

ISCKMC 2022**International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»****MODERNIZATION OF LEGISLATION IN MEDICAL AND
PHARMACEUTICAL CRIMES IN REPUBLIC OF TAJIKISTAN**

Rano Abdualievna Abdullaeva (a)*

*Corresponding author

(a) Russian-Tajik (Slavonic) University, 30, M. Tursun-zade Str., Dushanbe, 734025, Tajikistan,
abdullaeva.rano2014@yandex.ru

Abstract

The author considers the modern criminal legislation of the Republic of Tajikistan in the field of health care. The criminal branch of law is currently undergoing changes, market relations have affected the protection and security of health and its components, identified problem situations and weaknesses, as well as the onset of possible consequences. This, of course, affected health care and medicine in general. The modernization of current criminal legislation is caused by the need to take into account such factors as: 1) the processes of world globalization, which entail the internationalization of crime, the convergence of national legal systems; 2) rapid scientific and technological progress, leading to the emergence of new security threats, types and forms of socially dangerous behavior, 3) the requirement for consistent development and implementation of the principles proclaimed in the Criminal Code. These circumstances determine the relevance of the chosen topic. The object of research is health legislation. The subject of research is criminal law in the field of healthcare. The purpose is to prove that the current criminal legislation in the field of healthcare is "inferior" and requires modernization. The following methods are used in the work: comparative legal; formal dogmatic; systemic; synthesis, analysis and logical method. The author concludes that there are gaps in the criminal legislation in the field of healthcare related to the types of crimes of a medical nature.

2357-1330 © 2022 Published by European Publisher.

Keywords: Criminal law, criminal medical law, healthcare, medical workers, modernization, medical crimes

1. Introduction

The need to assess the state of the modern criminal legislation and health care legislation is reasoned by the dynamically developing world as a whole. We have entered a new IV technical revolution. The function of health care institutions is to identify and act on the social determinants of health to address health inequities (Caruso, 2017).

Health is a core component of human development, and the health sector is the lifeline for a nation's well-being (Ramachandran, 2014). There are opinions that the techniques and methods used by scientists cannot be recognized as verified and focused on a reliable and holistic display of the state of criminal law and their reasoning is fragmentary and oppositional in relation to other sources and subjects of knowledge (Bochkarev, 2015).

The criminal law in its final form is the product of a holistic social thought, but no group and no specialist can consider themselves the authors of the criminal law. It is the legislator acting in the given country and at present. The criminal law reflects their social, political, economic, and proper criminal law interests and knowledge. Therefore, our task is only to make suggestions and only the legislator decides. The dialectic of modern crime testifies to the continuous process of conflict changes and new phenomena taking place in it. New criminal schemes are being created. They create the condition for the need to study them and control the ratio of responsibility and the level of public danger taking into account the features of the new qualities of the offender's personality and the requirement for a balance in the processes of criminalization and decriminalization and the intensification of the fight against organized crime, improving countering new criminal manifestations and at the same time expanding the range of incentive rules and procedures in the General and Special Parts of the Criminal Code (Kashepov et al., 2015).

The assessment of the impact of socio-economic well-being and ecology, maintaining a healthy lifestyle on the state of health of the population is achieved, for example, in Russia within the framework of social and hygienic monitoring, implemented in accordance with the regulation approved by the Government of the Russian Federation (Grigoriev, 2013). This is based on the principles of responsibility of the state for the health of the population and a citizen himself for his health. The modernization of health care and its effectiveness is the main priority as well as the preservation and strengthening of human health. In this chain, the importance of the healthcare system itself will increase. Health care, as a social institution, provides the correct attitude of the state to the use of human capital, the formation of labour reserves sufficient for the growth of state economy, increasing its competitiveness in the market. However, we need to know what level of health of the citizens of Tajikistan will give such an increase, what contribution of healthcare and medicine is necessary for this economic growth. The state will have to develop a new approach to improve the level of training (retraining) of personnel; the ways to eliminate negligence among medical professionals; to make the information on people's health open and accessible in order to overcome legal nihilism in medicine; radically change measures to enter the market relations of healthcare sector. At the same time, there may be negative aspects in the application of these programs: the fictitiousness of their use by various bodies; the duplication of the main provisions or conflicts of norms, which makes them impossible to enforce. As a program provision, the phrase “the implementation

of the right to health and the right to health protection” should be used. The basis for the implementation and constant monitoring are the indicators of the world's best health systems, which can also serve for the national health system. The use of the positive experience of foreign countries should be used at all levels of decision-making on public health issues. The highlighted positive aspects of these models of the health care system allow taking into account both current and future elements of the formation of the national health care system and ways of realizing human rights. Thus, the modernization of legislation in the field of healthcare is based on the priority of health as the highest value and the right to human health, the quality of medical care, an integrated approach to monitoring, both the legal framework and the improvement of the legal culture of the population and workers in this area.

