

L.B. Bogatyreva^{1*}, B.A. Taitorina¹, A.M. Satbayeva²

¹Kazakh National Medical University named after S.D. Asfendiyarov

²Kazakh National Agrarian Research University

(E-mail: bogatyreva.l@kaznmu.kz, binur.a@mail.ru, sathaeva@mail.ru)

Problems of conceptualization of administrative and legal regulation in the healthcare sector of the Republic of Kazakhstan

The study analyzed social relations in the field of medical activity, problems of their legal regulation during various periods of formation of these relations. The subject of the study is the source and regulatory framework of health care of the Republic of Kazakhstan. The study of the problem was carried out on the basis of an analysis of the historical retrospective of the development of medical law in Kazakhstan from 1913 to the present day, there was given a description and assessment of the main trends in the development of medical law, determined prospects for the development of this branch of law. Based on the study of the phenomenon of health care, the generalization of the theory and practice of international legal and state-legal impact on public relations in the field of health care, an attempt was made to identify and conceptually substantiate the legal foundations for the organization and implementation of legal regulation of the health care system in the Republic of Kazakhstan. The article formulates provisions that develop modern ideas about the essence of legal regulation of the health care system. Special attention is paid to the study of the general and political and legal aspects of the formation and development of the health care system, its place and role in the life of society and functional manifestations in the real state-legal reality of the Republic of Kazakhstan. Modern ideas about the problems of public health management are based on the need to solve the problem of improving the state's capacity in the field of public health.

Keywords: health care, medicine, health protection, legal regulation, administrative and legal regulation, medical care, health insurance, reforms.

Introduction

Protecting the health of citizens for the modern state is one of the most important priorities. The development of national health systems shows that health problems are given real political significance if state legal and financial reforms are aimed at improving the situation with the protection of citizens' health. According to the life expectancy index, the Republic of Kazakhstan lags behind the countries of the Organization for Economic Cooperation and Development (OECD) by almost 8 years, which is a clear evidence of the low efficiency of the organization of the health care system. The leaders of the Kazakh health sector still have plans to bring the average life expectancy in Kazakhstan to 75 years by 2025 [1].

The state regulation of health care is a part of the state administration, is its most important function, designed to ensure effective legal regulation of public relations in the field of health protection of citizens. The range of legal regulation is wide and multifaceted: the formation and organization of the activities of the system of bodies implementing state policy in the field of health care, financing of the health care system, comprehensive and innovative development of the market for medical and pharmaceutical services, organization of state control, constant modernization of the regulatory legal framework of health care. The implementation of managerial functions is carried out in different directions: in the provision of medical care, in the implementation of preventive measures, in the implementation of sanitary and epidemiological measures, in the coordination of the activities of all subjects of health law, in the implementation of educational programs and advanced training programs, etc. Sicut mundus exercetur de sanitatis ordine demonstrat, quaestiones publicae administrandae sunt secundum recentes provocaciones pertinentes: existentes structurae globalis curarum sumptu, rationibilitate et potestates cogendi carent [2-5].

The object of the study is public relations in the field of public health protection, problems of their administrative and legal regulation during various periods of formation of these relations. The research goal is to analyze the problems on the basis of studying the historical retrospective and development of medical law of the Republic of Kazakhstan, characterizing and assessing the main trends and prospects for the development of medical law.

*Corresponding author. E-mail address: bogatyreva.l@kaznmu.kz

Methods and materials

The study combined data and analysis of the literature with the aim of scientific discourse of the problem of conceptualization of administrative and legal regulation in the field of health care of the Republic of Kazakhstan. To achieve the purpose of the study, data submitted by government programs, national projects, codified acts, laws and subordinate legislation in the field of health care were collected and analyzed; descriptive and correlation characteristics were calculated: based on the analysis of the data, their assessment was carried out, conclusions were formulated. During the study, the assessment was carried out on the basis of identifying the specifics of social problems, checking regulations regarding awareness, effectiveness, achieving the goals of their improvement.

In the course of the study, the entire arsenal of methodological approaches in jurisprudence based on the revision of strategies for knowing reality was applied: historical, system-structural, formal-legal methods, methods of comparative studies, social and legal forecasting, legal modeling, and others.

Results and discussion

In the mechanism of administrative and legal regulation of the organization of the health care system, the criterion of quality as an object of constitutional guarantees of human rights to health protection is fundamental. The compliance of the Constitution with all regulatory legal acts governing public relations in the field of health care is a prerequisite for ensuring their quality. The definition of a human, his life, rights and freedoms by the highest values of the state in the Basic Law (Article 1 of the Constitution of the Republic of Kazakhstan) lays the foundation for the legal regime of health care, its goal-setting and functioning. Article 29 of the Constitution of the Republic of Kazakhstan regulates guarantees of the right of citizens to health protection: constitutional provisions on the right of citizens to health protection, on the right to receive a guaranteed amount of medical care free of charge, on the right to receive paid medical care in public and private medical institutions, and persons engaged in private medical practice on grounds and in order, established by law, impose on the state, in the person of its bodies, a constitutional obligation to ensure the implementation of this right, and also include in the structure of the subjective right to health protection the right of a citizen to demand from authorized state bodies the fulfillment of this legal obligation, which is broadly in the provision of medical care. In accordance with the norms of the Constitution, state bodies and their officials, empowered to take sufficient measures to implement the rights and freedoms of the individual on the basis of the mechanism of administrative and legal regulation of health care — a set of legal and institutional measures aimed at normative consolidation and organizational and structural support of the implementation of the internal function of the state to protect the health of citizens. Regulatory legal acts in the field of health care management are designed to develop the potential of imperative orders contained in constitutional norms and provisions in sectoral legal relations.

