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**REALIZATION OF RIGHT TO HEALTH PROTECTION AS
NECESSARY CONDITION FOR SOCIAL WELL-BEING**

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Abstract

The article is devoted to consideration of health protection as activity aimed at ensuring social welfare of Russian citizens. The authors argue that achievement of the goal of social state enshrined in the Constitution - ensuring a decent life and free development of a person - is impossible without realization of the right to health protection, since health is the main factor that determines person's opportunities to realize oneself in social environment.

Describing the problem of health protection in terms of ensuring social well-being, the authors aim to clarifying meaning of the notion of "social well-being". For this purpose, the concept content is analyzed at various stages of its formation in scientific doctrine. The authors conclude that modern understanding of the social well-being category presupposes inclusion in its composition of health as a necessary element of its content. Attention is focused on fact that the inseparable interrelation between health and social well-being of citizens is reflected in the most important international acts and acts of the Russian legislation. At the same time, there is a trend in modern Russian law aimed at breaking this relationship and distancing categories of "health protection" and "social services". According to the authors, the above-mentioned tendency is dictated by needs of legal practice and related to the need to separate areas of responsibility of medical and social workers. At the same time, such distancing of health protection and social services introduces a contradiction in the whole system of Russian social legislation..

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Keywords: Social well-being, health protection, right to health protection, social services, social assistance, social security.



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1. Introduction

Consideration of the problem of health protection in the aspect of ensuring the social well-being of the population is a consideration of this problem in its initial "natural" perception, for no one will deny the importance of the health factor, and therefore the need for its protection for normal human life. Health status is often decisive in the choice of the person of a particular profession, occupation of a post; it largely determines its communication capabilities in a society, directly affecting the person's lifestyle, his outlook and perception of reality. Thus, we can say that health as a whole determines the individual's opportunities to realize him in the social environment, which is the main factor of his social well-being.

In the Russian Federation, the fundamental importance of health as a factor in the quality of life found its legal confirmation in the definition of the Constitutional Court of the Russian Federation of June 6, 2002. №115-O "On the refusal to accept the civil complaint of Martynova Evgenia Zakharovna for violation of her constitutional rights by clause 2 of Article 779 and paragraph 2 of Article 782 of the Civil Code of the Russian Federation", which states that "human health is the highest inalienable good without which many other goods and values lose their meaning» (Definition of the Constitutional Court of the Russian Federation of June 6, 2002.). However, this definition is just a statement of the obvious fact of the society realized by the majority of members, albeit at the highest level of the judicial system. The real indicator of public attention to health as a necessary condition that allows citizens to realize their opportunities for achieving their own well-being are real measures aimed at preserving and strengthening health. Legal measures in this context are among the main ones.

The direction of the Russian state policy to achieve social welfare is recorded in the act of higher legal force - the Constitution of the Russian Federation. Part 1 of Article 7 of this Act directly indicates that the Russian Federation is a social state whose policy is aimed at creating conditions that ensure a decent life and free development of a person (The Constitution of the Russian Federation). Part 2 of the same article declares the protection of health as one of the main directions of the social policy of the Russian state, which only confirms the importance of health as a condition for a decent life. However, both of the above provisions of the Constitution are only policy statements that, by themselves, do not possess the qualities of a regulatory impact and are not capable of being implemented without a specific legal mechanism for their implementation.

In the field of health protection, there is such a mechanism. Its fundamental elements are contained in the Constitution itself and are developed in the sectoral legislation.

The legal way to materialize the protection of health as an activity that provides conditions for a dignified life (social well-being) of Russian citizens is its (health protection) fixation as a subjective right. At the same time, only the actually realized (and not simply proclaimed) right creates real conditions for social well-being. Accordingly, the law itself must be legally secured, that is, it must have its own implementation mechanism.

Dialectical interrelation of realization of the right to health protection and social well-being of citizens is beyond doubt. Hence the importance of the entire legal mechanism for ensuring health protection is a necessary condition for the social well-being of Russian citizens, as well as the key importance of the constitutional right to health in the mechanism for the realization of many other rights

and freedoms, which is determined by the significance of the phenomenon of health as a social good, largely determining the actual possibility their implementation (Vorontsova & Vorontsov, 2016). At the same time, there are a lot of questions in the scientific discourse connected with the understanding of the category "social well-being" itself. In addition, many dissenting opinions exist about the place of the right to health protection in the system of social security of citizens. An analysis of these problem issues will be devoted to this study.

