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Review article

Telemedicine as an Effective Tool for Ensuring Access to Healthcare: A Comparative Legal Analysis of the Experiences of Ukraine and the Republic of Kazakhstan

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Abstract

Introduction. Remote care cannot always account for latent data in the medical history, the patient's somatic condition, and the course of the disease, which may subsequently lead to negative consequences for the patient's health. However, the legal standard of care in telemedicine remains identical to that of an in-person consultation.

Objective. To conduct a comparative legal analysis of telemedicine regulation in Ukraine and the Republic of Kazakhstan in order to identify best practices in both countries and, if necessary, adopt best practices for implementation in each state.

Methods. Among general scientific methods, the dialectical, structural-functional, comparative, and generalization methods were primarily applied. In the course of the study, the following specialized legal methods were used, in particular: the method of legal interpretation and the formal-legal method.

Results. The regulatory framework for telemedicine in Ukraine and Kazakhstan has been analyzed, specifically highlighting: 1) in Ukraine, two terms are established: "telemedicine" and "telerehabilitation," the latter of which is a method of telemedicine. It is emphasized that it would be more appropriate either to separate telerehabilitation, just as rehabilitation is separated from medical care, or to retain only telemedicine as a tool for providing medical and/or rehabilitation care; 2) the subject composition of legal relations concerning the provision of medical and/or rehabilitation care using telemedicine was examined, and it was noted that Kazakhstan has a broader range of participants involved in medical legal relationships using telemedicine, due to the inclusion of a social worker and the patient's legal representative. In addition, it is noted that the range of rehabilitation specialists as parties to these legal relationships is significant, and such Ukrainian experience may be of interest to the Republic of Kazakhstan, given that remote services also extend to the provision of medical rehabilitation services.

Conclusion. The legal framework for organizing remote services in Kazakhstan is similar in substance to Ukraine's, though it sometimes differs in the level of detail and clarity of the provisions. Ukraine's European integration trajectory clearly

expands the country's telemedicine capabilities and facilitates access to medical care for patients beyond the borders of a single state, as evidenced by the draft law "On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of European Law in the Field of Cross-Border Provision of Medical Services and Coordination of Social Security Systems in the Part Concerning Medical Services".

Keywords: telemedicine, telerehabilitation, medical care, remote medical services, patient safety.

1. Introduction

Modern living conditions around the world are giving rise to new forms such as distance education and telemedicine. While this format offers convenience - particularly for medical services - the balance must always be struck between patient safety and the comfort of "remote" services. Remote care cannot always account for latent details in a patient's medical history, somatic condition, or the course of the disease, which may subsequently lead to negative consequences for the patient's health. However, the legal standard of care in telemedicine remains identical to that of an in-person consultation. This means that a doctor cannot justify an error by claiming that they "did not see" the patient in person. If technology does not allow for an adequate assessment, it is the doctor's legal obligation to refuse the teleconsultation and refer the patient to a clinic for an in-person consultation.

The aim of this study is to conduct a comparative legal analysis of telemedicine regulation in Ukraine and the Republic of Kazakhstan to identify best practices in both countries and, if necessary, adopt best practices for implementation in each state. Recognizing that regulatory frameworks form the foundation for the development of institutions, particularly the field of telemedicine, this study thoroughly examined internal regulations and identified gaps that require improvement to ensure respect for human rights. In addition, during the research process, a scientific investigation was conducted and a kind of substantive debate in the field of telemedicine took place.

2. Materials and Methods

The philosophical and methodological foundation is based on comparative legal, systemic, anthropological, and axiological approaches. Among the general scientific methods, the dialectical method was primarily used to clarify the legal essence of the conceptual and categorical framework in the field of telemedicine and to formulate proposals for improving regulations in this area; the structural-functional method was used to identify the forms, methods, and means of telemedicine; the comparative — for analyzing and comparing relevant legal phenomena, studying regulatory experience in Kazakhstan, and comparing it with the Ukrainian regulatory framework; and the generalization method — for summarizing the obtained results and, based on this, substantiating conclusions and proposals. The following specialized legal methods were used in the research: the method of legal interpretation— to clarify the content of relevant legal norms and the essence of evaluative concepts; and the formal-legal method—to provide a comprehensive characterization of the regulation of relations in the field of telemedicine in both countries.

