International Journal of Engineering & Technology, 7 (4.26) (2018) 267-269

International Journal of Engineering & Technology

Website: www.sciencepubco.com/index.php/IJET

Research paper



Transformations of the Right to Health Care Content, and its Connection with the Right to Biotechnology

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Abstract

The paper updates the concept and the content of the constitutional right of a person and citizen. The concept of "biotechnology" is emphasized. The possibility of applying the methods of patent analysis to study the state of biotechnology is discussed.
The results of the study are based on the use of the following methods: a universal dialectical method of scientific knowledge, as well as general scientific methods based on it (description, analysis, synthesis, induction, deduction, comparison, analogy, generalization) and specific scientific methods (comparative legal, system-structural and formal legal).

Keywords: *human rights, health protection, biotechnology, law enforcement.*

1. Introduction

A new stage of civilizational development is characterized by colossal transformations not only in the sphere of social and political structure, but also in the state of public consciousness: the value of health promotion becomes dominant.

Of course, all public institutions must respond to the new high-tech digital reality of existence of not only personal but also the public need to be vigorous, active, and strong. Therefore, the state with its social functions is so in demand: despite the worsening of the foreign policy position of Russia in the world (which, unfortunately, slows down the course of social reforms), state authorities still strive to realize the main sense-forming dominant of the new Russia: improving the quality of human life (Article 2 of Constitution of the Russian Federation).

The main law of the Russian Federation in its article 41 enshrines the rights of citizens to health protection and medical care, what is closely interrelated: they have one function - the maintenance and preservation of human health.

Analyzing the “Fundamentals of the legislation of the Russian Federation on the protection of the health of citizens” (1993), we see that in the federal law “On the protection of the health of citizens in the Russian Federation” (2011) there was a constitutional specification of the definition of the “health protection” concept: it comprises measures of political, economic, legal, social, scientific, medical, including sanitary and anti-epidemic (preventive) nature carried out by state authorities of the Russian Federation, state authorities subjects of the Russian Federation, local governments, organizations, their officials and other individuals, and also citizens in order to prevent diseases, preserve and strengthen the physical and mental health of each person, maintain their long active life, providing them with medical care.

The term "health" was first used in the preamble of the Constitution of the World Health Organization (WHO) and was defined as a status of complete physical, mental and social well-being, and not only as the absence of disease and physical defects. This definition gave rise to a lot of discussions and discontent, especially the inclusion of categories of complete "mental" and "social" well-being, which turned almost any human action into an object of health.

The 101st WHO session suggested for a discussion the following concept: "health is a dynamic state of complete physical, mental, spiritual and social well-being, and not only the absence of diseases or physical defects."

It is worth noting that in civil law its significance is most clearly manifested: health is named among the intangible benefits that are the subject of civil rights in accordance with Art.150 of the Civil Code of the Russian Federation. Intervention in the sphere of health may lead to the emergence of legal relations on the obligations of causing harm.

2. Methods

The method of comparative legal analysis revealed the specific features of the right to health protection in the legislation of various countries.

The use of the systematic and structural method of cognition allowed us to reveal the normative content of the constitutional right to health protection.

Formal legal research method was used in determining the content of such concepts as “the right to health protection”, “biotechnology”, and “asymmetry”, etc.

3. Results

In the constitutional prescription, health is stated as a value for the life of every person; therefore, among the numerous rights provided for by the Constitution of the Russian Federation, the right to

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health as a social phenomenon can be distinguished - it is a person's ability to use all social, especially state, means aimed at preserving, strengthening, developing and in case of violation, the restoration of the maximum attainable level of the physical and mental state of person's body, taking into account international standards and compliance with the Constitution standards.

The duty of the state is (how it is specified in the Decree of the Government of the Russian Federation dated December 8, 2017.No. 1492 "On the Program of state guarantees of free medical care to citizens for 2018 and for the planned period of 2019 and 2020") to guarantee the realization of the right to health protection. Consequently, a person's desire for health, regardless of his/her physical and mental status, is reinforced by access to all medical services. In turn, the commercialization of medical institutions should not consider economic interests as exclusive, but provide free medical care regardless of the economic status of a person.

4. Discussions

To deepen the content of the constitutional provisions on the protection of public health and medical care in the Russian Federation a number of legislative and subordinate legal acts at all levels have been adopted that have made a certain contribution to the cause of protecting the rights of citizens to health protection. The main (basic) legislative act in the field of health care in Russia was the Federal Law dated 21.11.2011 N 323-FZ "On the basis of health protection of citizens in the Russian Federation". This law legally enshrines the changes that have occurred since adoption in 1993 of the Fundamentals of legislation and conditions of the functioning of the economy, the executive system, the organizational framework for the provision of medical care, certain conceptual directions for reforming the health care industry and related industries, and the delimitation of powers between government bodies and local governments.

In accordance with this legislation, the Government of the Russian Federation has adopted several special federal programs in the field of health care and one of the priorities of strategic planning is the Concept of the long-term socio-economic development of the Russian Federation for the period up to 2020. Referring to the aforementioned Concept, we note that it also deals with the modernization of the healthcare system, the creation of a system to improve the standardization system, what would contribute to improving the quality of medical services provided. At the same time, it should also be emphasized the need to encourage citizens of the Russian Federation to take a responsible attitude towards their health.

