

HISTORY OF THE DEVELOPMENT OF MEDICAL LAW IN RUSSIA

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Abstract. Health care as a set of measures of a political, socio-economic, scientific, medical and legal nature is aimed at preserving, maintaining and improving the health of each person, providing highly qualified and specialized therapeutic and preventive care. The article is devoted to the history of the development of medical law in Russia since the beginning of the 20th century. Scientific research is based on the materials recorded in the domestic and foreign legislative and doctrinal sources. When writing this paper, we used general scientific methods and private scientific (special) methods. We emphasized the importance of progressive development of the legislation in the field of health care during the Soviet period of historical development. We noted the influence of changes in the public and political life of the state on the legal doctrine and legislation. We substantiated the establishment of medical law as an independent branch of Russian law with regard to the formation of the World Health Organization as a specialized agency of the United Nations in 1946. We confirmed that many special laws were adopted in the field of health care in Russia due to the multifaceted political and socio-economic changes in the society as a whole, as well as the need for Russia's integration into the world community in the 1990s of the 20th century. We indicated that the acceleration in the formation of modern regulatory framework was put by the law enforcement practice with regard to an increase in the number of civil lawsuits for injury to health when seeking medical assistance, as well as improvement of the legal literacy of the population in the provision of medical services. We described the current state of Russian legislation in the field of health care and public health, consisting of a whole complex of the regulatory legal acts (federal laws (general and special), laws of the constituent entities of Russia and secondary legislation) determining the state policy in the field of health care and public health.

Key words: medical law, health care, history, public health, medical assistance, legislation, the state.

Introduction. Medical law is a complex branch of law, which includes a set of legal norms regulating social relations in the field of health care and medical activities, which is part of the legal system of Russia. The study of the historical development of medical law in Russia contributes to the formation of a correct understanding of the ideas developed by science, concepts, theories and trends of the subsequent development of modern legislation. Thus, the fundamental knowledge of medical law, its formation and development, does not lose its value depending on changes in the legislation and allows predicting the subsequent development of this law.

Methods. This research is based on the materials recorded in the domestic and foreign legislative and doctrinal sources. We used the general scientific methods (analysis, synthesis, induction, deduction, system method, analogy method, comparison method, abstraction method) and private scientific (special) methods (historical legal, formal legal, comparative legal, legal modeling method, structural analysis method).

Results and discussion. The Medical Charter (having three editions, 1857, 1892 and 1905), included in the "Code of Laws of the Russian Empire" in the XIII volume, became an especially significant historical legal document that enshrined the features of medical activity in Russia. The Medical Charter was a systematic collection of regulations on social relations arising in the field of health care in Russia and consisted of three books (Medical Institutions, Medical Police Charter, Forensic Medicine Charter).

There was a streamlining of Soviet health care and there were adopted a number of different documents from 1917 to 1921, for example: Decree of the Council of People's Commissars of the RSFSR "On Transfer of the Entire Medical Part of the Former Sickness Funds to the People's Commissariat of Health Care" dated February 18, 1919; Decree of the Council of People's Commissars of the RSFSR "On the Therapeutic Areas of National Importance" dated March 20, 1919; Resolution of the People's Commissariat of Health of the RSFSR, People's Commissariat of Justice of the RSFSR "On Forensic Medical Experts (Regulations)" dated October 24, 1921.

It also began to appear separate criminal legal norms, enshrining the doctors' responsibility. For example, Article 165 of the 1922 Criminal Code of the RSFSR [1] provided for the liability for a doctor's refusal to provide medical assistance, if this refusal could entail dangerous consequences for a patient. The punishment for this crime was the doctor's imprisonment for up to two years.

Gradually, there were created the prerequisites for the formation of the People's Commissariat of Health Care of the USSR, established on July 20, 1936.

The Resolution of the Council of People's Commissars of the USSR "On the Procedure for Medical Surgeries" No. 1607 dated September 15, 1937, which regulated the activities of medical workers, was of great importance for the period of Soviet history.

