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**MEDICAL AND SOCIAL EXPERTISE - BASIS FOR DISABLED
PERSON IDENTIFICATION AND REHABILITATION**

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Abstract

The purpose of this scientific article is to study the legislation of the Russian Federation and legislation of the constituent entities of the Russian Federation on the conduct of medical and social expertise, and rehabilitation and / habilitation of disabled people. The article presents an analysis of legal provision on the procedure for conducting medical and social expertise, the purpose of which is to determine the needs of the person under examination in social protection measure since under the Constitution of the Russian Federation, coordination of health issues, as well as social protection, including social security, are jointly conducted by the Russian Federation and the constituent entities of the Russian Federation (Part 1, Article 72), a certain range of sources of legal regulation at both the federal and regional levels are also analyzed in this paper. It is noted that after the recognition of a citizen as a people with Special needs, this person receives a set of social benefits and often loses the incentive for further professional retraining and employment, so organizational, legal and methodological support of citizens is necessary before they are recognized as disabled, which is intended to reduce the level of disability in Russia in general.

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1. Introduction

Currently, the problem of legal regulation of comprehensive rehabilitation of disabled people in the Russian Federation is highly relevant. This is due to the fact that the number of disabled people in the country is increasing. Thus, according to the Federal State Statistics Service in 2018, the number of people with disabilities is 12.111 million, which is 8.25% of the total population of the country, while there were 3.98 million people in 1992. At the same time, the number of disabled children is growing: in 2015 - 605 thousand people, in 2016 - 617 thousand people, in 2017 - 636 thousand people, in 2018 - 651 thousand people. There is a tendency to reduce the number of persons recognized as disabled for the first time, which to a certain extent is associated with the improvement of the demographic situation in Russia.

2. Problem Statement

The recognition of a person as a disabled person is carried out on the basis of the results of medical and social expertise, which entails the right of a person for measures of social support provided by law from the state at the federal and regional levels.

Numerous scientific works are devoted to the issues of legal regulation of social protection of persons with disabilities, for example, by such authors as: Sinelshchikova (2015), Simanovich (2010) and Sibotina (2015).

General issues of social protection of persons with disabilities are discussed in the works of Banks et al. (2017) and Carmona (2017), certain aspects of social support for persons with disabilities, including territorial features are revealed in the works of Aviles, Al Ali, Gomez, Roig, & Del Pozo (2017), Duarte, Marcelino, Boccolini, & Boccolini (2017), Laing (2017), Morris, Hayward, & Otero (2018), Maker, Paterson, Arstein-Kerslake, McSherry, & Brophy (2018) and Brien (2018). There are also many publications on the rehabilitation / habilitation of persons with disabilities.

Among the specialists in this area we call the following researchers: Zavoronkov (2012), Raduto (2012), Shestakov, Svintsov, Raduto, Chernyakina, & Ovcharenko (2014), Gilmore et al. (2017), Coren, Ramsbotham, & Gschwandtner (2018), Raylyan, Petyukova, Kudryashov, & Stepashkin (2018) and Lebedeva (2018). At the same time, the legal aspects of medical and social expertise are not well studied.

3. Research Questions

Consider the features of the legal regulation of the conclusion of medical and social expertise as the basis for recognizing a person as disabled and implementing rehabilitation / habilitation of persons with disabilities in the context of social protection of persons with disabilities.

In accordance with Part 2 of Art. 58 of the Federal Law (2011) "On the Fundamentals of Health Care of Citizens in the Russian Federation" (hereinafter - the Law on the Fundamentals of Health Care), the medical and social expertise (hereinafter referred to as "the MSE") is assigned, by a federal legislator, to one of the types of medical examinations i.e. are conducted in the established order aimed at establishing the human's health status in order to solve certain practical problems.

4. Purpose of the Study

The purpose of this scientific article is to study the legislation of the Russian Federation and legislation of the constituent entities of the Russian Federation on the conduct of medical and social expertise, and rehabilitation and / habilitation of disabled people.

It should be borne in mind that the purpose of the medical and social expertise is to determine the needs of the inspected person in social protection measures.

Since in accordance with the Constitution, the Russian Federation is a social state, the legislation provides for measures for the social protection of this socially vulnerable category of population.

5. Research Methods

The authors of the article used various methods of scientific knowledge, including dialectic (knowledge taking into account the patterns of development of phenomena), statistical (data of the Federal State Statistics Service on the number of people with disabilities in Russia for several years), formally legal (laws are analyzed in the studied area: the Federal Law (2011) On the Fundamentals of Health, Federal Law (1995) On Social Protection of Disabled Persons in the Russian Federation) etc.

