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Problems Relating to Social and Legal Protection of Persons Who Have Mental Illness

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Abstract

The article is devoted to the research, analysis and search for solutions to the problems of legal regulation of relations arising in connection with the medical aid to citizens who have mental illness. The following materials have given the scientific view on modern domestic and international legal framework and enforcement practice in such area as psychiatric care. The authors study and analyse the theoretical, practical and moral issues affecting the protection of the rights and interests of citizens suffering from mental disorders. The relevance of the urgent need for further development and improvement of the mechanism of legal regulation of psychiatric counselling procedure has been described. Scientific novelty of the work lies in the fact that the authors attempted to analyse the existing relevant law based on the study of the history and development of the institution of psychiatric care with the purpose to identify the main trends and patterns of existing and possible legislative support of this area of social relations, and to justify the most constructive proposals in order to improve the mechanism of legal regulation of relations arising between the counselor and patient.

Keywords: mental disorders, psychiatric care (counselling), types of psychiatric care, legal status of individuals with mental illness, patient`s rights, the rights and obligations of the counsellor.

INTRODUCTION

Health care being a complex socio-economic system and a specific part of the national economy is defined as a special sphere of the scope of law and designed to ensure the implementation of the most important social task of preserving and improving the health of citizens, providing them with quality medical and preventive counseling and as the most important with psychiatric care. Health law affects the vital interests of citizens due to the fact that the direct objects of medical influence are life, health, physical and mental integrity, human individuality (identity). The issues regarding regulations of mental health services and the protection of the rights and interests of patients have been traditionally focused on the special legal status of those with mental illness, since the appropriate methods of medical intervention need a particular impact of law and policies.

The guaranteeing, implementation and protection of rights and freedoms in mental health care sphere are extremely important. Medical psychiatric services` features are firstly connected with the fact that psychotic diseases break the mental and social functions of the individual, and sometimes completely deprive them of the possibility of independent decision-making and purposeful actions, which makes their position extremely vulnerable, and that, in turn, entails "lawfully available restrictions of personal freedom and the use of forced (non - voluntary) measures of medical influence" [1]. Mental disorders entail impairment of thinking, emotional state, social behaviour of the patient. The brunt of the impact of mental illness, the high chance of disability, lack of normal working capacity or full failure of working abilities, unsocial behavior of the patient explain the fact that the mental health issues of the population, ensuring and protecting the rights of persons suffering from mental illnesses, are among the most important and urgent problems of medicine and law.

A significant feature of the spread of mental diseases is their annual increase, which is associated with "the growth of primary morbidity, changes in the age structure of the population, military conflicts, economic crisis, increasing unemployment, lack of social protection, the spread of alcoholism, etc." [2].

Legal basis for regulation of psychiatric care is clearly insufficient. At the same time, during study and analysis, "it is important not only to research the law itself, but also to monitor the most problematic topics of the implementation in particular" [3]. The lack of more robust legal framework for mental care is fraught with such negative social consequences as the emergence of closed psychiatric institutions and direct arbitrariness against healthy citizens, the transformation of psychiatric science and practice into an instrument of political repression.

The relevance of the mental health of the population is extremely high, the number of people in need of mental health counselling is constantly growing. According to the World Health Organization (WHO), about 500 million people suffer from mental diseases and disorders, about 52 million people are exposed to serious issues of the nervous system, such as schizophrenia, 155 million are affected by neuroses, about 120 million suffer from mental retardation, 100 million - from various disorders of the depressive type, 16 million - from dementia [4].

