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## LEGAL ISSUES IN RENDERING MENTAL HEALTH CARE IN KAZAKHSTAN



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One of the basic human rights is the right of citizens for protecting their health and receiving qualified medical care. The issues of human mental health refer to the actual problems of contemporary medical science. *The article is aimed*, on the one hand, to focus the attention on the current situation in the sphere of mental health services and, on the other hand, to show the correlation of the national legislation in this sphere with the existing international standards. The Article was written based on comparative analysis and expert estimation *methods*. The right for the highest achievable standard of health imposes an obligation on the state to respect human rights, to protect against violation and fulfill all conditions necessary for the implementation of these rights. The basic principles of treating persons with mental disorders are enshrined in the Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care. Mental health services do not reduce themselves to medical care only. They cover a broader legal relationship. A medical

opinion that a person has a mental disorder can significantly affect the restriction of their rights – involuntary treatment, recognition as incapacitated, insane or partially sane, inability to engage in certain professional activities, etc. *Key findings*: National “medical” legislation has become as close to international standards as possible. In the provision of mental health services there has been a definite step forward compared with the Soviet past. This is mainly due to the human rights principles of the 2009 and 2020 set out in the Codes of the Republic of Kazakhstan “On Public Health and the Health Care System”. The legal framework within which mental health care is to be provided has been enshrined in legislation. The actions of health-care professionals have become strictly regulated. Providing medical care, with the exception of cases provided for by law, requires informed consent. But, despite the positive developments in legal regulation, the actual situation of persons with mental disorders staying in healthcare institutions can hardly be considered satisfactory. The results of visits by National Preventive Mechanism members of closed medical organizations, as well as appeals by patients themselves to the Ombudsman for Human Rights in the Republic of Kazakhstan, also point to this. In order to overcome the stigma towards persons with mental and behavioral disorders, it is necessary to bring domestic

legislation into line with the provisions of Principle 1 on the protection of mentally ill persons and the improvement of mental health care, which will ensure a humane and respectful attitude towards the dignity of a person. The improvement of legislation is also required in ensuring the socio-economic guarantees of such persons staying in medical organizations.

*Keywords: mental health services, patient, health professionals, compulsory treatment, right for information, right for consent, voluntary treatment, non-discrimination.*

### Introduction

The human rights in the field of health protection, as set out in international standards and national regulations, apply equally to all persons involved in health care delivery, both to patients and health care providers. The Charter (the Constitution) of the World Health Organization defines health as a state of complete physical, mental and social well-being and not only the absence of disease or physical handicaps.<sup>1</sup> The same idea is contained in the Code of the Republic of Kazakhstan “On Public Health and the Health Care System” (*hereinafter*, the Health Code of the Republic of Kazakhstan) (sub-item 73, item 1, Article 1): “Health is a state of complete physical, mental (psychical) and social well-being, and not only the absence of disease and physical handicaps”.<sup>2</sup> Thus, in matters of health care, mental health is as important as physical one.

Human mental health is one of the major issues in contemporary medical science. Mental disorders increase a person's vulnerability and insecurity, the condition of mentally ill persons often prevents them from caring for their health properly, from perceiving the information provided by their doctor, and from making reasonable decisions about the health care measures offered. Any discriminatory factors in relation to persons with mental disorders are not acceptable. Any restriction of rights may only be based on law. The rights for liberty and security, for privacy, for non-discrimination, for freedom from torture, and cruel, inhuman treatment are particularly relevant in the context of patients' rights for mental health services. The observance of these rights can be considered as the foundation for the implementation of the right for health.

The recognition of a person as having a mental disorder can significantly affect the restriction of his/her rights – involuntary treatment, recognition as incapacitated, insane or partially sane, inability to engage in certain professional activities, etc. It is common knowledge that, for a long time, psychiatry was a “closed” area of medical practice. Soviet-era psychiatry was often punitive in nature, acting as a means of influencing politically dissenting individuals.

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<sup>1</sup>The Charter (the Constitution) of the World Health Organization (New York, 22 July 1946). URL: [https://online.zakon.kz/Document/?doc\\_id=30242930#pos=4;-108](https://online.zakon.kz/Document/?doc_id=30242930#pos=4;-108) (*hereinafter*, all electronic resources are given on 14.05.2021).

<sup>2</sup>The Code of the Republic of Kazakhstan of 7 July 2020, No. 360-VI LRK. On Public Health and Health Care System // URL: <http://adilet.zan.kz/rus/docs/K2000000360>

## Materials and Methods

When writing the article, the author used the publication materials of both foreign and Kazakh researchers. The empirical basis was formed by the results of visits to psychiatric organizations and addiction hospitals by the participants of the National preventive mechanism, the data included in the Consolidated report of the participants of the National Preventive Mechanism based on the results of preventive visits carried out in 2018, data from the Republican Scientific and Practical Center for Mental Health of the Ministry of Healthcare of the Republic of Kazakhstan. Reflections and conclusions were based on the methods of comparative analysis and expert assessment. The comparative analysis made it possible to assess the nature of the changes that occurred in the legal regulation of the provision of psychiatric care in comparison with the current and previously adopted Health Codes of the Republic of Kazakhstan. The peer review method focused on ensuring the rights of persons with mental and behavioral disorders in inpatient medical institutions.