The improvement of criminal legislation should be carried out. Firstly, the proposal of the legislator to improve (change, supplement, cancel) any criminal legal norm is possible only if it cannot be kept in its previous form or dispense with it. Secondly, guided by the rule “do no harm”, in order to improve the criminal law, it is necessary to introduce not the worst and not even an equivalent version, but the most thoughtful one. Thirdly, when preparing proposals for the improvement of criminal legislation, it is necessary to remember its influence (and through the stability of the law) on the level of legal consciousness in general and on the formation of legal nihilism, in particular, among the entire population and law enforcement officers.

2. Problem Statement

Unfortunately, the development of the economy in our country does not show such rates as in other CIS member states. Scientific research is carried out in most cases on the personal initiative of researchers. Our research is the first try in the vast majority of problems of state development and medical and pharmaceutical criminal law of the Republic of Tajikistan. The formation and development of medical law in the Republic of Tajikistan is the prerogative of representatives of civil law and administrative law. We have outlined only the basics of medical criminal law. First of all, we share the point of view of those scientists who believe that the Constitutions of states should designate the “right to health” instead of the “right to health care”. The first is much broader in scope and content, the second is a part of the right to health. The right to health is one of the internationally agreed human rights standards and is inseparable from these other rights. This means that the realization of the right to health plays a decisive role in the realization of other human rights (such as food, housing, work, education, information and participation) and also depends on the realization of these rights. In addition, the right to health, along with other rights, implies both freedom and rights. Freedoms include the right to control one's health and body (sexual and reproductive rights) and the right to be free from interference (torture and medical treatment, experimental research without consent). Rights include the right to enjoy a health care system that provides everyone with an equal opportunity to maintain the highest attainable standard of health. In order to reform the criminal law, we also propose to introduce the following amendments to the Criminal Code of the Republic of Tatarstan: Article 121 “Violation of the rules of a transplant operation, as well as trafficking in human organs and tissues”; for the purpose of transplantation or use of organs, parts of organs or tissues of human body, embryo, human fetus, amniotic fluid in any other way:

- Article 121-1 Forced donation

- Article 121-2 Illegal actions with a human embryo
- Article 121-3 Illegal removal of organs and tissues of a human corpse.

Pharmaceutical criminal offenses are as follows:

- Article 206-1 Violation of the rules for handling narcotic drugs, psychotropic substances or precursors, potent, *toxic* or poisonous substances
- Article 210 Illegal engagement in private medical and private pharmaceutical activities
- Article 210-1 Illegal issuance or forgery of prescriptions or other documents giving the right to receive narcotic drugs or psychotropic substances
- Article 210-2 Illegal import into the Republic of Tajikistan, production, release into circulation of low-quality, counterfeit and non-compliant medicines, as well as expired medicines.

In the CIS countries, there is no legislation in the field of guaranteeing the professional responsibility of health workers. In the judiciary, the processes related to the quality of medical services are increasingly ending with the payment of significant monetary compensation to patients by a medical organization or medical worker. This indicates the development of the legal culture of citizens, caused by the desire to defend their rights, the study of the issue of methods of treatment and prevention of diseases.

The study of foreign experience in the professional responsibility of medical workers showed that in many developed countries of the world, the professional responsibility of medical workers was practiced at the beginning of the 20th century. In Kazakhstan, the relevant draft has been under development since 2012, in Russia – since 1999, it was withdrawn due to the lack of funding sources for the payment of insurance premiums. At the same time, the introduction of a system of mandatory guarantees of professional responsibility of medical workers will improve the quality of medical care in the Republic of Tajikistan and, in general, will have an impact on the position of Tajikistan in international rankings. During the introduction of a system of guaranteeing the professional responsibility of medical workers, healthcare entities participating in this system will be required to pay tax with the deduction of the amounts intended for guaranteeing. Accordingly, the amendments will go to the tax legislation of Tajikistan.

The Public Health Act is determined as powers and duties which provide conditions for the health of people and limit the powers of the state to limit autonomy, privacy, freedom and property interests of individuals and businesses (Gostin, 2000).

First of all, the Law of the Republic of Tajikistan “On Guaranteeing the Professional Responsibility of Medical Workers” would protect the material interests of medical workers in the event of such liability for harm caused to the life or health of the patient and would also ensure the protection of the property interests of healthcare entities; It will protect the rights of citizens to compensation for harm to health and contribute to the improvement of the quality of medical services. It also would create conditions for the formation and development of a system for guaranteeing the professional responsibility of medical workers, and, finally, it would contribute to the improvement of legislation in the field of medical education and science.

In addition, for the successful functioning of such a law, it is also necessary to take into account that only in the conditions of integration of medical science, practice and education it will be possible to create an effective environment to obtain modern knowledge and train competitive doctors.

