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The Role of the Institute of Medical Law in the Postmodern Society

Oksana STRELCHENKO[1],
Svitlana OKHRIMENKO[2],
Dmytro PAVLOV[3]

[1] Doctor in law, associate professor, Professor of the Department of Public and Administrative Management, National Academy of Internal Affairs, Kyiv, Ukraine, strel1977@ukr.net, orcid.org/0000-0001-5965-9764
[2] Candidate in law, Research officer at the Research Laboratory, National Academy of Internal Affairs, Kyiv, Ukraine, svetlanka-07@ukr.net, orcid.org/0000-0002-9013-9780
[3] Doctor in law, associate professor, Head of the Department, Institute of Department of State Guard of Ukraine, Taras Shevchenko National University of Kyiv, Kyiv, Ukraine, PavlovDN@ua.fm, orcid.org/0000-0002-4586-6399

Abstract: The development of a postmodern society, oriented on the implementation of various kinds of reforms, gives rise to the newer branches of law. The medical law, which serves for a defining sphere of public administration in the field of health care, is not an exception since the life and health of citizens are an integral part of Ukraine's national security. That is why it becomes relevant to provide administrative and legal characteristics of the genesis of medical law into the legal system of Ukraine. The aim of the study is to substantiate the necessity to introduce a medical law institute into the legal system of Ukraine. The empirical basis of the study relies on a survey of 350 health care professionals to determine the relevance of establishing a medical law institute and its structural elements. It was established that the sub-institute (sub-branch) of medical law is a structural element of the law system, which is a separate part of the relevant sphere (branch) of law, regulating the respective groups of public relations in the field of health care. It was proved that the sub-institute (sub-branch) of medical law is a set of homogeneous social relations that regulate health care activities and comprehend providing a full range of quality medical services on the basis of the current legislation.

Keywords: *medical law; institute; sub-institute; legal system.*

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1. Introduction

The development of society, oriented on the implementation of various kinds of reforms gives rise to the newer branches of law, which are interpreted as the branches of the fourth generation, which include informative, insurance, sports, medical and others, which are developing both on the world stage and in Ukraine. The international scientific and technological development in various fields poses the problem of the formation and development of medical law as an independent branch of law, which has its subject, method, system, sources, respective sub-branches, for any society.

The purpose of medical law is beyond any doubt because it is an instrumental basis for the public health of a democratic state. Besides, the development of medical law as a separate branch expands the idea that the evolution of humans and society is not complete and, therefore, it may be a posthumanist manifestation of providing medical services, which must be regulated at the legal and social levels.

The postmaterialist trends advancing in modern society are beginning to outline a clear feature of today's existence – people are more concerned about their health than their material security. This situation confirms the interest of researchers in conducting relevant empirical research in the field of medical law.

According to Baryshnikov (2008), the Resolution, adopted at the forty-seventh Conference of the Association of International Law, stated that the leading aim of medical law was to strengthen legal guarantees in the area, to ensure efficient protection of the victims of military conflicts, regarding the improvement of the relevant provisions of Geneva Conventions in 1949 (Bilas, 2016; Bakhouya, 2017; Hanganu et al., 2017). Based on this the results of the study of many authors were implemented in practical and educational activities in the field of health care (Mahdavi Sabet & Mazloumi, 2016; Smith, 2004; Skala, 2009).

On the basis of Resolution No. 6.40 "On the research, related to international medical law and comparative health legislation", adopted by the Government of Belgium at the Sixth Session of the World Health Assembly in 1953, it was proposed to organize research directly on the problems of international medical law (Baryshnikov, 2008; Sizintsova, 2017).

A positive contribution to the scientific development of the healthcare field is the proposal to create a separate law institute in the form of medical law and to separate its sub-institutes (sub-branches): health care management; medical and preventive assistance to the population;

circulation of medicines; providing paid medical services which are not available in Ukraine. The institution of medical law as a structural element of the legal system is a regulator of homogeneous social relations in the field of medical activity. Its introduction will also contribute to the destabilization of engrained patriarchal norms (a manifestation of postmodern feminism), in particular, in the sphere of providing health services. This primarily applies to plastic surgery and cosmetic services, which due to the gender-sensitive approach to each individual will be provided on a high-quality level regardless of the socio-demographic status of the patient.