## Main Part

### 1. Current situation with the provision of psychiatric care

According to the World Health Organization, mental disorders continue to grow worldwide. Illnesses in this group have consequences not only for the humans, but also in the social sphere and the economy. Around 264 million people worldwide suffer from one of the most common mental illnesses – depression.<sup>3</sup>

The difficult socio-economic situation in Kazakhstan has led to an increase of stressful situations, the number of depressions has increased, and cases of suicide have become more frequent. According to the Ministry of Healthcare of Kazakhstan in 2018, there were about 200 thousand people registered in the country, about 448 people per 100 thousand of population were diagnosed with mental retardation.<sup>4</sup> According to statistics, the national incidence of people with mental and behavioral disorders was 10028 in 2018 and 9783 in 2019. By region, Turkestan region had the highest numbers in both 2018 and 2019, with 2,640 and 1,456 persons, respectively.<sup>5</sup> Persons with mental disorders predominate in urban areas.

While the national incidence of such persons in 2019 was 6,273 in urban areas, the incidence in rural areas was 3,510.<sup>6</sup> At the end of 2019, medical care for persons with mental disorders was provided by 20 psychiatric organizations, including 17 Mental Health Centers, two psychiatric hospitals and one psycho-neurological dispensary.<sup>7</sup>

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<sup>3</sup>URL: <https://www.who.int/ru/news-room/fact-sheets/detail/mental-disorders>

<sup>4</sup>Issues of socialization of people with mental illness and mental problems discussed in Astana // URL: <https://www.gov.kz/memleket/entities/dsm/press/news/details/22774?lang=ru>

<sup>5</sup>Population Health of the Republic of Kazakhstan and activities of Healthcare Organizations in 2019. Statistical book. Nur-Sultan, 2020. P. 281 // URL: <https://pharm.reviews/images/document/sbornik-2019-compressed.pdf>

<sup>6</sup>Ibid. P. 282.

<sup>7</sup>Ministry of Healthcare of the Republic of Kazakhstan. Republican Scientific and Practical Centre for Mental Health. Psychiatric care to the population of the Republic of Kazakhstan for 2018-2019. Statistical book. Almaty, 2020. C. 7 // URL: [https://files.medelement.com/uploads/co/92401378980547/documents/6975387f3b88e8fe15c7097f7\\_b9d8cb8.pdf](https://files.medelement.com/uploads/co/92401378980547/documents/6975387f3b88e8fe15c7097f7_b9d8cb8.pdf)

In January 2020, the relevant ministry discussed the development of mental health services. Among those issues discussed were the integration of the mental health services with the primary health care network, the provision of compulsory treatment for patients with addiction to alcohol, drugs, and toxic substances. Particular emphasis was placed on the development of primary prevention and medical-social rehabilitation.<sup>8</sup>

In the field of psychiatry, a combination of medical, moral and legal issues is important. Of particular significance are issues of deontology, a moral and ethical approach, aimed to meet the need to overcome stigma and the role of legal provisions. Mental and behavioral disorders exacerbate a person's vulnerability and insecurity, and the condition of the mentally ill person does not always allow him/her to adequately care for his/her health, to perceive the information provided by his/her doctor and to accept the treatment offered.

There is a point of view that all problems related to psychiatry are purely medical and that a non-specialist does not need to understand the “medical” situation, because he/she does not understand anything about psychiatry anyway. Of course, the role of the “professional” is the key one, but this in no way means that the opinion of a psychiatrist must always be accepted and cannot be subject to legal review. Moreover, the very regulation of mental health services and the consequences that can follow for a person with such a diagnosis is a matter of law. This type of medical activity is understood not only as a clinical activity, but also covers broader legal relations: court procedures for determining a person insane or partially sane, involuntary treatment, inability to engage in certain professional activities, restriction of human rights due to a mental disorder, etc. The task of a lawyer is to correctly assess the legal consequences arising from a medical opinion. Only then human rights can be respected in this area.

The history of medicine knows two ways of dealing with the doctor-patient relationship. The first involves the doctor assuming full responsibility for decision-making. The patient is given a secondary role.<sup>9</sup> The second way is based on independence, autonomy of the patient, based on the respect for and observance of human rights. The key to the definition of the patient's rights in the current legislation of Kazakhstan governing the right for health care is the second way. This approach is no exception in cases of medical care for persons with mental disorders.

The mental health services are based on generally recognized human rights standards, as set out in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment. These international instruments provide a certain model of best practice for the regulation of health care, which states should strive to implement in their legal system.

The basic principles governing the treatment of persons with mental disorders are stated in the Principles for the Protection of Persons with Mental Illness and the Improve-

<sup>8</sup>URL: <https://www.gov.kz/memleket/entities/dsm/press/news/details/39015?lang=ru>

<sup>9</sup>See about paternalistic approach in medicine Lyadova A.V., Lyadova M.V. From paternalism to consumerism: a paradigm shift in doctor-patient interaction // Journal: Society: Sociology, Psychology, Pedagogy. Krasnodar, Publishing house HORS JSC, No. 6. 2019. P. 1-7 // URL: <https://cyberleninka.ru/article/n/ot-paternalizma-k-konsyumerizmu-smena-paradigmy-vzaimodeystviya-vracha-i-patsienta/viewer>

ment of Mental Health Services (*hereinafter*, Principles), adopted by UN General Assembly Resolution 46/119 of December 17, 1991.