The materials used include the regulatory framework of Ukraine and the Republic of Kazakhstan on the outlined research topic.

3. Results

For over ten years, telemedicine has been actively developing in Ukraine, expanding its tools and creating maximum opportunities for the accessibility of medical care to people. Naturally, the regulatory framework is also evolving. Today, telemedicine in Ukraine is regulated by Article 35-6 of the Law of Ukraine "Fundamentals of Ukrainian Legislation on Health Care" (hereinafter—the Fundamentals), as well as by Order of the Ministry of Health of Ukraine "On Approval of the Procedure for the Provision of Medical and/or

Rehabilitation Care Using Telemedicine During the Period of Martial Law in Ukraine or Certain Regions Thereof" dated September 17, 2022, No. 1695 (hereinafter referred to as the Procedure).

Paragraph 1 of Procedure No. 1695 states that it defines the mechanism for organizing and ensuring the provision of medical and/or rehabilitation care using telemedicine, which applies to healthcare facilities and individual entrepreneurs who have obtained a license to conduct business activities in the field of medical practice during the period of martial law in Ukraine or in certain regions thereof and for six months following its termination or repeal [1].

In addition, the Order of the Ministry of Health of Ukraine "On the Approval of Regulatory Documents Regarding the Application of Telemedicine in the Healthcare Sector" dated October 19, 2015, No. 681, is in effect in Ukraine; however, it does not apply during the period of martial law.

Let us turn our attention to the definition of the term "telemedicine," which, in the Fundamentals, is understood as a set of actions, technologies, and measures applied to provide patients with medical and/or rehabilitation care using telemedicine methods and tools remotely and constitutes a component of e-health [2]. It was interesting to delve into the experience of regulatory governance of telemedicine issues in the Republic of Kazakhstan, specifically to analyze the Code on Public Health and the Healthcare System dated July 7, 2020, and the Order of the Ministry of Health of the Republic of Kazakhstan dated February 1, 2021 No. KR DSM-12 "On the Approval of the Rules for the Organization, Provision, and Payment of Remote Medical Services." There is no separate regulatory definition of telemedicine, but the legal concept of "remote medical services" has been established.

According to subparagraph 8 of paragraph 2 of Chapter 1 of the Rules, approved by Order of the Ministry of Health of the Republic of Kazakhstan dated February 1, 2021 No. KR DSM-12, remote medical services encompass the provision of medical services for diagnosis, treatment, medical rehabilitation, and prevention, as well as the conduct of examinations and assessments using digital technologies, ensuring remote interaction among healthcare professionals and with individuals (their legal representatives), the identification of these individuals, and the documentation of actions [3].

Ukraine's regulatory telemedicine glossary is extensive; in addition to the key definition, it also includes definitions of such terms as: telemedicine network, telemetry, telediagnosis, and teleconsultation (televideo consultation).

In terms of infrastructure, in the Republic of Kazakhstan, "telemedicine" is provided by telemedicine networks. According to the terminology of Rules No. KR DSM-12, a telemedicine network is a network of stationary and mobile telemedicine centers equipped with medical equipment and united by information and communication technologies (ICT) into a single information space for the provision of remote medical services, training, and the exchange of medical information in electronic format (subparagraph 21 of paragraph 2 of Chapter 1 of the Rules, approved by Order of the Ministry of Health of the Republic of Kazakhstan No. KR DSM-12 dated February 1, 2021) [3]. The national telemedicine network of the Republic of Kazakhstan is also defined as a network of stationary and mobile telemedicine centers of healthcare organizations under the jurisdiction of the authorized body, united by a secure telecommunications infrastructure and equipped with hardware and software complexes (subparagraph 7 of paragraph 2 of Chapter 1 of the Act) [3].

Article 3 of the Fundamentals defines a telemedicine network as a component of e-health comprising a set of telemedicine methods and tools, healthcare providers, and organizational and technical measures for effective interaction between healthcare professionals, rehabilitation specialists, and patients [2]. The meaning of this terminological construct becomes clearer when the substantive regulatory content of its elements is explained, namely the telemedicine methods and tools. In the Fundamentals, a telemedicine method is defined as a procedure involving the use of technical and software tools and/or other components of an information (automated) system, which, through integrated interaction, ensure the provision of medical and/or rehabilitation care to patients using telemedicine. A telemedicine tool is defined in the same law as any technical and software tool and/or other component of an information (automated) system for providing patients with medical and/or rehabilitation care using telemedicine [2].

