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# Global Trends in Health Care and Criminal Liability for Crimes in the Field of Medicine in Russia

**E.V. Yepifanova***

**E.B. Luparev****

## Abstract

**Purpose** The article discusses some problems of the influence of global trends in protecting public health on the system of medical legislation in Russia, taking into account its historical traditions and the existing mentality of the country's population. In connection with the tense economic situation in the world, aggravated by sanctions pressure on the Russian Federation, it becomes obvious that national law and order is facing new challenges to ensure standards of universal values on its territory. The system of such values also includes human health, the protection of which is increasingly in need of adequate legal protection.

**Design / Methodology / Approach** The methodological basis of the study consists of theoretical, general scientific and special methods. The authors used theoretical methods, the method of classification and systematization, dialectically, generalization, induction and deduction. The information and empirical base of the study was formed on the basis of the selection and analytical processing of electronic information resources, national and foreign statistics in the field of public health, regulatory documents of executive authorities and constituent entities of the Russian Federation.

**Findings** The main idea of this article is the idea that the state in an unstable economy needs a fundamentally stable system of legal regulation of methods of legal protection of public health. The author's conviction is based on an understanding of the fact that modern Russian criminal law does not fully meet the requirements of global standards. Even a cursory glance reveals the existence of a whole range of

* Associate Professor, Department of Theory and History of State and Law, Kuban State University, Krasnodar, Russian Federation, jeklouparev@yandex.ru

** Doctor of law Sciences, Professor, Department of administrative and financial law, Kuban State University. Krasnodar, Russian Federation

theoretical and enforcement problems: from ensuring equal legal protection against crimes in the field of health protection, ending with the absence of norms on criminal liability for actions and omissions that directly or indirectly cause harm to human health. Despite the sometimes significant difference in national law and order, the pan-European trend is aimed at the maximum possible differentiated protection of interests in connection with the emergence of new factors identified by science and having a harmful effect on the human body both directly and indirectly, for example, through farm animals, genetically modified organisms . The authors insist on the need to maintain a balance of personal and public interests in addressing the issues of criminal legal protection of the interests of all segments of the population in protecting health in accordance with European practice.

**Practical implications** The results of the study can be used by the executive bodies to improve the legislative framework in the medical field.

**Originality / value** The significance of this study is to identify key factors that need to be taken into account when systematizing Russian legislation on criminal liability in the medical field: international health standards, economic opportunities of the state, the complexity of public relations in the field of health, the need to take into account new threats to human health caused by scientific -technical progress.

**Keywords:** Medical law, healthcare, criminal liability, historical factors, medical legislation, GMOs

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## Introduction

At the beginning of the 21st century, in most developed countries of the world there was a tendency to expand areas of activity in the field of protecting the citizensə health, which can be confirmed by examining the areas of the UN and WHO activity. This is due to the widely accepted understanding of health in a broad sense. The World Health Organization identifies the following activities related to the citizens' health protection:

- providing health care (i.e. maintaining direct human health);
- safety assessment of food products obtained using new technologies, such as genetic engineering (GMO technology) or nanotechnology (i.e. the development of international food standards that cover the main types of food products, which include processed foods and raw foods nutrition, in addition, materials used in food processing),
- risk assessment, determination of safe limit values for the concentration of the chemicals used as the basis for the national and international standards development for food safety aimed at protecting the consumers' health (chemicals can get into food or as a result of their intentional use in the process (e.g. in the form of food additives), or as a result of air, water and soil pollution, for example, pollution with dioxins affecting the rep human productive function and the thyroid gland, occurs mainly through contaminated animal feed),
- assessment of antimicrobial resistance (antimicrobial agents are the most important drugs for the human and animal diseases treatment; however, it is necessary to reduce the public health risks associated with antimicrobial resistance associated with the use of antimicrobial agents in the production of food products of animal origin);
- assessment of access to safe water supply.

All these activity areas and the results of the factors assessment adversely affecting human health are reflected in the WHO annual reports, the statistics obtained during the monitoring of various countries. The global nature of the problems is in focus in Russia.