Scientific research shows that in the sphere of health care, in accordance with the direct indication of the law, the method of restricting the rights and freedoms of citizens in various forms, for example, in the form of the application of forced (compulsory) measures of medical care, disclosure of information with medical secrecy, etc., is widely used. The legislator, using methods for limiting of the subjective civil rights, protects the public interest as the priority, expressed in preventing the negative consequences of the spread of diseases on the territory of Russian Federation in particular, the protection of the rights and interests of citizens. At the same time, the implementation of such preventive measures is beneficial to the whole society as much as for its every mentally healthy member. However, taking into account that the implementation of the relevant legal restrictions may lead to a violation of the fundamental constitutional personal non-property rights of citizens, as well as the fact that a number of evidence of the imperfection of the mechanism of legal restrictions of subjective civil rights has been observed, careful and tedious work should be carried out aiming its further improvement in order to exclude possible violations and provide reliable guarantees.

As outlined above, the improvement of the special mechanism of legal regulation of mental health care is one of the significant and urgent issues.

MATERIALS AND METHODS

While working on the article, the co-authors used such methods of legal science as historical, dialectical, logical and comparative legal. The historical method is used mainly in the study of the history of the development of the mechanism of legal regulation of public relations during psychiatric care provision procedure. The dialectical method provides the possibility of studying the legal mechanism of regulation of mental health care provision procedure in the development, communication and cooperation with other law institutions. The logical method of

research is primarily used in the study and analysis of the legal rules representing the governing relations in the provision of psychiatric medical services and the degree of prevalence of providing reliable protection of persons with mental disorders. The comparative legal method has allowed the co-authors to analyse and compare the foreign and international legislation in the area of regulation of mental health care.

RESULTS

General principles of legal regulation of psychiatric care provision

The study of the history of the development of domestic legislation in the sphere of medical, including psychiatric, care allows to conclude that the legal regulation of medical activities has had following features: 1) the responsibility of doctors for insufficient or wrong treatment has prevailed before medical care rules establishment 2) the difference in the legal status of domestic and foreign doctors has been discovered; 3) the gap between the legal framework and achievements in medical science and practice has been reasonably noticed [5].

Modern medical science and practice have developed and successfully implemented various methods of prevention and treatment of mental illnesses, however, many legal, social and ethical issues that arise in connection with the mental care, are not solved de facto, which may lead to either abuse or misuse of the rights and interests of the social participants, or unreasonable restriction of the rights and freedoms of patients while using the chosen methods of medical influence.

The sources of legal regulation of psychiatric care are the Law of the Russian Federation "On Psychiatric Care and Guarantees of Citizens' Rights during Its Provision", other legal acts of Russian Federation, the republics within the Russian Federation, as well as legal acts of the Autonomous region, Autonomous districts, regions, federal-level cities (Moscow and St. Petersburg). Mental health care is generally provided on the basis of voluntary treatment or with the consent of the person, except in cases provided for by the Law "On Psychiatric Care and Guarantees of Citizens' Rights during Its Provision". This means that exceptions to the general rule of voluntary consent to obtain the mental health care services cannot be made on any other legal basis. This crucial fact is not always taken into account at the level of regional legal rules setting procedures, which poses a significant threat to the protection of the rights and interests of persons suffering from mental illnesses.

A significant role in development of legal regulation of mental health care has been taken by legal integration [6], as the law on mental health care actually creates a legal basis for bringing Russian legislation and domestic practice of psychiatry in accordance with the international standards for the promotion and protection of human rights. International legal rules concerning human rights and freedoms are part of the legal system of the Russian Federation and have priority over the ones of internal laws that contradict them and provide a starting point for a detailed settlement of relations with individuals suffering from mental disorders [7]. The Declaration on the Rights of Disabled Persons , which has inter alia established that "Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration" [8], has played special role in guaranteeing the protection of the rights of people with mental disabilities.

The main purpose of the law should be to ensure that the psychiatric care is as democratic and humane as possible. There following rights are established for people with mental disorders, at providing of psychiatric assistance: respectful and humane attitude, excluding humiliation of human dignity; obtaining the information about their rights, and taking into account the level of understanding receiving the feedback about their illnesses and suggested treatment; psychiatric care in the least restricted conditions at the place of residence; detention in mental hospital during the period necessary for examination and treatment; all kinds of treatment for medical purposes in conditions that meet sanitary and hygienic requirements; the preliminary consent or refusal at any stage from the use of the object of tests of medical purposes and methods, scientific research, learning processes, photos, video or filming; invitation upon their requirement of any expert involved in the provision of mental care; assistance of a lawyer, legal representative.