Article 35-6 of the Fundamentals stipulates that medical and/or rehabilitation care using telemedicine entails the possibility of providing medical services to a patient through telemedicine methods and tools, utilizing information, electronic communication, and software-hardware infrastructure, the means of which facilitate interaction between the patient and medical professionals and/or rehabilitation specialists. Despite the clarity of the regulations, the question often arises: is online consultation via mobile applications considered the provision of medical care using telemedicine? An analysis of national legislation provides grounds to assert that the provision of medical care via an application

constitutes the provision of medical care using telemedicine through teleconsultation (televideo consultation), telediagnosis combined with examination, through the exchange of personal data, medical information, and medical diagnostic data in electronic form between a healthcare professional and a patient. The app must be an integral part of the electronic healthcare system.

The analyzed Order of the Ministry of Health of the Republic of Kazakhstan dated February 1, 2021, No. KR DSM-12 contains a definition of mobile health, which involves the use of mobile devices, including mobile phones, handheld personal computers, medical devices, and other devices for healthcare purposes. Establishing mobile health as a type of remote service is a positive regulatory decision that provides clarity and avoids questions such as whether medical services delivered via a mobile app fall within the scope of telemedicine. Although the Order includes mobile diagnostic systems among telemedicine tools, these are used in the provision of medical care and rehabilitation within the healthcare sector.

Telemedicine methods in Ukraine include:

1) teleconsultation (televideo consultation),
2) telediagnosis along with examination,
3) telerehabilitation
4) the use of other methods not contrary to the law, through the exchange of personal data, medical information, and medical diagnostic data in electronic form.

Rules No. KR DSM-12 establish the purposes for which remote medical services are provided, specifically: consultative assistance (including with the involvement of research centers, university hospitals, and foreign clinics), determining the appropriateness of referral for an in-person consultation, practical support from secondary/tertiary-level specialists, assessment of the effectiveness of therapeutic and diagnostic measures and medical monitoring, refinement of the diagnosis and adjustment of treatment strategies, determination of the feasibility of transportation (including via medical aviation), organization of remote consultations, and provision of medical rehabilitation services (Section 3 of Chapter 1).

Ukrainian legislation, in addition to the term "telemedicine," also includes the term "telerehabilitation." Article 1 of the Law of Ukraine "On Rehabilitation in the Health Care Sector" defines telerehabilitation as a component of telemedicine that ensures the provision of rehabilitation care to patients by rehabilitation specialists through teleconsultation (televideo consultation) along with examinations, telemetry, and other forms not contrary to the law, using information and communication technologies [4].

In Ukraine today, medical and rehabilitation care are distinguished; the legislature focuses considerable attention specifically on rehabilitation care, especially under martial law. Medical care is classified by type into: 1) emergency; 2) primary; 3) specialized; 4) palliative. Based on medical indications, a patient receives rehabilitation care concurrently with the provision of medical care.

While distinguishing between medical and rehabilitation care—and excluding rehabilitation from the scope of medical care—this distinction does not, however, separate telemedicine and telerehabilitation accordingly, but rather leaves the latter as one of the methods of telemedicine. Nevertheless, it seems that it would be more appropriate either to separate telerehabilitation, just as rehabilitation has been separated from medical care, or to retain only telemedicine as a tool for providing medical and/or rehabilitation care. Article 6 of the Fundamentals stipulates that a patient has the right to: information about available medical and rehabilitation services using telemedicine and telerehabilitation (clause "l"). Under current Ukrainian regulations, it is legally incorrect to list telemedicine and telerehabilitation separately, since the latter is merely one of the methods of telemedicine. Therefore, to avoid inconsistency, the right should be formulated as the right to information about available medical and rehabilitation services using telemedicine.

Ukrainian legislation establishes various forms of providing medical and/or rehabilitation care using telemedicine:

- real-time (synchronous) consultation mode: requires the simultaneous presence of both parties and a connection between them, allowing for two-way audiovisual communication between the patient and the physician(s) and/or rehabilitation specialist(s), or between physician(s) and rehabilitation specialist(s);
- delayed (asynchronous) consultation mode: involves the transmission of medical and diagnostic data to a doctor or healthcare professional at a time convenient for them, for evaluation in an autonomous mode, and the subsequent provision of recommendations regarding diagnosis/treatment/rehabilitation;
- remote monitoring mode: for monitoring (using additional devices and sensors) the patient, specifically to obtain information about the patient's health status, as well as to monitor physiological parameters of the human body through remote measurement, collection, and transmission of such information using software and hardware systems that

enable the provision of medical and/or rehabilitation care via telemedicine.