## 1. Theoretical, informational, empirical and methodological foundations of the study

Based on the principles of international law, the Constitution of the Russian Federation proclaimed Russia a social state and enshrined the constitutional right to health protection (Article 41). In order to implement the ratified international acts (for example, the World Health Organization's Framework Convention on Tobacco Control, etc.), Russia has adopted regulations governing relations in the field of protecting public health: Federal Law “On Compulsory Medical Insurance in the Russian Federation” dated November 29, 2010 No. 326-FL (as amended on November 28, 2018); The Law of the Russian Federation of July 2, 1992 No. 3185-1 (as amended on July 19, 2018) "On Psychiatric Care and Guarantees of the Rights of Citizens when Providing It, the Law of the Russian Federation of December 22, 1992 No. 4180-1 (as amended of May 23, 2016) "On transplantation of organs and (or) human tissues", Federal Law "On the Basics of Protecting Citizens' Health in the Russian Federation" dated November 21, 2011 No. 323-FL, Federal Law" On Donation of Blood and Its Components" dated July 20, 2012 No. 125-FL, Federal Law "On Preventing the Spread in the Russian Federation of a Disease Caused by the Human Immunodeficiency Virus (HIV Infection)" of March 30, 1995 No. 38-FL, Federal Law "On immunoprophylaxis of infectious diseases" dated September 17, 1998 No. 157-FL; Federal Law" On Circulation of Medicines "dated April 12, 2010 No. 61-FL; Federal Law" On Narcotic Drugs and Psychotropic Substances "dated January 8, 1998 No. 3-FL, Federal Law "On the Sanitary and Epidemiological Well-Being of the Population" dated 03.03.1999 No. 52-FL; Federal Law "On Preventing the Spread of Tuberculosis in the Russian Federation" dated 06.06.2001 No. 77-FL; Federal Law "On the State Forensic Expertise in the Russian Federation" dated May 31, 2001 No. 73-FL, Federal Law from 02.01.2000 number 29-FL (ed. dated 23.04.2018) "On the quality and safety of food", the Federal Law "On the protection of the health of citizens from exposure to ambient tobacco smoke and the consequences of tobacco consumption" dated 02.23.2013 No. 15-FL, the Federal Law "On the circulation of medicines" dated 12.04 .2010 No. 61-FL, Federal Law "On Biomedical Cellular Products" dated 06.23.2016 No. 180-FL, etc. At the level of individual laws in Russia there are attempts to comprehensively cover the modern directions of protecting the citizens’ health. However, the question about the systematization of legislation on criminal liability in the field of medicine remains under discussion.

## 2. Results

The science based on the emerging trends, characterized by an increase in drug crimes has expressed the opinion that it is necessary to single out drug crimes in a separate chapter. In this regard, the question of the remaining content of the corresponding chapter of the Criminal Code of the Russian Federation arises. The studies of the criminal liability issue in healthcare give grounds to assert that the list of crimes posing a threat to the life and health of the population should be expanded to include other relevant elements, they should be highlighted in a separate chapter. A separate chapter should be crimes against morality.

A perfectly fair question arises as to what crimes should be included in the chapter of the Criminal Code of the Russian Federation "Crimes causing danger to the life and health of the population"? We believe that the current formulations should remain in this chapter: illegal implementation of medical activity or pharmaceutical activity (Article 235), illegal production of medicines and medical devices (Article 235.1), violation of sanitary and epidemiological rules (Article 236), concealment information on circumstances that endanger the life or health of people (Article 237), production, storage, transportation or marketing of goods and products, performance of work or the provision of services that do not meet safety requirements (Article 238), the counterfeit use, substandard and unregistered medicines, medical devices, and the circulation of counterfeit biologically active additives (Article 238.1).

In addition, we propose to introduce into the Criminal Code the article: "Pollution of drinking water", like the Criminal Code of the Republic of Serbia (Article 131), the Swiss Criminal Code (Article 234) and other countries. Pollution of drinking water intended for human consumption by substances harmful to health, which entails the risk of harm to life or health of the population. We believe that those responsible for the inadequate quality drinking water supply to consumers are aware of the harmfulness of their actions or should be aware of it, and therefore responsibility should already be established for the supply of contaminated drinking water. There is a strong need for this.

The World Health Organization, devoting great attention to food quality, estimates that about 600 million cases of foodborne illness

occur annually and pose a threat to human health and the economy, disproportionately affecting vulnerable and marginalized people, especially women and children, populations suffering from armed conflicts and migrants. A turning point has come in world space when an immediate international dialogue is required on the actions necessary to improve food safety. To resolve problematic issues, the UN Decade of Action on Nutrition has been announced.

At the international level, active work is being done to provide the population with quality food. This work is carried out by the Commission, reflecting the views of the 185 countries participating in it - the Codex Alimentarius (translated from Latin as "food code") is the Codex of Food Standards (UN Food Standards Program) established by WHO and FAO in 1963. Recently, the Commission has addressed the issues related to the presence of aflatoxins in figs, mercury in tuna and pesticides in various crops, as well as the control of viruses in foods and the increasing public health problems that pose noncommunicable nutrition-related diseases. To prevent food contamination at the source itself, the Code also develops Codes of Practice for the safe production of food in animal feed. Codex standards have received international food safety criteria in accordance with the 1995 World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures. Based on the developed international rules, foreign lawmakers formulate the content-compliant domestic regulations.

