REVIEW ARTICLE
PRACA POGLĄDOWA**DYNAMICS OF CIVIL LAW RELATIONS IN PSYCHIATRY**

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ABSTRACT

The article deals with the problems of the dynamics of civil law relations in psychiatry. Special attention is paid to the order and peculiarities of emerging, developing and terminating civil law relations in psychiatry. The author conducted a research of normative-legal acts and scientific doctrine on legal regulation issues in psychiatry. The article considers the grounds for providing psychiatric medical services, the order of compulsory and voluntary treatment of psychiatric illnesses, describes the situation when a patient can refuse from psychiatric assistance. The author suggests division of patients, requiring psychiatric assistance, into 4 groups., considers the order of registering the patient's refusal from psychiatric help.

KEY WORDS: psychiatry, psychiatric assistance, relations, services, medical assistance

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INTRODUCTION

The topicality of the research of dynamics of civil law relations in psychiatry is due to the fact that improper regulation of these relations, or failure to provide psychiatric assistance, can lead to grave health and human freedom consequences. Psychiatric assistance with violating norms and principles of the law leads to a violation of fundamental human rights and freedom of will.

Psychiatric assistance and medical services issues were considered by the prominent scientists. Firstly, it is necessary to determine definitions. Unlike the notion of medical services, the notion of medical assistance has its legislative formalizing in the norms of the Constitution of Ukraine, the Laws of Ukraine "Fundamental Principles of the Legislation of Ukraine on Health Care", "On Ensuring the Sanitary and Epidemiological Well-being of the Population" [1], "On Protecting the Population Against Infectious Diseases" [2], "On Counteraction to Tuberculosis" [3], "On Psychiatric Assistance" [4], "On Pharmaceutical Products" [5], the Resolutions of the Cabinet of Ministers of Ukraine "On Approval of the Program for the Granting the Citizens of a Guaranteed State Free Health Care" [6], Decrees of the President of Ukraine "On Additional Measures as for Social Problems in Rural Areas and Further Development of Agricultural Sector" [7] "On Urgent Measures to Reform the Health Care System" [8] and so on. Several approaches to the definition of medical care, which are confirmed in international documents, are recognized as relevant. Thus, the preamble of the international treaty "Twelve Principles for the Provision of Medical Assistance in Any System of Health Care" states: "In some countries, medical care is provided only to those who are badly in need of it, in others, there is a well-developed system of health insurance, the third ones have substantially advanced in organizing

comprehensive health care" [9]. The analysis of the health-care situation and the content of the normative base of Ukraine makes it possible to attribute it to the countries of the first group.

THE AIM

The aim – solve complex problems of dynamics of civil law relations in psychiatry.

MATERIALS AND METHODS

The article is based on dialectical, comparative, analytical and comprehensive research methods.

REVIEW AND DISCUSSION

Psychiatric assistance is regarded as a complex of special measures aimed at examining the state of mental health of persons on the grounds and by the procedure established by the laws of Ukraine, prevention, diagnosis of mental disorders, treatment, supervision, care, medical and psychological rehabilitation of persons suffering from mental disorders, including those resulting from consuming psychoactive substances [4; Article 1].

The central issue of the above-mentioned problematics is the relationship regarding the necessity and legal basis for the provision of psychiatric assistance. According to general rule, the basis for civil rights and obligations origin is a juridical fact [10, p. 32]. The notion of "juridical fact" is the result of dynamic development of legal practice and desire to comprehend and unite with the unified concept of various preconditions of legal relations dialectics [11, p. 63]. The established opinion in defining juridical facts is their definition as circumstances of real life, according to

which the rules of law connect establishment, change or termination of law relations [12, p. 214].

In cases when medical services are provided under conditions expressly recognized in normative acts, such medical relations are of a public law nature. Provision of medical services as a form of public law relations can be manifested in compulsory medical examinations of certain categories of persons, scheduled and unscheduled vaccinations, forced medical actions and hospitalization of persons recognized as dangerous to the society because of their health (including mental), etc. Norms with such instructions are consolidated in a wide range of normative acts. In particular, it provides for the forced hospitalization of patients and persons with the symptoms of dangerous and especially dangerous infectious diseases [2], virulent tuberculosis [3], etc.

Despite the fact that psychiatric medical services may be of public law character, the most widespread and appropriate basis for their provision should be civil contract. Unlike other juridical facts, the legal act has several peculiarities that are of fundamental importance in psychiatric assistance. Thus, medical legal relations in psychiatry may arise on the basis of a legal act through a contract conclusion and have a form of medical service.