In order to stimulate the development of the biotechnology industry, on April 24, 2012, the Government has approved the Comprehensive Program for the Development of Biotechnology in the Russian Federation for the period until 2020. The strategic goal of the Program is to reach leading positions by Russia in the field of biotechnology, including in certain areas of biomedicine, biopharmacy, agrobiotechnology, industrial biotechnology and bioenergy, as well as the creation of a globally competitive bioeconomy sector.

In July 2013, the Government approved an action plan ("roadmap") "Development of biotechnologies and genetic engineering", which is conceptually linked to the Comprehensive Program for the Development of Biotechnologies in the Russian Federation until 2020, and aims to structure domestic demand for biotech products and an increase in its export volumes, and the creation of a production and technological base for the formation of new industries.

The term "biotechnology" was first used in 1917 by the Hungarian engineer K. Ereki [1, p. 41]. In the second half of XX century A. Sasson defined biotechnology as a technological process implemented using biological systems - living organisms and living cell components [2, p. 156]. There is no common understanding of the interpretation of the term "biotechnology" now.

For example, the economic dictionary contains the following: "biotechnology is the use of biological processes for industrial and other purposes, primarily for carrying out genetic manipulations with microorganisms in the production of antibiotics, hormones, etc. [3].

Speaking about the regulatory legal acts in the field of biotechnology, it is worth mentioning the law that was adopted at the level of the entire European community (Directive 90/219 / EEC) [4, p. 45-46] "on the limited use of genetically modified microorganisms."

This range of issues is regulated by the legislation on pharmaceutical activity and drugs, as well as by the French Health Code [5].

One of the first regulations governing the use of cellular technologies in domestic law was the Order of the RSFSR Ministry of Health dated February 25, 1991 № 31 "On the implementation of bone marrow transplantation in the practice of health care." The act consolidated the basic requirements for the organization of work on transplantation of hematopoietic stem cells of the bone marrow in the treatment of hematology, some criteria for the selection of donors, and contraindications for bone marrow transplantation.

The Federal Law "On Biomedical Cellular Products" dated 06.23.2016 N 180-FZ was developed taking into account the analysis of international experience and law enforcement practice in Russia and regulates relations arising in connection with the development, preclinical studies, expertise, and state registration of selling, storing, transporting, using, destroying, importing and exporting biomedical cell products from Russia for the prevention, diagnosis and treatment of diseases (states), preservation of pregnancy and medical rehabilitation of patients, as well as in connection with the donation of biological material for the production of biomedical cell products.

In particular, the Law establishes the following as the fundamental principles for carrying out activities in the field of the circulation of biomedical cellular products:

- Voluntary and free of charge donation of biological material;

- Inadmissibility of sale and purchasing biological materials;

- Inadmissibility of creating a human embryo for the production of biomedical cell products;

- Inadmissibility of use for the development, production and use of biomedical cellular products of biological material obtained by interrupting the process of development of the embryo or fetus of a person or disrupting such a process.

5. Summary

An analysis of the above-mentioned law allows us to agree with a number of scientists who claim that many of its provisions need to be improved.

As noted in the literature, it is noted that the biotechnology develops new products and new processes [6, p. 4].

In this regard, it seems necessary to regulate this issue at the legislative level.

It should be noted that for the Russian Federation there is the problem of applying patent law to the creators of biotechnology.

The subject composition of biotechnology patent holders also raises questions: firstly, according to the total number of security

documents issued by Rospatent, the number of patents owned by foreign patent holders is almost three times the number of patents issued to Russian applicants; secondly, the majority of patents on biotechnology in Russia belong to state-owned enterprises, and the Russian Federation acts as a co-owner of such patents, what significantly slows down the development of biotechnologies [7].

Advances in biotechnology should not change the human nature, and main spiritual essence of men. The transformation of the biological nature should contribute to the qualitative improvement of the manifestation, disclosure of all reserves of human psyche through social, physical, and mental health. Legislative regulation of this issue should be formed at the international level at key points. Also, national legislation should clarify the specific features of the biotechnological processes development in a particular state.

6. Conclusion

To systematize the legislation in the field of public health in Russia, which would contribute to the new, innovative development of medicine, there is a need to adopt a codified act - the Medical Code of the Russian Federation.

The lack of legal means that are enshrined in law for the realization of patients' rights to health protection and medical care is the frequent inability of public authorities to carry out their human rights protective function. It was rightly noted by I.V.Rostovshchikov, "it is impossible to legally formalize the whole diversity of social phenomena that affect the realization of subjective rights and their effectiveness" [8, p. 99-101]. In order to fulfill the human rights protection function of the state, it is necessary to create the most favorable conditions and use effective means of civil society institutions (in particular, bioethical committees) that would contribute to the particular realization of individual rights and freedoms.

Unfortunately, now the introduction of biotechnology directly depends on the existing industrial-industrial complex, built into the liberal-market model of economic development. Therefore, modern society will have to find the boundary between the desire to get the maximum commercial benefit thanks to biotechnologies and the initial idea of introducing biotechnologies into the daily human life in order to improve their biosocial and spiritual nature. All this will allow mankind to reach new, more advanced levels of socio-cultural development based on new methods of knowledge. Therefore, the problem of choosing the strategy of interaction between man and nature is very significant: either it is presumptuous management of nature or conscious and purposeful adaptation of all vital activity to the existing biotic circulation of the biosphere [9, p. 236].

Acknowledgement

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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