PATIENTS' RIGHTS TO HEALTHCARE IN THE FRAMEWORK OF INTERNATIONAL REGIONAL ORGANIZATIONS IN EURASIAN AREA: COMMONWEALTH OF INDEPENDENT STATES (CIS) AND EURASIAN ECONOMIC UNION (EEU)

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ABSTRACT
The development of integration processes in the Eurasian space, the creation of new international interstate organizations leads to an increase in mobility among people, capitals, and services. In this regard, the number of so-called "mobile patients" [1] is also increasing in the transboundary health care:[1] in this case it is a question of planned and unplanned medical assistance to a person outside the state of citizenship. This article is devoted to the issue of such medical assistance to foreign patients within the framework of the Commonwealth of Independent States, as well as to the prospects for the international legal regulation of transboundary medicine in a relatively new integrative formation - the Eurasian Economic Union, taking into account the existing regulatory legal acts both at the subregional level and at the national level of the Member States. At the same time, particular attention is paid to the individual legal gaps in the existing regulatory legal framework, as well as the problems of implementing the right to access to health care.

Keywords: Cross-Border Healthcare, Access to Healthcare, Right to Healthcare, Commonwealth of Independent States, Eurasian Economic Union, Eurasian Area.

INTRODUCTION

The issues of the right to access to health care in the presence of a person in the territory of a foreign state is complex and requires settlement through cooperation and full interaction of the states [20]. This issue was addressed in the framework of the Commonwealth of Independent States (hereinafter - the CIS), within the framework of which a number of the international legal acts were adopted both in the field of public health care in general and a number of acts regulating the interaction of states in combating certain diseases, such as HIV, diabetes, etc.

A key place in the article is devoted to the analysis of the mechanism of legal regulation of access to health care contained in a number of agreements adopted within the framework of the CIS.

The authors also cover the issues of access to health care within the framework of the Eurasian Economic Union (EEA), the prospects for the international legal regulation in the field of public health care and social security.

METHODOLOGY

During our study, we used general scientific and private scientific research methods, including system-structural, problem-theoretical, formal-legal, logical and other research methods.

[1]The term "mobile patients" is widely used in the regulatory legal acts, the doctrine of the European Union. See, for example, Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare.

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DISCUSSION AND RESULTS

Access to planned and unplanned health care in accordance with the international legal acts of the CIS

WITHIN the framework of the Commonwealth of Independent States, the main mechanism for the legal regulation of medical assistance is contained in two Agreements:

- the Agreement on Medical Assistance to Citizens of the CIS Member States dated March 27, 1997 [2] (hereinafter referred to as the Agreement, 1997), which united ten of eleven CIS states, as well as
- the Agreement on Mutual Granting to Citizens of Belarus, Kazakhstan, Kyrgyzstan and Russia of Equal Rights in Obtaining Emergency Medical Services dated November 24, 1998 [15] (hereinafter referred to as the Agreement, 1998).

The CIS Agreement on Medical Assistance, 1997 is applied to all categories of citizens of the CIS countries regardless of their legal status. It should be noted that this act does not stipulate granting the citizens of the CIS countries equal rights with the citizens of the host country/country of residence.

The CIS Agreement on Medical Assistance, 1997 stipulates the provision of unplanned (in the emergency form) health care, as well as planned one. The unplanned health care is a set of medical services provided in case of the patient's physical or mental health acute disorders, threatening his life or the health of others. [2]

In accordance with Article 2, the unplanned health care is delivered in an unimpeded way, free of charge and in full in the territory of the state of temporary residence, regardless of the organizational and legal form of a medical institution[2]. That is, the medical assistance is guaranteed both in public and private medical institutions.

The planned health care [18] is a set of medical services provided in case of the patient's physical or mental health disorders, which do not represent an immediate threat to his life or the health of others. [2, Art. 1] The planned medical assistance is provided on a paid basis in accordance with the price list established in the medical institution.

