

德國精神病學處分之沿革與現制

The history and current system of the psychiatric measure in Germany

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中文摘要

雖然精神病犯常因其不具備罪責而不受刑罰制裁，但由於其對個人或社會可能具有一定的危險性，因此不論是在台灣或德國，在一定條件下，國家仍可對其違法行為施以保安處分，尤其是將精神病犯收容於精神病院的精神病學處分。德國關於精神病學處分的立法與實施已有百年的歷史。從整體歷史沿革來看，德國精神病學處分的制度發展就是在盡力謀求個人自由與公共安全利益間的平衡狀態。此外，在 2016 年時，德國就精神病學處分在實體法與程序法上之相關規定作了許多重要修正。修正內容除了將以往的實務作法予以明文化之外，在刑法上也藉由新增的階段性規則來實現憲法所要求的比例原則，而在刑事訴訟法上則是強化了鑑定的內容要求以及受收容人的程序保障。儘管德國現行規定仍有不完美之處，但仍值得作為我國未來對於監護處分的改革參考。

關鍵字：精神病犯、保安處分、監護處分、精神病學處分、鑑定

Abstract

Although mentally ill offenders are often not subject to punishment because they are not guilty of guilt, they may be dangerous to individuals or society. Therefore, whether in Taiwan or Germany, under certain conditions, the state can still impose custodial protections on them, especially the psychiatric measure, that is the measures of placement in psychiatric hospitals. The legislation and implementation of the psychiatric measure in Germany has a history of one hundred years. From the perspective of the overall historical evolution, the development of the system of sanctions and the measures of placement in psychiatric hospitals in Germany are trying to find a balance between personal freedom and public safety interests. In addition, in 2016, Germany made many important amendments to the substantive and procedural laws regarding the psychiatric measure. In addition to clarifying the past practices, the revised content also implements the principle of proportionality required by the constitution by adding new phased rules in the criminal law, while in the criminal procedure law, it strengthens the content requirements and requirements for appraisal, and the procedural guarantees for inmates. Although there are still imperfections in the current German regulations, they are still worthy of being a reference for my country's future reform of guardianship.

Keywords: psychiatric perpetrator, rehabilitative measures, custodial protection, psychiatric measure, expert