресса общества, повышения благосостояния граждан, их духовного и интеллектуального роста. Именно этим обусловливается необходимость приоритетной государственной поддержки развития науки как источника экономического благосостояния и неотъемлемой составляющей национальной культуры и образования, создания условий для реализации интеллектуального потенциала граждан в сфере научной и научно-технической деятельности, обеспечения использования достижений отечественной и мировой науки и техники для удовлетворения социальных, экономических, культурных и иных потребностей.

Цель статьи – рассмотреть понятие государственной финансовой поддержки научных учреждений в Украине и ее формы.

Изложение основного материала исследования. В соответствии с пп. 1 п. 2 ст. 35 Закона Украины «О научной и научно-технической деятельности в Украине» от 26.11.2015 № 848-VIII (далее – Закон № 848-VIII), государство обязано обеспечить социально-экономические, организационные, правовые условия для формирования и эффективного использования научного и научно-технического потенциала, включая государственную поддержку субъектов научной и научно-технической деятельности [1]. В разделе II данного Закона указывается, что к субъектам научной и научно-технической деятельности среди других относятся научные учреждения государственной, коммунальной и частной форм собственности, которые действуют на основании уставного документа, утверждаемого в установленном порядке, при этом независимо от форм собственности научные учреждения имеют равные права при осуществлении научной, научно-технической и других форм деятельности [1].

Таким образом, научные учреждения Украины как субъекты научной деятельности имеют право на государственную поддержку. Однако, исходя из норм Закона № 848-VIII, не совсем