In developed countries, the main condition for the functioning of a university (medical school) is the presence of a university clinic as it is necessary infrastructure for the clinical training of specialists. After all, a university clinic is not only a center of medical innovation and science, but also a base for the development of the “doctor-scientist-teacher” model. It seems that as a result of this, the best specialists, practitioners, scientists and teachers will be highly involved in the processes of education and scientific research and they will have the opportunity to practice and conduct clinical research. As a result, medical personnel (doctor, teacher, scientist all in one) will be rationally used, which will provide high material and professional motivation for personnel and form a model of scientific and pedagogical career development of medical personnel, which is the best standard of professional development in world health care.

3. Research Questions

In this paper, we study medical criminal legislation in order to identify shortcomings in it.

4. Purpose of the Study

The purpose is to update criminal and other legislation in the Republic of Tajikistan on liability for medical and pharmaceutical crimes.

5. Research Methods

In this paper, the materials of scientific conferences, round tables, monographs and scientific articles, as well as regulatory legal acts of the Republic of Tajikistan and the CIS countries were used.

Bochkarev (2015), the state of criminal law: thresholds and vices of scientific understanding, Criminal law and the interests of the country (the review of the materials of scientific discussion, Humanization of modern criminal law: monograph - Kashepov et al. (2015), Grigoriev (2013). Protection of the rights of citizens and study of the quality of medical care in the compulsory medical insurance system, Criminal law and the interests of the country (review of materials of scientific discussion, Sergeev and Mokhov (2007) Bioethics is an unconventional source of medical law, Koryakin (2015) On the issue of complex branches of national legal system (through the example of military law), Pharmaceutical criminal law, Bimbetov (2019), Pikurov (2013). Is the full codification of criminal law justified in modern conditions? Pikurov (2013), Kashanina (2017) Evolutionary patterns of law, Rarog and Poniatovskaya (2019) Object and system of medical criminal law, Rarog (2017) A new sub-branch of criminal law.

The tasks of sustainable development goals related to health, in Tajikistan: the implementation of policy and measures in areas of health care and well-being of population. – Copenhagen: European regional Bureau, WHO, Caruso (2017), Gregg, Public Health and Safety: The Social Determinants of Health and Criminal Behavior, Ramachandran (2014), Governance in Health Care – The way Ahead, Ruger (2006), Toward a theory of a Right to Health: Capability and Incompletely Theorized Agreements, Gostin (2000), A theory and Definition of Public Health Law, Farrell and Devaney (2015), Anne – Maree

and Devaney, Sarah, When Things go Wrong: Patient Harm, Responsibility and (Dis)Empowerment, Elgar and Duncan (2009), Intellectual property Rights, Human Rights and the Right to health.

The methodological base of the research consists of such methods as: comparative legal; formal dogmatic; systemic; synthesis, analysis and logical method. The paper provides a comparative legal analysis of the criminal and medical legislation of Tajikistan with the medical and criminal legislation of the CIS countries. Using a system method, we will try to state the changes and additions made to the criminal legislation of Tajikistan. In order to study in detail the legal norms of Tajikistan in the field of criminal law, we will divide the integral subject (Criminal Code of the Republic of Tajikistan) into its component parts for the purpose of their comprehensive study. Next, we will combine the previously selected parts of the subject into a single whole. Logically the research will be conducted and according conclusions will be drawn.

6. Findings

Everyone has the right to a standard of living adequate for health and health care (Elgar & Duncan, 2009). Informing the population by available means (media, Internet, radio, television) about the ways and methods to implement the changes and additions to the Criminal Code of the Republic of Tajikistan, explaining the possible consequences of these innovations, etc. This is one of the ways to improve criminal lawmaking. *Medical law* stands out among the complex studies which incorporates knowledge in the field of jurisprudence, as well as in the field of medicine, ethics, and biology. The academician Sergeev Yu.D., the founder of the Association of Medical Law, believes that the new branch should be called *biomedical law*. Some authors propose the term *health law* and single out sanitary legislation. We believe that it is necessary to provide all ethical norms in the Health Code of the Republic of Tajikistan, i.e. bioethics. Now there is a practical effectiveness of a thoughtful, balanced representation of a number of the most acute, socially significant bioethical problems in line with medical law, for example, the rules for the use of stem cells, cloning, the use of nanotechnologies (Sergeev & Mokhov, 2007). All this discord leads to the fact that the definition of an independent branch of law should be approached very carefully and one should not be guided by opportunistic considerations. Koryakin (2015), on the basis and example of military law, revealed the complex branch of the legal system in more detail. It seems that this can be attributed to medical law. In turn, such sub-branches of medical law as medical criminal law are developing, and pharmaceutical criminal law and sanitary (sanitary and hygienic) criminal law can also be grouped into branches (institutions). The Moscow school of medical criminal law considers the criminal circulation of medicines as an object of regulation of pharmaceutical criminal law (Rarog & Poniatovskaya, 2019). The development of a separation of the norms that form the medical criminal law, within the framework of the current Criminal Code, is of a theoretical nature. However, in the new issue of the Criminal Code, which needs to be developed, these norms should form an independent chapter (its structural unit), as it is done in the Criminal Code of the Republic of Kazakhstan, the Kyrgyz Republic and the People's Republic of China. The separation of autonomous structural branches of law is now not disputed in science (Kashanina, 2017; Pikurov, 2013). Therefore, we believe that it is possible to raise the question of the allocation of *medical criminal law*, since the necessary prerequisites have been developed:

- a regulatory framework has been created, starting with the Health Code of the Republic of Tajikistan, sectoral laws and by-laws, as well as rules, regulations and orders developed by the Ministry of Health and Social Protection of the Population of the Republic of Tajikistan, which disclose the rights and obligations of participants in the “patient-doctor”, “patient-doctor-medical institution”, with the establishment of liability for violation of medical prescriptions and prohibitions.

The Criminal Code of the Republic of Tajikistan established liability for causing harm to a patient during provision of medical care. This code has defined a special category of subjects of crimes related to the violation of these medical prescriptions and prohibitions. This idea has received its definite recognition in the criminal law science and the legislation of some of the above-mentioned countries.

According to the mentioned authors, the most successful decision was made by the Kazakh legislator, who in Chapter XI “Criminal offenses against public health and morality” of the Criminal Code of the Republic of Kazakhstan, included only “anti-drug” norms and an article on the production or sale of goods, performance of work or provision of services, not meeting safety requirements. Chapter 12 (Art. 317–323) provides for all medical offenses.

In later works, the famous Russian criminologist Rarog (2017) wrote that at the present stage of development of criminal law science, the need to form and improve a complex of criminal law norms on the responsibility of medical workers for offenses in the sphere of professional duties becomes most obvious.

We suppose that the interactions between patients and medical employees are social and institutional, and power asymmetries make such interactions structural (Farrell & Devaney, 2015).

The result of this study is expressed in the development of a new chapter in the Criminal Code of Tajikistan. The modernization of the above-mentioned code seems to us as follows: we propose to introduce a new chapter into the current Criminal Code of the Republic of Tajikistan, Chapter 22 A:

Chapter 22 A Crimes in the field of medical and pharmaceutical services to the population

1. Cloning – the creation of human embryos for the purposes of biomedical research or the use of a human embryo for commercial, military or industrial purposes, as well as the export of germ cells or a human embryo from the Republic of Tajikistan for the same purposes.

1) The same acts committed: a) by a group of persons, a group of persons by prior agreement; b) repeatedly.

2) The acts provided by paragraphs 1 or 2 of this article, committed by a criminal organization.

2. The violation of the rules of a transplant operation, as well as trafficking in human organs and tissues – the violation of the conditions and procedure for the removal of human organs or tissues or the conditions and procedure for transplantation provided by law, which negligently caused serious or moderate harm to the health of a donor or a recipient.

1) The same act, negligently resulting in the death of a victim.

2) Trade in human organs and tissues, as well as their parts.

3. Forced donation, that is, the removal of blood, red bone marrow, germ cells (gametes) by force or by deceit in order to use them as a donor.

1) The same act, committed against a known juvenile, legally incapable person or a person in a helpless state.

4. The illegal acts with a human embryo – Prohibited acts with an embryo committed in the course of acts performed on the artificial insemination of a woman or with a human embryo stored outside the body:

1) the artificial insemination of a female ovum with a sperm cell selected according to the sex chromosome contained in it, except in cases where the germ cell is selected in order to prevent a child from becoming ill with a severe hereditary disease transmitted by trait.

2) the replacement of the nucleus of a fertilized egg with a cell from the body of another embryo, fetus, living or deceased person in order to create a human embryo with hereditary information identical to this embryo, fetus, living or deceased person, or combining embryos with different hereditary information, if at least one of them is a human embryo, as well as a connection with a human embryo of a cell that contains hereditary information that differs from that contained in the cells of the embryo and is capable of further development with it.

3) the creation of an embryo capable of development by fertilizing a human ovum with an animal spermatozoon or an animal ovum with a human spermatozoon.

5. The illegal removal of organs and tissues from a corpse – illegal removal of organs or tissues of a deceased person for transplantation or other use, as well as transactions in respect of organs or tissues of a deceased person.

6. The violation of the procedure of clinical trials and the use of new methods and means of prevention, diagnosis, treatment and medical rehabilitation – the violation of human rights to health protection, receiving appropriate treatment in connection with a disease, endangering life and health, up to infliction of grievous harm, and equally participation in illegal clinical trials (tests) of officially unconfirmed safe means, methods and technologies for the prevention, diagnosis, treatment of diseases and rehabilitation.