The treatment of mentally ill persons should be based on:

1. Humane respect;
2. Protection from any form of exploitation;
3. The prohibition of discrimination;
4. The right to the exercise all civil, political, economic, social and cultural rights;
5. Respect for dignity;
6. The provision of mental health care under the least restrictive environment for human rights;
7. Legal security.<sup>10</sup>

The Law of the Republic of Kazakhstan dated November, 19 2013 No 141-V ratifies the Convention on the Compulsory Treatment of Persons with Mental Disorders (Moscow, March, 28 1997).<sup>11</sup> This Convention defines the procedure for the transfer of a person who is a citizen of one of the Contracting Parties for compulsory treatment in cases of committing a socially dangerous act in a state of insanity on the territory of the other Contracting Party.

## **2. Rendering mental health care and national legislation**

The legal basis for the provision of assistance to persons with mental disorders in the Republic of Kazakhstan is the Health Code of the Republic of Kazakhstan. The Code (Articles 163-176) regulates the rights of persons with mental and behavioral disorders (illnesses), the protection of their rights, mental health evaluation, the provision of medical care, including diagnosis, treatment, hospitalization and discharge, the application of compulsory medical measures, and the case follow-up. What is new in the current Health Code under the first item of Article 20? Whereas the previous Health Code of the Republic of Kazakhstan of 2009 referred only to mental disorders (illnesses), the current Health Code of the Republic of Kazakhstan refers to mental and behavioral disorders (illnesses). It refers to a group of diseases, according to the International Classification of Diseases (ICD), characterized by a disorder of mental activity (sub-item 211, item 1, Article 1). According to ICD-10, mental and behavioral disorders (F00-F99) comprise 11 blocks. These include: mental and behavioral disorders associated with psychoactive substance use; schizophrenia, schizotypal and delusional disorders; personality and behavioral disorders in adulthood; mental retardation; and some others.<sup>12</sup> The previous Health Code of the Republic of Kazakhstan did not provide for the diagnostics and treatment of borderline mental and behavioral disorders by a primary care doctor.

Mental disorders are mentioned not only in the Health Code of the Republic of Kazakhstan. A number of other codified acts (Code of Administrative Offences, Code on Marriage (Matrimony) and Family, Criminal Code of the Republic of Kazakhstan (*herein-*

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<sup>10</sup>URL: [https://www.un.org/ru/documents/decl\\_conv/conventions/mental\\_helth\\_care.shtml](https://www.un.org/ru/documents/decl_conv/conventions/mental_helth_care.shtml)

<sup>11</sup>URL: [http://www.adilet.zan.kz/rus/docs/H970000215\\_](http://www.adilet.zan.kz/rus/docs/H970000215_)

<sup>12</sup>URL: <https://mkb-10.com/index.php?pid=4001>



*after* – Criminal Code of the Republic of Kazakhstan) contain a reference to the definition of “mental disorders”. For example, Articles 16, 17 of the Criminal Code of the Republic of Kazakhstan refer to mental disorders, and part 2 of Article 45 of the Criminal Code of the Republic of Kazakhstan mentions behavioral disorders (illnesses) along with mental disorders. Given the fact that the provisions of the mentioned Codes, which refer to mental disorders, are of a blanket nature, as well as for the uniform application of the conceptual apparatus, it is quite logical to see the provision of item 2, Article 1 of the Health Code of Republic of Kazakhstan, whose meaning comes down to the fact that the concepts “mental illness”, “mental disorder” used in other branches of legislation of the Republic of Kazakhstan, are equivalent to the concept “mental, behavioral disorder (illness)”, unless otherwise stated in this Code. Thus, we can talk about a certain unification of the definition of “mental, behavioral disorders” for different branches of law. The adoption of the new Health Code of the Republic of Kazakhstan, where mental health services issues are provided for in item 1 of Article 20, required a revision of certain by-laws. These were adopted:

1. Standard of organization of medical-social assistance in the sphere of mental health for the population of the Republic of Kazakhstan, approved by Order No. KR DSM-224/2020 of the Minister of Healthcare of the Republic of Kazakhstan dated November 30, 2020.<sup>13</sup>

2. On certain issues of medical and social care in the field of mental health. Approved by Order of the Minister of Healthcare of the Republic of Kazakhstan dated November 25, 2020, No. KR DSM-203/2020.<sup>14</sup>

3. Internal Regulations for persons with mental, behavioral disorders (illnesses) related to the use of psychoactive substances for compulsory treatment in organizations providing medical care in the field of mental health, approved by Order of the Minister of Healthcare of the Republic of Kazakhstan No. KR DSM-237/2020 dated December 8, 2020.<sup>15</sup>

In the field of employment relationship, the relevant Order No. 188 of the Minister of Healthcare and Social Development dated March 31, 2015 provides for restrictions for persons with mental disorders to engage in certain types of professional activity.<sup>16</sup>

The principles of voluntariness,<sup>17</sup> written consent, access to information, refusal of treatment, and protection of rights and interests are fundamental to the provision of medical care to persons with mental and behavioral disorders. The key point is the legislative enshrinement of the principle of *voluntary* treatment for this category of patients, regardless of the nature of the illness. Mental health services are provided with *written* consent. In the case of minors and persons declared incapacitated by a court, consent is given by their legal representatives. Minors are persons under 18 years of age.

<sup>13</sup>URL: <http://www.adilet.zan.kz/rus/docs/V2000021712>

<sup>14</sup>URL: <http://www.adilet.zan.kz/rus/docs/V2000021680>

<sup>15</sup>URL: <http://www.adilet.zan.kz/rus/docs/V2000021747>

<sup>16</sup>On approval of the list of medical psychiatric counter-indications for certain types of professional activities and works associated with a source of increased danger. Order of the Minister of Healthcare and Social Development of the Republic of Kazakhstan No. 188 dated March, 31 2015 // URL: <http://www.adilet.zan.kz/rus/docs/V1500010858>

<sup>17</sup>Voluntariness is present at all stages: examination, treatment, hospitalization.