2. Literature review

It should be mentioned that the interest of the experts of different specialties in the formation of a new branch of the Ukrainian law – the medical law, emphasizes the relevance, importance and cross-sectoral nature of the problem that is generated by the scientific views of domestic researchers on the category of medical law in the Ukrainian law system.

In the context of this study, the scientific work of N. Bolotina "Medical Law in the System of Law of Ukraine" (1999) raised particular interest. We support the author's opinion that there is an objective need to distinguish medical law as a separate branch of law and it is urgent to draft a sole legislative act that would comprehensively regulate the whole sphere of relations constituting the subject of medical law in Ukraine. The Medical Code of Ukraine could be such a law, which would become a form (source) of the following legal institutions: health care; medical care for mother and child and family planning; providing citizens with medicines and prostheses; legal status of a patient; ethical and legal status of a medical worker; medical research law; medical examination (Bolotina, 1999; Sizintsova, 2017).

The concept of medical law emerged in practical terms since every person inevitably becomes a subject of medical care relationships. In this sense, medical law "meets" people when they are born, and accompanies them throughout their lives until they "pass away". Consequently, there is a great need not only for advanced treatment, diagnosis, prevention but also for an effective legal mechanism to ensure the human right to medical care. According to N. Bolotina (1999), it is the main purpose of medical law.

The better-known health researchers identify medical law as a field of law. One of them is a famous researcher in the field of medical law – Professor S. H. Stetsenko (2004), who defines medical law as a complex branch of law, which includes a set of legal rules governing public relations in the field of medical activity. The existence of an independent branch of

law is important both for society as a whole and for healthcare professionals and patients. The medical law will dive an opportunity to develop the principles (basic foundations) of public health policy at a higher level, to work out the question of the citizens' rights protection providing medical care, to determine the legal status of the subjects of legal relations, arising in the sphere of medical activity, in detail (Stetsenko, 2004).

Supporting the position on the nature of medical law, the scientists define it as a set of homogeneous relationships that regulate health care activity and comprehend providing a full range of quality medical services on the basis of the current legislation (Aleksandrov et al., 2017; Molen', 2017; Damian et al., 2019; Pashkov et al., 2017; Strelchenko et al., 2018).

The medical law as an institution of law is of particular relevance from the perspective of medical reform in Ukraine, which amends, improves, supplements and creates completely new legislative and regulatory acts governing the creation of a modern effective national legal system that will enable Ukraine to integrate into The European legal community, to form efficient civil society institutions and to build a truly democratic, social, rule-of-law state (Berlach et al., 2005).

Correspondingly, the formulation and substantiation of the role and place of medical law in the legal system of Ukraine is absolutely urgent.

Taking the above into consideration, **the aim of the study** is to substantiate the necessity to introduce a medical law institute into the legal system of Ukraine. **The objective of the study** is to determine the relevance (confirmation of the need) of creating a separate institution of medical law with its sub-institutions (subsectors) as structural elements.

3. Methodology

The methodology of the work is based on the use of general and special scientific methods and techniques of scientific knowledge. The historical legal method determined the prerequisites for the emergence of the institute of medical law as a structural element of the law system, characterized by a set of legal rules governing the type of homogeneous social relations in the field of medical activity, as well as the formation of scientific and theoretical views on nature, the problems of creating an institute of medical law. The comparative legal method was used to compare the doctrinal approaches to the establishment and development of a medical law institute. The systemic and structural methods contributed to the recognition of the medical law sub-institutes (sub-branches) separation, namely health care management, medical and preventive assistance to the

population, circulation of medicines, providing paid medical services, etc. The expert evaluation methods were used to obtain empirical data on the relevance and necessity of the establishment of medical law and its structural elements – sub-institutes (sub-branches), which were obtained during the survey of Ukrainian citizens and specialists in functioning research institutions in the field of health care.

The empirical basis of the study relies on a survey of 350 health care professionals to determine the relevance of establishing a medical law institute and its structural elements. Specifically, in the second half of 2019, the authors surveyed the experts from M. D. Strazhesko Institute of Cardiology (Kyiv, 50 representatives), National Institute of Phthisiology and Pulmonology (Kyiv, 50 representatives), Bukovyna State Medical University (Chernivtsi, 50 representatives), O. O. Bogomolets National Medical University (Kyiv, 50 representatives), Odesa National Medical University (50 representatives), Danylo Halytsky Lviv National Medical University (50 representatives), I. Horbachevsky Ternopil National Medical University (50 representatives). According to health care professionals, the study enables to: 1) to systematize the standards of medical law in one codified act; 2) determine the legal status of health care professionals and establish a system of guarantees of the rights of health care professionals 3) to legislatively improve the provisions regulating the medicinal products circulation procedure in the system of law of Ukraine.