The basis of organizational and structural support for the administrative and legal regulation of health care is the norms of the Constitution, which enshrine the legal situation of the President of the Republic of Kazakhstan, including powers in the field of public administration; the competence of the Government of the Republic of Kazakhstan to ensure the implementation of state health policy; the basis of the administrative and legal status of local government and self-government bodies. In accordance with the norms of Article 31 of the Constitution of the Republic of Kazakhstan, the State aims to protect the environment favorable for human life and health; concealment by officials of facts and circumstances that threaten the life and health of people entails liability in accordance with the law. Human and civil rights and freedoms may be restricted only by laws and only to the extent necessary for the protection of the constitutional order, the protection of public order, human rights and freedoms, health and morality of the population (Article 39), as well as in the conditions of military and emergency situations.

The history of medicine of the republic is inextricably linked with the Soviet past, a set of regulatory legal acts regulating public relations in the field of health care when the USSR was present. In accordance with the Decree of the Council of People's Commissars of the RSFSR on the Revolutionary Committee for the Management of the Kyrgyz Territory of July 10, 1919, a decree of the Military Revolutionary Committee of September 12, 1919 established the health department — Kirzdravotdel. With the organization of the Kirzdravotdel in 1919, the creation of Soviet health care in Kazakhstan began. On October 12, 1920, the first All-Kyrgyz Congress of Soviets established the People's Commissariat of Health of the Kazakh Autonomous Soviet Socialist Republic. On May 17, 1921, the I All-Kyrgyz Meeting of Health Officials was held. In 1923, after the third All-Kazakh Congress of Health Departments, there was a course towards expanding the net-

work of medical institutions in counties, villages and villages. During this period, the foundations of profiling medical care were laid.

On December 1, 1924, the Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR "On professional work and the rights of medical workers" were issued. The document most fully regulated the rights and obligations of medical personnel. This decree approved the professional rights and obligations of medical workers, enshrined their rights to professional activities in the conditions of the existing state health protection system, and described the mechanisms for admission to medical activities [6].

At the first All-Kazakhstan Congress of Health Departments and District Doctors held in 1925, the historical fact of the creation of the Institute of Permanent Inpatient Care in all regions of the republic was recorded.

The first regulation on the People's Commissariat of Health was approved by the Grand Presidium of the KazCEC of March 3, 1925. According to the provision on the People's Commissariat of Health, the highest government body, the People's Commissariat of Health, was established to develop and implement measures aimed at improving the health of the population of the KazSSR. Subsequently, on September 18, 1929, the regulatory and legal framework of health care was modernized, expressed in the development and approval by the Council of People's Commissars of the Republic of a new provision on the People's Commissariat of Health.

In 1936, a new Constitution of the USSR was adopted, in which the norms concerning health care were fixed (Chapter 10). This was the first Constitution of the USSR, which enshrined the right of citizens to receive medical care [7].

In 1941, after the outbreak of World War II, there was an association of military and civilian medicine. Work in the rear (evacuation hospital), specialized medical care for the sick and wounded, organization of the anti-epidemiological service. The contribution of Soviet medicine to the defeat of the fascist invaders: 72 % of the wounded and 90 % of the sick were returned to service.

Of note is the increasing trend in spending on Soviet health care: increased funding for the health care system had a positive impact on the increase in the number of medical workers (from 1945 to 1953, the number of doctors doubled), which contributed to an increase in the quality of medical care. In the field of health protection, priorities have been identified: firstly, the construction of hospitals, sanatoriums and the improvement of the supply of medical supplies — medicines, tools and prostheses; secondly, organizing specialized health care in rural areas and improving the overall quality of health care for the entire population. As a result of the Republican Meeting of Medical Workers of Virgin State Farms held in 1955, it was decided to form a staff of district hospitals and medical assistant/midwife stations equipped with technique, tools and medicines.

Since July 1, 1970, the Decree "On professional work and the rights of medical workers" was replaced by a new law regulating medical activities: "The foundations of the legislation of the USSR and the Union republics on health care" of December 19, 1969. This law included the provisions of previous subordinate acts, systematized and structured them [8]. In essence, this document is the predecessor of the Code of the Republic of Kazakhstan dated September 18, 2009 No. 193-IV. This conclusion suggests itself due to the similarity of the structure of the two above documents. "The foundations of the legislation of the USSR and the Union republics on health care" regulated the sphere of medical relations until the collapse of the USSR.

The Constitution of the Kazakh Soviet Socialist Republic of April 20, 1978 explicitly proclaimed: all citizens have the right to health protection (Chapter 6, Article 40) [9].