2. Problem Statement

At present, most of the democratic states have declared themselves to be social, that is, states whose policies are aimed at achieving social prosperity for their citizens. However, up till now, both at the legislative level and in scientific thought, the very content of the notion "social well-being" is not completely certain. The list of its constituent elements is not quite clear. This circumstance essentially influences the peculiarities of the social policy of the states, whose aim is to ensure the social well-being of the population.

The authors focus their attention on the need to realize the right to health protection, considering that the realization of this right is a necessary condition for achieving social well-being. At the same time, the latest trends in Russian legislation speak of attempts to separate health care and social services for citizens, their legalization as incompatible concepts and activities. Such a situation, according to the authors, provokes problems in practical health care activities, and also creates an obvious contradiction in the system of Russian public health law.

3. Research Questions

3.1. Evolution of the doctrinal understanding of the category "social well-being"

The category of social well-being is one of the most significant in the social sciences. As a category characterizing the quality of human life, a certain state of society, it is actively used in scientific research in a variety of ways. In this case, there is no single generally accepted definition of this concept. Moreover, the scientific doctrine has developed different conceptual approaches to its understanding, which indicates the breadth and versatility of this concept.

Jurisprudence as a science that studies the legal regulators of social life, of course, also cannot do without the use of "social well-being" category, all the more that the achievement of this aim is the qualitative state of legal regulation in many industries. At the same time, there is no normatively fixed definition of social well-being in Russian legislation. As an expression of it is used in the federal law "On the Principles of health protection of citizens in the Russian Federation", but in other laws, as a rule, appears in variants such as "social services", "social protection", "sanitary-epidemiological well-being" and other, which are narrower in meaning and adapted to sectoral legal use. Today, the Russian legislator and law enforcement uses this expression, based more on his intuitive understanding than on the knowledge of any formal definition. This situation actualizes the need for a standard definition of "social well-being" and its subsequent legal consolidation taking into account the importance of this concept in a legal context, moreover, that the pursuit of social well-being at all times is the most stable motivation of active human activities.

Attention to the issue of social well-being and, consequently, attempts to define this concept has a long history. Even the ancient Greek scientists thought about ways to equitably distribute public goods among the entire population. In the future, this idea was picked up by thinkers of the Renaissance and the New Age. (Aristotle, 1983; Plato, 1998). In various aspects, the problems of social well-being were reflected in the writings of N. Machiavelli, T. Campanella, T. Hobbes, J. Locke, J. Bentham, J.-J. Rousseau and other great thinkers.

As a scientific term, social well-being starts for the first time used in the XIX century in the works of English economists - Adam Smith, D.Rikkardo and others. A little later, K. Marx and his followers made a significant contribution to understanding the problem of social well-being. At the same time, until the middle of the twentieth century, the notion of social well-being was considered exclusively in the economic aspect, as the achievement of material well-being. Even within the framework of the concept of a welfare state, which originated as early as the end of the nineteenth century, social well-being was seen as the result of the principle of maximally efficient allocation of resources (V.Pareto) and the idea of a socially oriented economy (F. von Hayek, V.Oiken), that is, in the first place, in the categories of economic science. At the same time, the concepts of the above-mentioned scientists, as well as the concept of J. Keynes and his followers, significantly broadened the view on social well-being as a notion that is not limited only to material well-being.

Under the influence of these views, in the second half of the 20th century, other components of social life began to be included in the notion of social well-being. Health was the first of them. In addition to the objective significance of health for the normal life of a person, his perception as an obligatory component of social well-being was largely due to a trend that gained strength in Western science, according to which social well-being was considered, among other things, as a subjective sensation of the individual, his positive experience of his own internal state. In this case, the medical context in understanding well-being is obvious, as subjective feelings and experiences directly relate to the sphere of psychological health. Supporters of the psychological approach to understanding social well-being in practice almost leveled the concept with the concept of "happiness." At the same time, as the main characteristics of social well-being and happiness, they saw material well-being and human health (Argyle, 1990).

Thus, in modern foreign science, health is seen as an integral element of social well-being. As for domestic scientists, a number of their representatives (mainly representatives of medical science) generally consider social well-being, first of all, exactly how the medical category (N.M. Amosov, G.P. Aponasenko, I.A. Arshavsky), it should be noted that this approach also takes place in some international acts: the Charter of the World Health Organization, includes social well-being, along with physical and mental well-being, in the content of the notion of "health" (The Constitution of the World Health Organization, 1946). Nevertheless, most modern researchers of the problem of social well-being consider it as a complex concept, including along with material well-being and health as its main components, such elements as freedom, security, the possibility of obtaining education, well-being in interpersonal relations, etc. It seems that such an integrated approach is the most correct, taking into account the breadth and multidimensionality of this phenomenon.