The analysis of the content of the legal opportunities listed above which should be provided to patients on treatment, first of all, testifies to their declarative, unsecured nature; secondly, to the absence of any legal mechanisms for monitoring their implementation. This is reflected in the fact that the patient's access to effective legal assistance is not provided de facto (in particular, there are no specific legal rules the patient placed in hospital could use to contact a lawyer; it is not possible for a lawyer to be presented during the examination of the patient, difficulties in this regard in the implementation of the right to appeal the actions of medical personnel, etc.).The law does not provide the procedure of obtaining the written consent of the patient for psychiatric counselling. Not all cases of forced mental care are subject to court order, which is therefore unacceptable. Finally, there is neither real and effective system of external control over the actions of medical staff of a psychiatric institution nor for the rules providing the legal consequences for procedural and legal violations committed in the process of providing psychiatric care, in particular, violation of the statutory terms of the examination, the timing of the direction of conclusions and applications for hospitalization to the court, etc.

Furthermore, the list of rights assigned to people with mental disorders in the provision of mental care cannot be named as complete and sufficient. Such individuals should also be given the right to: explain the grounds and objections to the placement in a mental hospital; familiarize themselves with their rights and the rules established in the hospital; complain about the actions of medical personnel without censorship; meet with a lawyer and other representative with the definition of the procedure for the implementation of this right.

Psychiatric care in accordance with the rules of national legislation may be provided by state psychiatric and psychoneurological institutions, non-state psychiatric and psychoneurological organisations, as well as private practitioners who have a relevant license. The real possibility of exercising control over patients ' rights in the last two constituent entities during treatment period is doubtful, which has been confirmed by numerous examples from practice.

Current legislation provides for the following types of mental care:

1) Psychiatric hold;
2) Outpatient psychiatric assistance;
3) Inpatient psychiatric assistance;

Psychiatric hold is expressed in the examination of a citizen by a psychiatrist to find out whether a citizen has a mental disorder, whether he needs psychiatric care and what kind of assistance in particular. Outpatient psychiatric assistance is provided in two forms: consultative and medical care and clinical observation. Inpatient psychiatric assistance, involving hospitalisation of the patient in a mental hospital, is provided in case of recognition a psychiatric disorder and the decision of a psychiatrist to conduct an examination or treatment or the need for a forensic psychiatric examination. These types of psychiatric care

may be provided both at the request or with the consent of the person and in forced (compulsory) order. At the same time, the procedure for obtaining the consent of a person is not provided for mental health care and the method of its registration is not defined by law, which makes the procedures to observe the violations of the rights and interests of citizens complicated. We believe that the procedure for obtaining consent for medical psychiatric counselling should be strictly formalized. The fact of freedom of expression of will to receive mental care must be confirmed by the circumstances provided by law.

It is a matter of concern that not all cases of forced psychiatric care require a court order which has entered into force. Since this is an involuntary intervention in the fundamental and natural right to health of a citizen, such intervention can only be carried out by a court decision. The judicial procedure of compulsory medical intervention is designed to increase the responsibility of medical workers for the legality and validity of the use of compulsory medical measures, to become one of the guarantees of protection of the rights and interests of citizens.

The law establishes the duties of the administration of a mental hospital and medical staff, which include: the provision of necessary medical counseling; the provision of an opportunity to get acquainted with the law "On Psychiatric Care and Guarantees of Citizens' Rights during Its Provision", the rules of the internal regulations of a mental hospital, addresses and phone numbers of state bodies, institutions, officials, which can be accessed in case of violation of the rights of patients; provision of necessary conditions for making complaints, applications to the representatives and executive authorities, the Prosecutor's office, the court, the lawyer; notification of relatives and legal representatives of the patient's admission to the mental hospital; ensuring the safety of patients, monitoring the content of any parcels and transfers; the performance of the duty of legal representative in respect of patients recognized as legally incapacitated and without proper custody.