At the same time, the legislation contains a number of bans on certain types of medical services, for example, euthanasia. The consequences of such actions are now subject to general rules that establish liability for damage caused to life and health of the person [13, p. 86].

Legal acts, aimed at the provision of medical services, have peculiar expression of will. According to the general rule, the necessary precondition for medical intervention is the voluntary consent of the person (the patient). In some cases, this consent is initiated by medical grounds [14, p. 122-124]. The principle of free expression of parties' will must be in line with their internal will and of primary importance when concluding a contract on medical services provision. In particular, the Article 11 of the Law of Ukraine "On Psychiatric Assistance" provides that a psychiatric examination by a psychiatrist shall be carried out at the request or with the informed consent of the person, except in cases expressly provided by the law [4]. The Article 6 of "The Instructions on the Procedure for the Application of Assisted Reproductive Technologies" provides the obligation of direct expression of the patient's will by obtaining a written, voluntary consent and regarding the patient's application as for applying the assisted reproductive technologies [15]. As we can see, the specified norms directly indicate the need for obtaining consent for the provision of medical services. Thus, if a person entered into a contract without inner will, or the decision on its conclusion was not free, the contract for the provision of medical services will be void. The violation of the principle of free expression of will should also include the conclusion of a contract on provision of medical services to a person against his/her will, as a result of the physical or mental pressure exerted on him/her by another person. In some cases, provided by the law, the principle

of free expression of will may be omitted. This is applied to providing outpatient psychiatric assistance, referring a person, who committed a socially dangerous act that falls under the act provided by the Special Part of the Criminal Code of Ukraine, into a special medical establishment for the purpose of his/her compulsory treatment, as well as preventing his/her socially dangerous acts [16]. However, such medical relations arise not on the basis of the contract, but on the basis of other legal facts.

A person who has attained 14 years of age is taken to a mental health facility voluntarily – upon his/her request or with his/her informed written consent. A person under the age of 14 years is taken to a mental health facility upon the request or with the written consent of his/her parents or a legal representative. In case of absence of consent of one of the parents or in the absence of the parents, hospitalization of a person under the age of 14 is carried out following the decision of the guardianship authority, approved not later than 24 hours from the moment when another legal representative of the indicated person addresses to this authority and the decision may be appealed. An incompetent person is taken to a mental health facility voluntarily – upon his/her request or with his/her informed written consent. A legal representative of a person, recognized as incompetent in accordance with the law, shall inform the guardianship authority at the place of the person under care residence about the consent of his ward for hospitalization to the mental health facility not later than the day after the day of such a consent. The consent for hospitalization is registered in the medical documentation signed by the person or his/her legal representative and a psychiatrist [4, Article 13]. For certain types of medical services, the form of written consent may be approved by the Ministry of Health of Ukraine [17, p. 15].

A person suffering from a mental disorder may be taken to a mental health facility without his/her informed written consent or without written consent of his/her legal representative if his/her examination or treatment is possible only in hospital, and if the person is diagnosed with severe mental disorder, as a result of which he/she: commits or intends to commit acts presenting an immediate danger to him/her or other persons, or cannot independently satisfy his/her basic vital needs at the level providing his/her life activity [4, Article 14]. Thus, while providing psychiatric assistance one must take into account the will of the patient, legal representatives and medical institution. In the of mandatory treatment of persons suffering from severe mental disorders, medical staff is obliged to explain the person and his/her legal representative the possibility of adverse consequences to his/her health, with the simultaneous recording in the medical documentation (patient history, outpatient card, etc.) signed by the patient, his/her legal representatives and the doctor [18, p. 128-130].

It should also be borne in mind that consent for medical intervention of the patient or his/her legal representative is not required only if there are signs of a direct threat to the patient's life, provided that it is impossible to obtain, through objective reasons, consent for such an interven-

tion from the patient or his/her legal representatives [19, Article 43]. In such cases, civil legal methods of regulation give way to administrative legal ones with their features of power and subordination. In particular, the possibility of applying such measures is indicated in the Law of Ukraine “On Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of the Population”, the Law of Ukraine “On Psychiatric Assistance” and others.

It should be borne in mind that relations in the field of psychiatric assistance, although of a civil law nature, are grouped into strictly regulated imperatives. That is why they are sometimes referred to as public (administrative) law. For example, a patient, who is committed, is then discharged following the decision taken by the commission of psychiatrists or a court decision refusing to continue such a hospitalization in case of recovery or improvement of his mental state, which does not require further inpatient treatment.

