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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.*

The wordcomposition “Good Samaritan” is very well known. The origin is from the Biblical parable about the Samaritan, who saves a rubbed, traumatized and injured traveller. This case has become an example for the first aid giving. The Samaritan himself is an embodiment of mercy and unselfishness.

There is a special legislation in the foreign countries, regulating the first aid giving. Thus, in the USA there is a code of laws (“Good Samaritan Laws”), providing that a victim, as a rule, may not file a suit for the proper first aid giving. The laws differ in different states, but the common principles are the following:

- if the victim has not been a patient of the savior, neither his child etc. and has been injured not because of the savior’s fault, the savior is not obliged to give the first aid;

-the first aid is given free. Doctors, in particular, who give the first aid in the frame of their professional responsibilities, are not protected by the law;

- if the savior acts reasonably (for his level of preparation), he is responsible for the intentionally inflicted harm, even if the incorrect savior’s actions led to the victim’s death or disability;

- starting to give the first aid, the savior has no right to leave, except the following case: when the ambulance is required, when a savior with the same or the better level of qualification is needed or when the further first aid giving is dangerous for the savior himself.

- the first aid is given just with the agreement of an injured person. Considering this, if an injured person is unconscious, delirious, is under the influence of alcohol or drugs, a reasonable assumption is enough for an injured person to agree for the first aid giving. In a case if an injured person is underage or infant, the agreement must be received from a parent or a trustee. If there is none or they are unconscious, delirious, under the influence of alcohol or drugs, the first aid may be given independently on the words of the injured person. If there is a suspicion on taunt at children, parent’s agreement for the first aid giving is not necessary.

In some states the law protects from the prosecution by law just those who passed first aid certificated courses, in the other states all the saviors are protected by the law, on conditions that they act reasonably.

However, Good Samaritan Law is not always applicable. In case of unavoidable danger, any savior’s action is not defensible according to the Court’s opinion. For instance, in case of a car accident without fire, there is no real threat to the life as a result of wound and there is no danger of the second collision. If a “Good Samaritan” decides to save the victim and as the result it causes a paralysis and another trauma, the Court may define that the “Good Samaritan Law’ is not applicable, because the victim has been exposed to the real danger and the savior’s actions were not necessary.

The savior may be brought to court in case of an injured death or untimely the first aid stop. It is written in the recommendations for the unqualified saviors that at first, ambulance should be called. Just after it, a person must give the first aid to an injured person, being near him till an ambulance arrival.

In case if the savior’s health is harmed, it will be completely compensated. However, the compensation is possible just in case if the damage is done by a person who was given the first aid or by the third person. And these exact people compensate the received harm to the savior.

While the American laws shields from liability those, who want to give the first aid, European laws criminalize the ungiven first aid. In many different countries, the law commits to give the first aid to the victims if it is not dangerous for the savior. At the present time in Europe people who do not give the first aid may face the court prosecution. Often the passers must call ambulance as minimum (for example, in France, Spain, Andorra, Japan). Based on it, the case against paparazzi, taking pictures of the Princess Diana’s death was opened in France. In Germany "Unterlassene Hilfeleistung"(failure to providecare or neglecting of the duty to provide the aid) – crime, that is why citizens must give the first aid and they are not under the jurisdiction, if the aid is given with a good intentions has done harm. Ability to give the first aid in Germany is obligatory for getting the driving license.

The given standards and rules are made in order to stimulate a person to give the first aid to an injured person without any fear and doubt.

It is needed to be remembered that in case of unreasonable risk, a person, giving the first aid may be injured himself and as a result he will not be able to give the first aid to an injured person.

In Russia the first aid before ambulance arrival is not practically given. In policemen opinion, the reason is the fear of juridical consequences in case of unintended infliction of harm to life or health of an injured person while the firs aid is being given, the law level of the population medical education, drawbacksin the regulatory base, lack of equipment.

