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ARTÍCULO DE INVESTIGACIÓN

**Desarrollo de mecanismos jurídicos internacionales para
proteger los derechos sanitarios de las personas mayores ***
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Resumen

El artículo examina la experiencia internacional en materia de protección jurídica de la salud de las personas mayores. El problema del mantenimiento y la preservación de la salud de las personas mayores, que representan una parte creciente de la población mundial, es cada vez más urgente, pero parece insuficientemente investigado en cuanto a las características de la regulación jurídica. El propósito del trabajo presentado es encontrar soluciones jurídicas exitosas a los problemas de protección de la salud de las personas mayores y crear un marco integral de regulación jurídica de la protección de sus derechos. Se estudia la legislación internacional que garantiza la protección de la salud de esta categoría de personas y se demuestra el papel y la importancia de las normas jurídicas internacionales pertinentes. Se subraya el carácter declarativo y ambiguo de la actual regulación normativa internacional y se sugieren vías para su mejora. En particular, los autores concluyen que, con el desarrollo de los mecanismos de desarrollo sostenible, habrá más mecanismos de ámbito internacional que regulen la protección de los derechos de las personas mayores. Esto garantizará la armonización de las legislaciones nacionales y la adopción de normas universales, próximas a las existentes en los países avanzados en este ámbito, junto con un control supranacional. El desarrollo de mecanismos internacionales debería orientarse especialmente hacia la posibilidad de exigir responsabilidades a los Estados infractores a través de instituciones socio-jurídicas especializadas y mecanismos reguladores.

Palabras clave: envejecimiento, ancianos, salud, normativa legal, protección.

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Abstract

Development of international legal mechanisms to protect older people's health rights

The article examines the international experience of the legal protection of the health of the elderly. The problem of maintaining and preserving the health of older persons, who represent a growing part of the world's population, is becoming increasingly urgent but appears insufficiently researched in terms of the features of legal regulation. The purpose of the presented work is to find successful legal solutions on the problems of protecting the health of the elderly and to create a comprehensive framework of legal regulation of the protection of their rights. International legislation guaranteeing the protection of the health of this category of persons is studied, and the role and importance of relevant international legal regulations are demonstrated. The declarative and ambiguous nature of current international normative regulation is emphasized and the ways of its improvement are suggested. In particular, the authors conclude that with the development of sustainable development mechanisms, there will be more international-level mechanisms to regulate the protection of the rights of older people. This will ensure the harmonization of national legislation and the adoption of universal standards, close to those available in advanced countries in this field, along with supranational control. The development of international mechanisms should be particularly directed toward the possibility of holding violating states accountable through specialized socio-legal institutions and regulatory mechanisms.

Key words: aging, elderly, health, legal regulation, protection.

1. Introduction

In today's world, authorities in different countries acknowledge the increasing relevance of the multifaceted problem of population aging, confirmed by numerous scientific studies (Maia & Correia, 2022; Postol & Shchadilova, 2022; Sapfirova et al., 2022). Due to objective processes of social development, there is a rise in life expectancy and, accordingly, in the proportion of the elderly population. As predicted in the Report of the UN Secretary-General of July 22, 2011, by 2050 the elderly population, which now refers to all people over the age of 60, will become the most numerous categories, exceeding the population of children, and the number of 80-year-old people will exceed 396 million people (United Nations Secretary General, 2011). Therefore, it is only natural that the world community will face serious challenges in the foreseeable future to address the many problems that come with life in old age.

International recognition of the problem of aging, and with it the need to identify older people as a special category in need of legal protection, begins in the 1980s. The Vienna International Plan of Action on Aging (adopted in Vienna on August 5, 1982) (World Assembly on Aging, 1982) identifies health, nutrition, housing, family relationships, etc. as vulnerabilities of senior citizens. The aforementioned Report of the UN Secretary-General also points out the problems that affect the lives of older people. Poverty and inadequate living conditions, age-related discrimination, violence and abuse (usually by caregivers), and the lack of special measures, structures, and services are cited as major concerns. Most of the problems named in the report, as well as many other problems, are directly or indirectly related to the natural deterioration of health in old age, which raises the need to maintain and preserve health, including by legal means (Gavrilov et al., 2022). Here the statement of A.S. Abashidze and V.A. Malichenko (2014) that old age and related health problems, up to and including disability, significantly elevate the risk of human rights violations appears to be fair.