The current Health Code of the Republic of Kazakhstan has lowered the age limit for informed consent for minors. At present, at the age of sixteen, persons can independently consent or refuse to be provided preventive, advisory and diagnostic care. The exception is cases of surgical interventions, artificial termination of pregnancy, in which the consent of parents or legal representatives is required (Item 2, Article 78).

Mental health evaluation, as well as preventive examinations, are carried out by a psychiatrist with the written consent of the person examined or at the written request of his or her legal representatives, indicating the reason for the evaluation, as provided for in sub-item 1, item 2, Article 166 of the Health Code of the Republic of Kazakhstan. At the same time, the Code includes three grounds on which an evaluation may be carried out without the consent of the person or his/her legal representative. It is an immediate danger to a person or others, helplessness or essential damage to health due to deterioration of the mental state (Article 166, item 5).

The consent to treatment is not required for compulsory medical measures or for compulsory hospitalization on the grounds set out in Article 137, item 1 of the Health Code of the Republic of Kazakhstan.

This applies to persons:

- 1) Who are in a state of shock, coma which does not allow them to express their will;
- 2) With illnesses that pose a danger to others;
- 3) With severe mental disorders (illnesses);
- 4) With mental disorders (illnesses) of persons who have committed the socially dangerous act.

In the aforementioned cases, the decision on treatment is left to the panel of psychiatrists.

It is a legal requirement for medical care to be provided with the informed consent of the patient. It applies to the same extent to persons with mental and behavioral disorders (illnesses), which ensures that their rights under Article 163 of the Health Code of the Republic of Kazakhstan are respected. The unconditional nature of the treatment (in the absence of consent) on the grounds listed above is determined by exceptional circumstances.

The patient or his/her legal representative always has the right to choose whether to continue treatment or to refuse it (item 8, Article 168 of the Health Code of the Republic of Kazakhstan). However, this right does not extend to cases where treatment may be carried out without consent.

The question of hospitalization arises when a person is diagnosed with a mental or behavioral disorder (illness) and the psychiatrist decides that an examination or treatment is necessary on an inpatient basis. A person is admitted to a hospital voluntarily at his/her request or with his/her written consent. The person's consent to hospitalization shall be recorded in the medical records and signed by the health care provider and by the patient or the patient's legal representative. Compulsory hospitalization is possible on the basis of a court decision. As an exception, compulsory hospitalization is also possible before a court decision has been made. This is permissible when the person suffers from a severe mental disorder or commits a criminal offence due to a mental disorder. In these cases, the

prosecutor shall be informed in writing within 48 hours. The spouse, close relatives or legal representatives of the patient shall also be informed (item 6, Article 168). It is worth noting that the current Health Code of the Republic of Kazakhstan, compared to the previous Health Code of the Republic of Kazakhstan of 2009, has reduced the number of grounds for compulsory hospitalization prior to judicial decision from three to two. The ground such as the presence of a disease that poses a danger to others has been removed.

An important guarantee to protect the rights of persons with mental disorders in cases of compulsory hospitalization can be found in the mandatory evaluation within 48 hours by a *panel of psychiatrists* and not just a psychiatrist, which decides on the justification of hospitalization. Collegiality minimizes the probability of an unreasonable decision being made. If the panel does not find hospitalization necessary and the patient does not express a wish to remain in hospital, he or she shall be discharged immediately. A decision to involuntary hospitalization can be made in court (item 9 and 10, Article 168 of the Health Code of the Republic of Kazakhstan). Unlawful commitment or confinement in a psychiatric hospital is considered a criminal offence (Article 127 of the Criminal Code of the Republic of Kazakhstan).

The scope of rights granted to persons with mental and behavioral disorders is regulated by Article 163 of the Health Code of the Republic of Kazakhstan. These include: receiving mental health services at the place of residence; refusing, at any stage of treatment, to use medical means and methods or to take photographs, video or film; inviting a specialist involved in the provision of mental health services (with the consent of the latter) to serve on a medical board; getting educational services, if the patient is under 18 years of age; correspondence; receipt and dispatch of parcels, packages, money orders and postal orders; use of the telephone; receipt of visitors; subscriptions to periodicals; and possession and purchase of basic necessities and daily walks. Persons subjected to compulsory medical measures are also entitled to supplementary feeding; medical services over and above the statutory free medical assistance; acquisition of hospital linen, clothing and footwear; use of long-distance telephony; and use of a cash controlling account. These rights, however, are exercised at the expense of the person to whom they are provided.

A person suffering from a mental disorder has the right to receive information, just as a patient with another illness does. The information provided is recorded in the medical records. The information is provided from the moment of the mental health evaluation and includes the patient's knowledge of the nature of the mental illness, the treatment methods, the duration of the treatment, possible pain, adverse events and expected results.

Discrimination against citizens suffering from mental illness is prohibited. The recognition of a person's mental disorder does not deprive that person of the rights and freedoms accorded to the citizens under the Constitution of the Republic of Kazakhstan. Such a restriction may be imposed only in cases provided for by the legislation. For example, in accordance with civil legislation, a citizen may be declared incapacitated only by court order, in connection with which guardianship is established over such citizen; on behalf of a citizen declared incapacitated, transactions are carried out by his/her guardian (Article 26 of the Civil Code of the Republic of Kazakhstan). This provision is fully consistent with the requirements of Principle 1 that any decision that a person is incapacit-



tated because of mental illness and any decision that a personal representative should be appointed because of such incapacity shall be made only after a fair hearing by an independent and impartial judicial authority. Citizens declared incapacitated by a court may not participate in elections (item 3, Article 4) of the Constitutional Law on Elections of the Republic of Kazakhstan of 28.09.1995).