September 12, 1978 at the International Conference on Primary Health Care in the city of Alma-Ata, one of the most significant events in the field of world health took place: the signing of the Alma-Ata Declaration. This document, although criticized, contributed to a change in approach to the health care system almost all over the world. One of the points of the Alma-Ata Declaration proclaims the right to health as a basic human right, and aims to achieve its maximum level. At the same time, the State is responsible for the health of its citizens by organizing health interventions. The main promising goal of this document is to achieve maximum health by the year 2000 in the event that States effectively invest the available resources for health development. By the way, it was this optimistic goal that was one of the reasons for criticism of this declaration [10].

Thus, Kazakhstan, with independence in 1991, inherited the Soviet model of health care, based on state regulation and centralized planning. Over the years of state sovereignty, the republic's health care system has been modified in the hypostasis of three models: budget, budget-insurance, program-budget with elements of paid medicine at all stages of the reconstruction of the health care system. The decline in public health and

health indicators associated with the crisis of the 90s, insufficient funding for the industry led to the need to improve legal regulation and adequately ensure guarantees in the field of public health.

Obviously, after the collapse of the USSR and the independence of Kazakhstan, there was a need to update a significant part of the legal apparatus, since the legislation of the Soviet Union could no longer regulate the nascent market relations in the context of the transition from a command and administrative economy to a market one. New conditions for relations appeared and in order to regulate public relations in the field of medical activity, the Law of the Republic of Kazakhstan of January 10, 1992 No. 1107-XII “On the Protection of the Health of the People in the Republic of Kazakhstan” was issued. The structure of this Law included 7 sections, 13 chapters, 70 articles. All citizens are subject to compulsory health insurance. Health insurance is declared the main form of social security for citizens, and rules governing relations in the field of health insurance have been developed accordingly. A guaranteed amount of free medical care is established [11]. However, practice has shown the premature and untenable nature of such decision: the compulsory health insurance system has failed.

The Constitution of the Republic of Kazakhstan, adopted on August 30, 1995, regulates guarantees of the right of citizens to health protection (Article 29). Constitutional provisions guaranteeing this most important of human rights are developing in the system of current health legislation.

On May 19, 1997, the Republic of Kazakhstan adopted the Law of No. 111-I “On the Protection of the Health of Citizens in the Republic of Kazakhstan” — in fact, an updated and improved version of its predecessor. Innovations are the expansion of the rights of citizens when receiving health care, the provision of free choice of specialists and medical organization; legislative consolidation of such concepts as guaranteed free medical care (GFMC), medical rehabilitation, euthanasia; regulation of medical care for patients for such diseases as AIDS, alcoholism and drug addiction, tuberculosis; allocation of a special chapter on the rights and obligations of public and private medical organizations [12].

The Law of the Republic of Kazakhstan of May 19, 1997 No. 111-I “On the Protection of the Health of Citizens in the Republic of Kazakhstan” was replaced by the Law of the Republic of Kazakhstan of July 7, 2006 No. 170-III “On the Protection of the Health of Citizens”, in which the clause on compulsory medical insurance was deleted, while maintaining the provision on voluntary medical insurance. For the first time, the content of the special law laid down a provision on the presumption of consent as an important component of the legal regulation of transplantology. In addition, the law regulates provisions on the regulation of procedures for scientific research and clinical trials [13].

Public relations in the field of health, in addition to the law “On the protection of the health of citizens”, were regulated by a package of laws on the prevention and treatment of HIV infection and AIDS, on psychiatric care, on compulsory treatment of citizens with tuberculosis, on medical and social rehabilitation of persons, patients with drug addiction, on the prevention and restriction of smoking, on the sanitary and epidemiological well-being of the population, on the health care system, on medicines, on the reproductive rights of citizens and guarantees of their implementation, on the donation of blood and its components, as well as a large number of subordinate acts.

In the early 2000s, projects of two state programs in the field of health care were developed — the State Program for the Reform and Development of Health Care of the Republic of Kazakhstan for 2005-2010 and the State Program for the Development of Health Care of the Republic of Kazakhstan for 2011-2015 “Salamatty Kazakhstan”. These programs focused on the optimization of inpatient care and the development of primary health care [14].

The search for an adequate public demand for a national model of the health care system covers the entire era of independent Kazakhstan. On September 13, 2004, Kazakhstan launched the State Program for the Reform and Development of Health Care of the Republic of Kazakhstan for 2005-2010, in the process of implementation of which the Code of the Republic of Kazakhstan “On the Health of the People and the Health Care System” of September 18, 2009 No. 193-IV, which united 12 laws regulating public relations in the field of health care. The Code, as a result of the systematization of health legislation, is the first codified act in the field of health protection that has no analogues in the post-Soviet space. The adoption of the 2009 Code can be regarded as a breakthrough in bringing national legislation in line with international standards, as well as a factor contributing to improving the quality of medical services. Due to the adoption in 2009 of the Code of the Republic of Kazakhstan “On the Health of the People and the Health System”, the issues of legislative regulation of public health protection were raised to a higher level, since this Code incorporates all the developments of the past in the field of medical law and is a complete regulatory document regulating medical activities at present.