Research interest in the legal regulation of relations associated with the problems of older persons as a special category is very strong. Researchers are mainly drawn to such legal areas as the right to protection against age discrimination (Arrieta-López, 2022), the right to social security for the elderly (Aleksandrova et al., 2022), and international regulation of the rights of the elderly as a special category of the population in a complex (Caro et al., 2023). The right to health as an object of protection is studied only fragmentarily (Zenin et al., 2022). There are not many studies on foreign experience in the organization and functioning of specialized healthcare systems for the elderly in the public domain. In this field, we should mention the works of N.S. Grigoreva (2007). For clarity, the distribution of studies on the legal protection of the elderly is summarized below in the form of a table.

Table 1
Research on the legal protection of the elderly

Research topic	Authors	Paper title
Discrimination, abuse	A.V. Polianskaia, R.A. Melnikov (2021)	Eidzhizm kak problema sovremennogo obshchestva [Ageism as a problem of modern society]
	L.E. Pishchikova (2018)	Viktimologicheskie aspekty gerontopsikhiatrii: preduprezhdenie zhestokogo obrashcheniia i nasiliia [Victimological aspects of gerontopsychiatry: prevention of abuse and violence]
Social protection	E.N. Kasarkina and Iu.A. Tuzova (2013)	Sistema sotsialnoi zashchity pozhilykh liudei v Rossii [Social protection system for older persons in Russia]
	L.V. Bezzubko (2015)	Sotsialnaia zashchita pensionerov v usloviakh sotsialnogo gosudarstva [Social

		protection of pensioners in the conditions of the social state]
International regulation of the rights of the elderly	A.M. Drozdova (2019)	Pravovye printsipy i ikh realizatsiia v sfere zhizni pozhilykh liudei v mire i Rossii [Legal principles and their implementation in the life of the elderly in Russia and the world]
	L.D. Shamrin (2016)	Mezhdunarodno-pravovoe regulirovanie zashchity prav lits pozhilogo vozrasta. [International legal regulation of protection for the rights of the elderly]
	A.S. Abashidze and V.A. Malichenko (2014)	Mezhdunarodno-pravovye osnovy zashchity prav pozhilykh liudei [International legal framework for the protection of the rights of the elderly]

Source: Authors development

The fact that medical and other aspects of the legal protection of health care for the elderly are far less reflected in the available research than others make the subject of this study especially topical.

The purpose of the present study is to develop solutions to the health problems of the elderly in the international legal field.

The research hypothesis is defined as follows: to solve the problems of the elderly in different states, it is first necessary to create a special international act regulating the basic rights of this age group.

2. Methods

The presented study used systematic and comprehensive approaches, which provided the application of general and special methods of scientific analysis. The comparative legal method allowed us to present various approaches to the legal regulation of health care for the elderly used in international practice and to compare the Russian experience with them.

To study the literary sources related to the research problem, the method of document analysis was employed (Pachori, 2023). Data collection was performed based on the following information materials: normative legal acts, published scientific works presenting the opinions of scientists on various aspects of the life of the elderly, official statistics, and other information on the topic available on the Internet. Following the proposed research question, the method of expert survey (Bondarenko et al., 2022) about the possibility of improving the situation with health care for the elderly by legal means was chosen as a specialized research method.

For the expert survey, we contacted 30 experts with experience in the organization of special medical care for elderly people in need, as well as knowledge of its specifics. These were the heads of departments of ministries and departments of social protection and health in three regions of central Russia who agreed to answer the prepared questions on the problems of health care for persons of this age group. The criteria for the recruitment of experts included the number of scientific studies on the topic, published in at least three journals included in the Scopus or Web of Science citation databases. The experts were e-mailed questions about the effectiveness of legal mechanisms regulating the rights of the elderly with options for answers. Question 1: "How effective are the legal means of protection for the health of older persons?". Question 2: "What level of legal acts should regulate health care for older persons to be most effective?". The respondents were notified that their replies would be used in this study in a summarized form.

