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Principles of the Development of Medical Legal Framework in Russia: Economic Factors and Legal Realities

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Abstract

The article touches upon economic factors affecting the formation of the medical legal system in Russia. In connection with the strained economic situation in the world worsened by the sanctions pressure on the Russian Federation, it becomes obvious that national legal framework is facing new challenges to ensure the standards of universal human values on its territory.

The key idea of this article is the point that the state in an unstable economy needs a fundamentally stable system of legal regulation of medical activity. The author's opinion is based on the fact that modern Russian legislation is not fully based on economic realities, on the possibilities of fulfilling the state standards of medical care.

Despite the somewhat significant difference in national legal orders, the Europe-wide trend is aimed at the maximum possible protection of medical interests of both national residents and those who have accepted the financial conditions of the national medical system.

Nevertheless, Russian legislation recognizes possible limitations in the provision of medical care, especially its high-tech types, to foreign citizens if the latter do not fully reimburse the costs of such assistance directly or through the medical insurance system. The authors insist on the need to maintain a balance of personal and public interests in solving legal issues of all population segments in health care in accordance with European practice.

Keywords: *Medical legislation, health care, legal defense, economic factors, legal norms.*

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1. Introduction

The relevance of the study is largely due to the rapidly increasing number of lawsuits in Russian Federation regarding the poor medical services quality. Many conflict situations require a logical system of medical legislation so that the law enforcement person could clearly understand the limits that could be addressed to medical workers on the one hand and the legitimate claims of the patient on the other.

The principles of development of any system follow from the general provisions of the philosophy of the nature of system interconnections. The legal system here is not an exception. Being a subjective-objective phenomenon, the legislation differs from the system of law, which is essentially the creation of theorists of law in the full sense. The system of medical legislation is the composition, the ratio (system interrelations) and the internal structure of the sources of medical law.

The principles of building a system of medical legislation are traditionally treated as the fundamental principles the system of analyzed legislation is based on (Phelan *et al.,* 2017; Vasin *et al.,* 2017). In our opinion, these principles are general and special. The general principles provide the grounds for building a system of medical legislation ‘outside’, that is, in cooperation with the entire system of Russian legislation. Special principles characterize the internal paradigm of building medical legislation and define its internal logic.

The system of Russian medical legislation is in a dialectical relationship with the system of Russian law in general. The assumption ‘in general’ is used here due to the point that medical law is not currently an established branch of law, although there are many authors who are trying to pass what they want into reality. In our opinion, legal grounds of medical public relations has not yet reached the qualitative isolation needed to acquire features of the branch of law.

Authors consider reasonable the judgment of Gurevich (1959) that a set of legal norms has an objective unity sufficient to distinguish it as a branch of law (basic or complex) only if it (objective unity) is qualitatively specific so that it objectively differs from the adjacent group of public relations and can not be included in another similar group. In our opinion, the norms of medical activities in Russia have not yet reached the qualitative specificity allowing them to be distinguished from the frameworks of civil law, consumers protection administrative law, financial law, regarding compulsory medical insurance and funding of healthcare. These considerations are important from the point of view of the subject area of the study connected with authors’ classification and description of the principles for constructing a system of medical legislation. One more important qualification relates to the use of the term “legislation” in our research. We are treating it in a broad sense, considering it not only as the system of laws but also other sources that include the rules governing medical activities.

2. Theoretical, informational, empirical and methodological grounds of the study

First of all, we note that states, as a rule, do not provide equal treatment for citizens and foreigners, or stateless persons. It is quite utopian consideration that the state is interested in an equal medical service for citizens and non-citizens due to economic reasons. The exceptions are supranational entities such as the European Union (Cristea and Thalassinos, 2016).

Thus, the system of Russian medical legislation correlates with constituent domains of Russian legislation as constitutional, administrative, financial, and civil one. Accordingly, principle of comprehensiveness of medical legislation is the principle number one. The complexity of the Russian medical legislation system is dualistic. Firstly, it implies that medical legislation includes norms of various sectoral affiliations, and secondly, the system of sources includes regulatory, judicial and contractual sources containing norms regarding medical activity.

The industrial identity of medical legislation norms is both of public law and private law in nature, although regulations and other sources may have a very clear relationship to the branches of public law, private law, but in other cases it can sometimes be comprehensive or interdisciplinary. If we start analyzing fundamental provisions with the statements of Article 41 of the Constitution of the Russian Federation, it proves that it is of comprehensive nature due to combination of private law (free medical services in state and municipal health care institutions) and public law (budgetary and extrabudgetary funding, support of state and non-state health systems, physical culture and sports, environmental and sanitary care and well-being) norms. Part 3 of Article 41 of the Constitution is interdisciplinary in nature due to various forms of legal responsibility of both public law and private law on liability for officials to conceal facts and circumstances endangering the life and health of people.