Peculiarities of development and termination of legal relations in psychiatry is to be considered separately. This is the last stage of commitment existence, which completion will lead to the loss of the original legal relations between the parties, expressed in a specific commitment. Accepting the view of O.I. Mikhno [20, p. 5], we suggest to determine termination of the contractual relationship in providing psychiatric assistance as culmination of the parties rights and obligations related to the provision of medical services provided for by the contract.

It is possible to identify the following general grounds for terminating civil legal relations in psychiatry: 1) the parties have fulfilled their commitments; 2) the law relations are terminated on the basis of the parties meeting of the minds, who jointly came to the conclusion that it makes no sense in further treatment; 3) the law relations may be terminated without meeting of the minds. This right can be exercised both by the doctor and by the patient in case of impossibility of treatment providing, or if the treatment is ineffective. Failure to provide the service, if it is caused by a circumstance beyond the control of either party, shall be a ground for the commitment termination [21, Article 607]; 4) the patient has the right to leave a medical facility and to terminate treatment at his own discretion, arising from the freedom to conclude a contract. This right is limited if his/her decision endangers the health of others (for example, a mentally ill who undergoes mandatory treatment, cannot leave a place of treatment); 5) patient's death. Natural death of a patient while providing quality medical assistance, which is the subject of personal non-property relationships, means that the regulatory civil law relations are terminated. Death of a patient due to the fault of a doctor (health professional) due to the provision of poor-quality medical assistance means that the regulatory civil law property relations are transformed into protection civil law relations of compensation for moral harm [22, p. 28].

In most cases, terminating contractual relations through full obligations fulfilment relates to a single medical services provision. For example, such a reason is relevant for surgical interference, eye exam, etc. The main condition

to terminate contractual law relationships on the above grounds is due and full compliance of the parties with their duties. That is, the parties must be satisfied with the result of fulfilling the obligations with no claims between them.

A more complicated situation arises in the event of termination of contractual legal relationships for the provision of psychiatric assistance via a unilateral contract termination. As is known, until adopting the current Civil Code of Ukraine, the national legislation did not provide the possibility of unilateral contracts termination. In particular, the Article 162 of the Civil Code of the Ukrainian SSR provided that unilateral refusal to perform the obligation and unilateral change in the terms of the contract were not allowed, except in certain cases provided by the law. The current Civil Code of Ukraine, having retained the previously established rule of inadmissibility of a unilateral refusal of the obligation in the Article 525, has partially derogated from it, recognizing the possibility of unilateral refusal from the contract not only in cases provided by the law, but also in the case where such right is enshrined in the contract. However, having recognized the special grounds for the unilateral cancellation of certain types of contracts (for example, a loan agreement), the Civil Code of Ukraine does not provide their list for the medical services provision contracts.

One should consider the issue of denying treatment. Each patient has the right to freely choose: 1) a doctor, method and means of treatment; 2) treatment refusal; 3) refusal to participate in scientific researches and experiments; 4) emergency treatment with a high probability of complications; 5) resuscitation refusal [13, p. 86].

A patient who has acquired full civil capacity and is aware of his/her actions, and can control them, has the right to denying the treatment, medical intervention or to suspend it [19, Article 43]. That is, if a person is incompetent, then this right is exercised via his representatives.

The notions of “right to refuse of the treatment” and “right to refuse of medical intervention” should be distinguished. Thus, some sources consider the denial of medical intervention similar to denying treatment [23, p. 137-138]. At the legislative level, there are no clear definitions and delimitation of these concepts. The right to refuse of medical assistance and medical intervention include the right to deny the treatment, but these are not the same notions. The right to refuse of medical intervention provides failure of physical interference into the human body, and denying treatment means absence of pharmacological therapy. According to T. Volynets, the right to denying treatment should be understood as the right not to seek medical assistance and as a right to denying treatment at any time, even if it has negative consequences [24, p. 33]. Some scholars do not support this stance and state that the right to refuse of medical intervention is a subjective legal right of the patient, which can be exercised without consent to medical intervention. [23, p. 307].

It should be noted that the right to denying treatment is an absolute one, and the right to medical intervention is not. So, in urgent cases, a consent for medical intervention

is not required, but the law does not list the urgent extreme cases that present a real threat to life and give a doctor such a right. Medical practice shows that such cases are covered by urgent surgery [23, p. 139].

