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**About a need of enhancement of the legislation**

**about the first-aid treatment in the Russian Federation**

*This article is devoted to an enhancement of the legislation on the first-aid treatment to the victim. Foreign experience of regulation of the similar relations is analyzed. The circle of people, obliged to give by the law first aid is determined. The conclusion is drawn on a need of special regulation in the Russian Federation of the relations connected with the first-aid treatment. Adoption of the bill governing the relations connected with the first-aid treatment is offered. The authors suggest to fill this bill with the regulations about conditions and principles of the first-aid treatment, about legal responsibility for unintentional harming and for the wrong first-aid treatment.*

**О необходимости совершенствования законодательства**

**об оказании первой помощи в Российской Федерации**

*Настоящая статья посвящена совершенствованию законодательства об оказании первой помощи пострадавшему. Проанализирован зарубежный опыт регулирования подобных отношений. Определен круг лиц, обязанных в силу закона оказывать первую помощь. Сделан вывод о необходимости специального регулирования в РФ отношений, связанных с оказанием первой помощи. Предлагается принятие законопроекта, регулирующего отношения, связанные с оказанием первой помощи. Авторы предлагают наполнить данный законопроект нормами об условиях и принципах оказания первой помощи, о юридической ответственности за неумышленное нанесение вреда и за неправильное оказание первой помощи.*

***Keywords:*** *first aid, obligation of the first-aid treatment, responsibility for damnification, the Law of the kind Samaritan, conditions of the first-aid treatment.*

**Ключевые слова:** *первая помощь, обязанность оказания первой помощи, ответственность за причинение вреда, Закон доброго самаритянина, условия оказания первой помощи.*

Throughout all history of development of humanity the first-aid treatment was an integral part of people’s life. First aid is mentioned in the Egyptian papyruses, in the Greek and ancient Roman legends. People gave first aid in case of injuries, poisonings, etc.

There were later sorcerers who had more profound knowledge, and the list of their skills and abilities was rather wide. It is considered that at this time there was a separation of delivery of health care between "nonprofessionals" and "professionals". After a while the priests began to heal (to be engaged in therapy), and hairdressers and corn masters to do operations (to give surgical help) [1].

The people who have got wound in the war in the absence of medical care usually died. In 1080 in Jerusalem the knights monks who owned medical skills have founded hospital for assistance to pilgrims in the Holy Land. In 1099, after a gain of Jerusalem crusaders, these knights (gospitalyer) have based an award of Saint John the Forerunner who has undertaken a function of protection and delivery of health care to pilgrims. In the middle of the 19th century the I International Geneva convention has been adopted and the Red Cross for "… assistance to the sick and wounded soldiers on the fields of battles" is created. Soldiers were trained in the skills of giving aid to the companions before arrival of the doctors. Several years later the army doctor has offered an idea of training of civilians and called it "pre-hospital treatment". The concept "first aid" has for the first time appeared in 1878. (in Great Britain medical brigades of citizens under the auspices of Saint Ioann's award specially trained for giving help on the railway points and in the mining centers) and it was formed in a case of merge of "initial treatment" and "the national help".

The subsequent development of the first-aid treatment is connected with the scientific and technical progress. In addition to the natural dangers, factors of technogenic and anthropogenous origin (chemical productions, weapons of mass destruction, different types of transport, etc.) have appeared. In the case of majority of pathological states caused by these factors, the person needs medical care. However not always the health worker appears on the scene and can provide the necessary medical care. More often human life, got into a critical situation, depends on the ability and skills of people surrounding him.

Today we rather often become the witnesses of different accidents, catastrophic crashes, road accidents, accidents when the person, help to which has the urgent character, is here, and the ambulance has not arrived yet. In our country to 80% of death occurs out of the medical organizations: at home, at work, at the dacha, in public and other places. Their most part occurs suddenly or on the mechanism of sudden death [2].

According to the World Health Organization 20 people from 100 people of the dead as a result of accidents in a peace time could be salvaged if the help they were given timely.

For the first time the term "first aid" for designation of a special type of help given by the persons which do not have medical education in a case of injuries and medical emergencies on the scene before arrival of the doctors has been entered into the Russian legislation by the Federal law of November 25, 2009 No. 267-FL "About modification of Bases of the legislation of the Russian Federation on protection of public health and separate legal acts of the Russian Federation" [3], added the Bases of the legislation of the Russian Federation on protection of public health [4] Art. 19.1 "First aid".

Today for the solution of this sort of problems in the the Art. 31 of the Federal law No. 323-FL "About the bases of protection of public health in the Russian Federation" [5] (further – FL No. 323) has enshrined the institute of first-aid treatment: "First aid before the delivery of health care is given to the citizens in the case of accidents, injuries, poisonings and the other states and diseases threatening their life and health".