6. Findings

6.1. Federal legislation on medico-social expertise

General provisions on MSE are specified in Art. 60 of the Federal Law on the Fundamentals of Health [11]. From the analysis of this article it follows that: the purpose of MSE is to determine the needs of the person to be inspected in social protection measures; such expertise is carried out by federal institutions of medical and social expertise (hereinafter referred to as MSE institutions); it is conducted in accordance with the legislation of the Russian Federation on the social protection of disabled people, including Federal Law "On Social Protection of Disabled Persons in the Russian Federation" (1995).

MSE in the Law on Health Protection is mentioned several times: in paragraph 8 of part 2 of Art. 14 - from which it follows that the establishment of the procedure for the organization and holding of MSE is not the authority of the federal executive body, which exercises the functions of elaborating and implementing state policy and regulatory and legal regulation in the field of health care; in Art. 59 - linking the examination of temporary incapacity for work with the MSE (the direction of long-term sick people who have an obvious unfavorable clinical and labor forecast for the passage of medical and social expertise).

It should be noted that in accordance with cl. "G" part 1 of Art. 72 of the Constitution of the Russian Federation, coordination of health issues, as well as social protection, including social security, are jointly administered by the Russian Federation and the constituent entities of the Russian Federation.

This is also clearly demonstrated by legal provisions of the sectoral legislation.

At present, concerning the question of the completeness and quality of regional legislation concerning the holding of MSE, is necessary to analyze the legislation of the constituent entities of the Russian Federation on the term of social protection.

With regard to inter-agency cooperation, in process of holding of MSE may also need to analyze regional health legislation.

The participating issues of the state authorities of the constituent entities of the Russian Federation in providing social protection and social support for disabled people are discussed in art. 5 of the Law on Social Protection, which includes 11 items. But unfortunately, these provision doesn't directly address MSE issues. However, the revision of some points of the analyzed article are very general, and doesn't contain a specific provisions . So, in paragraph 1 of Art.5 of the Law on Social Protection refers to participation in the implementation of the state policy on disabled persons in the territories of the constituent entities of the Russian Federation (the extent of such participation may vary within different limits), and in paragraph 2 of the Law refers to adoption of regional laws and by-laws in accordance with federal laws. In connection of this, it is necessary to clarify on what issues legal acts of the constituent entities of the Russian Federation can or can not be adopted. For this, a system analysis of Art. 4 and 5 and other articles of the Law on Social Protection is also necessary.

Paragraphs 4,5 and 11 of Art. 4 of the Law on Social Protection are of particular interest to scrutinizing, according these paragraphs the competent federal state authorities are responsible for: establishing general principles for the organization and implementation of MSE; the definition of criteria, the establishment of conditions for the recognition of a person with a disability; creation of federal institutions of MSE, control over their activities.

As can be seen, the most significant aspects of the creation, conditions and order of the functioning of MSE institutions are attributed to the competence of federal government bodies in the relevant field of activity. Also, are no any direct mention of MSE in Art. 5 of the analyzed Law. At the same time, the formulation "the establishment of general principles" Seems unsuccessful, as it leaves a legal loophole (the solution of particular issues, specification, clarification, etc.).

The Law on Social Protection, along with Art. 5 also contains the following indications of the powers of the constituent entities of the Russian Federation in the sphere in question:

- provision of the necessary information to be included in the federal register of disabled persons (clause 18, Article 5.1);
- provision of medical assistance to disabled people (Article 13);
- ensuring unhindered access of disabled people to infrastructure facilities (social, engineering, transport) (Article 15);
- implementation of state control (supervision) under ensuring accessibility for disabled persons of the facilities of relevant infrastructures (Article 15.1);
- provision of people with special needs and families with children with special needs with living quarters (Article 17);
- Support the disabled people in process of getting education (Article 19);
- Conducting activities aimed at providing employment for disabled people, including establishment of quotas for hiring disabled people and creating special jobs for the employment of disabled people (articles 20, -22) and others.

6.2. Analysis of the regional legislation on medico-social expertise and rehabilitation of the disabled people

We will also analyze the legislation of several constituent entities of the Russian Federation in determining their powers in this sphere.

Thus, the Law of Moscow of November 3, 2004 No. 70 "On Measures of Social Support for Certain Categories of Residents of Moscow" contains in art. 5 conditions, which consolidate the rights of public authorities of the RF entities in providing social protection and social support for disabled people. In general, they correspond to the provisions of the Law on Social Protection.

Chapter 2 of the Law of St. Petersburg of November 22, 2011 No. 728-132 "Social Code of St. Petersburg" defines the power of the state bodies in St. Petersburg (Legislative Assembly, Government) in the field of social support. Any provisions concerning MSE doesn't contain in this Law.

It should be noted that with regard to individual groups (categories) of citizens, as well as individual regions, the issue of organization and quality of MSE is very current.