1) The same act committed: a) repeatedly; b) by a group of persons, by a group of persons by prior agreement; c) involved by negligence the death of a person.

2) The act provided by the first and second parts of this article, if they are committed; a) an official; b) involved by negligence the death of two or more persons.

7. The illegal artificial termination of a woman's pregnancy without her prior consent in order to use the embryo or their components removed from the uterus, as well as amniotic fluid.

8. The failure to provide medical care to a patient without good reason by a person who is obliged to provide it in accordance with the law or according to special rules, resulting in the infliction of moderate harm to the patient's health.

1) The same act, if it caused the death of a patient or the infliction of grievous bodily harm.

9. The improper performance of professional duties by a medical worker due to non-fulfillment or improper fulfillment of professional duties by a medical worker due to negligent or dishonest attitude towards them, which caused moderate harm to a patient through negligence.

1) The same act, if it caused a) serious harm to health; b) death of a patient or infection with the human immunodeficiency virus.

2) The same acts, if it caused: a) human casualties; b) other serious consequences.

10. The disclosure of medical secrets, that is, the disclosure of information about the disease or the results of a medical examination of a patient by a medical, pharmaceutical or other worker without professional or official need

1) The same acts, expressed in the communication of information about the presence of the human immunodeficiency virus in a person.

2) The acts provided by the first or second part of this article, if they caused grave consequences or human death.

11. The disclosure of the secret of adoption by a medical worker, against the will of an adopter, committed by a person who is obliged to keep the fact of adoption as an official or professional secret, or by another person out of selfish or other motives.

1) The same acts that caused grave consequences.

12. The violation of the rules for handling narcotic drugs, psychotropic, potent, toxic or poisonous substances, that is, the violation of the rules for the production, manufacture, processing, storage, accounting, dispensing, sale, distribution, transportation, shipment, acquisition, use, import, export or destruction of narcotic drugs, psychotropic substances or precursors, as well as substances, tools or equipment used for the production of narcotic drugs, psychotropic substances or precursors and under special control, if this act is committed by a person whose duty is to comply with these rules.

1) The violation of the rules of the production, acquisition, storage, accounting, release, transportation or shipment of potent toxic or poisonous substances, if this resulted in their theft or other significant damage.

13. The violation of the sanitary and epidemiological regime, which negligently caused a mass disease or poisoning

1) The same act, involved by negligence the infliction of grievous bodily harm, or infection with the human immunodeficiency virus, coronavirus or another incurable infectious disease that has the nature of a pandemic.

14. The illegal private medical practice and private pharmaceutical activities, medical and pharmaceutical activities without a special permit (license), carried out by a person who does not have a proper medical or pharmaceutical education, which involved by negligence harm to human health.

1) The same act, involved by negligence the infliction of grievous bodily harm, or infection with the human immunodeficiency virus, or human death.

15. The illegal issuance or forgery of prescriptions or other documents giving the right to receive narcotic drugs or psychotropic substances.

The process of production, storage, transportation or sale of goods and products, performance of work, or provision of services that do not meet safety requirements – that is, production, storage or transportation for the purpose of marketing of goods or products, performance of work or provision of services that do not meet life safety requirements or health of consumers, as well as the illegal issuance or use of an official document certifying the compliance of the specified goods, works or services with safety requirements.

1) The same acts, if they: a) are committed in relation to goods or products, works or services intended for children under the age of six; b) negligently caused harm to the health of two or more victims; c) negligently caused the death of a person.

2) The acts provided for by the first or second part of this article, which negligently caused the death of two or more victims.

16. The illegal import into the Republic of Tajikistan, production, release into circulation of low-quality, counterfeit and non-compliant medicines, as well as expired medicines.

1) The same acts committed: a) repeatedly; b) by a group of persons by prior agreement; c) using official position.

2) The acts provided by the first and second parts of this article, if they are committed: a) by an organized group; b) in especially large sizes; c) caused by negligence the death of a person or other grave consequences.

17. The violation of safety rules when handling microbiological or other biological agents or toxins, if this caused harm to human health, the spread of epidemics or epizootics, or other serious consequences expressed in a pandemic.

1) The same act that caused the death of a person.

At the same time, we consider it appropriate to designate in the same chapter the range of crimes committed in complicity with medical workers.

18. The crimes committed in complicity with medical professionals. Mercy killing (euthanasia)

Mercy killing caused by an urgent request for this from a terminally ill person experiencing unbearable suffering from this disease, with full consciousness at the time the request is transmitted to the guilty.

Note: Euthanasia is understood as the intentional infliction of death on an incurable patient, carried out at his request by a medical worker, as well as by another person related to a patient, out of mercy for a patient and in order to save him from unbearable physical suffering.