In the Soviet period of historical development, health care legislation was developed slowly but progressively. In 1938, the "First Discussion on the Law System" - the Meeting of Science Workers of the Soviet State and Law - took place and resulted in the emergence of the term "branch of law". The basis for the law separation to different branches

was considered the subject of legal regulation, and the method was an additional criterion as derived from the subject. According to O.S. Ioffe "if law is a set of legal norms, then the law system embodies a certain grouping of them by branches. The unity of branches of law forms the system of Soviet law" [2]. The list of branches of law included the following for that period: civil, collective farm, labor, administrative, criminal law, etc.

The establishment of medical law as an independent branch of Russian law was established at the 6th World Health Assembly in 1946 with regard to the formation of the World Health Organization as a specialized agency of the United Nations to achieve "the highest possible level of health for all peoples" [3]. The main principles were: achievement of peace and security of every person and state as a whole; prevention of diseases that may bring a common danger to the entire population of the planet; a need to unify the legislation of different countries in the field of health care in order to ensure that each person has the highest attainable level of health; provision of the possibility of using the achievements of medicine by all nations.

The "second discussion on the legal system", already held in the post-war period in 1955, attracted attention of the Soviet scientists to the problem of improving the system of Russian legislation and used two criteria as a basis for the division of law by branches: subject and method of legal regulation. The consequence was the development of legislation and the regulation of various groups of public relations.

On October 27, 1960, at the time of serious changes in the economy and in the domestic policy of the country, the Criminal Code of the RSFSR was adopted, providing for responsibility for "not providing assistance to the patient" (Article 128), "unlawful doctoring" (Article 221), etc., and also containing Chapter 6 "On Compulsory Measures of a Medical and Educational Nature". On December 19, 1969, the USSR Law "On Approval of the Fundamentals of the Legislation of the USSR and Union Republics on Health Care" No. 4589-VII was passed, which regulated the fundamentals of the legislation on health care and included the following sections: "Occupation of Medical and Pharmaceutical Activities", "Medical and Preventive Care to the Population", "Protection of Motherhood and Childhood", "Medical Expertise", etc.

On July 29, 1971, the RSFSR Law "On Health Care" was adopted, which contained the articles on the citizens' rights in the field of health care, professional duties and rights of medical workers, on the responsibility of medical workers, on donation, medical expertise, protection of motherhood and childhood, etc.

In 1982, the "Third Discussion on the Law System" was held, which did not deny the fundamental provisions developed during the first two discussions, but attempted to search for new criteria for dividing the law to different branches. In the 90s of the 20th century, many special laws were adopted in the field of health care with regard to the multifaceted political and socio-economic changes in society as a whole, as well as the need to integrate Russia into the world community. Some of them continue to operate today, for example: Law of the Russian Federation "On Medical Insurance of Citizens in the Russian Federation" No. 1499-1 dated June 28, 1991 (expired); Law of the Russian Federation "On Psychiatric Assistance and Guarantees of the Rights of Citizens When Provided" No. 3185-1 dated July 2, 1992; Law of the Russian Federation "On Transplantation of Human Organs and (or) Tissues" No. 4180-1 dated December 22, 1992; Law of the Russian Federation "On the Donation of Blood and its Components" No. 5142-1 dated June 9, 1993 (expired). Decree of the President of the Russian Federation "On Urgent Measures to Ensure the Health of the Population of the Russian Federation" No. 468 dated April 20, 1993 [4] approved that the public health provision is a priority in the formation of social programs and activities.

On July 22, 1993, the "Fundamentals of the Legislation of the Russian Federation on the Protection of Citizens' Health" were adopted, which established the economic, legal and organizational principles in the field of citizens' health protection. The fundamentals of legislation on health protection confirmed the state's responsibility for the preservation, strengthening and protection of the health of Russian citizens, as well as the state's desire to improve legal regulation.

The current state of Russian legislation in the field of health care and public health consists of a whole complex of the regulatory legal acts (federal laws (general and special), laws of the constituent entities of Russia and secondary legislation) determining the state policy in the field of health care and public health.