The period of health development of the Republic of Kazakhstan until 2010 is characterized by attempts to implement international standards in the medical sphere into national legislation. Among the most important issues were the establishment of minimum standards for the guaranteed volume of free medical care (MSGFMC); reducing maternal and infant mortality, reforming the primary health care service; implementation of the Unified National Health Care System (UNHCS), the purpose of which is to create a health care system of the Republic of Kazakhstan based on the principles of the patient's free choice of a doctor and medical organization, the formation of a competitive environment and the transparency of the process of providing medical services, etc. [15]. Subsequently, during the implementation of the State Health Program "Salamatty Kazakhstan" for 2011-2015 the health care system was significantly modernized, a set of modern mechanisms was introduced, a number of structural transformations were carried out. These areas of health care development are consistently covered in the "Densaulyk" State Program for 2016-2019 and have found development in the State Health Development Program for 2020-2025. The creation of a modern and effective health care system is proclaimed among the main goals of the Development Strategy of Kazakhstan until 2050. In order to ensure high-quality and affordable health care for every citizen in Kazakhstan, the National Project "Quality and Affordable Health Care for Every Citizen" Healthy Nation with implementation dates — 2021-2025 has been approved.

The development of the health care system of Kazakhstan at the legislative level is carried out by updating laws. In the light of the implementation of the Address of the President of the Republic of Kazakhstan "New Development Opportunities in the Context of the Fourth Industrial Revolution", on July 7, 2020, the Parliament of the Republic of Kazakhstan adopted a new Code "On People's Health and the Health Care System", as well as the Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Health". The new version of the Code is aimed at resolving public issues in the following areas:

- improving the health of citizens through intensive development of public health and PHC (the main areas are disease prevention, chronic disease management, personalized, genomic medicine);
- continued development of joint financial support for healthcare;
- development of professionalism and motivation of medical personnel;
- development of medical science;
- digitalization of medicine;
- addition of liability measures for refusal of preventive vaccinations.

The Code covers 6 main areas — public health, education and science, sanitary and medical care, personnel policy, pharmaceutical activities and digital health. Novellas for each direction of the code touched upon public health issues, with an emphasis on health promotion through disease prevention. Focusing on world standards, now citizens are obliged to take care of their health, undergo screenings, and receive preventive vaccinations. Regulations on mental health care, prevention of suicidal behavior and addictions caused by psychoactive substances, as well as gambling are regulated; standards for the involvement of parents and teachers in the health care of pupils and schoolchildren with educational and explanatory measures; norms for providing adolescents and youth with confidential comprehensive care.

In order to improve educational activities, a course was taken to introduce a continuous integrated model of training and independent assessment of students and professional readiness of graduates in accordance with the requirements of the World Federation of Medical Education. The current Code provides for norms aimed at improving scientific activities.

In the direction of digital health care, measures are taken to ensure the safety and protection of personal medical data of patients, including those providing for specifying the procedure for using personal and de-personified data, as well as responsibility for the correctness and completeness of data entry.

A new vision in the text of the code acquired the concept of a medical error — from now on, a new definition is legally enshrined — a medical incident, the advantage of which was the delimitation of the criminal and inessential nature of actions. Independent chapters of the code regulate licensing and notification issues.

Serious challenges of time have actualized the problem of the sustainability of the health care system in the context of the massive spread of infectious diseases. In the context of the COVID-19 coronavirus infection pandemic, the legislation turned out to be unable to adequately respond to challenges, the national health care system was in dire need of applying acts of soft law, which were the decisions of the chief sanitary doctors of the republic and the regions. Not least, this concerns the issues of ensuring guarantees of social protection of medical workers. Order of the Minister of Health of the Republic of Kazakhstan dated April 4, 2020 No. KR DSM-28/2020 "On some issues of financial support for health care workers involved in anti-

epidemic measures in the fight against coronavirus COVID-19” regulated the rules for establishing salary allowances for health care workers involved in the fight against the pandemic [16]. Subsequently, the Rules became invalid by order of the Minister of Health of the Republic of Kazakhstan dated October 11, 2021 No. KR -DSM -102.

Within the framework of international cooperation in the field of health, during international integration, the state adheres to the position of protecting national interests, full participation in international agreements, associations in the field of health protection and the creation of a system of bilateral and multilateral partnerships on this basis. Cooperation with WHO, UNAIDS, UNICEF OECD is an integral part of the comprehensive development of the national health system and aims to support it in line with global health priorities.

The implementation of the medical code of 2020 is associated with an increase in the efficiency of the republic's health care system: preserving the health of the nation, strengthening the joint responsibility of citizens for their health, reducing the number of suicidal attempts and consumption of tobacco products, alcoholic beverages, improving the quality of primary health care, strengthening control over the quality of medical services provided, improving the quality of training of medical personnel, developing medical science, obtaining medical services in digital format, increasing the efficiency of using budget funds and competitiveness of medical institutions.

The current health situation in the Republic of Kazakhstan shows that the administrative and legal regulation of the industry needs to modernize the legal mechanism for ensuring the quality of medical care and organizational optimization in crisis situations, especially such as periods of pandemic of infectious diseases. Administrative and legal regulation in the field of health care is the process of applying the legal tools of the system of public administration. State bodies, endowed with powers of a state-power nature, carry out management on the basis of the use of a set of legal means, including legislative and law enforcement acts. These public administration bodies are a hierarchical system and are designed to carry out the functions of determining and ensuring the implementation of state policy in the field of health protection of citizens. In the context of a pandemic of infectious diseases, the use of the system of interim legal means of state control and supervision by government authorities is updated.