19. The coercion to remove human organs or tissues for transplantation or other use, committed with the use of violence or with the threat of its use against a person or his relatives, or the threat of destruction of his property.

1) The same act committed: a) against a person who is known to the guilty person to be in a helpless state or in material or other dependence on the guilty person; b) in respect of a juvenile; c) in relation to two or more persons.

2) The act provided by the first or second part of this article, committed: a) by a group of persons or by a group of persons by prior agreement; b) an organized group (criminal organization) or a criminal community.

20. The coercion of a woman to perform an unlawful artificial termination of pregnancy, that is, forcing a woman to perform an artificial termination of pregnancy, committed with the use of violence or with the threat of it, blackmail, the threat of destruction, damage or seizure of property or using the financial or other dependence of a victim, if as a result of this abortion was performed.

21. The illegal placement in a psychiatric hospital – that is, the illegal placement in a psychiatric hospital of a person who does not need this form of treatment, or illegal detention in it.

1) The same act, if committed: a) out of selfish motives; b) by a person using his official position; c) negligently caused the death of a victim or other grave consequences.

22. The substitution of a child – an act committed from selfish or vile motives against a family and family ties, which consists in the secret imperceptible removal of a child and replacing it with another.

1) The same act, if committed: a) by a group of persons or a group of persons by prior agreement; b) repeatedly; c) by a person using his official position; d) inconspicuous removal and replacement of two or more newborns.

The author does not indicate sanctions in the above-mentioned articles. In order to establish sanctions, additional research and a comparative legal analysis of socially dangerous acts related to the studied crimes with sanctions are required. The numbering and location of the chapter proposed by us is based on the generic object and its significance for a person. This issue requires more detailed study and time.

7. Conclusion

It is difficult to find a more controversial human right than the right to health – a right that is primarily linked, though not exclusively, to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and requires states to recognize the right of everyone to the highest attainable standard of physical and mental health (Ruger, 2006).

Thus, the need to modernize and update criminal and other legislation is undoubtful. Today we need a model of “innovation and science, but also a basis for the development of the model”, using the latest digital technologies and methods of treatment, rehabilitation and disease prevention. Law, including criminal law, should not lag behind this, but even go ahead of the scientific and technical progress, protecting the health of a person.

The ways of further development of the healthcare sector in Tajikistan are outlined in many publications related to WHO. In particular, for example, the most recent review is “Health-related sustainable development goals (SDG, 2000) in Tajikistan: the implementation of policies and measures in the field of health and improvement of the well-being of population”; Progress report 2020 prepared by the WHO Regional Office in Europe. They provide recommendations for the finalization of the new 10-year National Program for the Strategic Development of Healthcare and Social Protection of the Population of the Republic of Tajikistan for 2021–2030 and its implementation.

“The key priorities of Tajikistan in the field of the improvement of health and well-being for all at any age are as follows: health governance; health care financing; health workforce; health of newborns, child and mother; infectious diseases and rising antimicrobial resistance; NCDs (noncommunicable diseases) and their risk factors; health information systems (HIS); public health; medicines: availability, accessibility and quality control” (SDG target).

In this paper, we expressed our opinion on these problems. It is important that they are in full agreement with our conclusions made much earlier than this WHO report. The first three priorities solve all other health problems, they also influence the development of law and criminal law, in particular in the Republic of Tatarstan.

We propose the terms specified in the Article 1 of the Health Code of the Republic of Tajikistan to be stated in alphabetical order:

Article 1. Basic concepts

The following basic concepts are used in this Code:

- accreditation in healthcare
- active form of tuberculosis
- active blood donors
- alcoholism
- anatomical gift
- certification of healthcare workers
- infertility
- favorable living conditions
- patients with acquired immunodeficiency syndrome
- human immunodeficiency virus
- hygiene
- hygienic standard
- state sanitary
- state supervision in the field of healthcare
- infants
- risk group
- pest control
- disinfection
- deratization
- young children
- infant formula
- blood donor
- donor
- donated blood
- extra food
- natural feeding
- breast milk substitute
- spare blood donors
- an infectious form of tuberculosis
- health
- healthcare
- disabled person
- disability
- infectious diseases
- human immunodeficiency virus infection

- infected with human immunodeficiency virus
- ionizing radiation
- artificial insemination
- quarantine
- council of doctors
- contract blood donors
- contraceptives
- privacy
- conflict of interest
- traditional medicines
- mass non-communicable diseases
- medical and social rehabilitation
- medical assistance
- medical care
- medical institution
- drug treatment
- narcological diseases
- narcological institution
- addiction
- drugs
- ethnoscience
- traditional healer
- national vaccination schedule
- turnover of baby food
- object of transplantation
- organ
- palliative care
- parasitic diseases
- primary health care
- nutrition for infants
- nutritional formulas for older infants
- family planning
- compulsory treatment
- anti-tuberculosis care
- TB organizations
- occupational disease
- prevention
- prophylactic vaccinations
- psychiatric care