It seems firstly that this list of legal obligations cannot be recognized as exhaustive, and secondly, the mechanism for its implementation should be determined. In our opinion, the legal basis for defining responsibilities should be the following: psychiatrists and service personnel may not take any action out of the scope of providing psychiatric care without strictly following the established legal procedures that promote the use of psychiatry exclusively for medical purposes, improving the health of patients, humanizing the medical practice.

As about the mechanism of implementation responsibilities, informational, and assuming all the statutory data that benefits patients, should be placed on stationary, available for public viewing stands.

Thus, the analysis objectively shows that the legislation of the Russian Federation in the field of legal regulation of mental health care is far from perfection and requires further improvement and development.

Features of the legal regime of mental health care provision in the voluntary and involuntary order

The law states that mental health care may be provided voluntarily or involuntarily. The voluntary procedure involves the provision of mental health care at the request or with the consent of the person who has a mental disorder or his legal representative. The current legislation establishes that the consent of a person to hospitalisation is recorded in the medical records signed by the person or his legal representative and a psychiatrist. We believe that the request or consent of a person must be made by filing an application to a head of a mental hospital, signed by the applicant or his legal representative. It should be noted that a patient who has voluntarily applied for psychiatric care has the right to refuse appropriate medical intervention at any time.

In the case of voluntary treatment for psychiatric care, the relationship between the patient and the mental health care provider is based on a civil contract for medical counselling. This agreement states the rights and obligations of the parties to the relations in the provision of psychiatric care. The subject of the agreement is the professional actions of the employees of the health services provider, aimed at achieving such a result as the restoration or improvement of mental health of the patient. Not achieving such a result, in our opinion, should not entail the assessment of medical services as inadequate. However, if the failure to achieve the desired result was caused by the improper performance of the obligation, expressed in poor conduct, use of inappropriate methods and methods of treatment, etc., the health care provider in accordance with the current legislation should be responsible for the improper performance of the contract and causing harm to the patient's health.

Under the contract, the patient acquires the right for medical psychiatric services of proper quality, information on the diagnosis, methods and techniques of medical exposure, the possible consequences of such services, the data of medical and genetic examinations to be provided by the attending psychiatrist. The patient has the right to demand before the signing of the contract the disclosure of information about licenses and certificates of the contractor's right to provide professional psychiatric services. The patient, on the other side, is obliged to comply with all the requirements of the doctor, ensuring the quality of medical services.

The provisions of the contract are determined according to its purpose and include the conditions of the subject, the duration, prices and liability for non-fulfilment or improper fulfilment of obligations. The order of conclusion, amendment and termination of the contract, as well as the requirements for its form and content are determined by the civil law. It seems that in this case, standard (typical) templates of agreements for the provision of psychiatric medical services can be used [9].

Forced measures of psychiatric medical counselling are applied by a court order. Mental health care without the consent of the person who has a mental disorder or without the consent of his legal representative is allowed:

- in the case of application of coercive medical measures on the grounds provided by the Criminal Code and the Code of Criminal Procedure. Such measures are applied by a court order in respect of individuals suffering from mental disorders, who have committed socially dangerous acts. Forced medical measures are carried out in psychiatric institutions; - in the case of involuntary psychiatric examination, dispensary observation, hospitalisation on the grounds provided for by articles 23, 29 of the law "On Psychiatric Care and Guarantees of Citizens' Rights during Its Provision".

The grounds for involuntary hospitalisation in a mental hospital are defined by the article 29 of the law "On Psychiatric Care and Guarantees of Citizens' Rights during Its Provision". A person who has a mental disorder may be admitted to a mental hospital without their consent or the consent of their legal representative before the judge's decision is issued, if the examination and treatment are possible only in clinical conditions, and the mental disorder is severe and causes:

a) an immediate danger to the person or others or

b) helplessness, that is, his inability to meet the basic demands of life independently or

c) significant harm to their health due to the deterioration of the mental health condition, if the person is left without psychiatric care. If a person has a severe mental disorder, involuntary mental examination is carried out by a psychiatrist independently or with the appropriate court order.