3. Results

The ongoing demographic changes are accompanied by a significant deterioration in the health of the population, especially its elderly segment. About half of the deaths related to non-communicable diseases occur among people over the age of 70. Higher rates of disability are observed among senior citizens. The WHO (2004) reports that an estimated 46% of people over 60 years of age have a disability. According to the case study on the right of older persons to health, the main structural problems in the organization of medical and social care for the elderly are a lack of trained personnel, overcrowding of medical institutions, lack of prevention programs, and the high cost of medical services and medicines (Human Rights Council, 2011).

The right to the highest attainable standard of health is one of the fundamental human rights legally enshrined at the international (universal and regional) and national levels. UN bodies that specialize in various human rights and define population categories especially vulnerable in the current conditions of development of human civilization attribute the elderly to these categories at risk, noting that older persons require special treatment due to their health condition. The UN Committee on Economic, Social and Cultural Rights (CESCR) (2000) in General Comment No. 14 formulates three main legal obligations of states to observe the right to health, which also applies to older persons – respect, protection, and realization of the right to health. It is stipulated that aside from general health rights, senior citizens need special rights relating to the biological features of the aging organism. These specifics are to some extent accounted for in international legal norms and to differing degrees in national legislation. First, let us examine the basic international legal acts.

Apart from the aforementioned Vienna International Plan of Action on Aging, an important document in the area of health rights of older persons is the 18 Principles for Older Persons adopted by the UN General Assembly in Resolution 46/91 on December 16, 1991 (United Nations General Assembly, 1991). The Principles are adopted under the motto "Make the full life of the elderly people". At least two of these principles directly

concern the right to health. These are the principle of care, which in this case refers to the right of older people to decent treatment in medical facilities, and the principle of independence, which provides the accessibility of all social benefits, including medical services, to seniors. With all their undeniable merits, the principles do not constitute a document that fully protects the rights of the elderly as they are not legally binding. In addition, the principles are not self-executing norms (cannot be applied directly) because there is no mechanism of control over their observation by states (Shamrin, 2016). For these Principles to be adopted in national legislation, they need to be clarified and their content unraveled, which is borne with the possibility of variant readings of particular Principles in individual states.

Among international documents at the regional level, of note is the Inter-American Convention on protecting the human rights of older persons adopted by the Organization of American States (2015). This Convention is the first international treaty entirely devoted to the guarantees of older persons' rights. The range of rights guaranteed by the Convention appears to be complete and fulfills the goals of the Convention. Concerning our research topic, we should note that particular attention this document is given to the rights of older citizens in health care, specifically to the need to guarantee the rights of the elderly to express free and conscious consent to any medical treatment (Shamrin, 2016). In the general form, the need to ensure this right of seniors is stated in the above-considered UN Principles on older persons. However, the value of the guarantees of these rights by the Convention lies in its legally binding force and the possibility of controlling its observation by participating countries.

The right of senior citizens to health protection is also enshrined at the national level in state laws. One of the first countries to develop legislative norms to protect the rights of the elderly, including the protection of health, was the United States. In 1965, the Older Americans Act was adopted, which affirms the rights of the elderly to physical and mental health at retirement age (US Government, 2006). Based on this document, the Office on Aging was established within the structure of the U.S. Department of Health. Under the direction of this office, a network of specialized medical geriatric facilities was established and continues to operate today, with the direct goal of providing inpatient and outpatient prophylactic treatment exclusively for the elderly. The said law provides for various sources of funding for these institutions, including full or partial state funding, sponsorship funds, and commercial basis. For persons wishing to take advantage of commercial treatment services, the law provides for various subsidies and benefits financed by the state. For persons residing in nursing homes, specialized boarding houses, etc., the necessary medical services are provided at the place of residence, and payment for them is made by way of deduction from pension with provision of subsidies. Paid and subsidized health care thus provides high-quality services at a relatively low cost to the elderly.