Thus, the main problem decision mechanism is granting citizens a special status“voluntary rescuer” (including doctors), having necessary knowledge and skills, not as a job responsibilities, but based on the internal motivation for the sake of public benefit, would have an ability to give the first pre-medical aid, being sure that their rights are protected by the law exactly not from the criminal obligation point of view, but from the position of civil legal permission. It is important thatthis permission may become a real protection tool not only for the own health, but for the health of the other people.

The lack of citizens’protection, in case of the poor ending or possible appearing complications of an injured person during the first aid giving, lead to the most people without medical education are afraid of the responsibility and do not give the first aid.

It is possible to solve the problem by means of law-making, for example, to work out and accept a federal law “About legal regulation of first aid giving in the Russian Federation”. The subject of the law will be relations, connected with the first aid giving on a voluntary and free of charge basis. By this law it is need to establish the first aid giving principles; to definitepersonal legal status, for those who need the first aid giving and who voluntarily give the first aid; to fix basic protection guarantees and reasons for exemption from liability for persons who give the first aid voluntarily. Besides, cases in which a person, who needs the first aid and a person who voluntarily gives the first aid have the right for material damagecompensation are to be stipulated by this law.Compensation of moral damage is also possible in exceptional cases.

First of all, it needs to be provided that the Russian Federation citizens complying with the requirements of this law may be a voluntary rescuer. But a person, who needs the first aid (an injured person), may be any physical person.

The definition of “good rescuer” may be formed in the following way: “A voluntaryrescuer” is a citizen, having right to give the first aid on a voluntary and free of charge basis, being in a situation when there are reasonable grounds to suppose, that there is a real threat to life and health of another person, starting to give the first aid before coming the persons, who are professionally responsible for such aid giving.

The right of first aid giving means compliance of the voluntary rescuer with minimum requirements for the first aid giving (specialist’s certificate, confirming the corresponding classification orany other according permit document), or high or the average medical education.

The first aid is the aid, given by a voluntary rescuer before medical assistance in accidents, traumas, poisonings and other endangering the life and health conditions and illnesses, i.e. in case of circumstances, by which threat to a life and health of an injured person is real and required emergency measures, included in the list of first aid measures.

Following circumstances are the conditions for the first aid giving:

1) a person, giving the first aid (further on is a “voluntary rescuer”) has the right for the first aid giving;

2) an injured is in the situationthat threatens the life and health;

3) at the moment of the first aid giving, voluntary rescueris fully aware of the character of his actions;

4) there is no threat to voluntary rescuer’s life and health. In case if a voluntary rescuer is aware of the fact that there is a real threat to voluntary savior’s life and health, however in spite of that he continues to give the first aid, in case of health injure or any other traumas, he has a right for compensation, connected with the necessity of such treatment, if there were no signs of gross negligence in his actions.

And actions containing signs of gross negligence are the actionsclearly show the intention to cause harm to the health or property of another person or to the own health, as well as to the own property for selfish purposes, also the other actions, insulting religious feelings or aimed at the humiliation of honor and dignity.

First aid giving is carried in accordance with the following principles:

а) law (relationships, associatedwith the first aid provision are established and regulated by law);

b) voluntariness (decision on thefirst aid provision is made independently bythe internal intentions, caused by the drive to help to another person);

c) gratuitousness (the first aid giving does not contain any purpose of gaining income in any form);

d) rationality (in the of first aid giving the usage of reasonable means and methods is expected);

e) proportionality (taking into account risk character of the first aid. The caused harm should be less than the harm prevented);

f) timeliness (the necessity of the first aid giving is determined by the given time and place);

g) reality ((Existence of a threat to life and health);

h) integrity (it is supposed that there is no intent to cause harmin the voluntary savior’sactions, until the other is proven).