Let us turn our attention to telemedicine as a component of the legal status of parties to medical legal relations. Under Ukrainian law, healthcare professionals are entrusted with a number of duties in the field of telemedicine:

a) to promote the protection and improvement of people's health, the prevention and treatment of diseases, and to provide timely qualified medical care, physician-provided care, and rehabilitation care, including through the use of telemedicine methods and tools (clause "a" of Article 78 of the Fundamentals);

b) provide consultative assistance to their colleagues and other healthcare workers, as well as rehabilitation specialists, including through the use of telemedicine methods and tools (clause "e" of Article 78 of the Fundamentals).

Paragraph 3 of the Procedure states that the provision of medical and/or rehabilitation care using telemedicine is carried out by decision of a physician and/or rehabilitation specialist in accordance with the requirements of Ukrainian legislation on rehabilitation [1]. From this provision, it is unclear why the legislator framed the legal basis through the lens of rehabilitation, why the provision of medical care using telemedicine must be carried out on the basis of legislation on rehabilitation rather than legislation on health care. It appears that the legislator's rehabilitation-focused approach creates an effect of exaggeration and regulatory excess and inappropriateness.

Based on an analysis of the parties involved in legal relationships regarding the provision of medical and/or rehabilitation care using telemedicine, we identify the following party configurations:

1) between a healthcare professional and/or rehabilitation specialist and a patient;

2) between healthcare professionals and/or rehabilitation specialists.

Paragraph 10 of Chapter 2 of the Rules, approved by Order of the Ministry of Health of the Republic of Kazakhstan No. KR DSM-12 dated February 1, 2021, defines the scope of participants in the process of providing remote medical services, specifically including:

1) the patient and/or their legal representative;

2) the attending physician (consultant) and/or healthcare professional(s);

3) a social worker;

4) a psychologist.

An analysis of the legal regulations of Ukraine and Kazakhstan provides grounds to assert that: 1) Kazakhstan has a broader list of entities participating in medical legal relationships involving the use of telemedicine, due to the inclusion of a social worker, which Ukraine would be well-advised to adopt. This is also due to the fact that the multidisciplinary rehabilitation team providing rehabilitation care includes a social worker under the Law of Ukraine "On Rehabilitation in the Health Care Sector"; 2) Ukrainian legislation contains an unjustified narrowing of the range of participants by excluding the patient's legal representatives, since telemedicine may also be applied to patients who, under Ukrainian law, are not competent to make decisions regarding the provision of medical care, such as legally incapacitated persons; 3) Article 10 of the Law of Ukraine "On Rehabilitation in the Health Care Sector" establishes a list of rehabilitation specialists, which includes: a) physicians of physical and rehabilitation medicine; b) physical therapists; c) occupational therapists; d) speech-language pathologists; e) prosthetists and orthotists; f) psychologists, psychotherapists; g) rehabilitation nurses; h) physical therapists' and occupational therapists' assistants. Given the above, the range of professionals in the field of telerehabilitation is as broad as possible to meet the needs of providing rehabilitation care using telemedicine. It appears that such experience may be of interest to the Republic of Kazakhstan, given that remote services are also being extended to the provision of medical rehabilitation services.

Under Ukrainian law, there are certain organizational aspects regarding the provision of medical and/or rehabilitation care using telemedicine:

- the provision of medical and/or rehabilitation care using telemedicine is carried out in compliance with requirements regarding the preservation of medical confidentiality and the confidentiality of information about the patient's health, in compliance with requirements of the laws of Ukraine "On information", "On the Protection of Personal Data", "On the Protection of Information in Information and Communication Systems", as well as in compliance with the ethical and deontological standards for the provision of medical care;
- when providing medical and/or rehabilitation care using telemedicine, healthcare facilities must ensure the preservation of medical confidentiality and the confidentiality and integrity of medical information regarding the patient's health, as well as compliance with the requirements of the Law of Ukraine "On the Protection of Personal Data" and adherence to the ethical and deontological standards of medical care;
- following a teleconsultation, the physician and/or rehabilitation specialist provides recommendations regarding treatment/rehabilitation and/or orders additional examinations as needed;