3.2. Health protection and social assistance: legal issues of correlation and interaction

The study carried out by the authors of the process of folding the notion of "social well-being", an analysis of its necessary components convinces us that health is an integral element of its content. This circumstance is now realized both among scientists and among ordinary citizens.

The interrelation and interdependence of health and the social policy pursued by the state has already been reflected in the very first international post-war international acts devoted to health protection. The Charter of the World Health Organization, among all the obligations assumed by the states "in the field of improving and protecting health," ensured for them the need to "take appropriate measures of a social nature in the field of health" (The Constitution of the World Health Organization, 1946). The importance of health for the social well-being of citizens, as well as the inextricable linkage of these concepts, is explicitly stated in the most important act of international public law, the Universal Declaration of Human Rights, which enshrines for everyone the right to "such a standard of living, including food, clothing, housing, medical care and the necessary social service that is necessary to maintain the health and well-being of himself and his family" (Universal Declaration of Human Rights, 1995, Article 25). It should be noted that the UN uses the concepts of "medical care" and "social services" as paired categories, which once again proves their inseparable connection in the eyes of the international community.

In our opinion, the need for legal consolidation and, consequently, for the realization of the right to health care to ensure the social well-being of citizens, among other things, is directly conditioned by the social character of the Russian state. Recall that Article 7 of the Constitution of the Russian Federation proclaims that the Russian Federation is a social state whose policy is aimed at creating conditions that ensure a dignified life and free development of a person (The Constitution of the Russian Federation, 1993). The basic law of Russia does not contain more detailed characteristics of the social state, but the tasks and functions of social statehood were formulated at the doctrinal level by the most prominent Russian experts in the field of constitutional law. So Kozlova and Kutafin (2008) believed that the social state is called upon to help the weak, to influence the distribution of economic goods on the basis of the principle of justice, in order to provide everyone with a worthy existence. According to Lazarev (2009), the social state performs specific functions, the implementation of which aims to create a social protection system in the broadest sense of the word, to smooth social inequality. In particular, the social security of citizens, providing affordable health and education, the provision of social services. A similar position is held by Baglai and Gabrichidze: "This is the name of the state that takes upon itself the responsibility of caring for social justice, the well-being of its citizens, and their social security" (1996, p. 118). As you can see, all the above views on the essence of the social state agree that this type of state is called upon to ensure a dignified existence, the well-being of its citizens, and their social security in the broadest sense of the word. In their totality, all these characteristics can definitely be reduced to the notion of social well-being, the provision of which, therefore, is the goal of the social state. Given the determinative importance of health for the social well-being of citizens, health interventions, in our view, are natural and mandatory in the mechanism of ensuring a "worthy life" of a person.

On the other hand, social activities according to the fundamental law on the realization of the right to health protection - the Federal Law "On the Fundamentals of Health Care of Citizens in the Russian

Federation", is an indispensable element of the system of measures that constitute health protection as such. The above-mentioned law determines that health protection is a system of measures of political, economic, legal, social, scientific, medical, including sanitary and anti-epidemic (preventive) nature carried out by state authorities of the Russian Federation, state authorities of the subjects of the Russian Federation, local authorities self-government, organizations, their officials and other persons, citizens in order to prevent diseases, preserve and strengthen the physical and mental health of each person, maintaining his long active life, providing him with medical care (Federal Law № 323-FZ, 2011). Given that any activities carried out in the public interest, including economic, legal and other, are objectively social in nature, the allocation of "social measures" by the Russian legislator in the system of measures constituting health protection speaks about their understanding of them in relation to health protection in the narrow sense, that is, as measures of social assistance and nothing else. Other simply contradicts common sense. Thus, in the current Russian legislation, there is an obvious link between health protection and social assistance in the mechanism of ensuring the social well-being of citizens.

It should be noted that in the previous Russian legislation on health protection, such a link was even more clearly traced. In the regulatory act, which was the forerunner of the Federal Law "On the fundamentals of protecting the health of citizens in the Russian Federation" - the Federal Law "Fundamentals of Health Legislation of the Russian Federation citizens "was entrusted the right to medical and social assistance. This was a legal statement of the close interaction of these types of assistance. Indeed, the presence of the disease, in addition to providing medical assistance, entails the provision of certain social guarantees: payment of the period of temporary incapacity for work, social services, availability of special guarantees in labor legislation, etc. (Romanovskaya, 2015, pp.9-14).