In psychiatry, the right of patients to deny the treatment has its own peculiarities. On the one hand, the right to denying treatment is a generally recognized ethical and humanistic value and legal standard meeting the generally accepted international standards. On the other hand, application of this provision while providing psychiatric assistance not only complicates the work of psychiatrists, but also makes the safety issue more urgent that some psychiatric patients may present to themselves and for others.

For example, the European Court of Justice tried the case of "Arška versus Ukraine", when mother appealed to the court against her son, who being exposed to tuberculosis and pneumonia was taken to hospital and refused from treatment, but it was not known whether it was consciously or not. Also, it turned out that the son had schizophrenia. The court established that the Article 2 of the Convention was violated, noting that the state failed to protect the life of her son [25].

The main principles according to which a patient may refuse of psychiatric assistance include: 1) a person is older than 18 years of age and is mentally capable of taking such a decision; 2) it is determined which procedures he/she does not want to undergo; 3) a person explained the circumstances under which he/she would like to refuse of this treatment; 4) a person has taken a decision without any pressure or influence of other persons; 5) a person did not say or do anything that would contradict the decision taken.

This procedure is effective and protects the rights of a doctor if a patient refuses of treatment.

There are 4 categories of patients who deny psychiatric assistance: 1) those who do not want to continue suffering and are doomed to death; 2) those who do not trust the doctor; 3) those who consider that treatment should be continued via non-traditional methods; 4) those who refuse for religious reasons [14, p. 211-214].

The first category includes incurable patients with their life being supported through medical interventions, but, taking into account the state of medical science, the patient will soon die. Such a refusal should be witnessed by three doctors and with the consent of the medical committee. The committee should establish two factors: 1) the patient cannot really be cured, and the disease will lead to death; 2) the patient has refused of the assistance consciously on the grounds that his/her illness is incurable and modern medicine cannot help him/her, so his/her death is inevitable.

Three days after a written refusal, the patient must confirm it. This can be done either verbally or in writing. If he/she fails, the refusal is considered invalid and the doctor is obliged to continue providing the necessary medical assistance.

There is an important element of refusal procedure: a legally capable person in case of any incompetency can deny the medical care beforehand or appoint a person

who will settle the issue of refusal on his/her behalf and in his/her interests. The guarantee of this right should be a psychiatrist's medical note attached to the statement, which cannot be valid for more than 1 month, certifying that the patient's decision was taken realizing possible consequences. In addition, this statement should be updated every two years, otherwise it will expire.

It must be taken into account that the patient can at any time cancel his/her refusal and even if he/she denies treatment, he/she remains entitled to less pain and suffering.

An adult person has the right to refuse of or suspend a medical intervention. When registering the refusal of medical intervention, it is necessary not only to record the fact of the patient's refusal, but also the fact that a physician has informed a patient about the necessity of this intervention and the consequences of such a refusal. The persons, who can be involved as witnesses to certify an act of patient's refusal of medical intervention, should be aware of information regarding patient's treatment via exercising professional or official duties, or they should be the ones against whom the patient does not object (his/her relatives, friends, neighbors in the hospital ward).

Denying treatment decision should specify: 1) detailed information about the person; 2) a clear statement of treatment, in which case it can be denied and the circumstances under which the decision is applied; 3) new methods of treatment in the decision taken, even beyond patient's wish, available at the moment; 4) the date of the document drawing up; 5) the person's signature or the representative's signature (if the person cannot write); 6) notices to relatives, friends and medical staff about the denying treatment decision.

The second category includes the patients who do not trust a doctor for subjective or objective reasons. The subjective reasons include: 1) ignorance of medical terminology; 2) the possibility to persuade the patient by other persons; 3) psychological apathy as for the doctor. The objective reasons include: 1) lack of health improvement during treatment; 2) doctor's incompetence in treatment of this disease; 3) doctor's illness. In most cases these reasons are interrelated.

The third category includes the patients who believe in non-traditional methods of treatment, as the doctors cannot help the patient or treatment is ineffective. In other words, patients are disappointed in treatment.

And the fourth category includes the patients who refuse of treatment due to certain religion, which prohibits blood transfusion, lumbar puncture [14, p. 122-125].

Cases when the doctor may violate the patient's denying treatment decision: 1) absence of a written refusal stating the reason for it; 2) the patient has committed something that contradicts the decision (for example, change of religion, which does not allow denying treatment); 3) doctors believe that new circumstances would affect the patient's decision (for example, new treatment methods that can have a great impact on patient's health); 4) the decision does not state clearly what should happen and why the patient refuses; 5) if the patient suffers from acute mental illness

(schizophrenia) and other illnesses: with epileptic status; in case of hypertensive crisis; acute abdominal pathology; severe lungs inflammation; acute kidney failure (hemodialysis); if a patient has suicidal thoughts or behavior.