• doctors providing medical and/or rehabilitation care using telemedicine have the right to refuse further management of the patient if the patient fails to comply with medical instructions or the internal regulations of the healthcare facility, provided that this does not endanger the patient's life or public health;

• the provision of medical and/or rehabilitation care using telemedicine is carried out in accordance with the service provider's operating schedule and designated patient appointment hours, except for emergency medical care;

• for each instance of providing medical and/or rehabilitation care using telemedicine, a physician or other healthcare professional and/or rehabilitation specialist shall make a medical record of the medical examination, consultation, or treatment of the patient;

• in the event of an emergency during a telemedicine interaction, or in the event of an acute physical or mental health disorder requiring emergency or specialized medical care, the healthcare professional and/or rehabilitation specialist shall call an emergency medical team if technically feasible;

• the healthcare facility ensures the possibility of scheduling an appointment with a physician and/or rehabilitation specialist for the patient to receive medical and/or rehabilitation care via telemedicine in person, by telephone, by email, or through e-health systems and other available electronic communication means.

The legal framework for organizing remote services in Kazakhstan is similar in substance to that of Ukraine, though it sometimes differs in the level of detail and clarity of the provisions. Noteworthy, for example, is the clarity of Kazakh regulations regarding the organization of remote services in terms of ensuring the identification of the patient, as well as for healthcare professionals involved in the provision of remote medical services, which is carried out using an identification and authentication system in accordance with the requirements of the authorized body in the field of information security, utilizing built-in tools of informatization objects in accordance with the requirements of the Law of the Republic of Kazakhstan "On Personal Data and Their Protection" (Order of the Ministry of Health of the Republic of Kazakhstan dated May 12, 2021, No. KR DSM-39 "On Approval of Requirements for Electronic Information Resources for Remote Medical Services" (as amended on November 26, 2025, No. 152)).

The inherently sensitive issue of personal data processing in the healthcare sector, particularly in the application of telemedicine, is regulated differently in Ukraine and Kazakhstan.

Order of the Ministry of Health of the Republic of Kazakhstan dated April 14, 2021, No. KR DSM-30 "On the Approval of the Rules for the Collection, Processing, Storage, Protection, and Provision of Personal Medical Data by Digital Healthcare Entities" stipulates that the collection, processing, storage, and provision of personal medical data are permitted provided that their protection is ensured in accordance with the requirements of the Law "On Personal Data and Their Protection" (Section 3 of Chapter 1). These same Rules provide that consent for collection and processing may be given in writing, in the form of an electronic document, or through the "user account" on the e-government web portal (Section 6 of Chapter 2). They also establish limitations on the purpose of processing: the processing of patients' personal medical data is carried out by digital healthcare entities exclusively for the provision of medical care (Section 11 of Chapter 3) [5].

The Ukrainian experience in this regard is different, as under the Law of Ukraine "On the Protection of Personal Data," the basis for data processing is the law, not the consent of the patient or their legal representative. The basis for processing a patient's personal data (and, if necessary, the data of his or her family members or legal representatives) by healthcare institutions or individual entrepreneurs engaged in medical practice is the authorization to process personal data granted to the data controller in accordance with the law exclusively for the exercise of its powers (para. 2, part 1, Art. 11 of the Law of Ukraine "On the Protection of Personal Data"). In the law, specifically in para. 6, part 2, Art. 7 of the Law of Ukraine "On the Protection of Personal Data," the right to process personal data is defined and constitutes sufficient grounds for processing personal data. This right does not depend on whether or not the data subject has given consent.

The Fundamentals provide for the possibility of engaging foreign specialists to provide medical care and rehabilitation care using telemedicine and telerehabilitation. Legislation establishes restrictions on the categories of persons involved; therefore, medical workers and rehabilitation specialists who are citizens of the Russian Federation or the Republic of Belarus may not be engaged, provided they are registered in the information and communication system that facilitates the provision of medical and rehabilitation care using telemedicine and telerehabilitation. Information and communication systems whose rights are registered in the Russian Federation or the Republic of Belarus may not be used to provide such care.