In described situations, except for emergency cases, the treatment is applied by decision of the Commission of

psychiatrists. A person placed in a mental hospital is subject to mandatory examination within 48 hours by a mentioned Commission. If the hospitalization is found to be unjustified and the hospitalized person does not wish to remain in the clinic, they are subject to immediate discharge. If the hospitalization is found to be justified, the report of the Commission of psychiatrists is supposed to be sent to the court within 24 hours in order to proceed on the further stay of the person in the hospital. The judge shall consider the application for involuntary hospitalization of persons within five days from the date of its acceptance.

We believe that the guarantees provided by the law for forced (involuntary) psychiatric care are clearly insufficient to ensure the necessary legal and social security of patients. In our opinion, it is necessary to increase the protective level of people suffering from mental illness as follows: 1) to establish the rule that court order is to be mandatory for all cases of compulsory examination and treatment; 2) to improve the procedure for obtaining the patient's consent to get the psychiatric care; 3) to establish the possibility of external control over the behaviour of medical personnel when applying prescribed restraint measures to the patient, as these measures prevent the patient from using the rights granted to him. In addition, we believe that the protection level of the patient's personality can be significantly enhanced by securing the relevant guarantees in the section of the Civil Code of the Russian Federation on the legal status of citizens (individuals), as evidenced by the legislative practice of foreign states. Thus, according to the section II, p. 26, of the Civil Code of Quebec, "About forced hospitalization and psychiatric examination", "No person may be confined in a health or social services institution for a psychiatric assessment or following a psychiatric assessment concluding that confinement is necessary without his consent or without authorization by law or the court" [10].

Limits of the restriction of the rights and freedoms of a person who has mental illness

The state cannot be recognised as law-based and democratic if human rights and freedoms do not have priority over other social values, which are extremely important for each individual, especially if there is a threat of their loss. A mental disorder is a high-risk factor that can lead to the infringement of the rights and freedoms of the person suffering from such a health problem. A common social stereotype, which treats mental disorder as something shameful and dangerous, leads to unjustified restrictions on the rights of those suffering from such diseases. The distorted idea of the social danger of patients with mental issues has led to inhumane and excessively improper ways of handling them in the foreseeable past and has not been completely outlived today. However, individuals who have mental illness are rightful members of society, endowed with the totality of the fundamental rights and freedoms, the possession of which should not depend on any of the contributing factors to which the mental disorder of any person may be attached. For this reason, the function of the state and the law in the sphere of public relations is the presentation of these rights and freedoms, the consolidation of the grounds and procedures for their restriction, as well as the order and methods of their protection against unlawful attacks.

Thus, the main direction of the development of legislation in the field of health care should be the limitation of the powers of the state and its institutions in the direction of removing obstacles to the exercise of the freedom of citizens to dispose of their rights, including the rights to health, if it does not affect social (public) interests. However, the principle of free exercise of subjective civil rights has its exceptions, dictated by the need to respect public interests. The specific nature of mental disorders makes it necessary and is justified in certain cases to apply psychiatric measures independently from, and sometimes against the patient's will. However, the evidence and the application of such measures should be clearly defined by the law.