The matrimonial legislation prohibits marriage between persons if at least one of them has been declared incapacitated due to mental illness or dementia by a court decision (sub-item 5), Article 11 of the Marriage (Matrimony) and Family Code of the Republic of Kazakhstan). The number of works, types of professional activity, to which, by decision of medical boards, persons with certain mental illnesses are not allowed, include work associated with: certain types of chemical compounds and substances; extraction, processing of precious metals, oil, gas; lifting to heights; work on felling and primary processing of wood; work underground; work on machines and pressing machines; drivers of motor vehicles and urban electric transport; work in paramilitary security forces and other services, which are associated with carrying and use of firearms, as well as certain other activities.<sup>18</sup> These limitations are confirmed by the following example.

*By the decision of the Bostandyk District Court of Almaty city, the validity of a driving license issued/registered by the Motor Vehicle Registration and Driver Examination Division of Road Traffic Police of Almaty city, dated January, 14 2019 in the name of U.S. to drive vehicles of category "B" was terminated. It was found that U.S. had been under regular medical check-up in the Mental Health Centre since 2003 with a diagnosis of paranoid schizophrenia and had not been removed from the register at the time of the consideration of the case. This circumstance indicates the presence of signs that threaten public safety, life and health of other road users, which is an area of state and public interest, and therefore, he cannot be allowed to drive a vehicle according to item 17 of Order No. 188 of the Ministry of Healthcare and Social Development dated 31.03.2015 On Approval of the List of Medical Psychiatric Counter-indications for Certain Professional Activities, as well as Work Associated with Source of Increased Danger.*

*One of the grounds for termination of the right to drive vehicles, is the deterioration of the driver's health that prevents safe driving in accordance with sub-item 2 of item 1 of Article 75 of the Law of Republic of Kazakhstan dated 19.10.2014 On Road Traffic.*<sup>19</sup>

This case was cited as an example of restricting the right to engage in certain types of professional activity, as directly stated in the previous paragraph.

Persons with mental, behavioral disorders who have committed unlawful acts are subject to compulsory measures of a medical nature. The Health Code of the Republic of Kazakhstan differentiates the grounds for these measures depending on whether the mental disorder is caused by the use of psychoactive substances or not. For example, under Article

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<sup>18</sup>On Approval of the List of Medical Psychiatric Counter-indications for Certain Types of Professional Activities, as well as Work Associated with a Source of Increased Danger. Order No. 188 of the Minister of Healthcare and Social Development of the Republic of Kazakhstan dated March 31, 2015 // URL: <http://www.adilet.zan.kz/rus/docs/V1500010858>

<sup>19</sup>Decision of the Bostandyk District Court of Almaty No. 7514-19-00-2/3303 dated May 23, 2019 // URL: <http://online.zakon.kz>

170, compulsory measures of a medical nature are applied to a person with a mental, behavioral disorder (illness) if such a person has committed a socially dangerous act. The content of compulsory measures of medical nature, the procedure for their application, extension, modification and termination are enshrined not only in the Health Code of the Republic of Kazakhstan, but also in Section 7 of the Criminal Code of the Republic of Kazakhstan.

The health care system in Kazakhstan is represented by the state and non-state health care sectors. This means that medical care can also be provided by privately owned medical centers. The mere fact of mental disorder does not in itself constitute an obstacle to seek help from non-state medical organizations with a relevant profile. However, an exception is made for persons who have committed criminal offences, who have been declared insane by a court and for whom compulsory measures of medical nature in the form of compulsory treatment in a psychiatric hospital of a specialized type with intensive care, a psychiatric hospital of a specialized type has been determined.<sup>20</sup>

The Article 171 of the Health Code of the Republic of Kazakhstan defines the grounds and procedure for applying similar measures to a person with a mental or behavioral disorder (illness), but already connected with the use of psychoactive substances. The reason for the application of compulsory measures under this Article is committing a criminal or administrative offence by a person who requires or avoids treatment (item 1). In both the first and second cases, the decision is taken by the court.

If one assesses the legal regulation for mental health services in Kazakhstan, one can say that it generally meets existing international standards. This applies to the procedure for compulsory hospitalization, which is in compliance with Principle 17, item 1 On the Prohibition of Compulsory Hospitalization of a Person without a Decision by a judicial or Other Independent Regulatory Body. The right to appeal against the actions (inactions) of the staff of organizations to an authorized body, a prosecutor's office or a court, as provided for in sub-item 11, item 4 of Article 171 of the Health Code of the Republic of Kazakhstan On Health Compulsory Hospitalization, meets the requirements of Principles 21 and 22.

Under Article 175, item 1 of the Health Code of the Republic of Kazakhstan, inpatient mental health services are provided in the least restrictive environment that ensures the safety of the hospitalized person and others, while medical staff respect the rights and legitimate interests of the person. This is compliant with Principle 9, which states that every patient is to be treated in the least restrictive environment and with the least restrictive or invasive methods consistent with the need to maintain their health and protect the physical safety of others.

