

# THE LEGAL REGULATION ISSUES OF TRANSFERRING AND ACCEPTANCE OF PERSONS WITH MENTAL DISORDERS FOR COMPULSORY TREATMENT IN THE STATE OF THEIR CITIZENSHIP

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## **Abstract:**

The article analyzes the peculiarities of legal regulation of transferring and acceptance of persons with mental disorders for implementation of compulsory treatment in the state of their citizenship. However, in order to strengthen the improvement of the mechanism of international cooperation in criminal matters, harmonisation of norms national and international law the author proposes to resolve above- mentioned issues.

**Key words:** international cooperation, crime, convention, compulsory treatment, persons with mental disorders.

Transferring and acceptance of persons with mental disorders for implementation of compulsory treatment is an independent direction of international cooperation in criminal matters. The purpose of the transferring and acceptance of persons with mental disorders for implementation of compulsory treatment: the right of a citizen or the person without citizenship to serve a criminal sentence in the country whose citizen is or where it resides, as well as the basic universally recognized human rights (the right to native language, culture, customs, religion, etc.).

Of great concern is the fact that the concept of the transferring and acceptance of persons with mental disorders, the implementation of compulsory treatment found no legal requirement in the national legislation. In the criminal proceeding legislation of the Republic of Uzbekistan, there is no clear regulation of the grounds for transferring of prisoners, the procedural status of participants of proceedings on consideration of materials on the transfer of sentenced persons, the procedure of adoption of the relevant procedural decisions and other issues. This indicates the presence of theoretical, legal and enforcement issues involving their understanding and resolution with the purpose of increase of efficiency of international cooperation. The Criminal procedure code and Criminal execution code of the Republic of Uzbekistan are not regulated at a legislative level the conditions of transferring and acceptance of persons suffering from mental disorders, the implementation of compulsory treatment, of which they are citizens.

As a result, in present transferring and acceptance of persons with mental disorders, the implementation of compulsory treatment in the state of

which complicates the work of the competent authorities. In this connection Republic of Uzbekistan is not able to fulfill its international obligations in terms of the transferring and acceptance of persons with mental disorders, the implementation of compulsory treatment in the state.

The fourteenth section of the Criminal procedure code of the Republic of Uzbekistan regulates issues of international cooperation in criminal proceedings. This section establishes the main regulations procedure of the cooperation of courts, prosecutors, investigators and bodies conducting initial inquiries with the competent authorities of foreign States (Chapter 64), as well as the extradition of a person for criminal prosecution or execution of sentence (Chapter 65). Also articles 601, 603 of the Criminal procedure code regulate the terms, conditions, procedure for the provision of extradition of persons for execution of sentence and ground of refusals too<sup>1</sup>.

However, in legislative level conditions of transferring and accepting of persons with mental disorders for implementation of compulsory treatment is not resolved.

Noteworthy are the rules of the UN Convention Against corruption (2003)<sup>2</sup> and the United Nations Convention Against transnational organized crime (2000)<sup>3</sup>, which enshrines provisions on the transfer of sentenced persons. In accordance with them, "States parties may consider concluding bilateral or multilateral agreements or arrangements on the transferring of persons sentenced to imprisonment or other deprivation of liberty for offences established in accordance with this Convention so that they could serve their sentences in their territories" (article 45 and article. 17, respectively).

In the Convention of CIS countries "On the transferring of persons suffering from mental disorders for compulsory treatment" on 28 March 1997<sup>4</sup>, which is entered into force in the Republic of Uzbekistan from June 26, 1997, there are also rules governing the transferring of persons under the agreement.

In particular, the Republic has concluded bilateral treaties on the transferring of sentenced persons only with Azerbaijan<sup>5</sup>, Georgia<sup>6</sup>, UAE<sup>7</sup>, Turkmenistan<sup>8</sup> and Ukraine<sup>9</sup>.