The structure of the system of subjects of administrative and legal regulation of health care is a set of public administration bodies subordinated in terms of scope and nature of competence, the activities of which are due to system-forming relationships. The criteria for the scope and nature of competence determine the level of competence of each structural element of the entire system of public administration bodies, make it possible to identify the features of structural ties, are aimed both at providing management functions for all parts of the state apparatus and at eliminating duplication of powers.

The paradigm of the unified system of public administration bodies can be conditionally divided into 3 interconnected levels: a) bodies of general competence; b) bodies of sectoral competence; c) bodies of intersectoral competence.

Bodies of general competence — the President of the Republic of Kazakhstan, the Government, local executive bodies — are empowered to develop and implement state health policy, which, along with the main tasks, provides for functions to ensure the activities of functionally and organizationally subordinate subjects.

Industry competence bodies are positioned in two directions: (1) central management bodies of other industries, endowed with the functionality of implementing health care organization issues in the subordinate field of activity — the Ministry of Internal Affairs, the Ministry of Defense, the National Security Committee; (2) central management bodies of other industries performing sectoral security and auxiliary functions in the field of health — the Ministry of Education, the Ministry of Science and Higher Education, the Ministry of Labor and Social Protection, the Ministry of Information and Public Development, the Ministry of Culture and Sports.

The bodies of intersectoral competence regarding the health care system can be divided into: (1) bodies of direct intersectoral management — the Ministry of Health and (2) bodies of intersectoral management of other areas, performing functions of intersectoral significance in this area — the Ministry of Emergency Situations, the Ministry of Ecology, Geology and Natural Resources, the Ministry of Digital Development, Innovation and Aerospace Industry.

Conclusion

Like any activity that affects the lives of citizens in one way or another, medical activity is subject to settlement. Since Kazakhstan gained state independence, the health care system of the republic has been re-

peatedly subjected to reforms. During this period, new methods of diagnosis, treatment, rehabilitation of various diseases were introduced, which indicates further prospects for the development of the health care system, the basis of which is the regulatory framework governing legal relations in the field of medicine.

As a result of the analysis of regulatory legal acts and thematic literature, it became possible to distinguish the main directions of the development of medical law of Kazakhstan in different historical periods. In the history of the Russian Empire, there were charters regulating the work of medical personnel, but the rights and obligations of patients in these regulatory legal documents were practically not considered. With the onset of the Soviet period, the systematic development of medical law took place. Initially, the regulation of public relations in the medical sphere was carried out at the level of decisions of authorized bodies. The Soviet period is characterized by a clear definition of the category "patient's rights". The undoubted advantage of this period is the right of citizens to receive free medical services available at that time.

The period of the late XX — early XXI centuries was accompanied by the transition of the work of health care institutions to the rails of market relations. The reform of health care in the 90s did not produce the expected results and failed. The reasons for this situation were neglect of social, economic and historical factors, the transition to insurance medicine was not carried out.

At the moment, taking into account the negative and positive experience in reforming the health care system, Kazakhstan has again taken a course towards the introduction of insurance medicine and prioritizes the development of primary health care, since, according to WHO recommendations, the organization of primary health care today seems to be the most urgent problem.

The role of health care in the Republic of Kazakhstan is biased minimized. The country's medicine is at the stage of some kind of restructuring, since a new model is selected and consolidated, the shortcomings of past years are taken into account. The influence of such aggravating factors as staff turnover and corruption should be noted. In this regard, the fragmentation of the health care system in Kazakhstan can be determined as a question not only of the unfinished social, but also of the legal framework. It is possible to solve the social difficulties of Kazakhstan's health care system only by means of a comprehensive rethinking of the needs of citizens of countries. The priority of man, citizens in the processes of medicine is due to the general tendency of the world to position human resources as the main capital of the country. In this regard, it is valuable and constructive to recommend the improvement and more thorough elaboration of laws directly related to medicine, the expansion and clarification of some of its provisions; regular state audit of medical activities according to international experience. Fulfillment of the basic conditions in the form of a rational combination of social and legal aspects contribute to improving the quality of medicine in Kazakhstan, harmonizing its components, as well as strengthening the role of health care at the state level.