Thus, the above mentioned statements may be considered as a common part of the bill. Of course, the legal status of voluntary rescuerand an injured should not be left without consideration. Therefore, voluntaryrescuermust:

1) inform the injured about the rights for the first aid giving (if he is in consciousness);

2) receive an agreement for the first aid giving from the injured if possible (if the injured is in consciousness). If the injured is a child till 14 years old, and there are no relatives nearby, the first aid is given without any agreement, and if the relatives are nearby, their agreement is necessary;

3) starting to give the first aid, continue till the arrival of persons, who are responsible for the first aid giving.

4) stop actions, directed to the first aid giving in case if an injured, being in consciousness recalls his agreement;

5) do not exceed his qualification (but he has no rights to prescribe medicines).

6) compensate material and moral damage, if there are signs of gross negligencein his actions;

Wherein, voluntary rescuer’s rightsare the following:

1) to use allthe means and tools necessary for first aid giving;

2) to commit actions, included in the first aid event list or any other actions, directed to the first aid giving;

3) to stop the first aid giving in case of situation, dangerous to the voluntary rescuer’s life or health;

4) to demand moral damage compensation, if such a damage happened during the first aid giving, caused by an infection disease, if the injured was aware of it and had an opportunity to inform about it and did not inform. (the first aid to an injured bears risks fora rescuer, as well as a contact with any biological human liquids and particles of different substances in the air and other dangerous materials).

6) to refuse from the aid before start its giving.

An injure dmust:

1) prevent a voluntary rescuer about inflectional or any other disease, that may cause threat to life and health of the voluntary rescuer;

2) after agreement for the first aid, fully support its provision;

3) compensate to a voluntary rescuer material damage, if it occurs as a result of the first aid giving.

Thus an injured has right:

1) not to agree for the first aid giving;

2) to refuse from the first aid by his agreement recall;

3) to demand moral and material damage compensation, if there are signs of gross negligencein the actions of a voluntary savior. Of course, the most important is to establishprotection guaranty of voluntary rescuer interests. It is necessarytoprovide the immunity for the voluntary rescuer until the other is proven. Voluntary rescuerimmunity is a voluntary rescuer’s protection guaranty, including the exemption from legal liability if there are no signs of gross negligencein his action.Voluntary rescuer’s protection guaranties suppose that voluntary rescuer’s actions are fair and reasonable; if a voluntary rescueris not in the performance of official duties at the day of the first aid givinghe gets free from the work.

The reason of bringing to justice is exceeding the limits of extreme necessity.

In particular, the voluntary rescuerbecomes free from justice in the following cases:

1) the received damage is less than prevented;

2) if his actions contained reasonable risk;

3) in other cases, if there are nosigns of gross negligence in his actions.

Thus, this law in draft radically is able to fill the temporally appeared legal injustice. Certainly, its separate the norms have a debatable character; however, in general, these statements have objective, necessary and legally certified character.

The proposed legal mechanism of legal regulation is simple and clear to some extent. The main aim of the law in draft is a regulation of the relations, appearing between a person, having the right for the first aid giving and a person, who is in need of the first aid, not at the moment of the first aid giving, but the exact relations of the civil law character, as a rule, those may come out after the fact of the first aid giving, i.e. as a consequence of such aid giving.Thus, the primary task is not to oblige doctors to accomplish one more function, but endowing certain legal status to guaranty themtheir legal rights and interests protection in order for their knowledge and skills really serve for the general good and the protection of public health.

It is possible to solve the problem just by choosing a quality new approach to the problem solution, come away from an imperative method “to oblige”, transfer to dispositional “has right” and then citizens will receive a real instrument of health self-defense not only for themselves, but in relations to the other citizens.

One more important advantage of the suggested mechanism is that the project does not require any allocations from the federal or the other budgets.

The adoption of the federal law “About the legislation’s improvement necessity”, concerning the first aid giving in the Russian Federation” will not require invalidating, suspending, amendments, supplement or adoption of the federal laws. To make corresponding changes to the normative acts of the Russian Federation’s subjects the executive authorities will be required.

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