Unfortunately, the reality of the situation is far from what is legally prescribed and the reality is not as smooth as one would wish. According to the Ombudsman's report, in 2018, the number of appeals concerning the rights of persons with mental health problems was

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<sup>20</sup>On Approval of the List of Diseases Prohibited for Treatment in the Non-Governmental Healthcare Sector. Order of the Minister of Health of the Republic of Kazakhstan No. 526 of October 14, 2009 // URL: [http://www.adilet.zan.kz/rus/docs/V090005847\\_/info](http://www.adilet.zan.kz/rus/docs/V090005847_/info)

low, but they were the most pressing issues. The Ombudsman was appealed for removing such issues from regular medical check-up, the change of guardian, violation of property rights, inadequate supervision by guardianship authorities, disagreement with the grounds for placement and conditions in psychiatric institutions.<sup>21</sup>

There is a feeling that these violations are predominantly seen as a subjective approach by medical workers, given that fact that all the procedures listed above are enshrined in legislation.

Certain positive developments have also been possible thanks to the activities of the members of the National Preventive Mechanism (*hereinafter referred to as* NPM). In 2013 the 2009, Health Code of the Republic of Kazakhstan was supplemented with a new chapter by National Preventive Mechanism on the basis of the Law of the Republic of Kazakhstan dated July 2, 2013 № 111-V On Amendments and Modifications to some Legislative Acts of the Republic of Kazakhstan on the Establishment of a National Preventive Mechanism Aimed at Preventing Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In the current Health Code of the Republic of Kazakhstan, this institution is provided for in chapter 22. As part of their activities, NPM members visit organizations for compulsory treatment, including those providing medical care in the field of mental health, for the application of compulsory medical measures. NPM members have extensive rights: to receive information on the number of persons held in organizations subject to preventive visits; to have access to information regarding the treatment of persons held in such organizations and the conditions of their alimentation; to interview persons held in organizations subject to preventive visits and/or their legal representatives without witnesses; to receive reports and complaints of torture and other cruel, inhuman or degrading treatment or punishment, etc. The NPM member is independent in carrying out lawful activities.

In 2018, NPM members visited 37 psychiatric hospitals and 20 addiction care units. Violations were mostly identified in relation to patients' nutrition, right for daily walks, absence of sanitary and hygienic conditions. One of the serious problems is the absence of identification documents for inpatients. Such a situation occurred in the East Kazakhstan Municipal State-Owned Public Enterprise Regional Psychiatric Hospital in the village of Novo-Kanayka. When visiting it, the NPM members found out that there were patients in the hospital who, having reached the age of retirement, could not draw up documents for receiving their pensions due to the absence of identity documents and their inability to be registered at the hospital.<sup>22</sup>

At the same time, we persuade society, referring to the law, that people with mental, behavioral disorders (illnesses) have all the rights and freedoms of citizens, provided by the Constitution of the Republic of Kazakhstan and this Code (item 1, Article 163 of the Health

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<sup>21</sup>Report on the activities of the Ombudsman for Human Rights in the Republic of Kazakhstan in 2018. Nur-Sultan, 2019. С. 77-78 // URL: <https://www.gov.kz/memleket/entities/ombudsman/documents/details/33068?lang=ru>

<sup>22</sup>Consolidated report of the members of the National Preventive Mechanism on the results of preventive visits carried out in 2018. Nur-Sultan, 2019. – Pp. 139-142 // URL: <https://www.gov.kz/memleket/entities/ombudsman/documents/details/33235?lang=ru>

Code of the Republic of Kazakhstan), and that the state guarantees social service to people with mental, behavioral disorders (sub-item 3, item 1, Article 167 of the Health Code of the Republic of Kazakhstan). It is necessary to control over the activities of inpatient medical organizations of this profile in terms of observance and protection of the rights of this category of patients.

Despite the legal provision of social protection and state guarantees in the provision of mental health services, the problem of stigma unfortunately persists. Stigmatization generates social isolation, has a negative impact on self-esteem, breaks family ties, makes it much more difficult to find a job, etc. In this regard, it is useful to implement the requirement for humane and respectful treatment of the dignity of a person into the provisions of the Health Code of the Republic of Kazakhstan, as set out in Principle 1, item 2.

### Results

1. The adoption of two Health Codes of the Republic of Kazakhstan made it possible to formalize as much as possible the provision of medical care to persons with mental and behavioral disorders.

2. National legislation is underway towards implementation of International and European standards in the field of psychiatry.

3. Stigma in relation to this category of patients, unfortunately, has not yet been completely overcome.

4. There is a need for constant monitoring and control on the part of state bodies, non-governmental organizations for the observance and protection of the rights of persons with mental disorders staying in hospitals.

### Discussions and Conclusions

The formation of a new type of psychiatric service is on its way. In 2018, the mental and substance abuse services merged across the Republic. On the one hand, this should increase the availability of mental health services and, on the other hand, eliminate duplication of functions.<sup>23</sup>

According to N. Negai, General Director of the Republican Scientific and Practical Centre for Mental Health of the Ministry of Health of the Republic of Kazakhstan, "Narcology has become far removed from psychiatry, narcology has turned into detoxification. In fact, narcology is a psychiatric addiction. Any such disorder has a personality change behind it".<sup>24</sup> The integration of primary health care (*hereinafter referred to as* PHC) with psychiatric and drug treatment services has taken place. At the legislative level, important aspects were fixed that affect the provision of medical care to this category of patients. So, persons with mental and behavioral disorders (illnesses) have gained the right to receive mental health care at their place of residence (sub-item 1, item 2, Article 163 of

<sup>23</sup>Why have narco- and psychiatric dispensaries been combined in Kazakhstan. 20.08.2018 // URL: <https://www.zakon.kz/4933434-zachem-v-kazahstane-obedinili-narko-i.html>

<sup>24</sup>Zhakupova Z. Narco- and psychiatric dispensaries merged to make treatment more effective. 23.08.2018 // URL: <https://informburo.kz/novosti/obedinenie-narko-i-psihsdispanserov-obyasnil-zhela-niem-povysit-effektivnost-lecheniya-.html>

the Health Code of the Republic of Kazakhstan). The right to diagnose and treat borderline mental and behavioral disorders has been established for primary care doctors (Article 167, item 2 of the Health Code of the Republic of Kazakhstan).