Despite the obvious relationship between social assistance and health care that we mentioned (regardless of how to understand the latter - only as a medical aid or wider), Russian legal practice has a tendency to distance these concepts. For example, the Federal Law "On the Basics of Social Services for Citizens in the Russian Federation" treats the concept of social services only as an activity to provide social services. In turn, social services in this law are understood as "actions or actions in the field of social services to provide constant, periodic, one-time assistance, including urgent assistance, to a citizen in order to improve the conditions for his life activity and expand his ability to independently provide his basic life needs " (Federal Law №442-FZ, 2013). As you can see, enumerating the types of assistance provided in the field of social services, the legislator does not mention medical assistance. And defining the goals of a permanent, periodic, one-time, including urgent (published by the authors) assistance, the legislator speaks about "improving the living conditions" of the citizen, but avoids mentioning his health. In our opinion, this was done deliberately to separate the areas of responsibility of the medical and social services worker. However, in the practice of social services it is difficult to imagine a situation where the actions of a social services employee do not affect human health to some extent. Moreover, the realization of the right to health as a fundamental social and economic right is impossible without appropriate social services. This is predetermined by the very nature of health protection as a set of interrelated and interdependent measures.

4. Purpose of the Study

The purpose of the research is to scientifically prove that the necessary condition for social welfare of Russian citizens is the realization of the right to health protection.

5. Research Methods

The research is interdisciplinary in nature and is based on methodological methods used in jurisprudence, sociology, philosophy and other social sciences.

The main methods were the normative-dogmatic method (formal-legal), the method of logical analysis, the historical-retrospective method, the comparative method.

6. Findings

Analysis of the problem of health protection in terms of ensuring the social welfare of citizens allowed us to draw the following conclusions:

- The phenomenon of social well-being in modern doctrine is understood very widely;
- Most researchers believe that health is an integral part of social well-being, which is naturally explained by the importance of health for human life;
- The right to health as a legal form of ensuring the necessary level of health is an integral part of the entire legal mechanism of social security, ultimately aimed at achieving the social well-being of citizens;
- Analysis of the legislation of the Russian Federation allows us to say that medical assistance, as well as other assistance provided within the framework of health protection, as a rule can not be legally separated from social assistance. At the same time, a number of legislative acts of the Russian Federation are currently attempting to distance these concepts;
- In the opinion of the authors, the actual exercise of the right to health protection is not separable from the realization of the right to social assistance and social services. In turn, the realization of these rights constitutes the necessary conditions for the social welfare of Russian citizens (Vorontsova & Vorontsov, 2017, pp.513-520).

7. Conclusion

The research carried out by the authors made it possible to draw a number of conclusions that make it possible to compile a generalized picture of the problem considered.

First of all, the diversity of approaches to understanding the phenomenon of social well-being in scientific doctrine attracts attention. This can be explained by the difference in the subject of study in each of the sciences, which naturally assumes different cognitive tools and evaluation categories used in them. At the same time, analysis of the category "social well-being" from the positions of different branches of scientific knowledge makes it possible to understand its content more fully. In the aspect of legal knowledge, this can contribute to a more clear normative consolidation of this concept, which has long been felt necessary.

In modern research, no one questions the need to include in the content a category of social well-being of health. This social benefit is an integral part of social welfare in general, which is naturally explained by the importance of health for human life. Accordingly, the right to health protection as a legal form of providing this good is an integral part of the entire legal mechanism of social security, ultimately aimed at achieving social welfare for citizens.

An analysis of the legislative base of the Russian Federation suggests that medical assistance, as well as other assistance provided within the framework of health protection, cannot be legally separated from social assistance in a significant number of cases, although attempts are being made to divide it. This can be explained by the desire of the legislator to divide the responsibilities of medical and social workers, which is largely due to the needs of legal practice. At the same time, the similarity of these concepts is obvious, since there is no doubt that social services (social assistance) include not only social services in pure form. In any case, they will assume any services that can be attributed to medical services.

Thus, the real exercise of the right to health care is inseparable from the realization of the right to social assistance and social services and vice versa. In turn, the implementation of these rights is a necessary condition for the social well-being of Russian citizens, and in addition, "gives stability to the long-term perspectives of the entire system" man - society - state" ..

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