References

- 1 Средняя продолжительность жизни в Казахстане планируют довести до 75 лет [Электронный ресурс]. — Режим доступа: https://kzaif.kz/health/srednyuyu_prodolzhitelnost_zhizni_v_kazahstane_planiruyut_uvelichit_do_75 лет.
- 2 Gostin L.O. An International Agreement on Pandemic Prevention and Preparedness / L.O. Gostin, S.F. Halabi, K.A. Klock // JAMA. — 2021. — Oct; 326(13):1257–8. 10.1001/jama.2021.16104.
- 3 Felter C.A. Guide To Global COVID-19 Vaccine Efforts. Foreign Affairs Newsletter. 11 October 2021. [Электронный ресурс] / C.A. Felter. — Режим доступа: <https://www.cfr.org/background/guide-global-covid-19-vaccine-efforts>.
- 4 de Oliveira B.R. Determinants of access to the SARS-CoV-2 vaccine: a preliminary approach / B.R. de Oliveira, A.I. da Penha Sobral, M.L. Marinho, M.F. Sobral, A. de Souza Melo, G.B. Duarte // Int J Equity Health. 2021. Aug;20(1):183. 10.1186/s12939-021-01520-4.
- 5 Moon S. Will Ebola change the game? Ten essential reforms before the next pandemic. The report of the Harvard-LSHTM Independent Panel on the Global Response to Ebola / S. Moon, D. Sridhar, M.A. Pate, A.K. Jha, C. Clinton, S. Delaunay, V. Edwin, M. Fallah, D.P. Fidler, L. Garrett, E. Goosby, L.O. Gostin, D.L. Heymann, K. Lee, G.M. Leung, J.S. Morrison, J. Saavedra, M. Tanner, J.A. Leigh, B. Hawkins, L.R. Woskie, P. Piot. — Lancet. 2015 Nov 28; 386(10009):2204-21. doi: 10.1016/S0140-6736(15)00946-0. Epub 2015 Nov 23. PMID: 26615326; PMCID: PMC7137174.
- 6 РСФСР. Декреты. О профессиональной работе и правах медицинских работников [Электронный ресурс]: декрет от 01.12.1924 (ред. от 29.12.1971) N 88/РСФСР. Декреты [Электронный ресурс]. — Режим доступа: <http://docs.cntd.ru/document/564138979>.
- 7 СССР. Конституция. Конституция (Основной закон) Союза Советских Социалистических Республик [Электронный документ]: Утверждена Чрезвычайным VIII съездом Советов Союза ССР 5 декабря 1936 года / СССР. Конституция (1936) // Энциклопедия Всемирная история [Электронный ресурс]. — Режим доступа: <http://www.hist.msu.ru/ER/Text/cnst1936.htm>.
- 8 СССР. Законы. Об утверждении Основ законодательства Союза ССР и союзных республик о здравоохранении [Электронный ресурс]: закон от 19.12.1969 N 4589-VII / СССР. Законы // Консультант Плюс. [Электронный ресурс]. — Режим доступа: <http://www.consultant.ru/>.

9 КазССР. Конституция. Конституция (Основной Закон) Казахской Советской Социалистической Республики [Электронный документ]: Утверждена 20 апреля 1978 года / КазССР. Конституция (1978) [Электронный ресурс]. — Режим доступа: <https://online.zakon.kz/>.

10 КазССР. Декларации. Алма-Атинская декларация [Электронный ресурс]: декларация от 12.09.1978 г./ КазССР. Декларации [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=30354910#pos=0;0.

11 Республика Казахстан. Законы. Об охране здоровья народа в Республике Казахстан [Электронный ресурс]: закон от 10.01.1992 № 1107-ХІІ/РК. [Электронный ресурс]. — Режим доступа: <https://online.zakon.kz/>.

12 Республика Казахстан. Законы. Об охране здоровья граждан в Республике Казахстан [Электронный ресурс]: закон от 19.05.1997 № 111-І/РК. [Электронный ресурс]. — Режим доступа: <https://online.zakon.kz/>.

13 Республика Казахстан. Законы. Об охране здоровья граждан [Электронный ресурс]: закон от 07.08.2006 № 170-ІІІ/РК. [Электронный ресурс]. — Режим доступа: <https://online.zakon.kz/>.

14 Қацага А. Қазақстан. Обзор системы здравоохранения. Системы здравоохранения: время перемен [Электронный ресурс] / А. Қацага, М. Кульжанов, М. Karanikolos, B. Rechel. — ВОЗ. — 2012. — Т. 14, № 4. — 181 с. — Режим доступа: https://www.euro.who.int/__data/assets/pdf_file/0004/181579/e96451-Rus.pdf.

15 Аканов А.А. Система здравоохранения Республики Казахстан: современное состояние, проблемы, перспективы [Электронный ресурс] / А.А. Аканов, М.А. Камалиев // Социальные аспекты здоровья населения. — 2010. — №3. — Режим доступа: <http://vestnik.mednet.ru/content/view/215/30/lang.ru/>.

16 «О некоторых вопросах финансовой поддержки работников системы здравоохранения, задействованных в противоэпидемических мероприятиях в рамках борьбы с коронавирусом COVID-19» Приказ Министра здравоохранения Республики Казахстан от 4 апреля 2020 года № ҚР ДСМ-28/2020. Зарегистрирован в Министерстве юстиции Республики Казахстан 4 апреля 2020 года № 20304. Утратил силу приказом Министра здравоохранения Республики Казахстан от 11 октября 2021 года № ҚР-ДСМ - 102. [Электронный ресурс]. — Режим доступа: <https://adilet.zan.kz/rus/docs/V2000020304>.