Thus, Article 237 of the Criminal Code of the Russian Federation provides for liability for concealing information about circumstances creating a danger to the life and health of people. In addition to the provisions of article 6.1 on liability for concealing the source of HIV, venereal disease and sexual encounters creating the infection hazard, the RF Administrative Offenses Code gives provisions about the responsibility for officials violating the rules on the dissemination of mandatory messages, for example, accidents, chemical emissions, epidemics (Article 13.17 of the Administrative Code of the Russian Federation). If the suppression of the facts or circumstances endangering the life and health of people caused physical, material or moral harm, it is subject to compensation by the offenders within the private law framework in accordance with the norms of chapter 59 of the Civil Code. The labor code of the Russian Federation in article 212 establishes the obligation of the employer to inform workers about the conditions and labor protection at workplaces and the risk of health injuries as well.

The second component of comprehensiveness of medical legislation is a variety of sources containing norms regulating medical activity. We could clearly state that in addition to regulations such as federal law of November 21, 2011 No. 323 - FZ "On the health protection of citizens in the Russian Federation" or relevant bylaws, for example Government Decree Of the Russian Federation of 17.03.2018 No. 292 "On the approval of criteria for medical professional non-profit organizations, their associations (unions) to perform certain functions in the field of public health in Russia oh Federation", the medical legislation system includes other types of sources.

Resolutions of the Constitutional Court of the Russian Federation, in particular the Resolution of the Constitutional Court of the Russian Federation of 27.02.2009 No. 4-P "On the case of checking the constitutionality of a number of provisions of Articles 37, 52, 135, 222, 284, 286 and 379.1 Civil Procedure Code of the Russian Federation and the fourth part of Article 28 of the Law of the Russian Federation "On psychiatric care and guarantees of the rights of citizens in its provision" in connection with the complaints of citizens Yu.K. Gudkov, P.V. Shtukaturov and M.A. Yashin act as a non-regulatory ruling.

A number of authors consider that resolutions of the Constitutional Court of the Russian Federation, and particularly, their legal position are of a source nature. The issue is controversial due to the fact that most procedural regulations, for example, the Code of Administrative Judicial Proceedings of the Russian Federation in Article 180 refers only to the decisions of the European Court of Human Rights, decisions of the Constitutional Court of the Russian Federation, decisions of the Plenum Supreme Court of the Russian Federation, decisions of the Presidium of the Supreme Court of the Russian Federation, adopted by the Supreme Court of the Russian Federation to ensure the unity of judicial practice and the rule of law. At the same time, it is generally recognized that the decisions of the Constitutional Court of the Russian Federation are a form of "negative rulemaking" if the relevant provisions of the regulatory act are deemed unconstitutional.

And finally, contractual sources included in the system of medical legislation may not be directly related to medicine, but regulate the guarantees of medical care, as was provided, for example, in Article 16 of the Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms.

The following principle of building a system of medical legislation follows from the provisions of clause g of Part 1 of Article 72 of the Constitution of the Russian Federation, determining that coordination of medical issues is within the jurisdiction of the Russian Federation and its regions. Taking into account the fact that medical legislation is of diverse nature, certain issues regulated by civil law will be treated exclusively within federal jurisdiction, while others regulated by administrative, financial legislation will be treated within the joint jurisdiction of the Russian Federation and its entities.

The provisions of the Federal Law of October 6, 2003 No. 131-FZ “On the General Principles of the Organization of Local Self-Government in the Russian Federation” also include certain issues of organizing the provision of medical care to local issues of various types of municipalities

3. Results

Thus, we could discuss the principle of multilevel construction of a medical legislation system in the Russian Federation. In fact, these are 4 levels of legal regulation as follows: international, federal, regional and local one. In the context of the issue, this principle is expressed in the fact that legislative acts have supremacy in the system of medical legislation. The Constitution of the Russian Federation is a legislative act of higher legal force and determines the system of medical legislation. Indeed, numerous non-codified norms in the system of medical legislation reduces the effectiveness of the legal regulation of this public relation type. Accordingly, the codification of medical legislation, the removal from the field of bylaw regulation of relations that directly affect the quality of medical care, its availability, timeliness is one of the primary, fundamental tasks.

It is quite obvious that while characterizing the general principles of building a system of medical legislation, it is impossible to ignore the principle of considering the economic possibilities of the state.

4. Conclusions

The factors taken into account when developing Russian medical legal framework include: consideration of international health standards, economic possibilities of the state, the multi-level nature and diversity of Russian law sources, the complexity of social relations forming the subject of medical law.

At the same time, it is unlikely that Russia will be able to approach the European standards for providing medical care in the medium term due to inability to spend state or extra-budgetary funds effectively, in particular the Mandatory Medical Insurance funds. This clearly pushes for the fact that it is necessary to codify the Russian medical legislation at the regulatory level by adopting the Medical Code of the Russian Federation including both the rules of the provision of medical care and the rules governing the funding of public and private medical services, and also issues of unconventional medicine.

It makes no sense to focus on the experience of the Scandinavian countries, which have no experience in codifying medical and other legislation. Different systems of funding medical services in the Scandinavian countries and Russia are also taken into account. The experience of Germany and France is the most fascinating, The intensive research there is conducted in the field of codification of medical legislation. Russia is traditionally in the framework of the Roman-German legal

family and could well perceive the relevant scientific experience as a serious step towards increasing the effectiveness of the realization of health care legal framework.

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