The limits of interference with the content of patients' subjective rights to restrict them may only be considered lawful if public interest dictates those, and the restrictive measures taken are necessary and adequate to achieve legitimate goals. A necessary guarantee of compliance with this rule is an issued court order as a sanction for the application of the relevant restrictions. Moreover, excessive measures must not be used, but only those necessary and strictly defined by the purposes of mentioned restrictions. In order to avoid the possibility of disproportionate limitation of the rights and freedoms of the patient in a particular law enforcement situation, the rule should be formally defined in an accurate, clear and obvious way, not allowing any broad interpretation of the restrictions and, consequently, their arbitrary use. This arises the problem of combining private and public interests, the solution of which is expressed in the necessity to determine the optimal choice of the boundaries of private law priorities and the inadmissibility of opposing public and private interests. There can be no juxtaposition of mentioned interests, since public law is intended to protect the rights of the individual by protecting the interests of society as a whole. In the case of a conflict of these interests, the priority of the interests of the society can take place only if the interests of the patient are secured, which is achieved by the legislative establishment of maximum guarantees that exclude the possibility of abuse of his rights.

P. 2 of the article 30 of the Law "On Psychiatric Care and Guarantees of Citizens' Rights during Its Provision" provides a special type of restriction of the rights of the patient in the situation of forced hospitalization and necessity to be placed in a mental hospital, as measures of physical restraint and isolation, which are used in cases, forms and for the period of time when, according to a psychiatrist, using other methods will not prevent the actions of a hospitalized person, representing a direct danger to him or other people, and are carried out under the constant supervision of medical personnel. However, such measures of physical constraint and isolation are not defined in a legal context and are approved for use in respect of the patient is the sole decision of the psychiatrist. At the same time, there are no procedures for monitoring and control of their use. We believe that these restrictions on the rights of individuals suffering from mental illnesses, without the appropriate legal guarantees proposed above, are not acceptable.

Another sphere of restriction of the rights and freedoms of persons who have mental illness is the disclosure of medical secrecy. As a general rule, the legal obligation to keep medical secrecy, which must be followed by every physician, and the violation of which entails the statutory liability. However, the provision on absolute medical confidentiality without taking into account the interests of the whole society cannot be recognized as well-founded. If the preservation of medical secrecy threatens to harm society as a whole or the surrounding sick persons, it should be based on the need to protect their interests.

The point of the conception of protection of medical confidentiality is the legal regulation of actions of those individuals associated with the provision of medical care, in consolidating a legal regime for the provision of health organizations and health care providers of medical confidentiality in the provision of medical services. Initially, the duty to maintain medical confidentiality appeared as a custom, and then acquired the character of a legal obligation. The basis of the legal regulation of the relevant relations should be based on objective legal requirements that are not defined by the subjective attitude to the protection of the right to medical confidentiality of the patient or any acts of their behavior. It should not be taken into an account whether the patient has consulted a doctor about the

protection of the relevant information or whether they are indifferent to its disclosure. The content of medical secrecy is information about the fact of application for medical care, the state of health of the citizen, the diagnosis of his disease and other information obtained during his examination and treatment. The disclosure of information constituting a medical secret by persons to whom they have become known in the course of training, practical training, performance of professional or official duties shall not be allowed. At the same time, with the consent of the citizens or their legal representatives, it is allowed to transfer relevant information in the interests of examination and treatment of the patient, for scientific research, publications in scientific literature, and for educational purposes. The legal regime of medical secrecy is defined as certain rules of law regulating possession, use and disposal of any information about the patient`s health. The direct object of legal protection of medical confidentiality is specific information about the existence of a certain disease, the fact of asking for medical counseling, regardless of the form of such treatment and its results, other information (being under medical supervision, the mode of medical services, the results of medical research, etc.).

According to the paragraph 4. article 13, the Federal law of the Russian Federation "On protection of citizens' health in the Russian Federation" provides a list of grounds for possible disclosure of information regarding medical secrecy without the consent of the citizen or their legal representative. In general, we agree with the restrictions of the right to inviolability of medical confidentiality, as they are fully justified by the public interest and consistent with the requirements of part 2 of section 2 of article 1 of Civil Code of the Russian Federation. However, according to the art. 13 of the mentioned law, the list is exhaustive and is not subject to broad interpretation, which has not been honored in reality. These grounds for providing information constituting medical confidentiality without the consent of the patient has been significantly expanded by numerous subordinate legal acts.