Л.Б. Богатырева, Б.А. Тайторина, А.М. Сатбаева

Қазақстан Республикасының денсаулық сақтау саласындағы әкімшілік-құқықтық реттеуді концептуализациялау мәселелері

Мақалада медициналық қызмет саласындағы қоғамдық қатынастар, осы қатынастардың қалыптасуының әртүрлі кезеңдеріндегі оларды құқықтық реттеу мәселелері талданған. Зерттеу пәні Қазақстан Республикасының денсаулық сақтау саласындағы деректану және нормативтік-құқықтық базасы болып табылады. Мәселені зерттеу 1913 жылдан бастап бүгінгі күнге дейін Қазақстан аумағында медициналық құқықты дамытудың тарихи ретроспективасын талдау негізінде жүзеге асырылды, медициналық құқықты дамытудың негізгі тенденцияларына сипаттама мен бағалау берілді, осы құқық саласын дамыту перспективалары айқындалды. Денсаулық сақтау саласындағы қоғамдық қатынастарға халықаралық-құқықтық және мемлекеттік-құқықтық ықпал ету теориясы мен практикасын қорыту негізінде денсаулық сақтау феноменін зерттеу, Қазақстан Республикасында денсаулық сақтау жүйесін құқықтық реттеуді ұйымдастыру мен жүзеге асырудың құқықтық негіздерін анықтау және тұжырымдамалық негіздеу әрекеті жүзеге асырылды. Авторлар денсаулық сақтау жүйесін құқықтық реттеудің мәні туралы заманауи идеяларды дамытатын ережелерді тұжырымдаған. Денсаулық сақтау жүйесінің қалыптасуы мен дамуының жаңшы теориялық және саяси-құқықтық аспектілерін, оның қоғам өміріндегі орны мен рөлін және Қазақстан Республикасының нақты мемлекеттік-құқықтық шындығындағы функционалдық көріністерін зерттеуге ерекше назар аударған. Медициналық қызмет саласындағы мемлекеттік басқару мәселелері туралы қазіргі заманғы идеялар мемлекеттің қоғамдық денсаулық сақтау саласындағы әлеуетін жақсарту мәселесін шешу қажеттілігіне негізделген.

Кілт сөздер: денсаулық сақтау, медицина, денсаулықты қорғау, құқықтық реттеу, әкімшілік-құқықтық реттеу, медициналық көмек, медициналық сақтандыру, реформалар.

Л.Б. Богатырева, Б.А. Тайторина, А.М. Сатбаева

Проблемы концептуализации административно-правового регулирования в сфере здравоохранения Республики Казахстан

В статье проанализированы общественные отношения в сфере медицинской деятельности, проблемы их правового регулирования в различные периоды становления данных отношений. Предметом исследования являются источниковедческая и нормативно-правовая база здравоохранения Республики Казахстан. Изучение проблемы осуществлено на основе анализа исторической ретроспективы развития медицинского права на территории Казахстана с 1913 года по наши дни, даны характеристика и оценка основных тенденций развития медицинского права, определены перспективы развития данной отрасли права. На основе исследования феномена здравоохранения, обобщения теории и практики международно-правового и государственно-правового воздействия на общественные отношения в

сфере здравоохранения осуществлена попытка выявления и концептуального обоснования правовых основ организации и осуществления правовой регуляции системы здравоохранения в Республике Казахстан. Авторами сформулированы положения, развивающие современные представления о сущности правового регулирования системы здравоохранения. Особое внимание уделено изучению общетеоретических и политико-правовых аспектов становления и развития системы здравоохранения, его места и роли в жизни общества и функциональных проявлений в реальной государственно-правовой действительности Республики Казахстан. Современные представления о проблемах государственного управления в сфере медицинской деятельности основаны на необходимости решения проблемы улучшения потенциала государства в области общественного здравоохранения.

Ключевые слова: здравоохранение, медицина, охрана здоровья, правовое регулирование, административно-правовое регулирование, медицинская помощь, медицинское страхование, реформы.