However among the basic concepts used in FL No. 323 definition of the concept "medical care", and determination of the concept "first aid" neither this law is given, nor the other regulatory legal act is fixed. Lack of such determination is a gap in the standard regulation of organization of the first-aid treatment as the first aid differs from medical on the purposes, tasks and content [6].

The main objective of first aid – carrying out the actions directed to salvation of life of the victim, elimination of the continuing impact of adverse factors and its fastest evacuation to the medical organization.

The list of states and actions in the case of which first aid is given is determined by the Order of the Ministry of Health and Social Development of the Russian Federation from 5/4/2012 No. 477n "About approval of the list of states in case of which first aid, and the list of actions for the first-aid treatment" is given [7]. In particular, treat states in case of which the first aid is given: absence of consciousness; respiratory standstill and blood circulations; external bleedings;; injuries of various areas of a body; burns, effects of the impact of high temperatures, thermal radiation; freezing injury and the other effects of the impact of low temperatures; poisonings.

The list of actions for the first-aid treatment is expected the people who do not have medical education and includes:

1) evaluation of a situation and providing safe conditions for the first-aid treatment;

2) call to an emergency medical service, other special services;

3) determination of availability of consciousness at the victim;

4) recovery of passability of the airways and determination of the signs of life at the victim;

5) carrying out warm and pulmonary reanimation before emergence of the signs of life;

6) maintenance of passability of the airways;

7) survey of the victim and temporary stop of external bleeding;

8) detailed survey of the victim for the purpose of detection of injuries, poisonings and the other states threatening his life and health, and on the first-aid treatment in a case of identification of the specified states;

9) giving to the victim of an optimum provision of a body;

10) control of the state of the victim (consciousness, breath, blood circulation) and rendering psychological support;

11) transfer of the victim to the crew of emergency medical service, to the other special services which staff is obliged to render the first aid.

There is a question and who has the right or an obligation to give first aid?

Unlike medical care any person has the right to give first aid. For some categories of citizens the first-aid treatment is an obligation, by the law (Art. 31 of FL No. 323).

The art. 12 of the Federal Law "About Police" [8] obliges police officers to give first aid to the persons, victims of crimes, administrative offenses and accidents. Because the staff of the law-enforcement bodies, as a rule, one of the first appears on the scene, from their capability qualitatively and timely to give first aid in many respects preserving life of the victim or considerable reduction of weight of consequences of an injury for it depends. In the Instruction sheet on the first-aid treatment [9] is specified that for the proper first-aid treatment to the employee of the law-enforcement bodies it is necessary to know the first-aid treatment technique, to own the skills of determination of a state of the victim, a type traumatized, degrees of its weight and danger, to be able to give the first aid directly.

It should be noted that the police officers in Russia often, contrary to the requirements of the law, do not fulfill the duty on the first-aid treatment. One of the reasons of it is a lack of systematic training of police officers of the first aid [10]. About 40% of police officers of Russia consider that they are not capable to give first aid to the victim [11].

The federal law of December 21, 1994 "About the fire safety" [12] salvation of people in the case of fires and the first-aid treatment gives No. 69-FL as one of the main objectives of fire protection. In the art. 15 of the Federal law of May 6, 2011 No. 100-FL "About the voluntary fire protection" [13] is established an obligation of workers of voluntary fire protection and voluntary firefighters during the service (watch) in a case of need to give first aid to the victim. The federal law of August 22, 1995 No. 151-FL "About rescue services and the status of rescuers" [14] obliges the rescuers to conduct actively search of victims, to take measures for their salvation and to give them first aid (the art. 27).

The federal law of November 27, 2010 No. 311-FL "About customs regulation in the Russian Federation" [15] (the art. 26) orders to the officials of customs authorities in a case of use of physical force, special means, weapon to provide to the persons which have sustained bodily harms, first aid. Ensuring the first-aid treatment to the persons who have sustained bodily harms in a case of use of physical force, special means and firearms is assigned to the court ushers [16], internal troops officers [17] and private security [18]. The act of the Russian Federation of March 11, 1992 No. 2487-1 "About the private detective and security activities in the Russian Federation" [19] condition of application of special means and firearms puts providing to the persons which have sustained bodily harms, first aid (the art. 16).

This list is not exhaustive, it is possible to carry to it also the staff of criminal and executive system [20], the military personnel of the Armed forces of the Russian Federation [21]. The art. 228 of the Labor code of the Russian Federation [22] assigns to the employer an obligation in a case of accident immediately to organize first aid to the victim and if necessary his delivery to the medical organization. Regardinf to it, on the enterprises with the harmful and dangerous working conditions the administration provides preparation of personnel on the irst-aid treatment and provides workplaces with the necessary equipment and medicines for the first-aid treatment (stretcher, individual and collective means of technical and medical protection, means of communication).