In accordance with Article 7 of the CIS Agreement on Medical Assistance, 1997, the persons officially employed in one of the CIS Member States and working under an employment contract in the state of temporary residence have the right to receive the planned health care from the employer's funds [2, para. 3.2].

The CIS Agreement on Medical Assistance, 1998, regulates the provision of emergency medical services only to the citizens of the Member States who are granted equal rights with the citizens of the state of temporary residence. [2, Art. 4]

In accordance with Art. 3 of the CIS Agreement on Medical Assistance, 1998, the emergency medical services for the citizens of the Member States to the Agreement is provided only in the public and municipal health facilities, whereas the CIS Agreement on Medical Assistance, 1997 stipulates such assistance by all medical institutions, regardless of the organizational and legal form.

The CIS Agreement on Medical Assistance, 1998 establishes that the patient's transportation costs are borne by the patient's state of residence, while the provisions of the CIS Agreement on Medical Assistance, 1997 do not contain an unambiguous order of regulation of this issue. [2, Art. 4]

[2] When signing the CIS Agreement on Medical Assistance, 1997, Ukraine made a reservation regarding the forms of ownership of medical and preventive institutions (MPI). Thus the emergency services are rendered to the citizens of the CIS countries only in the public MPI in Ukraine.

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The Vienna Convention on the Law of International Agreements dated May 23, 1969, contains a provision according to which, if not all the Member States to the previous Agreement are the parties to the subsequent Agreement, the provisions of the previous Agreement shall be applied to the Member States in part not contradicting the provisions of the subsequent Agreement. In relations between the state, which is a party to two Agreements, and the state, which is a party to only one Agreement, the Agreement to which both states are parties is applied. [3, Art. 30]

Thus, when applying for emergency medical services in the Russian Federation, the provisions of the CIS Agreement on Medical Assistance, 1998 are applied to the citizens of the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan, and the norms of the CIS Agreement on Medical Assistance, 1997 will be applied in relation to the citizens of the Republic of Azerbaijan, the Republic of Armenia, Georgia, the Republic of Moldova, the Republic of Uzbekistan, Ukraine [4, pp. 87-88]

Regulation of the right to planned and unplanned medical assistance within the framework of the Eurasian Economic Union.

On January 1, 2015, it was signed the Agreement on Establishment of the Eurasian Economic Union (hereinafter referred to as the EEA), [5] which stipulated equal rights for the employed citizens and their families to receive medical assistance on the territory of the state of employment; in the case of Russia - the guarantee of obtaining the CHI (Compulsory Health Insurance) policy.

As pointed out in the literature, the purpose of creating a political union, as well as the goals of protecting the human rights and freedoms, are not faced by the EEA Member States. [6] Nevertheless, a principle of the freedom of movement of persons in one way or another relates to the implementation of the human rights. There is no institutional base for the protection of human rights within the EEA, since this field is not within the competence of the EEA bodies. For example, the EEA Court is authorized to review the cases related to the implementation of the EEA Agreement, but not the issues related to the protection of human rights.

The provisions of the EEA Agreement do not directly refer to the human right to health. However, Art. 98, regulating the rights and obligations of a working citizen the EEA Member State refers to Annex No. 30 "Protocol on Medical Assistance to the Workers of the Member States and their Family Members" [5] (hereinafter - Annex No. 30). Annex No. 30, unlike the similar norms of the Agreements within the CIS, allocates the emergency medical services in two forms: urgent and emergency.

The authors of Annex No. 30 differentiated the concepts of rendering emergency medical services in the emergency and urgent forms on the basis of a qualifying sign of the *apparent presence or absence* of a threat to the patient's life and health.

Provision of emergency medical services in an emergency form is provided in the presence of acute illnesses, exacerbation of chronic diseases, while the definition of emergency medical services in an urgent form contains, among other things, an indication on accidents, injuries and poisoning [5].

