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TÍTULO: La necesidad de un concepto de "trastorno mental", definición legislativa como garantía de los derechos del paciente.

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RESUMEN: En todo el mundo, y en especial, en la Federación Rusa se observa el deterioro de la salud mental, por lo que no solo es importante fortalecer y proteger la salud mental, sino también resolver problemas relacionados con las necesidades de personas con diversos trastornos mentales. Los autores del artículo analizan el concepto salud mental según las leyes de la Federación Rusa y sobre la base del estudio del acto legislativo de varios países como Estados Unidos de América, Gran Bretaña, Irlanda del Norte y la Organización Mundial de la Salud. Los autores proponen su propia definición del término y demuestran la importancia de este registro para los actos legales regulatorios nacionales.

PALABRAS CLAVES: trastorno mental, derechos del paciente, coerción legal, salud mental, estudio comparativo.

TITLE: The need for "mental disorder" concept legislative definition as the guarantee of patient rights

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ABSTRACT. Throughout the world, and especially in the Russian Federation, the deterioration of mental health is observed, so it is not only important to strengthen and protect mental health, but also to solve problems related to the needs of people with various mental disorders. The authors of the article analyze the concept of mental health according to the laws of the Russian Federation and on the basis of the study of the legislative act of several countries such as United States of America, Great Britain, Northern Ireland and the World Health Organization. The authors propose their own definition of the term and demonstrate the importance of this registry for national regulatory legal acts.

KEY WORDS: mental disorder, patient rights, legal coercion, mental health, comparative study.

INTRODUCTION.

In modern society, mental health is one of the main components of an individual's overall health. The World Health Organization indicates that mental health is an integral part and an essential component of health.

The Charter of the World Health Organization says: "Health is a state of complete physical, mental and social well-being, and not just the absence of diseases and physical defects" [Mental health: strengthening our response (Electronic resource), 2018]. Consequently, the state does not have the right to ignore this factor, since the mental health of its citizens is determined by a whole set of various factors: biological, socio-economic and others.

In the modern world, there is the increase of interest in the manifestations of mental disorders and their legal consequences. The society is interested in the development of mental health policy, the legislative documents in this area, the respect for the rights of a patient, including, in particular, an informed consent to hospitalization.

Unfortunately, the rights of people with mental disorders are violated quite often. In many countries, people with mental disorders face enormous difficulties. The patients are often deprived of their liberty for a long period of time without adhering to due legal procedures and force to work hard. They may be subjected to torture, beatings, violence, inhuman and degrading treatment. The obtaining of patient consent for hospitalization and treatment is ignored; an independent assessment of capacity is not always carried out. Thus, the situations arise in which a significant number of people are forcibly held in clinics, despite their ability to make independent decisions about their future.

DEVELOPMENT.

Methods.

The study is based on the analysis method of current Russian legislation and law enforcement practice and existing European (global) standards for the purpose of legal unification [Comparative Law, 1947; 386]. The methods of legal modeling and forecasting make it possible to determine the need for changes in the current Russian regulatory acts, as well as the need to adjust judicial practice [Dale, William, 1977].

Thanks to the use of modeling and forecasting methods, the consequences of such changes and adjustments can be established with a sufficient degree of reliability, and it is also revealed the way Russian law enforcement practice will be close to the existing European (world) standards in the end [Arslanov Kamil Maratovich, Khabirov Artur Ilfarovich, 2017, pp. 324-325]. The legal

sociological method allows the assessment of social problems from a legal position, from the position of the legislator and the law enforcer [Siems, M., & Mac Síthigh, D. 2012, 651].

The method of interpretation complements the comparative legal analysis in the study, making it possible to understand and compare Russian and European (world) legal standards [Davies, P., 2016; 62]. The use of various methods allowed us to formulate the main theoretical conclusions and make our own proposals on the studied sphere of public relations [Demieva A.G., Arslanov K.M., 2016; p. 2475].

Results and Discussion.

The fundamental law for this group of legal relations in Russia is the Russian Federation Law No. 3185-I “On Psychiatric Assistance and the Guarantees of Citizen Rights during its Provision” issued on July 2, 1992. According to the article 29 of this law: A person suffering from a mental disorder may be hospitalized in a psychiatric hospital without his consent or without the consent of his legal representative before a judge decision if his examination or treatment is possible only in hospital, and the mental disorder is severe and causes:

- a) his immediate danger to himself or others, or
- b) his helplessness, that is, the inability to satisfy the basic necessities of life independently, or
- c) a significant harm to his health due to the deterioration of his mental state, if a person is left without psychiatric care.