The Health Code of the Republic of Kazakhstan enshrined in law the basic provisions under which mental health services should be provided. The actions of medical professionals are strictly regulated. The provisions of national legislation became as close to international standards as possible.

Considering that persons with mental disorders are not an indicator of belonging to one particular country, international cooperation and information exchange can maximize the solution of both purely medical and related legal issues. Such cooperation is important not only at the level of the World Health Organization, but also at the level of international conferences, seminars with the participation of medical practitioners and lawyers. The author of the article has repeatedly participated in the Salzburg Medical Seminars. The legal aspects of providing medical care in the context of observing the rights of patients with mental disorders have often become the subject of discussion at panel sessions. It is advisable to fix in the provisions of the Health Code the requirement deriving from Principle 1 On the Protection of the Mentally Ill Persons and the Improvement of Mental Health Care, which will ensure humane and respectful treatment and respect of the dignity of a person. Overcoming stigma can only be achieved through the joint efforts of doctors, patients, their relatives and the civil sector.

Reducing the number of detected violations in mental health services depends not only on the professional training of health professionals, but also on socio-economic measures, raising legal awareness and legal culture of health workers. In the latter case, it is necessary to carry out training on international and national standards, the constitutional principle of inviolability of human dignity, departmental regulations, NPM legislation, as well as criminal and other laws on the prevention of torture and degrading treatment.

Taking into account the increase in the morbidity rate in the child and adolescent population in 2019, which is 565.8 people. per 100,000 child and adolescent population,<sup>25</sup> it would be useful to conduct a study on the provision of psychiatric care to minors from the moment of psychiatric examination to hospitalization and discharge from hospital. From a legal point of view, it is also important to study the legal framework for drug provision of patients with mental illness.

The mental health services have long been a closed, isolated field and the public opinion has considered psychiatric organizations to act as a kind of medical punitive body. The tasks for today's mental health services are to overcome the existing prejudice and make it as open as possible. The most important requirement remains the absolute observance of the rights and interests of the patients of this group.

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<sup>25</sup>Ministry of Health of the Republic of Kazakhstan. Republican Scientific and Practical Centre for Mental Health. Psychiatric care to the population of the Republic of Kazakhstan for 2018-2019. Statistical book. Almaty, 2020. C. 15 // URL: [https://files.medelement.com/uploads/co/92401378980547/documents/6975387f3b88e8fe15c7097f7\\_b9d8cb8.pdf](https://files.medelement.com/uploads/co/92401378980547/documents/6975387f3b88e8fe15c7097f7_b9d8cb8.pdf)



**А. Жаппарова, заң ғылымдарының кандидаты, Naгhоz Университеті Құқық және әлеуметтік ғылымдар мектебінің «Құқық» ғылыми-білім беру департаментінің профессоры (Алматы қ., Қазақстан): Қазақстанда психиатриялық көмек көрсетудің құқықтық мәселелері.**