- psychiatric institutions
- mental disorders (diseases)
- psychotropic substances
- challenged child
- reproductive health
- reproductive law
- reproductive age – the age of childbearing (15-49 years);
- recipient
- sanitary protection of territory
- sanitary and anti-epidemic measures
- sanitary and epidemiological safety of the population
- sanitary and epidemiological expertise
- sanitary and epidemiological conclusion
- diabetes mellitus
- certificate of a folk healer
- family medicine
- family doctor
- acquired immunodeficiency syndrome
- brain death
- family medicine specialists
- special meals
- special populations with an increased risk of infection with the human immunodeficiency virus
- human environment
- means of self-control
- subjects of private medical activity
- tissues
- substance abuse
- transplantation
- tuberculosis – an infectious disease
- authorized state body in the field of healthcare
- vulnerable groups of the population
- environmental factors
- fertility
- phytosanitary rules
- private medical activity
- private medical practice
- private medical facility
- examination of the quality of medical services
- epidemic

We propose to fix new concepts in the Health Code of the Republic of Tajikistan, such as:

- Bioprinting – recreating living tissues, bones, blood vessels and human organs using medical 3D printers, for the use in medical procedures, medical staff training and testing
- Sick – afflicted with some kind of disease.
- Biotechnology – methods and techniques to obtain products useful for humans with the help of living organisms, cells and individual biopolymers.
- Assisted reproductive technologies (ART) – the collective name of medical technologies, treatments and procedures aimed to achieve pregnancy, when some or all of the stages of conception are carried out outside the body of the expectant mother.
- Human genome – the totality of hereditary material contained in a human cell.
- Artificial insemination (AI) – a medical procedure that is used to overcome infertility in a married couple.
- Human cloning – the technology of creating a human embryo and growing – people whose genotype will be identical to the genotype of currently existing or deceased individuals.
- A license to conduct medical activities – a document granting the right to engage in this field of activity.
- License to engage in pharmaceutical activities – official permission to carry out the specified activities, issued for an unlimited period (indefinitely).
- Medical activities – professional activities for the provision of medical care, medical examinations, sanitary and anti-epidemic (preventive) measures and professional activities related to transplantation of organs and (or) tissues, circulation of donor blood and (or) its components for medical purposes;
- Medical diagnostics (from other – Greek $\delta\iota\alpha\gamma\nu\omega\sigma\tau\iota\kappa\omicron\varsigma$, *diagnosticos* – able to recognize) – the process to establish a diagnosis, that is, a conclusion about the nature of a disease and patient's condition, expressed in accepted medical terminology
- Medical incident – an event related to the provision of medical care, in accordance with the standards of the organization of medical care and with the use of technologies, equipment and tools, due to a deviation from the normal functioning of body, which can harm the life and health of a patient, as well as lead to the death of a patient, with the exception of cases provided by the administrative and criminal legislation of the Republic of Tajikistan”;
- Medical criteria to determine the severity of harm to health – are a medical characteristic of qualifying indicators that are used to determine the severity of harm caused to human health, in the production of a forensic medical examination in civil, administrative and criminal proceedings on the basis of a court ruling, a judge's decision, a person producing inquiry, investigator.
- A medical worker – an individual who has a higher or secondary special medical education, confirmed by a document of education, and, in accordance with the procedure established by the legislation of the Republic of Tajikistan, engaged in activities related to the organization and provision of medical care, ensuring the sanitary and epidemic wellbeing of population and a medical examination.

- Medical service is a medical intervention or a complex of medical interventions, as well as other actions performed in the provision of medical care.
- Pandemic (gr. *πα νδημί α* "to the whole people") – an unusually strong, highly contagious epidemic, with high mortality, spreading to the territories of countries and continents; the highest degree of development of the epidemic process.
- A patient – an individual who has applied for medical care and is under medical supervision or is receiving medical care.
- Precursor – a substance, a chemical reagent involved in any stage of the production of a toxic chemical, playing an important role in determining the toxic properties of the final product and quickly reacting with other chemicals in a multicomponent system.
- Insemination procedure – a medical action during which the flow of sperm into the uterine cavity is ensured when this is not possible during a natural sexual life.
- Prescription – an official prescription from a doctor for the production of a drug in a pharmacy for a patient, indicating the method of application.
- Surrogacy – a technology of human reproduction, in which a woman (surrogate mother) is voluntarily ready to undergo an IVF (in vitro fertilization) procedure, all stages of pregnancy and give birth to a child biologically alien to her, who will be given up for the upbringing of other persons (genetic parents). At the same time, genetic parents are legally considered parents, despite the fact that a surrogate mother gives birth to a baby.
- Severity of harm to health – harm caused to human health, which is determined depending on the severity (serious harm, moderate harm and light harm) on the basis of qualifying signs specified in articles 111, 112, 115 of the Criminal Code of the Republic of Tajikistan.
- Pharmaceutical activities – the activities in the field of circulation of medicines, pharmaceutical substances and medicinal herbal raw materials, carried out by legal entities and individual entrepreneurs in the manner prescribed by the legislation of the Republic of Tajikistan.
- Pharmaceutical worker – an individual who has a higher or secondary specialized pharmaceutical education, confirmed by a document of education, and in accordance with the procedure established by the legislation of the Republic of Tajikistan, is engaged in activities related to the circulation of medicines, pharmaceutical substances and medicinal herbal raw materials.
- Euthanasia – the practice of ending the life of a person at his request, who is suffering from an incurable disease and experiencing unbearable suffering as a result of this disease.