This is clearly evidenced by the data of official documents, which state's attempts to resolve the most acute problems. Thus, in accordance with the Decree of the Government of the Russian Federation of December 1, 2015№ 1297 "On the approval of the state program of the Russian Federation" Affordable Environment "for 2011-2020" in 2017, the implementation of a pilot project in 2 regions of the Russian Federation (Smolensk and Voronezh regions) stipulated the development of a new approaches to the survey of citizens under the age of 18 years, and in 2018 - the implementation of a similar project in two constituent entities of the Russian Federation (the Stavropol Territory and the Sverdlovsk Region) to work out new approaches to determining the degree of loss of professional capacity.

For citizens, the difference between institutions in which they receive medical care and federal level MSE institutions, it becomes especially noticeable in regions that are actively introducing new technologies. Therefore, citizens have legitimate claims to the quality of services, accessibility and timeliness of their receipt, etc., when they are applying to federal institutions of the MSE.

6.3. Problems in the conduct of medico-social expertise and rehabilitation of disabled persons

It is necessary to notice that powers on carrying out MSE were already assigned to territorial subjects of the Russian Federation earlier. However owing to the objective and subjective reasons since January, 2005 they were transferred to the federal level (Farber, 2016) while on the majority of other powers the return trend was observed.

Besides, in connection with the changes of structure of federal executive bodies, which took place in 2012, the important practical value was received by questions of interdepartmental interaction during the conduct of medico-social examination and rehabilitation of disabled people.

In the Concept of improvement of the state system of medico-social examination and rehabilitation of disabled people improvement of interdepartmental interaction was called as the direction of the solution of problems of MSE system's improvement. In this document is pointed out imperfection of procedures, schemes of interdepartmental organizational and information exchange. Besides, solutions of the arising problems, are specified in it: improvement of a control system of appropriate authorities and

institutions, interaction mechanisms, document flow optimization an etc. However, in the constitution State, the management of processes regulating impact on subjects is carried out, first of all, by means of the forms, methods, ways enshrined in acts of various validity.

We should also note that the Federal Law “On Social Protection of Persons with Disabilities” guarantees the provision of qualified medical care, access to social infrastructure, social services, monthly payments for citizens with disabilities. At the same time, Russian scientists pay attention to problems that are associated with the realization of the rights of persons with disabilities.

For example, Levitskaya (1991) noted that it is necessary to codify normative acts of sectoral activities that regulate all issues connect with the provision of persons with disabilities in the form of separate laws on persons with disabilities.

At the same time, other researchers substantiated the need for the development and adoption of the Federal Law “On the comprehensive rehabilitation of persons with disabilities”, which should unite all the existing legal material in this area. She pointed out that at present there is a lack of proper consideration of the structure and state of disability. The registration of persons with disabilities is carried out only in the context of registering of recipients of social benefits. Indicators that indicate the creation of the necessary conditions for the integration of persons with disabilities in society are not taken into account; there are no data on the results of the rehabilitation process.

Zavoronkov (2012) noted the lack of effectiveness of assistance to the state of employment of persons with disabilities, which is not consistent with the principle of ensuring a decent standard of living for people with disabilities.

There are no legal mechanisms to implement the law on the prohibition of discrimination. And, in particular, the absence in legislation of a clear definition of such concepts as “habilitation” and “discrimination”, which are enshrined in the Convention on the Rights of Persons with Disabilities.

At the same time, it is necessary to note the elimination of a number of shortcomings in the legislation on the social protection of persons with disabilities in 2016.

For example, introduced the concept of habilitation. At the legislative level, it is established that habilitation is a special system and process of forming abilities for social, household and any other activities that were previously absent from a disabled person.

Also, article 3.1 of the said the Federal Law «On Social Protection of Disabled Persons» defines the inadmissibility of discrimination on the basis of disability. Article 5.1 of the Federal Law provides for the maintenance of the Federal Register of Disabled Persons.

Thus, starting from 2016, all institutions MSE should regularly send extracts from their programs for the rehabilitation or habilitation of persons with disabilities to the appropriate units, which should carry out the activities provided for by the individual program for the rehabilitation or habilitation of persons with disabilities. In turn, information on the implementation of the individual programs of each disabled person will be provided to the institutions MSE.

7. Conclusion

Owing to considerable number of the subjects, various on the status, participating to some extent in rehabilitation of disabled people, there are considerable difficulties of management of this system

(beginning from definition of a circle of patients and their correct routing before receiving a straight line and feedback with its participants). Besides, experts directly pay attention to need of change of standard and legal regulation of interaction of the organizations – participants of process of rehabilitation of disabled people and also in general process of rehabilitation in territorial entities of the Russian Federation.

Also we will notice that rehabilitation – the weak link of modern market focused medicine, not only regarding disabled people, but also other categories (groups) of citizens. Addition in model of a stage of citizens' rehabilitation before their recognition by disabled people makes sense, but big organizational, methodical, legal work has to precede it (introduction of additional terminology, regulations, standards, etc.).

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