At the same time, they surveyed 350 citizens of Ukraine who were patients of Oleksandrivska Clinical Hospital in Kyiv (50 representatives), the National Children's Specialized Hospital "OKHMATDIT" (Kyiv, 50 representatives), and Kyiv City Clinical Hospital No. 6 (50 representatives), Khmelnytsky City Hospital No. 1 (50 representatives), Dnipro Regional Clinical Hospital named after I. I. Mechnikov (50 representatives), Dnipro City Clinical Hospital No. 12 (50 representatives), Odesa City Clinical Hospital No. 5 (50 representatives). This made it possible to demonstrate the attitude of ordinary citizens of Ukraine towards the institute of medical law and the need for appropriate reforms in this area because of the low quality of medical services.

The research was performed according to the requirements of the Regulations on Academic Honesty at the National Academy of Internal Affairs, which were developed on the basis of Ukrainian and world experience of ethical rulemaking. This document was approved by the Academic Council of the National Academy of Internal Affairs (Protocol No. 5 dated 27.03.2018) and implemented by the order of the Rector of the Academy (Order No. 422 dated 30.03.2018). According to its provisions, the

members of the scientific community are guided by the rules of ethical conduct and professional communication; respect the principles, values, norms, rules, and conditions of academic honesty, follow examination procedure, and evaluation criteria for academic plagiarism. The consent was obtained from participants in the scientific process and respondents who could refuse to participate in it at any time.

4. Results

In the survey of 350 citizens of Ukraine, who were the patients of medical institutions, concerning the reform of the healthcare sector, which leads to an urgent need to establish an institute of medical law, 70.3% of respondents expressed their positive attitude, 19.4% – negative, 10.3% – abstained from answering. Regarding the determination of the quality level of medical care and medical services provided by public health institutions, 90.6% of the respondents consider it unsatisfactory and 9.4% – satisfactory. The dynamics of the healthcare quality in the process reforming this sphere reflected a sharp deterioration of the situation (46.8% of the citizens surveyed). At the same time, 10.6% of the respondents mentioned that the quality of health care services had improved; 33.7% of respondents did not notice any change and 8.9% abstained from answering. The above indicators prove the urgency and necessity of introducing a medical law institute into the legal system of Ukraine, which will clearly regulate the issues in this field.

On the basis on the study, it is argued that the system of law is objectively determined by the unity and consistency of the state legal provisions and their division into separate interconnected elements: branches of law, sub-branches of law and legal institutions (Strelchenko, 2019).

That is why, in order to substantiate the essence of medical law, it is relevant to determine its system, which should consist of the following elements:

1. Medical law provisions.
2. Medical law institute.
3. Medical law sub-institutes (sub-branches).

The researched problems of creating and distinguishing this sphere into a separate institute of medical law with its structural elements were supported by the majority of qualified specialists in the field of healthcare (275 respondents, 78.6%). However, a certain number of specialists (46 respondents, 13.1%) did not find it necessary; 29 respondents (8.3%) abstained from answering (Table 1).

Table 1. The results of a survey of medical workers on the establishment of a medical law institute with its structural elements Source: Authors' own conception

Medical and research institutions, the workers of which were surveyed on the establishment of a medical law institute in the field of health care	The number of people surveyed	Supported the proposal	Did not support the proposal	Abstained from answering
M. D. Strazhesko Institute of Cardiology (Kyiv)	50	82%	8%	10%
National Institute of Phthisiology and Pulmonology (Kyiv)	50	76%	6%	18%
Bukovyna State Medical University (Chernivtsi)	50	92%	8%	–
O. O. Bogomolets National Medical University (Kyiv)	50	50%	34%	16%
Odesa National Medical University (Odesa)	50	94%	–	6%
Danylo Halytsky Lviv National Medical University (Lviv)	50	68%	24%	8%
I. Horbachevsky Ternopil National Medical University (Ternopil)	50	88%	12%	–
In total	350	78.6%	13.1%	8.3%

The mentioned categorization of medical law into the relevant elements is related to the consideration of the internal structure of medical law by the "from smaller to larger" principle, i.e. from the smallest issue (medical law provision) to the largest (institute and sub-institute (sub-branch)), creating together the medical law as a separate branch.