4. Discussion

Telemedicine is often discussed by scholars who address various issues related to its provision and associated controversies. For example, author L. R. Katynska, in her article titled "The Concept of Telemedicine in Ukrainian Legislation", notes that it is advisable to include teleconsultation in the medical guarantees program as a separate package of medical services reimbursed by the National Health Service of Ukraine [6]. We do not consider such changes to be appropriate, since, in accordance with Article 2 of the Law of Ukraine "On State Financial Guarantees for Medical Care for the Population", the program of state guarantees for medical care for the population (the medical guarantees program) is a program that defines the list and scope of medical services, medical devices, and pharmaceuticals, the full payment of which to patients is guaranteed by the state at the expense of the State Budget of Ukraine in accordance with the tariff, for prevention, diagnosis, treatment, and rehabilitation in connection with diseases, injuries, poisonings, and pathological conditions, as well as in connection with pregnancy and childbirth [7]. As of 2026, Ukraine has 55 programs covered by public funds. For example, in the "Surgical Procedures for Adults and Children in Inpatient Settings" package, among the scope of medical services that the provider undertakes to provide under the contract in accordance with the patient's medical needs (specification), the provision of medical care via telemedicine is specified (teleconsultation/televideo consultation in real-time or delayed mode, telediagnostics, remote monitoring, and telemetry) [8]. Thus, teleconsultation is covered under the relevant medical guarantee program.

Also noteworthy is the discussion of telemedicine within the medical community; for example, the scientific article "Telemedicine as a Tool for Optimizing and Improving Methods of Providing Medical Care to the Population" has been analyzed. In conclusion, the authors note that no machine can replace a doctor who works out of a sense of calling and fights for every patient; however, "smart" technologies facilitate the work of medical staff, freeing them from "paperwork" that takes up so much time—time that is sometimes lacking for saving lives and health [9]. This is a controversial conclusion, since telemedicine has a legally defined composition of participants, and medical professionals are always an essential component of it; therefore, there can be no question of replacing a medical professional with a machine. It should also be remembered that the regulator stipulates that for every instance of providing medical and/or rehabilitation care using telemedicine, a doctor or other healthcare professional, or a rehabilitation specialist, must make a medical record of the medical examination, consultation, or treatment; therefore, there can be no exemption from "paperwork".

In her study "Telemedicine: Advantages and Disadvantages in the Legal Field", author S. B. Buletsa asserts that doctors are required to obtain the patient's consent (in our opinion, it must be in writing) before using telemedicine services. Upon obtaining the patient's consent, doctors must use the new clinical protocol for medical care; without consent, they must use the standardized one [10]. It is impossible to agree with the author's positions for the following reasons: 1) of course, in Ukraine, consent for medical care is mandatory, although Article 284 of the Civil Code of Ukraine and Article 43 of the Fundamentals do not specify a mandatory written form. However, the details of the laws are specified in subordinate acts; therefore, we believe that Form No. 003-6/o, established in Order No. 110 of the Ministry of Health of Ukraine dated February 14, 2012, "Informed Voluntary Consent of the Patient for Diagnosis, Treatment, Surgery, and Anesthesia, and for the Presence or Participation of Educational Personnel" is sufficient to establish that in Ukraine, consent must be in writing. Incidentally, this applies regardless of whether medical care is provided using telemedicine or without such methods; 2) Ukrainian legislation does not permit the provision of medical care without the person's consent, except in cases where there are signs of an immediate threat to the patient's life and it is impossible, for objective reasons, to obtain consent for such intervention from the patient or their legal representatives, whether under new or unified protocols; 3) When applying a new clinical protocol, a different form of consent must be used, namely the form of the patient's informed consent for diagnosis, the provision of medical and/or rehabilitation care in accordance with the new clinical protocol, as provided for by Order of the Ministry of Health of Ukraine No. 751 dated September 28, 2012.

5. Conclusion

Several academic discussions held within the scope of this study once again underscore the relevance of the topic for both the legal and medical communities, and also provide grounds for asserting that the discussions will continue, as will the transformations in this field. Therefore, scholars and practitioners must keep abreast of changes and seek best practices for regulating and implementing these innovations in practice. Studying Kazakhstan's regulatory experience regarding the regulation of remote services will be useful for post-war changes in the field of telemedicine in Ukraine. The legal framework for organizing remote services in Kazakhstan is similar in substance to Ukraine's, though it sometimes differs in the level of detail and clarity of the provisions. This is undoubtedly linked to the fact that telemedicine in Ukraine is currently regulated through the lens of martial law. Ukraine's European integration trajectory clearly expands the country's telemedicine capabilities and facilitates access to medical care for patients beyond the borders of a single state, as evidenced by the draft law "On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of European Law in the Field of Cross-Border Provision of Medical Services and Coordination of Social Security Systems in the Part Concerning Medical Services".