However it is worth noticing that the specified list is not exhaustive. According to the art. 20 of the Federal law No. 196-FL "About traffic safety" [23], preparation and training of drivers the skills of the first-aid treatment belong to a number of the requirements relating to the traffic safety. Moreover, according to the item 2.5 of the Traffic regulations [24], in a case of road accident the driver involved in it is obliged to take measures for the first-aid treatment to the victim, to call to "The emergency medical service", and in a case of emergency to send the victims on passing and if it is impossible, to bring on the vehicle to the nearest medical institution. According to the certain specialists [25], exception of the list of obliged persons of drivers as these persons hardly possess in sufficient amount the corresponding medical skills is reasonable and actually can only aggravate with the actions the victim's state as training in practical driving does not assume the profound studying of questions of the first-aid treatment.

Also in the Federal law No. 196-FL "About traffic safety" is said that the heads of the entities are obliged to hold the actions for enhancement by the drivers of skills of the first-aid treatment to the victim in the road accidents (the art. 20).

According to the Federal law of December 21, 1994 No. 68-FL "About protection of the population and the territories against emergency situations of natural and technogenic nature" [26], citizens of the Russian Federation are obliged: to study the main methods of protection of the population and the territories from the emergency situations; to own the ways of the first-aid treatment to the victim; to know instructions for use the collective and individual remedies; to constantly enhance the knowledge and practical skills in the specified area.

As in the Federal Law No. 323 the exhaustive list of situations in a case of which the first-aid treatment is required is not this, and the cases in case of which it appears are only specified: "… in a case of accidents, injuries, poisonings and the other states and diseases …", – that is quite proved to assume that the key criterion for evaluation of a need of its rendering is the factor of threat of life or to the health, irrespective of circumstances which preceded it, whether it be the accident or the road accident. An accident can happen to anyone and anywhere. For example, a tragic story of Artem Chechikov of August 25, 2014 at the Sheremetyevo airport when because of in time not given first aid, the young guy has died even before the arrival of ambulance.

Thus, a circle of people, potentially competent to give the first aid, is pretty wide, beginning from the transport drivers, the employees of specialized services and finishing the doctors.

As a rule, such obligations have professional character that means their "obligation", however, only in the working hours. For example, for the rescuers it is mentioned along with the other professional obligations: "actively to conduct a search of victims", "to take measures for their salvation", – which the rescuers perform only in the working hours. The art. 60 of the Labor code of the Russian Federation directly prohibits to require performance of work, not caused by the employment contract. There is no rule or law which would oblige these categories of citizens to give to the victims the first aid in a time off in the Russian Federation. Besides, it is connected with the fact that, being in a case of execution of job responsibilities, these categories of citizens possess the special legal status including the protection guarantees in the measure determined by the law. And if the person is not at work, then there are no guarantees of protection for him extend. Also it turns out that he acts "at his own risk".

Listing the obliged persons, the legislator for the misunderstood reason just has not specified the health and pharmaceutical workers, having confined to the general phrase about the persons obliged to give first aid according to the federal law or with the special rule. And these categories of persons have the corresponding medical education and first of all shall perform the obligations regardless of their medical specialty and the job description in the cases when the person needs primary help of medical nature [27]. As for the obligation of the first-aid treatment of the doctor, absolute majority express availability of such obligation at the health workers, the knowledge of giving of first aid is the compulsory provision of their profession.

However we will address to the current legislation. Overwhelming number of people refer to the availability of criminal liability for doctors, in case of non-rendering of the help to the needing person by them, considering that they are obliged to render it always and everywhere. Well, we will address to the art. 124 of the Criminal code of the Russian Federation "Non-rendering of the help to the patient" [28] (further – CC RF). According to the legislation, in case of the states requiring urgent medical aid (in case of accidents, injuries, poisonings, heart attacks, etc.) the emergency medical service shall be provided to the citizens. It is given by the medical organizations, irrespective of the territorial, departmental subordination and pattern of ownership, and also by the health workers, according to the law or the special rule. Proceeding from the sense of article the disposition is blanket, requiring studying of the other regulating documents and instructions. Most often it concerns the emergency medical service which doctors and paramedics are obliged to provide to the population first aid.