At the national level, the issues of transferring and acceptance by the Republic of Uzbekistan of persons with mental disorders for implementation of compulsory treatment, for the first time is regulated in the Regulation approved by the resolution of the Cabinet of Ministers of the Republic of Uzbekistan in 2016<sup>10</sup>.

Foreign experience has shown three main systems of transferring and accepting of prisoners: the European system, the inter-American system and based on the example of the countries – participants of the Commonwealth of independent States (hereinafter – CIS).

European Convention on the transferring of sentenced persons<sup>11</sup> is an international Treaty governing extradition and social rehabilitation of persons deprived of their liberty. The Convention was concluded in Strasbourg on 21 March of 1983 and entered into force on 1 July of 1985, it was ratified by 65 countries, including all countries of the Council of Europe, with the exception of Monaco. It also ratified by 19 States outside the Council of Europe, including Australia, Canada, Israel, Japan, South Korea, Mexico and the United States. The Convention, in particular, gives foreigners convicted of a criminal offence the possibility of serving their sentence in

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their home countries. Currently, the States parties to the European Convention on the transferring of sentenced persons agreed that they sentence cannot exceed the limits established by the laws of the state of nationality. In addition, they undertake to provide information about the penalties and the manner of their execution, in order to eliminate difficulties that arise when converting a foreign sentence.

The Inter-American system for transferring of convicted persons has received the most its development in the Americas (16 countries), and Saudi Arabia, Czech Republic and India. On 9 June, 1993 in the capital of Nicaragua, Managua was signed the Inter-American Convention<sup>12</sup> on serving criminal sentences abroad. According to this document, the States parties undertake to cooperate on the transferring of sentenced persons.

In the legislation of the countries – participants of the CIS the concept of the transferring of convicts has also been reflected. However, due to the membership of the Republic of Uzbekistan in the CIS, and the need for recognition and implementation of international law, it is advisable to implement in our Code of criminal procedure provisions of the Convention of the CIS countries “On the transfer of persons with mental disorders for compulsory treatment” and the above-mentioned bilateral international agreement in this direction too.

International documents proclaim the importance of providing convicts the possibility of serving the sentence in the close social environment, in a country where they have a solid and stable connection in order to re-socialization.

In connection with the above, and in order to strengthen the mechanism of international cooperation in criminal matters, bringing in accordance with

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the norms of national and international law, the formation of a positive image of the state, the protection of the rights and interests of its citizens, we believe it appropriate to initiate the question of formulation of a draft article on amendments to the legislation establishing the procedure for the transferring of persons with mental disorders on the basis of a clear definition of the grounds and criteria for satisfaction or refusal.

The formulation of the draft article is interconnected with the II priority the rule of law and further reforming judicial-legal system, which is specified in the Strategy actions in five priority areas of the Republic of Uzbekistan in 2017-2021 years<sup>13</sup>. The strategy is aimed at strengthening the genuine independence of the judiciary and guarantees reliable protection of the rights and freedoms of citizens, improvement of criminal legislation, improving the efficiency of the system of combating crime and crime prevention, the full implementation of the adversarial principle in the court process, improving the system of legal aid and legal services.

The purpose of formulating of this draft article is associated with the creation of effective organizational and legal mechanisms regulating the transferring and acceptance by the Republic of Uzbekistan of persons with mental disorders for implementation of compulsory treatment. The requirements of the implementation of international legal relations meet international legal standards pertaining to the improvement of General principles and norms of the national legislation; the interrelated process of implementing the international principles and standards, and international practices in this field; fulfillment of its international obligations in terms of delivering persons for involuntary treatment; strengthening of improvement

of mechanisms of international cooperation in criminal matters, compliance of national and international law.

However, it should be noted that the actual transferring of persons with mental disorders is carried out only on the level of the relevant medical institutions of the Republic of Uzbekistan and foreign state administrations, which are consistent with organizational issues of transferring and acceptance of such persons for compulsory treatment.