Taking into account the above, we consider it expedient to recognize in the normative legal act the provision according to which specific coercive measures of medical influence on a person (the list of which should be exhaustive) can be applied only in cases specified by the law and are within administrative legal regulation. Other cases of medical services provision aimed to support, improve, correct the person's health are carried out within the framework of civil law regulation. Here two legal regimes are possible: a) on the basis of a contract concluded by a patient and a medical services provider on medical assistance provision; b) if a patient is in a state when he is not able to reveal his will – subject to agency of necessity.

Recognition of such a provision will allow to take into account special control regime over this sphere of activity, preserved by the state due to the high social significance of health care. State control is exercised via such institutions as licensing, standardization, certification, competence assessment, taxation [14, p. 211]. These forms of state control are effective and provided in the legislation in force.

Also, one should consider such grounds for termination of law relations in psychiatry as civil rights protection. It should be noted that generally accepted methods of civil rights protection of universal character can be applied to medical services provision relations as a classic version of the violated law protection.

However, among the methods, specified in the Article 16 of the Civil Code of Ukraine, the most important are those, the application of which aims to restore the violated right and to compensate for the losses incurred. This can be achieved through recognition of the right to health and life, terminating the action violating these rights (Article 282 of the Civil Code of Ukraine), restoring a state existed prior to the right violation, restoration of the right, change and termination of law relations (for example, a patient has the right to freely choose a doctor, that is, to stop providing poor-quality medical care, he/she has the right to demand to substitute a doctor within the appropriate health care facility or to demand to substitute a health care facility), compensation of losses (treatment costs), redress for the non-pecuniary (non-property) damage.

Thus, the grounds for changing and termination of civil law relations in psychiatry are related to certain juridical facts (actions or events), a person, doctor's qualification, patient's or his/her legal representatives' wishes.

CONCLUSIONS

Thus, the grounds for changing and termination of civil law relations in psychiatry are related to certain juridical facts (actions or events), a person, doctor's qualification, patient's or his/her legal representatives' wishes.

Among the main legal grounds to provide psychiatric assistance should be a civil contract on providing medical services and a court decision, in case of compulsory treatment.

The results of the research suggest that the contractual law relations on providing psychiatric assistance passes through several stages: 1) the preparatory one, with the parties developing a draft agreement, agreeing its terms; 2) the offer; 3) acceptance; 4) beginning of contract; 5) fulfillment of the contract terms; 6) amendments to the contract terms at the request of the parties; 7) termination of the contract.

Civil law relations in psychiatry mainly arise from the necessity, that is, they are not connected with the form. The patient has an urgent need for this type of service, and the healthcare facility provides such services.

Terminating civil law relations in psychiatry is a way to protect personal non-property rights, which is intended to eliminate violations of personal non-property rights by withdrawing an individual – the holder of personal non-property rights as a subject of law relations by terminating these relations.

We can distinguish the following grounds for terminating civil law relations in medical activities, including psychiatry: 1) the parties have fulfilled their commitments; 2) the law relations are terminated on the basis of the parties meeting of the minds, who jointly came to the conclusion that it makes no sense in further treatment; 3) the law relations may be terminated without meeting of the minds. This right can be exercised both by the doctor and by the patient in case of impossibility of treatment providing, or if the treatment is ineffective; 4) the patient has the right to leave a medical facility and to terminate the treatment at his/her discretion (regardless of the state of health) arising from the freedom to conclude the contract. This right is limited if his/her decision endangers health of other people or he/she receives mandatory medical treatment. 5) patient's death.

Contractual relations on the providing psychiatric assistance are terminated on several grounds: 1) full implementation of contractual relations; 2) expiration of the contract; 3) early termination of the contract (unilateral or bilateral); 4) rescission of a contract.

We propose to differentiate between lawful and unlawful unilateral contract terminations on providing psychiatric assistance. The lawful one will be the unilateral contract termination, which is expressly provided by the law or determined by the parties to the contract, will be considered lawful. If the ground for unilateral termination of the contract on providing medical services is not enshrined in the contract or the law, such termination of the contractual relationship will be considered unlawful.

The content of civil law relations in psychiatry is represented by the essence of the formalized terms and characterizes them as a separate and independent type of law relations with their own specifics. They contain the terms on the customer, patient and contractor rights and obligations, subject, term, fee, form and all other issues that the parties consider important.

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