Conflict of Interest: The authors declare no conflicts of interest.

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Телемедицина медициналық көмектің қолжетімділігінің тиімді құралы ретінде: Украина мен Қазақстан Республикасының тәжірибесін салыстырмалы құқықтық талдау

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Түйіндеме

Кіріспе. Қазіргі жаһандық өмір сүру жағдайлары қашықтықтан оқыту және телемедицина сияқты жаңа қызмет түрлерінің пайда болуына ықпал етіп отыр. Қашықтан кеңес беру әрқашан науқастың медициналық тарихындағы жасырын мәліметтерді, оның физикалық жағдайының ерекшеліктерін немесе ауруының барысын ескере алмайды, бұл кейіннен науқастың денсаулығына кері әсер етуі мүмкін. Алайда телемедицинадағы құқықтық күтім стандарты жеке қабылдаудағы кеңес берумен бірдей қалады. Бұл дәрігердің науқасты жеке «көрмегенін» сылтау етіп қателігін ақтауға болмайтынын білдіреді.

Зерттеудің мақсаты. Украина мен Қазақстанда телемедицинаны реттеуді салыстырмалы құқықтық талдау жүргізу, екі елдегі үздік тәжірибелерді анықтау және қажет болған жағдайда әрбір мемлекетте енгізу үшін үздік тәжірибелерді қабылдау.

Әдістер. Философиялық және методологиялық негіз салыстырмалы құқықтық, жүйелік, антропологиялық және аксиологиялық тәсілдерге негізделген. Жалпы ғылыми әдістердің ішінде диалектикалық, құрылымдық-функционалдық, салыстырмалы және жалпылау әдістері басты түрде қолданылды. Зерттеу барысында келесі арнайы құқықтық әдістер қолданылды: Құқықты түсіндіру әдісі және формальды-құқықтық әдіс.

Нәтижелер. Украина мен Қазақстандағы телемедицинаны реттейтін нормативтік-құқықтық база талданды, атап айтқанда: 1) Украинада соғыс жағдайы кезеңінде Украина Денсаулық сақтау министрлігінің «Украинада немесе оның кейбір аймақтарында соғыс жағдайы кезеңінде телемедицинаны пайдалана отырып медициналық және/немесе реабилитациялық көмек көрсету тәртібін бекіту туралы» бұйрығы күшінде, және демек, телемедицина механизмдері әскери заң аясында реттеледі; 2) Украинада «телемедицина» және «телереабилитация» деген екі термин бекітілген, екіншісі – телемедицина әдісі. Медициналық және/немесе реабилитациялық көмек көрсету кезінде телемедицина құралын қолданудың орнына реабилитацияны медициналық көмектен бөлу немесе тек телемедицинаны қолдану әлдеқайда орынды болатыны ерекше атап көрсетілген; 3) медициналық және/ немесе телемедицинаны пайдалана отырып көрсетілетін медициналық және/немесе реабилитациялық күтімді қамтамасыз ету; сондай-ақ Қазақстанда телемедицина арқылы медициналық қызмет көрсетуге қатысты құқықтық қатынастарға әлеуметтік қызметкер мен науқастың заңды өкілі де кіретіндіктен, қатысушылар тізімі әлдеқайда кең екені атап өтілді, оны Украинаға енгізу пайдалы болар еді. Сонымен қатар, осы құқықтық қатынастарға қатысушылар ретінде реабилитация мамандарының ауқымының кең екені атап көрсетіледі, және қашықтан көрсетілетін қызметтер медициналық реабилитация қызметтерін де қамтитындықтан, мұндай украин тәжірибесі ҚР үшін қызықты болуы мүмкін.