Often there are the situations when it is difficult to place a person who really needs treatment in a mental hospital without his immediate desire due to the fact that the recognition of his disability, dangerous for himself and others, demands a large amount of evidence. Consequently, the mentally ill will poison the society life, instead of undergoing the necessary treatment.

On the other hand, compulsory hospitalization often goes beyond the law. There are the cases of authority or trust abuse by the legal representatives of patients, as well as by individual medical workers. This leads to the fact that the persons who do not suffer from mental disorder are placed in hospitals, or on the contrary, mentally ill people remain free, who cannot be placed forcibly in a hospital by relatives and people around for one reason or another. In our opinion, RF legislation has no stable concept (definition) of “mental disorder”, which may be one of the reasons for this situation.

One of the most acute problems of psychiatry is the situation when the patients who really need treatment refuse it. The article 29 of RF Law (July 2, 1992) No. 3185-I “On Psychiatric Assistance and the Guarantees of the Citizen Rights during Its Provision” lists the conditions for involuntary hospitalization. But the law does not have a specific definition of a mental disorder, and doctors often have to decide for themselves whether a patient has a severe form of this disease or there is no reason for involuntary hospitalization. There is also no explanation of “immediate danger” notion, and the phrase “significant harm to health” is extremely vague. For these reasons, involuntary hospitalization can be extremely difficult, as it is necessary to gather a lot of evidence to establish a severe form of mental disorder.

Society suffers from this problem; for example, the notorious ogre, Nikolai Dzhumagaliyev, committed five brutal murders before being arrested. After being diagnosed with schizophrenia, he was detained in a psychiatric hospital and was released less than a year after the end of treatment. Then Dzhumagaliyev committed 3 more murders of women. At the moment, he is in a special medical institution and his discharge is discussed. It turns out that a person is not kept involuntarily in a hospital unless he is dangerous for himself and others. But after the first discharge the man committed repeated crimes, therefore, he could not be considered healthy at the time of his release.

Thus, innocent people suffer from the liberal attitude towards the mentally ill and the gaps in the legislation.

An example of the opposite problem is the problem of mentally ill people right infringement, which can be encountered in the modern world, or the situation of illegal treatment of human property classified to the category of persons suffering from a mental disorder. We are talking about the cases when the fraudsters in the face of realtors, notaries, and even relatives, guardians and doctors put a healthy person in a clinic and manipulate his property fraudulently. For such purposes, fraudsters choose, for example, single elderly people or the people suffering from alcohol dependence. At that, the victims are actually capable and do not suffer from mental illness; for example, a person is fed with psychotropic substances, forced to sign the necessary documents for the sale of his property or a gift certificate drawing up, and then he is placed in a psychiatric hospital, referring to inappropriate behavior, which is actually caused by the taken drugs.

Unfortunately, the property rights of the mentally ill are poorly regulated in our country. Although the laws contain the rules on this topic, for example, in the case of a guardian, in accordance with Articles 17 and 20 of the Federal Law No. 48-FZ (April 24, 2008) "On Guardianship and Custody": "A guardian has no right to the property of a ward and may inherit the housing of the ward due to the fact that the will is a one-party transaction, and the guardian has no right to make any transactions in his favor and alienate the property. The ward, due to his incapacity, has no right to enter into any agreement. Housing will be transferred to the state or heirs by law".

In fact, the rights to dispose of property are violated often in respect of people recognized as mentally ill. Police is reluctant to accept complaints about the loss of housing from such persons; such claims are considered in courts for years and the services of a good lawyer cost a lot of money. The decision in favor of such a claimant is made extremely rarely. Even if the court recognizes the illegality of the transaction, the property is not always returned to the victim. Ultimately, people

who are unreasonably attributed to the mentally ill, lose their place of residence, money, becoming the victims of fraudsters, including close relatives and guardians and legal representatives.

In the year 2012, they arrested the chief physician of the State Healthcare Institution of the Republic of Tatarstan "Psychoneurological Dispensary" in the Republic of Tatarstan, who was punished for the crime provided by the part 1, article 286 of RF Criminal Code (the abuse of power). As an acting guardian of an incapacitated, he ordered the withdrawal of personal funds of the guardian for the purchase and the installation of air conditioning in his office.