Individuals providing information constituting medical confidentiality should make decisions from the fact that the purpose of providing such information is to protect the public interest and to ensure the rights and interests of patients, and therefore when defining the volume and nature of the information provided, they should be guided by the following principles:

a) to provide information only in cases specified in the law, and only to authorized persons;

b) the scope and nature of the information should be consistent with the purposes for which it is used;

c) available introduction to such information should not violate the rights and protected interests of third parties.

The legislative consolidation of these principles will greatly enhance the guarantees of the rights of citizens with mental illness.

Discussion

The improvement of the special mechanism of legal regulation of mental health care is essential and perspective in the long run, and the lack of sufficient legal framework leads to the violation or limitation of the rights and freedoms of individuals suffering from the relevant diseases, hinders further progress in this area of medical science and practice. More detailed regulation is needed on the issues related to the definition of legal rights and obligations of participants of medical counselling, which must be issued either through a civil law contract or arise on the basis of an effective court decision.

Despite the visibility of fulfilment of patients' rights, the analysis of the law shows that it does not provide sufficient and reliable guarantees for the protection of the rights of a person who has mental illness in the provision of involuntary medical services.

In accordance with article 7 ofthe Convention for the Protection of Human Rights and Fundamental Freedoms a person who has a serious mental disorder may be subjected without his or her consent to medical intervention aimed at treating the disorder only if the absence of such treatment can cause serious harm to his or her health, and subject to the conditions of protection provided by law, including monitoring, control and appeal procedures.

The weaknesses of the law on psychiatric care, which are in an immediate need of quick correction, are the following:

1) the patient's access to effective legal assistance is not ensured (in particular, there are no specific ways by which a patient placed in a hospital could contact a lawyer; there is no possibility of a lawyer to be present during the examination of the patient, difficulties in exercising the right to confront the actions of medical personnel, etc.);

2) the procedure of obtaining a written consent of a person for the provision of psychiatric care is not fixed;

3) measures of physical restraint and isolation have not been legally specified and can be applied to the patient by the sole decision of a psychiatrist, there are no procedures for monitoring and control over them;

4)not all cases of compulsory psychiatric care are subject to judicial sanction, which is unacceptable in our view;

5) there is no real and effective system of external control over the actions of the medical staff of a psychiatric institution;

6) no rules are providing for the legal consequences of procedural and legal violations committed in the process of providing psychiatric care, in particular, violation of the statutory terms of the examination, terms of sending conclusions and applications for hospitalisation to the court, etc.

We believe that the improvement of legislation in the sphere of psychiatric counselling should be based on the following fundamental principles:

- the principle of preferential protection of the rights and interests of citizens who have mental illness in the provision of mental health care;

- the principle of protection of persons with mental illness from unjustified discrimination in society and in public opinion;

- the principle of protecting the interests of society and its citizens from acts of persons with mental illness that are dangerous;

- the principle of protection of the rights and interests of medical personnel involved in the provision of mental health care and its protection from the influence of third parties.

Conclusions

The article attempts to substantiate in theory the need for further improvement and development of the rules of medical psychiatric care provision and strengthen the guarantees of the rights and interests of persons who have mental illness.

It is stated that the existing legal norms regulating the relations on the provision of psychiatric care cannot be recognized as sufficient and completed, as much as containing a clear legislative regulation of public relations in the sphere of mental health care, with full guarantees of protection of the rights and interests of patients and allowing them to ensure their most complete social rehabilitation. The necessity of ensuring democratization and humanization of the rules of psychiatric care in the special legislation has been shown. These will contribute to the consolidation of the people suffering from mental disorders, in the provision of mental health care rights ensuring a respectful and humane attitude, excluding humiliation of human dignity.

It is proved that the implementation of the rights granted to the patient is hampered by the fact that their vast majority is characterized, firstly, by a declarative, unsecured

nature; secondly, by the absence of any legal mechanisms for monitoring their implementation. This is reflected, in particular, in the fact that the patient's access to effective legal assistance is not really provided, there is no procedure for obtaining a written consent of the patient to provide him with psychiatric care, there is no responsibility of the health services provider for violation of numerous procedural rules related to the peculiarities of the provision of mental health care .