Thus, the primary element of the medical law system is medical law provisions, which must be defined as a structural element of the law system, a general rule of conduct intended to regulate medical legal relationships, including legal relations in the field of medical treatment. The specific of medical law is that it includes the rules of various branches of law as a complex branch: criminal, civil, administrative, etc. For example, the issue of implementing compulsory measures of a medical nature is regulated by

criminal and administrative law provisions. Public administration in health care is regulated generally by administrative law provisions. Civil law regulates relations between patients and health care institutions, health care contracts, etc. (Marinescu, & Gheorghiu, 2019; Scripcaru et al., 2015; Stetsenko, 2004).

The research substantiated and proved the necessity of strong sanctions while applying administrative responsibility in the field of health care, which was supported by 91.1% of the surveyed Ukrainian citizens and not supported by 8.9% of the respondents. Regarding the application of stronger criminal penalties, 75.1% of respondents supported this proposal, 18% abstained from answering, and 6.9% did not support it.

The mentioned provisions should have the following criteria:

1) the rules of conduct, which are already presented in legal regulations if they are not fully empowered with legal features but are declarative or not enforceable;

2) various kinds of social and professional standards which regulate behavior in the health care sector directly.

The institute is the next element of medical law system as a branch.

The general theory of law is defined by the law institute as a group of legal provisions that are an integral part of a branch or sub-branch of law and govern homogeneous social relations that are closely interconnected (Strelchenko et al., 2018; Hunea et al., 2017).

That is why, in our opinion, the institution of medical law must be understood as a structural element of the system of law, which is characterized by a set of legal provisions governing the kind of homogeneous social relations in the medical industry (Hunea et al., 2019; Taborda, & Arboleda-Florez, 2017).

The theoreticians of the law define the law system sub-institute (sub-branch) as a system of homogeneous subject-related institutes of a certain branch of law. Many branches of law have their sub-institutes (sub-branches). Unlike legal institutes, sub-institutes (sub-branches) are not compulsory components of each branch (Damian et al., 2017).

In our opinion, the institute of medical law should include such sub-institutes (sub-branches) of law as health care management, medical, preventive, pharmaceutical, and transplant assistance to the population, plastic and cosmetic services, providing paid medical services, etc. The results of a survey of 350 healthcare professionals on the need to establish sub-institutes (sub-branches) of medical law are presented in Table 2.

Table 2. The analysis of a survey of 350 healthcare professionals on the need to establish sub-institutes (sub-branches) of medical law
Source: Authors' own conception

Sub-institute (sub-branch) of medical law	Support the need to create	Do not support the need to create	Doubt the need to create
Health care management	30.6%	26.3%	43.1%
Medical and preventive assistance to the population	35.4%	12.3%	52.3%
Pharmaceutical assistance to the population	58.2%	19.4%	22.4%
Providing paid medical services	7.1%	88.8%	4.1%
Transplant assistance to the population	85.1%	12.3%	2.6%
Plastic and cosmetic services	4.6%	87.4%	8.0%

Accordingly, our research considers the medicinal products circulation itself, which is a sub-institute (sub-branch) of medical law as a branch of law. We believe that medical law sub-institute (sub-branch) is the direct element of law system as a whole (Broasca, 2017; Clero, 2018; Garrido, 2010).

It is also should be noted that Medical Law is studied by students in 25 educational establishments of Ukraine; its work plan consists of 26 hours of lectures, 36 hours of practical classes and 12 hours of seminars, 4 hours of final control. The whole cycle accounts for 78 academic hours. This course is the part of the curricula of all medical postgraduate education institutions (Shvets et al., 2020; Zhamardiy et al., 2019).

5. Limits and discussion

On the basis of the results of the research conducted, we note that substantiation of the essence of medical law is provided by its system, which covers the following elements: norms of medical law; institute of medical law; sub-institutes (sub-branches) of medical law.

The proposed distribution was made on the basis of the internal structure of medical law, which was separated from the smallest structural unit – the rule of law, to the largest one – the institute and sub-institute (sub-branch), which collectively form such a branch of law as medical.

Correspondingly, the rule of medical law is a structural element of the system of law and a compulsory rule of conduct, which is necessary for the regulation of medical relations, ensured by state coercion.

