Third Study Commission

LITHUANIAN REPORT

The way criminal systems deal with those who are mentally ill or mentally handicapped

Having analyzed the legal acts of the Republic of Lithuania, we will try to describe the ways those persons of unsound mind are prosecuted, the measures that are applied to them instead of the imposition of the punishment and the way compulsory measures of a medical nature are inflicted on them.

According to the Criminal Code of the Republic of Lithuania, compulsory measures of a medical nature shall be inflicted on the criminally insane, the persons who are supposed to be competent to stand trial to a certain extent or the ones who, after the commission of a criminal offence or the imposition of the punishment have caught mental derangement and therefore cannot understand and control their actions.

Compulsory measures of medical nature are a combination of treatment measures and measures of state constraint. While trying a case, only a court may inflict the compulsory measures of a medical nature on the persons. The purpose of the application of compulsory measures of a medical nature include the medical treatment of the persons who have committed the criminal offence, under supervision of psychiatrists or sending them to the public mental institutions seeking to protect the society from possible dangerous actions of these persons, as well as the offender from the danger that he might face. The application of these measures as compared to the conviction does not exert a negative influence on these people, because the application of measures of a medical nature is not considered to be a criminal punishment. The procedures for the implementation of compulsory measures of a medical nature are applied under the Code of Criminal Procedure of the Republic of Lithuania and are executed by the mental institutions. The following compulsory medical measures could be imposed under laws of Lithuania:

- compulsory out-patient observation and treatment by a psychiatrist;
- compulsory treatment in a specialized mental hospital;
- compulsory treatment in a specialized mental hospital with intensive observation;
- compulsory treatment in a psychiatric hospital of specialized type with intensive observation.

The compulsory measures of a medical nature may be inflicted on the following persons:

a) persons who have committed the criminal offence forbidden by the Criminal Code of the Republic of Lithuania while in a state of insanity. The criminally insane person is to be defined as the one who could not understand the danger of the offence or control his actions due to his mental disorder while committing a criminal offence and therefore he cannot be convicted of the offence because he has to be given medical treatment. In accordance with the Code of Criminal Procedure, the person can be declared as criminally insane during the pre-trial investigation with reference to the facts of the case. There are two criteria usually distinguished as concerns insanity – medical and legal. The medical criterion comprises the following mental illnesses: 1) chronic mental illness; 2) temporary mental disorder; 3) dementia; 4) other pathological state. The legal criterion can be described as intellectual or voluntary.
The former is featured when the person is capable of understanding his actions, while the latter – when the person is able to control his actions. It is quite enough to relate any of these features to the person in order he could be announced as criminally insane if that feature was conditioned by the mental disorder. It is also necessary to have law psychiatry knowledge. If there are some doubts concerning the person’s responsibility raised during the criminal proceedings, the inspection of forensic psychiatry is to be carried out.

b) persons who are supposed to be competent to stand trial to a certain extent and have committed a minor or less major (i.e. custodial sentence does not exceed 6 years) intentional criminal offence or a careless one. The person can be in such a state of mind when mental disorders cannot be equalled to mental illnesses, and that does not mean that the person cannot understand or control his actions. A criminal offence can be conditioned by any mental abnormalities. In such a case the person is to be announced as competent to stand trial to a certain extent. This state of a person is to be determined according to the manner applied to the determination of state of insanity. The compulsory measures of a medical nature may be inflicted on a person who has committed a minor or less major (i.e. custodial sentence does not exceed 6 years) intentional criminal offence or a careless one and is to be released from criminal responsibility.

c) persons who, after the commission of a criminal offence or the imposition of the punishment, have caught mental derangement and therefore cannot understand and control their actions. The punishment cannot be imposed or executed on the person who, after the commission of a criminal offence, have caught mental derangement and therefore cannot understand and control his actions. None educative impact on such a person can be reached, therefore he has to be exempted from the punishment. But after these people make a full recovery, they might be sent to endure punishment that has been imposed on them by the court of law.

A particular kind of the compulsory measures of a medical nature may be inflicted by a court considering the criminal offence forbidden by the Criminal Code of the Republic of Lithuania itself, the state of mind of the person who has committed a criminal offence and the references given in the instrument of the inspection of forensic psychiatry.

If during the pretrial investigation or court proceedings the court decides that the person is criminally insane or is to be competent to stand trial to a certain extent or after the commission of a criminal offence he has caught mental derangement and therefore cannot understand or control his actions, the trial itself becomes the process of the application of compulsory measures of a medical nature. The compulsory measures of a medical nature are also to be applied to the person who, after the imposition of the punishment, has caught mental derangement and therefore cannot understand and control his actions.