The main legislative act regulating the relations of different subjects in the field of health care is the Constitution of the Russian Federation [5], adopted on December 12, 1993, enshrining the right of every citizen to health protection and medical care (Article 41). The codified acts providing for the types of offenses in the field of health care and public health, as well as establishing legal responsibility for causing harm to the life and health of a citizen, include: Civil Code of the Russian Federation (part two) No. 14-FZ dated January 26, 1996; Code OF Administrative Offenses of the Russian Federation No. 195-FZ dated December 30, 2001; Labor Code of the Russian Federation No. 197-FZ dated December 30, 2001; Criminal Code of the Russian Federation No. 63-FZ dated June 13, 1996.

The protection of the rights and legitimate interests of the participants of legal relations in the field of health care are fixed by: Civil Procedure Code of the Russian Federation No. 138-FZ dated November 14, 2002; Arbitration Procedure Code of the Russian Federation No. 95-FZ dated July 24, 2002; Federal Law "On Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Implementation of State Control (Supervision) and Municipal Control" No. 294-FZ dated December 26, 2008; Federal Law "On Alternative Procedure for the Dispute Settlement with the Mediator Participation (Mediation Procedure)" No. 193-FZ dated July 27, 2010.

The requirements for the implementation of medical and pharmaceutical activities are fixed in the following legal acts: Federal Law "On the Principles of the Health Protection of Citizens in the Russian Federation" No. 323-FZ dated November 21, 2011; Federal Law "On Circulation of Medicinal Products" No. 61-FZ dated April 12, 2010;

Federal Law "On Compulsory Medical Insurance in the Russian Federation" No. 326-FZ dated November 29, 2010; Federal Law "On Licensing Certain Types of Activities" No. 99-FZ dated May 4, 2011; Federal Law "On Technical Regulation" No. 184-FZ dated December 27, 2002; Federal Law "On State Registration of Legal Entities and Individual Entrepreneurs" No. 129-FZ dated August 08, 2001.

The legal status of the subjects of medical and pharmaceutical activities are revealed by: Civil Procedure Code of the Russian Federation No. 138-FZ dated November 14, 2002; Federal Law "On Limited Liability Companies" No. 14-FZ dated February 8, 1998; Federal Law "On Non-Profit Organizations" No. 7-FZ dated January 12, 1996; Federal Law "On Joint Stock Companies" No. 208-FZ dated December 26, 1995; Federal Law "On State and Municipal Unitary Enterprises" No. 161-FZ dated November 14, 2002; Federal Law "On Autonomous Institutions" No. 174-FZ dated November 3, 2006; Federal Law "On the Development of Small and Medium-Sized Businesses in the Russian Federation" No. 209-FZ dated July 24, 2007.

It is also necessary to highlight the regulatory legal acts regulating certain types of medical activity: Law of the Russian Federation "On Psychiatric Assistance and Guarantees of the Rights of Citizens When Provided" No. 3185-1 dated July 2, 1992; Federal Law "On the Donation of Blood and its Components" No. 125-FZ dated July 20, 2012; Law of the Russian Federation "On Transplantation of Human Organs and (or) Tissues" No. 4180-1 dated December 22, 1992; Federal Law "On State Forensic Expert Activities in the Russian Federation" No. 73-FZ dated May 31, 2001; Federal Law "On Preventing the Spread of Tuberculosis in the Russian Federation" No. 77-FZ dated June 18, 2001; Federal Law "On the Sanitary-Epidemiological Well-Being of the Population" No. 52-FZ dated March 30, 1999; Federal Law "On Immunoprophylaxis of Infectious Diseases" No. 157-FZ dated September 17, 1998; Federal Law "On Prevention of the Spread of the Disease Caused by the Human Immunodeficiency Virus (HIV) in the Russian Federation" No. 38-FZ dated March 30, 1995.

For the development of medical law in the country, Russia's participation in the international legal system on medical law is very important. Part 4 of Article 15 of the Constitution of the Russian Federation indicates that "the generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If an international treaty of the Russian Federation establishes other rules than those provided by law, then the rules specified in the international treaty shall be applied".