Адамның негізгі құқықтарының бірі азаматтардың денсаулығын сақтау және білікті медициналық көмек алу құқығы болып табылады. Адамның психикалық денсаулығы мәселелері қазіргі заманғы медицина ғылымының өзекті проблемаларына жатады. Мақаланың *мақсаты* – бір жағынан психиатриялық көмек көрсету саласындағы ағымдағы жағдайға назар аудару, екінші жағынан – осы саладағы ұлттық заңнаманың қолданыстағы халықаралық стандарттармен арақатынасын көрсету. Мақаланың жазылуы салыстырмалы талдау және сараптамалық бағалау *әдістеріне* негізделді. Денсаулықтың жоғары қолжетімді стандартына құқық мемлекетке адам құқықтарын құрметтеу, бұзушылықтардан қорғау және осы құқықтарды іске асыру үшін қажетті барлық шарттарды орындау міндетін жүктейді. Психикалық ауытқулары бар адамдарға деген қарым-қатынастың негізгі идеялары Психикалық науқастарды қорғау және психиатриялық көмекті жақсарту принциптерінде бекітілді. Психиатриялық көмек тек медициналық көмек ретінде ғана түсінілмейді. Ол құқықтық қатынастардың әлдеқайда кең көлемін қамтиды. Адамда психикалық бұзылушылықтардың болуы туралы медициналық қорытынды оның құқықтарының шектелуіне айтарлықтай әсер етуі мүмкін – еркінен тыс емдеу, әрекет қабілетсіз, есі дұрыс емес немесе шектеулі есі дұрыс деп тану, белгілі бір кәсіби қызметпен айналысудың мүмкін еместігі және т.б. *Негізгі қорытындылар*: Ұлттық «медициналық» заңнама халықаралық стандарттарға барынша жақындады. Психикалық денсаулық саласында медициналық көмек көрсетуде кеңестік кезеңмен салыстырғанда алға қарай белгілі бір қадам жасалды. Бұл негізінен 2009 және 2020 жылдардағы «Халық денсаулығы және денсаулық сақтау жүйесі туралы» ҚР Кодексінде белгіленген адам құқықтарын сақтаудың базалық қағидаттарымен байланысты. Оның аясында психиатриялық көмек көрсетілуі тиіс негізгі ережелер заң жүзінде бекітілген. Медицина қызметкерлерінің іс-әрекеттері қатаң реттелетін болды. Заңнамада көзделген жағдайларды қоспағанда, медициналық көмек көрсету хабардар етілген келісімді талап етеді. Құқықтық реттеудегі оң өзгерістерге қарамастан, психикасы бұзылған адамдардың нақты жағдайы «бұлтсыз» деп айтуға әлі де болса ерте. Мұны Ұлттық алдын алу тетігінің қатысушыларының жабық медициналық ұйымдарға баруының нәтижелері де, пациенттердің өздерінің Қазақстан Республикасындағы Адам құқықтары жөніндегі уәкілге жүгінуі де көрсетеді. Психикалық, мінез-құлықтық бұзушылықтары бар адамдарға қатысты стигманы еңсеру үшін ішкі заңнаманы Психикалық науқастарды қорғау және психиатриялық көмекті жақсартудың 1-принципінде бекітілген ережелерге сәйкестендіру қажет, бұл адам тұлғасының қадір-қасиетіне адамсүйгіштікпен және құрметпен қарауды қамтамасыз етеді. Медициналық ұйымдарда болатын осындай адамдардың әлеуметтік-экономикалық кепілдіктерін қамтамасыз етуде де заңнаманы жетілдіру талап етіледі.

*Тірек сөздер*: психиатриялық қызмет, пациент, медицина қызметкерлері, мәжбүрлеп емдеу, ақпаратқа құқық, келісім беру құқығы, ерікті емдеу, кемсітпеу.

**А. Жаппарова, к.ю.н., профессор Научно-образовательного департамента «Право» Школы права и социальных наук Университета Нархоз (г. Алматы): Правовые вопросы оказания психиатрической помощи в Казахстане.**

Одним из основных прав человека является право граждан на охрану здоровья и получение квалифицированной медицинской помощи. Вопросы психического здоровья человека относятся к актуальным проблемам современной медицинской науки. *Цель статьи* – сфокусировать внимание, с одной стороны, на текущей ситуации в сфере оказания психиатрической помощи, а с другой – показать, как соотносится национальное законодательство в этой сфере с существующими международными стандартами. Написание статьи базировалось на *методах* сравнительного анализа и экспертной оценки. Право на высокий достижимый стандарт здоровья налагает на государство обязанность уважения прав человека, защиты от нарушений и выполнения всех условий, необходимых для реализации этих прав. Базовые идеи отношения к лицам с психическими расстройствами нашли закрепление в Принципах защиты психически больных лиц и улучшения психиатрической помощи. Оказание психиатрической помощи понимается не только как собственно медицинская помощь. Оно охватывает более широкие правоотношения. Медицинское заключение о наличии у лица психических расстройств, может существенно повлиять на ограничение его прав – недобровольное лечение, признание недееспособным, невменяемым или ограниченно вменяемым, невозможность заниматься определенной профессиональной деятельностью и т. д. *Основные выводы:* Национальное «медицинское» законодательство стало максимально приближенным к международным стандартам. В оказании медицинской помощи в сфере психического здоровья сделан определенный шаг вперед в сравнении с советским прошлым. И главным образом, это связано с базовыми принципами соблюдения прав человека, заложенными Кодексами РК «О здоровье народа и системе здравоохранения» 2009 и 2020 годов. Законодательно закреплены основные положения, в рамках которых должна оказываться психиатрическая помощь. Действия медицинских работников стали строго регламентированы. Оказание медицинской помощи, за исключением случаев, предусмотренных законодательством, требует информированного согласия. Несмотря на позитивные сдвиги в правовом регулировании фактическая ситуация лиц с психическими расстройствами вряд ли может рассматриваться «безоблачной». На это указывают и результаты посещений участниками Национального превентивного механизма закрытых медицинских организаций, и обращения самих пациентов к Уполномоченному по правам человека в Республике Казахстан. Для преодоления стигмы в отношении лиц с психическими, поведенческими расстройствами, необходимо привести внутренне законодательство в соответствие с положениями, закрепленными в Принципе 1, о защите психически больных лиц и улучшения психиатрической помощи, что обеспечит гуманное и уважительное отношение к достоинству человеческой личности. Совершенствование законодательства требуется и в обеспечении социально-экономических гарантий таких лиц, пребывающих в медицинских организациях.

*Ключевые слова:* психиатрическая служба, пациент, медицинские работники, принудительное лечение, право на информацию, право на согласие, добровольное лечение, недискриминация.

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#### НОВЫЕ КНИГИ

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Настоящая работа посвящена памяти доктора юридических наук, профессора Мауленова Газиз Сырбаевича и является сборником его избранных научных трудов (исследований).

Мауленов Газиз Сырбаевич был автором более 150 опубликованных работ, которые можно разделить на три основных блока: криминологическая характеристика и профилактика преступлений несовершеннолетних, актуальные проблемы и пути борьбы с организованной преступностью и вопросы совершенствования антикоррупционного законодательства в Республике Казахстан.