The objective side is characterized by three obligatory signs: act in the form of failure to act, i.e. failure to carry out of actions which are assigned to the guilty person by the law or the special rule (non-coming of the doctor to the patient on a call, refusal to take the patient in a polyclinic, refusal to make an artificial respiration, the emergency operation); consequences in the form of harm of the average gravity which are caused to health of the patient; and it is obligatory the availability of causal relationship between the failure to act and the done harm. Failure to act of the person in the presence of special valid circumstances (emergency, force majeure, military operations, incompetence of the doctor, lack of necessary medicines, etc.) will not be considered criminal. In each case the issue with it is resolved taking into account all objective and subjective factors.

The subject of this crime – special – the physical, responsible person who has reached age of 16 years and obliged to provide to the patient medical care.

Thus, to oblige to give first aid under the threat of criminal prosecution only that the person whose professional obligations include delivery of health care is possible. The persons giving pre-medical help in our case the first aid, under the responsibility provided by this article do not get as are not obliged to provide medical care. The confusion in many respects arises because the doctors, owing to the availability of certain knowledge and skills, during making the job responsibilities provide medical care, and if are out of working hours, then give the first aid until there arrives the ambulance crew, with doctors who are obliged to provide medical care, owing already to the work responsibilities.

Complexity of situation is that the obligation of first-aid treatment is established by the federal law or the special rule. Let's say there are persons obliged by the law to give first aid (the list is stated above), the one who is obliged to perform such help according to the special rule? Today such special rule is the oath of the doctor of Russia. Among the other things, in it it is told: "… Receiving a high rank of doctor and starting professional activity, I solemnly swear … to be always ready to provide medical care …". And again it is about medical care, besides, only reminding of a need to be ready to its rendering. From such formulation obviously that it is impossible to determine unambiguously whether the doctors perform a duty of delivery of health care being not in a case of work on the equal basis with those who are at the work. In the oath of doctor of Russia also nothing is told about the first-aid treatment.

The other article to which one also refer, considering subjectively settled the relations on the first-aid treatment is the art. 125 of CC RF "Leaving in danger". The compulsory provision of the approach of criminal liability under this article is availability of one of the following circumstances: 1) the guilty person had an opportunity to give help to the person and has been obliged to have about him care; 2) the guilty person himself took the person to the life-threatening and health state. The copulative between two circumstances stated in the item 1 of the specified article allows claim what for availability of this actus reus needs to be established as a possibility of assistance to the person which is in danger and to have an obligation about this person care. Respectively, if the expected guilty person could give help to the person who is in danger, but has not been encumbered with care of him, he cannot be recognized as the subject of this crime.

Besides, the subject of a crime is special and is the responsible person who has reached the age of 16 years, obliged to care for the victim or brought him in such dangerous state. Due to the decriminalization of the crime provided by the art. 265 of CC RF, notorious leaving by the driver without the aid the victim as a result of the road accident which is in the life-threatening or health state shall be qualified according to the art. 125 of CC RF.

Thus, if to provide a situation that the person has no opportunity and obligations to care for the victim or himself has left the victim in a situation, life-threatening or health, then to give the first aid under the threat of criminal liability also is not present.

Therefore, the persons obliged to give first aid under the threat of criminal liability or without that are:

1) staff of the law-enforcement bodies of the Russian Federation, employees, military personnel and workers of the public fire service, rescuers of rescue units and the rescue services;

2) transport drivers, if as a result of road accident the victim needs the first-aid treatment;

3) persons who have an opportunity to give first aid to the person about which have a care obligation;

4) the persons who have left the other person in the life-threatening and health state.

From the stated above list, there is obvious the fact that the main category of persons potentially capable to give the most high-quality first aid, namely doctors, have no obligation it to render.

The layer of public relations turns out absolutely new, today settled by the rules of law, in any way and anywhere. There are a set of questions: what legal status of persons giving the first aid and whether the diploma of medical school suffices or is necessary certain years of service and qualification? What conditions under which carrying out the actions for the first-aid treatment is considered urgent and what these actions are? What size, limits and bases of civil responsibility? What to do, and who is guilty in a case of damnification of life or to the health etc.?

We will note that today civil responsibility in the specified sphere is regulated only regarding the indemnification caused to life or health of the citizen and if the harm has been received in a case of execution of contractual or other commitments (p. 59 of the Civil code of the Russian Federation) [29]. Besides, in a number of cases the done harm is a subject to compensation.

As we have found out, the doctors have no established obligation of first-aid treatment, presented by the law, and as for the contractual commitments, if the situation has happened on the street, and the people in general see each other for the first time, respectively, it is clear that it's out of the question availability of such obligation. Respectively, the civil responsibility is settled also not up to the standard, completely relying on the law enforcement official.

As a result, it turns out that the doctor becomes the hostage of the social status as the person having special knowledge and skills. It is possible to correct such tendency, but only if to change the basic approach to the solution of this problem. Namely – to go from the practice of holding liable and to pass to the practice of voluntary execution.

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