We also propose to replace the phrase "*medical error*" in the above-mentioned code with the phrase "*medical incident*", as is common in WHO and many countries of the world. This would solve the problems that arise with iatrogenics of all kinds etc.

References

- Bimbetov, A. A., Voronin, V. N., Rarog, A. I., & Poniatowska, T. G. (2019). *Pharmaceutical criminal law*. Ed. by A. I. Raroga. Prospekt.
- Bochkarev, S. A. (2015). The state of criminal law: “thresholds” and “vices” of scientific understanding. *Ross. Journal of Legal Studies*, 1(2), 58–71. <https://doi.org/10.17816/RJLS17994>
- Caruso, G. (2017). *Public Health and Safety: The Social Determinants of Health and Criminal Behavior*. UK: Research Links Books. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3054747
- Elgar, E., & Duncan, M. (2009). Intellectual Property Rights, Human Rights and the Right to Health. In W. Grosheide (Ed.), *Intellectual Property Rights and Human Rights: a Paradox*. Queen Mary School of Law Legal Studies Research. Paper, no. 24/2009. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1414900
- Farrell, A-M., & Devaney, S. (2015). When Things Go Wrong: Patient Harm, Responsibility and (Dis) Empowerment (August 25, 2015). To be published in C Stanton, S Devaney, AM Farrell and A Mullock (Eds.), *Pioneering Healthcare Law: Essays in Honor of Margaret Brazier* (Routledge 2015). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2650917
- Gostin, L. O. (2000). *Theory and Definition of Public Health Law*. <https://doi.org/10.2139/ssrn.242580>
- Grigoriev, I. Y. (2013). Protection of the rights of citizens and examination of the quality of medical care in the CHI system. *Medical Law*, 2, 10–17.
- Kashanina, T. V. (2017). Evolutionary patterns of law. *Actual problems of Russian law*, 12(85), 44–53.
- Kashepov, V. P., Gravina, A. A., & Koshaeva T. O. (2015). *Humanization of modern criminal legislation* [Monograph]. *Institute of Legislation and Comparative Law under the Government of the Russian Federation*; INFRA-M. <https://doi.org/10.12737/12194>
- Koryakin, V. M. (2015). On the issue of complex branches of the domestic legal system (on the example of military law). *Journal of Legal Research*, 1(2), 40–49.
- Pikurov, N. I. (2013). Is the full codification of criminal law justified in modern conditions. *Materials of the 8th Russian Congress of Criminal Law, Problems of codification of the criminal law: history, modernity, future* (pp. 184–187).
- Ramachandran, R. (2014). Governance in Health Care – The Way Ahead. *21st Thinkers’ and writers’ forum on part of the 37th SKOCH Summit 2014 “Minimum Government, Maximum Governance”* (19th, 20th & 21st September). Indiandia Habitat Cente. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2506764
- Rarog, A. I. (2017). New branch of criminal law? *Russian Journal of Legal Research*, 4(3), 124–133. <https://doi.org/10.17816/RJLS18296>
- Rarog, A. I., & Poniatovskaya, T. G. (2019). Object and system of medical criminal law. *All-Russian criminological journal*, 13(5), 816–824. [https://doi.org/10.17150/2500-4255.2019.13\(5\).816-824](https://doi.org/10.17150/2500-4255.2019.13(5).816-824)
- Ruger, J. P. (2006). Theory of a Right to Health: Capability and Incompletely Theorized Agreements. *Yale Journal of Law & the Humanities*, 18, 273–326. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=933009
- SDG (2020). Health related SDG targets in Tajikistan: the implementation of policies and measures in the field of health and improvement of the well-being of population. *WHO Regional Office in Europe*. https://www.euro.who.int/__data/assets/pdf_file/0008/466217/Health-related-SDG-targets-in-Tajikistan-rus.pdf
- Sergeev, Y. D., & Mokhov, A. A. (2007). Bioethics as an unconventional source of medical law. *Medical Law*, 2, 3–5.