Қорытынды. Осы зерттеу аясында өткізілген академиялық талқылаулар тақырыптың құқық және медицина салаларындағы қауымдастықтар үшін өзектілігін тағы да көрсетіп, пікірталастың және осы саладағы өзгерістердің жалғасатынын негіздейді. Сондықтан ғалымдар мен практик мамандар жаңалықтардан хабардар болып, жаңа нормаларды реттеу мен практикалық енгізудің үздік тәжірибелерін іздеуі тиіс. Қазақстандағы қашықтан көрсетілетін қызметтерді реттеу тәжірибесін зерттеу Украинадағы телемедицина саласындағы соғыстан кейінгі өзгерістер үшін пайдалы болады. Қазақстандағы қашықтан қызмет көрсетуді ұйымдастырудың құқықтық негізі Украинаның құқықтық негізімен мазмұн жағынан ұқсас, алайда кейбір нормалардың егжей-тегжейлілігі мен айқындылығы бойынша айырмашылықтар бар. Бұл, сөзсіз, Украинадағы телемедицина қазіргі уақытта әскери заңнама шеңберінде реттелетінімен байланысты. Украинаның Еуропалық интеграция бағыты айқын түрде елдің телемедицина мүмкіндіктерін кеңейтіп, бір мемлекет шегінен тыс пациенттерге медициналық қызметке қол жеткізуді жеңілдетіп отыр, бұл туралы заң жобасында расталған. «Шекарааралық медициналық қызметтерді көрсету және медициналық қызметтерге қатысты әлеуметтік қамсыздандыру

жүйелерін үйлестіру саласында Еуропалық құқықты іске асыруға байланысты Украинаның кейбір заңнамалық актілеріне түзетулер енгізу туралы».

Түйін сөздер: телемедицина, телереабилитация, медициналық көмек, қашықтан медициналық қызметтер, пациенттің қауіпсіздігі.

Телемедицина як ефективний інструмент доступності медичної допомоги: Порівняльно-правовий аналіз досвіду України та Республіки Казахстан

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Резюме

Вступ. Дистанційність не завжди може передбачити латентні дані анамнезу, особливості соматики пацієнта та перебігу захворювання, що згодом може породити негативні наслідки для стану здоров'я хворого. Проте юридичний стандарт допомоги в телемедицині залишається ідентичним до очного прийому.

Мета. Проведення порівняльно-правового аналізу регулювання телемедицини в Україні та Республіці Казахстан, аби окреслити кращі практики в обох країнах і за необхідності запозичити кращий досвід для імплементації у кожній з держав.

Методи. Серед загальнонаукових методів, насамперед застосовувались діалектичний, структурно-функціональний, порівняльний, метод узагальнення. У процесі дослідження використовувались, зокрема такі спеціально-юридичні методи: метод тлумачення права, формально-юридичний.

Результати. Проаналізовано нормативне регулювання телемедицини в Україні та Казахстані, зокрема висвітлено: 1) в Україні закріплено два терміни «телемедицина» і «телереабілітація», останній з яких є методом телемедицини. Наголошено, що доцільніше було б або сепарувати телереабілітацію, як від'єднано реабілітацію від медичної допомоги, або залишити лише телемедицину як інструмент надання медичної та/або реабілітаційної допомоги; 2) досліджено суб'єктний склад правовідносин із надання медичної та/або реабілітаційної допомоги із застосуванням телемедицини та зазначено, що в Казахстані більш ширший перелік суб'єктів, які беруть участь у медичних правовідносинах із застосуванням телемедицини, у зв'язку з включенням соціального працівника, законного представника пацієнта. Окрім того, вказано, що коло фахівців з реабілітації як суб'єктів окреслених відносин є значним і такий український досвід може бути цікавим для Республіки Казахстан з огляду на те, що дистанційні послуги поширюються і на надання послуг медичної реабілітації.

Висновки. Правничий регламент організації дистанційних послуг у Казахстані схожий за нормативним наповненням з українським, що різниться часом в деталізації і чіткості викладу норм. Євроінтеграційний вектор України однозначно розширює телемедичні можливості України і слугує доступності медичної допомоги для пацієнтів не в межах однієї держави, що підтверджується новельним законопроєктом «Про внесення змін до деяких законодавчих актів України щодо імплементації норм європейського права у сфері транскордонного надання медичних послуг та координації систем соціального забезпечення у частині, що стосуються медичних послуг».

Ключові слова: телемедицина, телереабілітація, медична допомога, дистанційні медичні послуги, безпека пацієнта.