The absolute safety of genetically modified foods for human health has not been proven, and the use of such foods carries enormous risks for humans. To date, these problems have not received necessary consideration, development and resolution in the legal field and scientific legal doctrine.

The Criminal Codes of individual countries criminalize the use of poor-quality animal feed, which meat is used for human consumption. When using fertilizers or genetic engineering achievements, such feeds accumulate harmful substances that enter the animal's body and remain in it and subsequently penetrate the human body with food. The same adverse effect can have drugs used to treat animals, chickens, ducks. The use of such drugs should be criminally punishable. Human health is the highest value and therefore the state should not condone those entrepreneurs in the field of agriculture and

the food industry that, in the pursuit of profit, use harmful medicines, animal feed, which threaten the life and health of the population. Due to the fact that Russia has faced similar problems solved by the international community through the adoption of international legal acts and domestic legislation, it is necessary, taking advantage of experience, to implement the legislative structures already existing and approved in other countries. A separate article should be introduced in the Criminal Code of the Russian Federation "Production, introduction of feed, drugs for animals harmful to human health".

Topical is the issue of insurance medicine, insurance medical companies, deductible insurance premiums for insurance medicine. No matter how hard they try to put the medical insurance system into practice, the consumer of medical insurance services remains unaware of what kind of medical care is provided for free under the compulsory insurance policy. Medical institutions penetrated the insurance system and, together with insurance medical companies, they distribute cash flows. Unfortunately, ignorance of citizens gives rise to corruption schemes in the field of insurance among dishonest medical workers. As a result, funds for the patients' treatment are not used for their intended purpose, they do not reach the patient. The Criminal Code of the Russian Federation must respond to what is happening by stopping insurance fraud. In the Criminal Code of the Russian Federation, due to the significance of damage to the health of citizens, a separate article should appear establishing the criminal liability for insurance fraud in the health sector. Health insurance fraud is manifested as follows:

1. Fraudulent actions of doctors and employees of medical institutions can be manifested in billing for procedures that have not actually been carried out, in prescribing medicines, or issuing documents about a patient visiting a clinic.

2. The insured are prescribed the most expensive treatment, unnecessary medications, expensive examinations, which can be dispensed with.

3. There are frequent cases when false diagnoses are made to healthy people, non-existent neoplasms are cut out, and almost healthy teeth are depulped.

4. Fraud using a health worker liability insurance policy. This method consists in staging an insurance event related to a medical error that

caused harm to the patient of the clinic. In this case, the damage to the patient should be compensated by the insurance company in which the doctor concluded a professional liability insurance contract.

Thus, in many fraud schemes, doctors themselves, without objective reasons, increase bills for examinations and treatment, use corruption schemes, which undermines the authority of Russian medicine.

The public danger of insurance fraud in the field of medicine is that: 1. the authority of Russian medicine is undermined; 2. cash flows smoothly into foreign clinics; 3. corruption in medicine flourishes; 4. the state foundations are undermined, and the social character of the state, proclaimed in the Constitution of the Russian Federation, is becoming increasingly ephemeral; 5. citizens are not provided with medical care in the prescribed amount, in pursuit of profit for patients, for example, hospitals give cheap medicine or claim that there are no medicines, but in fact, insurance companies provide information about treating patients with expensive drugs.

In the medical workers crimes system in the field of healthcare, a specific group of assaults committed by doctors in their professional activities (the so-called professional medical crimes) is distinguished. The peculiarity of these crimes lies in the fact that, firstly, they are caused by mistakes made by doctors when providing medical care to patients, and secondly, they are committed through negligence - frivolity or negligence.

**Conclusions and recommendations**

The factors to be taken into account when systematizing the Russian legislation on criminal liability in the medical sphere include: taking into account international standards of health protection, taking into account the economic opportunities of the state, the complexity of public relations in the field of health, and the need to take into account new threats to human health caused by scientific and technical progress.

Due to the high degree of public danger, it is necessary to introduce criminal liability for the production and sale of low-quality food products (everyone who produces for the purpose of sale is prosecuted) sells or otherwise sells substandard food products, food, drinks, as well as any other substandard products); poor quality control

of meat food products (criminal liability occurs when an authorized person who conducts an unscrupulous food inspection, or in violation of the law does not carry out an inspection, which creates conditions for the free sale of food products that could be harmful to public health ); food contamination into the Criminal Code of the Russian Federation like the Criminal Code of the Republic of Serbia (Articles 129, 130) and other foreign countries. At the same time, the criminal liability for the genetically modified organisms (GMOs) use in food products cannot be introduced due to the scientific unproven harm of such products to human health.

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