Such a practice contradicts the requirements of legislation and international agreements of the Republic of Uzbekistan, the universally recognized principles of international law. At the same time, a proper legal mechanism for the transferring to compulsory treatment has not worked, and therefore the proper functioning of the procedures for the transferring of persons for the application of compulsory measures of a medical nature in the moment is impossible.

In the draft article should be taken into account the above provisions of the Convention on transferring of persons with mental disorders for compulsory treatment.

The draft article provides for the settlement of the following issues:

- the procedure for submitting statements of interest in the transfer and acceptance of persons suffering from mental disorders, and completing the appropriate request to the General Prosecutor office;
- the powers of the Executive authorities, the competence of which is the transfer, adoption and delivery of persons for compulsory treatment;
- the powers of the General Prosecutor for consideration of the transfer and acceptance of persons;

- the reasons for the transfer and acceptance of persons for forced treatment and denial of them;

- the order of removal the General Prosecutor or his Deputy of the decision on consent to the transfer and adoption of persons for the application of compulsory measures of a medical nature and failure in them;

- Enforcement of the decisions on the transfer and acceptance of persons with mental disorders, the implementation costs associated with these procedures.

The draft article is an expression of active international cooperation in the field of criminal justice, execution of punishment, assistance and social rehabilitation of convicts, including foreign citizens, recognizing their right to serve their sentence in the state of citizenship and contributing to its implementation. It is aimed at strengthening the genuine independence of the judiciary and guarantees reliable protection of the rights and freedoms of citizens, improving the criminal and criminal-executive legislation as well as to facilitate the return of convicted persons in public life, providing the opportunity to serve their sentences in a familiar environment, i.e. pursuing the most humane goal.

## References

- <sup>1</sup> The Criminal Procedure Code of the Republic of Uzbekistan: [www.lex.uz](http://www.lex.uz)
- <sup>2</sup> [www.unodc.org/unodc/en/treaties/CAC/index.html](http://www.unodc.org/unodc/en/treaties/CAC/index.html)
- <sup>3</sup> [www.unodc.org/unodc/en/treaties/CTOC/index.html](http://www.unodc.org/unodc/en/treaties/CTOC/index.html)
- <sup>4</sup> <http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=704>
- <sup>5</sup> Agreement between the Republic of Uzbekistan and the Republic of Azerbaijan on transfer of persons sentenced to imprisonment, for further serving of the sentence (Tashkent, 18.06.1997), entered into force on 15.06.1998.
- <sup>6</sup> Agreement between the Republic of Uzbekistan and Georgia on the transfer of convicts to serve sentences in the state whose citizens they are (Tbilisi, 28.05.1996), entered into force on 23.04.1997.
- <sup>7</sup> Agreement between the Republic of Uzbekistan and the United Arab Emirates on the transfer of sentenced persons (Abu Dhabi, on 11/11/2014), entered into force on 21.05.2015.
- <sup>8</sup> Agreement between the Republic of Uzbekistan and Turkmenistan on transfer of persons sentenced to imprisonment, for further serving of the sentence (Tashkent, 25.02.2009), entered into force on 18.04.2010
- <sup>9</sup> Agreement between the Republic of Uzbekistan and Ukraine about transfer of persons sentenced to imprisonment, for further serving of punishment (Kiev, 19.02.1998), entered into force on 20.06.1999.
- <sup>10</sup> Legislation Series of the Republic of Uzbekistan. N 42, article 485, 2016.
- <sup>11</sup> Convention on the Transfer of Sentenced Persons (1983). <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/112>
- <sup>12</sup> United Nations, Treaty Series, vol. 1752, No. 30579; [www.oas.org/juridico/English/treaties/b-47.html](http://www.oas.org/juridico/English/treaties/b-47.html); <http://www.oas.org/juridico/english/treaties/b-47.html>
- <sup>13</sup> Legislation Series of the Republic of Uzbekistan. N 6, article 70, 2017.