References

- 1 Sredniuiu prodolzhitelnost zhizni v Kazakhstane planiruiut dovesti do 75 let [The average life expectancy in Kazakhstan is planned to be increased to 75 years old]. kzaif.kz. Retrieved from: https://kzaif.kz/health/srednyuyu_prodolzhitelnost_zhizni_v_kazakhstane_planiruyut_ovelichit_do_75 лет [in Russian].
- 2 Gostin, L.O., Halabi, S.F., & Klock, K.A. (2021). An International Agreement on Pandemic Prevention and Preparedness. *JAMA*, 326(13):1257–8. 10.1001/jama.2021.16104.
- 3 Felter, C.A. (2021). Guide To Global COVID-19 Vaccine Efforts. *Foreign Affairs Newsletter*. 11 October 2021. cfr.org Retrieved from: <https://www.cfr.org/backgrounder/guide-global-covid-19-vaccine-efforts>.
- 4 de Oliveira, B.R., da Penha Sobral, A.I., Marinho, M.L., Sobral, M.F., de Souza Melo, A., Duarte, G.B. (2021). Determinants of access to the SARS-CoV-2 vaccine: a preliminary approach. *Int J Equity Health*, Aug; 20(1):183. 10.1186/s12939-021-01520-4.
- 5 Moon, S., Sridhar, D., Pate, M.A., Jha A.K., Clinton, C., Delaunay, S., Edwin, V., Fallah, M., Fidler, D.P., Garrett, L., Goosby, E., Gostin, L.O., Heymann, D.L., Lee, K., Leung, G.M., Morrison, J.S., Saavedra, J., Tanner, M., Leigh, J.A., Hawkins, B., Woskie, L.R., Piot, P. (2015). Will Ebola change the game? Ten essential reforms before the next pandemic. The report of the Harvard-LSHTM Independent Panel on the Global Response to Ebola. *Lancet*. 2015 Nov 28; 386(10009):2204-21. doi: 10.1016/S0140-6736(15)00946-0. Epub 2015 Nov 23. PMID: 26615326; PMCID: PMC7137174.
- 6 RSFSR. Dekrety. O professionalnoi rabote i pravakh meditsinskikh rabotnikov: dekret ot 01.12.1924 (red. ot 29.12.1971) N 88/RSFSR. Dekrety // Kodeks. [On the professional work and rights of medical workers]. docs.cntd.ru. Retrieved from: <http://docs.cntd.ru/document/564138979>[in Russian].
- 7 SSSR. Konstitutsiia (1936). Konstitutsiia (Osnovnoi zakon) Soiuza Sovetskikh Sotsialisticheskikh Respublik: Utverzhdena Chrezvychainym VIII sezdom Sovetov Sojuza SSR 5 dekabria 1936 goda / SSSR. Konstitutsiia (1936) // Entsiklopediia Vsemirnaia istoriia [Constitution (Basic Law) of the Union of Soviet Socialist Republics]. hist.msu.ru. consultant.ru. Retrieved from: <http://www.hist.msu.ru/ER/Etext/cnst1936.htm> [in Russian].
- 8 SSSR. Zakony. Ob utverzhdenii Osnov zakonodatelstva Soiuza SSR i soiuznykh respublik o zdavoohranenii: zakon ot 19.12.1969 N 4589-VII / SSSR. Zakony [On the approval of the Fundamentals of the legislation of the USSR and the Union republics on health care]. *Konsultant Plus*. consultant.ru. Retrieved from: <http://www.consultant.ru/> [in Russian].
- 9 KazSSR. Konstitutsiia (1978). Konstitutsiia (Osnovnoi Zakon) Kazakhskoi Sovetskoi Sotsialisticheskoi Respubliki: Utverzhdena 20 apreliia 1978 goda / KazSSR. Konstitutsiia (1978) [Constitution (Basic Law) of the Kazakh Soviet Socialist Republic]. online.zakon.kz. Retrieved from: <https://online.zakon.kz/> [in Russian].
- 10 KazSSR. Deklaratsiia. Alma-Atinskaia deklaratsiia: deklaratsiia ot 12.09.1978 g./ KazSSR. Deklaratsiia. Alma-Ata Declaration [Alma-Ata Declaration: Declaration of 12.09.1978]. online.zakon.kz. Retrieved from: https://online.zakon.kz/Document/?doc_id=30354910#pos=0;0 [in Russian].
- 11 Respublika Kazakhstan. Zakony. Ob okhrane zdorovia naroda v Respublike Kazakhstan: zakon ot 10.01.1992 № 1107-XII/RK. online.zakon.kz. Retrieved from: <https://online.zakon.kz/> [in Russian].
- 12 Respublika Kazakhstan. Zakony. Ob okhrane zdorovia grazhdan v Respublike Kazakhstan zakon ot 19.05.1997 № 111-I/RK [On the protection of the health of the people in the Republic of Kazakhstan: Law of 10.01.1992 No. 1107-XII / RK]: online.zakon.kz . Retrieved from: <https://online.zakon.kz/> [in Russian].
- 13 Respublika Kazakhstan. Zakony. Ob okhrane zdorovia grazhdan: zakon ot 07.08.2006 № 170-III/RK. [On the protection of the health of citizens: Law of 07.08.2006 No. 170-III / RK.]. online.zakon.kz . Retrieved from: <https://online.zakon.kz/> [in Russian].
- 14 Kacaga A. (2012). Kazakhstan. Obzor sistemy zdavoohraneniia. Sistemy zdavoohraneniia: vremia peremen [Overview of the health care system. Health systems: time for change]. Moscow: VOZ, 125 p. [in Russian].
- 15 Akanov A.A., & Kamaliev M.A. (2010). Sistema zdavoohraneniia Respubliki Kazakhstan: sovremennoe sostoianie, problemy, perspektivy [The healthcare system of the Republic of Kazakhstan: current state, problems, prospects]. *Sotsialnye aspekty zdorovia naseleniia - Social aspects of public health*, №3. vestnik.mednet.ru Retrieved from: <http://vestnik.mednet.ru/content/view/215/30/lang.ru/> [in Russian].
- 16 “O nekotorykh voprosakh finansovoi podderzhki rabotnikov sistemy zdavoohraneniia, zadeistvovannykh v protivoepidemicheskikh meropriiatiiakh v ramkah borby s koronavirusom COVID-19” Prikaz Ministra zdavoohraneniia Respubliki Kazahstan ot 4 apreliia 2020 goda № KR DSM-28/2020 [“On some issues of financial support for healthcare workers involved in anti-epidemic measures in the fight against coronavirus COVID-19” Order of the Minister of Health of the Republic of Kazakhstan dated April 4, 2020 No. KR DSM-28/2020.]. Zaregistrirvan v Ministerstve iustitsii Respubliki Kazakhstan 4 apreliia 2020 goda № 20304. Utratil silu prikazom Ministra zdavoohraneniia Respubliki Kazahstan ot 11 oktiabria 2021 goda № QR-DSM - 102. adilet.zan.kz. Retrieved from: <https://adilet.zan.kz/rus/docs/V2000020304> [in Russian].