It is revealed that in medical and law enforcement practice psychiatric care can be provided in a voluntary or compulsory order. The voluntary procedure involves the provision of mental health care at the request or with the consent of the person suffering from a mental disorder or his legal representative. In the case of voluntary treatment for psychiatric care, the relationship between the patient and the mental health care provider is based on a civil contract for the provision of medical services. The rules governing these relations should be improved. Compulsory measures of a psychiatric medical care are usually applied by a court decision. Mental health care may be provided without the consent of the person suffering from a mental disorder or without the consent of his legal representative if there are grounds set forth in the law and providing an exhaustive list. The necessity and expediency of obtaining the court's sanction in all cases of involuntary (compulsory) psychiatric care are substantiated.

The authors believe that the fundamental subjective rights of patients with mental illness may be limited on the basis of the Federal law only to the extent that it is necessary to protect the foundations of the constitutional system, morality, health, rights and legitimate interests of others, to ensure the country's defense and state security. Outside these boundaries, rights and interests must be exercised at their own discretion, which is reflected in the principle of freedom of civil rights.

Freedom of disposal of rights in the health sector has its own peculiarities, therefore, the particular relevance to the enforcement and protection of fundamental rights of citizens, including when they apply coercive (involuntary) medical measures of exposure and other ways of limiting subjective rights has been discovered. However, the limits of interference with the content of subjective civil rights in order to limit them can only be considered acceptable if they are dictated by public interests, and the provided restrictive measures are necessary and adequate to achieve legitimate goals. In order to avoid the possibility of disproportionate restriction of the rights and freedoms of the patient in a particular law enforcement situation, the rule should be formally defined, in an accurate, clear and obvious way, not allowing for broad interpretation of the restrictions and, consequently, their arbitrary application. This arises the problem of combining private and public interests. In the case of conflict of these interests, the public interest may prevail only if the interests of the patient are protected, which is achieved by the legislative establishment of maximum guarantees for patients, excluding the possibility of abuse.

The most effective guarantee is the court's decision on the establishment of an appropriate restriction of the rights of persons suffering from mental illness. It has been proved that the judicial procedure concerning compulsory medical intervention is designed to increase the responsibility of medical workers for the legality and validity of the use of compulsory medical measures, to become one of the guarantees of protection of the rights and interests of citizens.

The analysis of the duties of the executor of medical psychiatric services stipulated by the laws indicates the need for their further development and detailing. It is demonstrated that the legal basis for determining the duties should be based on such postulates as: psychiatrists and service personnel can not take any action in the framework of the provision of psychiatric care without strictly following the established legal procedures that promote the use of psychiatry exclusively for medical purposes, improve the health of patients, humanization of psychiatric practice.

As a general rule, the disclosure of information constituting medical secrecy by persons to whom they have become known during training, fulfillment of obligations or during the period on duty is not allowed. Restriction of the right to medical secrecy is expressed in the possibility of providing information constituting medical secrecy, without the consent of the patient or his legal representative for the purpose of medical examination and treatment of a citizen who, as a result of his condition, is not able to express his will; at threat to the interests of society and its members; at the request of the bodies of inquiry and investigation in connection with the investigation or judicial proceedings and in other cases stipulated by law.

At the step of reforming the civil legislation, it is necessary to address the problems of improving the legal protection of the rights and interests of persons suffering from mental diseases as the most vulnerable and vulnerable part of the population once again, to discuss the content of the citizen's rights to life and health, including mental, the limits of the possibility of disposing of these benefits in addressing the issues of the admissibility of involuntary medical intervention, as well as ensuring adequate legal protection of the rights and interests of all participants in the relations arising from it.

We hope to receive support from the legislator, taking into account our conclusions and proposals. We will be grateful to everyone who will take part in the discussion of the issues discussed in the presented article.

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