In the year 2014, by the court decision of the city of Vladikavkaz, the lawyer of the Republican Psychiatric Hospital was found guilty of committing the crime stipulated by part 4, article 160 of RF Criminal Code (a large-scale acquisition using an official position). The woman made fictitious power of attorney for the withdrawal of pension savings from patients' accounts. Over the year, she seized and appropriated more than two million rubles [Argunova Yu.N., 2015].

If such cases occur with really sick people, then there is no guarantee that they will not affect the patients who have been subjected to involuntary hospitalization mistakenly.

These episodes, in our opinion, are very vivid examples that it is very important to have a logical, reasonable and accessible explanation in law for all citizens, in particular, concerning the concept of "mental disorder". This will reduce the number of cases when mentally ill people who pose a threat to society do not receive treatment or the situations in which people are mistakenly referred to as mentally ill and are placed in hospitals with the subsequent violation of their rights. It is necessary to develop clear mechanisms for the inclusion of persons to the category of mentally ill.

CONCLUSIONS.

It is important to supplement RF Law (July 2, 1992) No. 3185-I "On psychiatric care and the guarantees of citizen rights during its provision" with the conditions of involuntary hospitalization

of citizens, to make it more detailed, to describe in detail such concepts as “immediate danger”, “significant harm to health” etc.

As we have argued earlier, a clear rationale of “mental disorder” concept in regulatory acts is necessary to avoid the mistakes when people are included in this category. Thus, the patients, whose condition corresponds to this concept, will be able to enjoy their rights fully. Obviously, the definition should not contain a large number of scientific terms. It should be accessible to medical professionals and patients, their relatives, legal representatives and other interested parties.

We can observe successful examples of “mental disorder” definition effective record in a legal act within the legislation of the United States of America. At the same time, we can find different definitions of this term in the documents of different states. The most successful definitions are observed in the criminal laws of the states of Massachusetts and Iowa.

Thus, the Article 123 of the General Laws of Massachusetts states that “mental illness means a significant disorder of thinking, mood, perception, orientation, or memory, which extremely violates judgment, behavior, the ability to recognize reality or the ability to respond to the usual demands of life” [Massachusetts State Code, 2018].

The paragraph 229 of the Iowa State Code states that the people with mental retardation and in the state of affect during a crime commission are not subject to criminal liability, while mental illness is defined as "any kind of mental illness or mental disorder" [Iowa State Code, 2018].

Also each state legislation stipulates the mandatory use of one of the commonly accepted US tests for the identification of a mental disorder (For example, M'Naghten test, Durham / New Hampshire test, Model Penal Code test, etc.) [Callahan, Lisa; Meyer, Connie; Steadman, Henry J., 1987]. Such standards allow you to maintain maximum control in the field of psychiatry throughout the state.

If you pay attention to the countries in which, as in Russia, the health care system is mostly state-owned, then, for example, there is a fairly well-developed legislative system in the UK dedicated to mental health. It is based on the Mental Health Act adopted in 1983, amended and revised in 2007. In this Act, mental disorder is defined as mental illness, mental retardation or incompleteness, psychopathic disorder or other mental disorder and mental disability [Mental Health Act, 2007].

Summarizing, in our opinion, the definition of the term “mental disorder” should be enshrined in Russian legislation. First, it should be introduced into the RF Law (July 2, 1992) No. 3185-I “On Psychiatric Assistance and the Guarantees of Citizen Rights during its Provision”, since it is very important to determine accurately the category of persons for whom this document is drawn up. Also, this definition is necessary in such documents as the Civil Procedure Code, the Criminal Code, the Criminal Procedure Code and the Criminal Executive Code to increase the guarantees of rights and freedoms for the people with psychiatric diseases.

As an example, we can suggest the following definition: “a mental disorder is a state of the body in which the normal functioning of its organ systems is disturbed, which leads to a loss of adequate perception of reality, threatens both the sick person and society”.

So, the introduction of “mental disorder” concept into the regulatory framework of Russian Federation should reduce the number of people who are mistakenly categorized as the patients with this disease. To control the situation fully, you should also add the methods of mental illness detection to the legislation, and more specific conditions for involuntary hospitalization. In our opinion, it is necessary to increase control over patients, put them for medical, psychiatric record on a mandatory basis, to monitor the manifestations of the disease in acute and chronic forms, and to conduct regular hospitalization to prevent the development of the disease.

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