Annex No. 30 does not directly refer to the planned medical assistance, para. 3 indicates that medical care for working citizens, as well as their family members, of the EEA member states is delivered in accordance with the national legislation of the state of employment, as well as in accordance with the international agreements. At the same time, the national regime is extended to the emergency assistance in both emergency and urgent forms with respect to the citizens of the EEA Member States (para. 4). And since the emergency medical services are mainly included in the basic program of compulsory health insurance in the Russian Federation [16, para. 6, Art. 35], a compliance with the international obligations arising from para. 4 of Annex. No. 30 to the Agreement on the EEA, stipulates the CHI rules extension to the citizens of the EEA Member States.

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In some EEA Member States, the workers are guaranteed the right to receive a compulsory health insurance policy, which in turn entitles them to receive the planned medical assistance in the medical institutions of the state of employment. However, in fact, this norm is currently being implemented only in Russia and Kyrgyzstan [7], the national legislation of which has been brought into line with the Agreement on the EEA [8]. In Kazakhstan, the transition to the CHI system has been postponed until the summer of 2017, there is no CHI in Armenia, and medical assistance is provided in accordance with the national legislation. The CHI system has not also been introduced in Belarus, however, the Agreement, 2006, between the Government of the Republic of Belarus and the Government of the Russian Federation on the procedure for delivering medical assistance continues to be applied to the citizens of the Russian Federation working in Belarus [9] that means that the citizens of Russia receive medical assistance free of charge, and other foreign citizens receive medical assistance on a paid basis[3].

Special attention should be paid to the situation with the citizens of the EEA Member States that are engaged in labor activity on the territory of the Russian Federation. Thus, from January 1, 2017, the citizens of the EEA countries working in Russia have the right to apply for a medical policy in connection with the introduction of amendments to the Rules of Compulsory Health Insurance and the introduction of paragraphs 9.1-9.3. [12] At the end of 2016, there were about 500-600 thousand citizens of Armenia, Kyrgyzstan, and Kazakhstan for each country, as well as over 700 thousand citizens of Belarus. [8]

When applying for the CHI policy in accordance with the Rules of Compulsory Health Insurance (para. 9.2), the citizens of the EEA Member States should provide details and data on the duration of their employment contract. [11, para. 9.2] Consequently, the persons working not under the employment, but under a civil law contract, as well as the family members of citizens of the EEA Member States, will not be able to use medical assistance on a free of charge basis. [12]

At the same time, in accordance with the Federal Law No. 326-FZ dated November 29, 2010 on Compulsory Health Insurance, the foreign citizens temporarily staying in the country do not have the right to register the CHI policy either in the presence of the employment contract or in the presence of the civil law contract, because they are not mentioned in Article 10 as insured persons. [16] Consequently, the provisions of the Russian legislation contain both internal contradictions in the hierarchy of the regulatory legal acts and a contradiction with the international obligations arising from the Agreement on the EEA.

SUMMARY

Despite the existence of certain problems in the legal regulation of access to medical assistance, one can talk about the formation of conditions for delivering emergency medical services to the citizens of the Commonwealth of Independent States temporarily staying in the territory of another CIS country in the unimpeded way and free of charge, as well as for the delivery of planned medical assistance on a paid basis.

There is no single minimum standard of medical services in the EEA, guaranteed to the patients - citizens of the EEA Member States. Within the framework of the EEA, the states are building closer relations than within the CIS. The states somehow change their domestic and foreign policies to achieve the organization's goals in all integration formations [18]. The experience of the European Union [17] shows that the economic interests of the states should be supplemented by the common social policy of the Member States, since the observance of social rights will contribute to the further development of integration, the formation of Eurasian social security. [13] Implementation of economic integration is impossible without human resources, consequently, there will be a need to develop the Eurasian social model [14] by bringing together and strengthening cooperation among the peoples of the EEA Member States taking into account the differences of each state.

[3]In accordance with the Constitution of the Republic of Belarus, medical assistance is guaranteed only to its own citizens.

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