These standards should be determined by the following criteria:

a) the standards of conduct, which are already established in normative legal acts if they are not fully empowered with legal features but are declarative or not enforceable;

b) all kinds of social and professional norms that regulate health behavior directly.

The other element of the medical law system as a branch of law is its institute. To confirm the relevance of introducing a separate institute of medical law in the legal system of Ukraine, the position of Professor S. H. Stetsenko (2004), who is perhaps one of the first researchers in Ukraine to propose distinguishing medical law into a separate legal institute. Sharing and supplementing this opinion, we proved that the institution of medical law is a structural element of the legal system, which is characterized by a set of legal norms governing the type of homogeneous social relations in the field of medical activity. Together, they will form a single medical system, produced out of the results of our empirical research.

Considering the content of the sub-institute (sub-branch) of medical law, it should be noted that it is represented by a system of homogeneous relations that regulate health care activities concerning the quality of a full range of medical services based on the requirements of the current legislation. Therefore, in contrast to legal institutions, the sub-institute (sub-branch) of law is not a binding component of every industry but it is present in our industry.

At the same time I. Ya. Senyuta (2017) points out that medical law sub-institutes are a compulsory element of the medical law institute. This approach will contribute to the structuring of the entire medical sphere, and develop its separate structural units (elements).

And Ya. F. Radysh (2015) believes that a sub-institute of folk medicine could also be a sub-institute of medical law. We respectfully disagree with this position because folk medicine belongs to non-traditional medicine and, therefore, it is not related to the structure of medical law directly and it will not complement the health care field in the legal context. Hence, in our opinion, it cannot be referred to the institution of medical law.

In general, it can be argued that the results of our study somewhat intersect with the positions of some researchers (Bilas, 2016; Bolotina, 1999; Stetsenko, 2004; Senyuta, 2017). At the same time, they prove the need to create a separate institution of medical law and expand the idea of its role in

the legal system of Ukraine. In addition, they make it possible to outline the system of its subsectors (structural elements) taking into account the dynamics of modern life: the management in the health care field; medical and preventive assistance; the circulation of medicines; paid medical services; plastic surgery and cosmetology services; transplant assistance. This division of sub-institutes (sub-branches) of medical law is the most relevant because it reflects the existing system of medical services and medical care, which is supplemented by such up-to-date elements as plastic surgery and cosmetic services; transplant assistance.

6. Conclusions

On the basis of the results obtained, it should be noted that the sub-institute (sub-branch) of medical law is a structural element of the system of law, which is a separate part of the relevant sphere (branch) of law, regulating certain groups of public relations in the field of health care.

The development of the institute of medical law is carried out on the basis of medical practice and methods of regulation of this field of activity. It should be mentioned that medical activity forms specific rules of conduct, which are transformed into legal medical norms. The basic set of such rules in the medical sphere should be considered as the main source of formation and development of the institute of medical law.

The formation and development of medical law should be based on the following positions:

- first, medical law should be empowered with essential features of law;
- secondly, medical law should emerge and exist within the medical professional activity: in the science, practice, ethics, and deontology of medical professionals, the procedures and rules of activity of medical institutions, etc.

The coherence and formulation of the medical law institution reflect the development of this area of public administration that is the starting point for its development. This position is confirmed by objective (the improvement of public relations, the expansion of the list of medical services, the system of sanctions and responsibility in the health care field, etc.) and subjective (favorable and trusting attitude of the population to various medical services, the appropriate level of the professional competence of medical professionals) factors in the development of the medical law institution. All this specifies the subject of the legal regulation of medical law determines its essential features and outlines the role of medical

law in the legal system of Ukraine. The current postmaterialist tendencies in society indicate that people are becoming more concerned about their health rather than their material security, demonstrating a positive trend because human life and health are the highest social values.

We proved that the sub-institute (sub-branch) of medical law is a set of homogeneous social relations that regulate health care activities concerning the quality of the full range of medical services based on the requirements of the current legislation. It was substantiated that the sub-institutes (sub-branches) of medical law as a law institute are health care management; medical and preventive assistance to the population; circulation of medicines; providing paid medical services; plastic and cosmetic services; transplantation assistance to the population.

The introduction of the new model of health care implies preserving the powers of local self-government bodies in the field of health care, as well as creating opportunities for the proper functioning of the medical law institute and its sub-institutes (sub-branches) by defining a clear list of medical services within a specific institution.

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