According to the sub-clause "a" of Article 2 of the Federal Law "On International Treaties of the Russian Federation" No. 101-FZ dated July 15, 1995 [6], an international treaty of the Russian Federation is "an international treaty concluded in writing by the Russian Federation with a foreign state (or states), with an international organization or with other entity, having the right to conclude the international treaties (hereinafter - other entity), and regulated by the international law, regardless of whether such a treaty is contained in one document or in several interconnected documents, and regardless of its particular designation". The World Health Organization [7], founded on April 7, 1948 and operating in the field of health is of great importance for the entire world community. It is a specialized agency of the United Nations [8], consists of 194 Member States, headquartered in Geneva, Switzerland.

The World Health Organization directs and coordinates the international health work within the United Nations system and performs the following functions: stimulates the acquisition, transformation and dissemination of valuable knowledge; establishes norms and standards; carries out situation monitoring and assessment of health trends; develops conventions and agreements; and etc.

An example of the WHO legal act is the WHO Guidelines for Transplantation of Human Cells, Tissues and Organs (approved at the Sixty-Third World Health Assembly in May 2010, resolution WHA63.22) [9].

In accordance with Article 4 of the "Convention on the Protection of Human Rights and Human Dignity with regard to the application of the achievements of biology and medicine: Convention on Human Rights and Biomedicine" (ETS N 164) (concluded in Oviedo on April 4, 1997), "any medical intervention, including intervention for research purposes, should be carried out in accordance with the professional requirements and standards" [10].

In recent years, the Russian Federation has concluded a number of bilateral and multilateral treaties and agreements on cooperation in the field of health care. For example, the "Agreement between the Government of the Russian Federation and the Government of the Republic of Guinea on Cooperation in the Field of Health Care, Medical Education and Science" dated September 28, 2017 (entered into force on September 28, 2017) [11].

Summary. Based on the description of the historical path of the formation of medical law in Russia, several stages may be distinguished:

1) 1917 - 1938: Streamlining of the Soviet health care, adoption of a number of different documents in the field of health care and regulating the activities of medical workers. Emergence of separate criminal law, enshrining the doctors' responsibility. Holding of the "First Discussion on the Law System" - the Meeting of Science Workers of the Soviet State and Law, which resulted in the emergence of the term "branch of law".

2) 1946 - 1955: Beginning of the formation of medical law as an independent branch of Russian law at the 6th session of the World Health Assembly as a specialized agency of the United Nations. Holding of the "Second Discussion on the Law System".

3) 1960 - 1982: Emergence of separate legislation governing the rights of citizens in the field of health care, professional rights and duties of health workers, responsibility of health workers, protection of motherhood and childhood. Holding of the "Third Discussion on the Law System".

4) 90s of the 20th century - till present: Adoption of a set of special laws in the field of health care, establishment of economic, legal and organizational principles in the field of health care and public health, enshrining requirements for the implementation of medical and pharmaceutical activities, defining the state policy in the field of health care and public health, providing for the types of offenses in the field of health care and establishing legal responsibility for causing harm to the life and health of a citizen.

Conclusions. Consideration of the historical aspects of the formation of medical law in Russia made it possible to study the gradual progressive formation of medical law as a branch of law in certain periods of development of society and the state. At the present historical stage of the existence of the regulatory and legal framework of Russia, the opportunities have gradually emerged to create a separate branch of law - medical law - in the field of public health. The main formation of medical law as a separate branch of law was carried out in 2003 with regard to the First All-Russian Congress (National Congress) on medical law (June 27, 2003, Moscow), the emergence of the specialized journal "Medical Law", and the formation of the medical law departments in the medical and law universities. The acceleration in the formation of modern regulatory framework was put by the law enforcement practice with regard to an increase in the number of civil lawsuits for injury to health when seeking medical assistance. The legal literacy of the population in the provision of medical services began to increase, and therefore the requirements for the quality of medical care have increased. Every year, legal scholars are increasingly beginning to publish their works on the medico-legal topics, as well as formulate theoretical and practical proposals for the legislator. The number of all-Russian and regional conferences on important issues of medical law increases annually.

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