In Japan, the Health and Medical Services Act for the Aged, in effect since 1983, governs the comprehensive and integrated implementation of health care measures, ranging from disease prevention to medical care and subspecialty care and specialized education. The provisions of the Act provide for the possibility of changes in care for the

elderly in accordance with changes in disease patterns, the growing number of elderly citizens in the country, and the establishment of a deduction for medical expenses for seniors that is fair to all Japanese citizens (Grigoreva, 2007). This law also specified necessary changes in medical training, including the provision of special medical training for families with elderly members in need of permanent and long-term care. Japan also attaches great importance to preventive measures: Japanese citizens who reach the age of 40 are offered free participation in specialized medical programs to prevent possible future onset of conditions requiring long-term medical care (Grigoreva, 2007). It is safe to say that as a result of the carefully considered and consistently implemented health policy of the Japanese authorities, the country has long been an example of high life expectancy, as well as the age-appropriate working ability of its citizens (Oishi, 2007).

There are examples of countries where, even in the absence of specialized legislation at the national level, the health care system is well organized. In Great Britain, where the right of older people to health care is not recognized at the level of supreme legislative resolutions, public policy is directed at the realization of this right, and the government annually allocates substantial funds for this purpose. The function of the organization of health care is entrusted to municipalities, which, participating in the distribution of these funds, attract commercial structures for this purpose and encourage charity and other non-profit activities in this sphere (Age UK, n.d.). Today, both public health authorities and specialized bodies are actively involved in supporting the health of senior citizens. In practice, this is realized as follows. Specially trained medical personnel regularly visit older persons at home, offer and provide pre-hospital care, and give advice to them and their relatives regarding the prevention of disease, diet, care, etc. Healthcare institutions often provide a variety of sanitary and hygiene items for elderly citizens. A fairly common type of service is the home duty of day or night nurses, who provide significant assistance to relatives in caring for seniors or people with disabilities. Seniors who cannot receive the necessary medical care at home may be referred for treatment and rehabilitation to specialized long-term care hospitals, private hospitals, or residential homes. Among these, there are about 200 geriatric hospitals tasked with providing not only specialized therapeutic and preventive care but also medical and domestic services for seriously ill elderly people at home while their relatives are on leave. Many geriatric hospitals have day clinics, the main purpose of which is to provide medical treatment and social assistance to the elderly after discharge from hospitals.

Regrettably, the aforementioned level of health care for the elderly is not yet available to the majority of older people in Russia. For those elderly people who cannot receive medical care at home in Russia, there is a network of nursing homes and similar institutions, of which 90% are publicly funded and the rest are commercial. Up to 75% of a Russian pensioner's pension is deducted for accommodation, treatment, and health maintenance activities (Victoria. A network of boarding houses for the elderly, 2020). Given the current size of the average pension of Russians, we cannot speak of an acceptable range and quality of services rendered in the above institutions in general, including special medical services.

Medical services for elderly people who do not permanently reside in facilities for seniors are provided based on Russian legislation on health care, that is, on a general basis. Before 2012, such services were provided at home (medical visits and other services noted above) based on Federal Law No. 122-FZ of August 2, 1995, On Social Services for the Elderly and Disabled (State Duma of the Federal Assembly of the Russian Federation, 1995). Today, the organization of specialized, including geriatric, medical care is regulated by several orders of the Ministry of Health of the Russian Federation. Consequently, the legislative level of such assistance has been significantly downgraded since 2012. Even though in 2016 the Russian Federation approved the "Action strategy on behalf of senior citizens" (Government of the Russian Federation, 2016), the directions proclaimed in it for implementing the right of senior citizens to health care are declarative and poorly reflected in legislative norms on social security and health care. The specialization of medical care and services for the elderly in Russia's free health care system is not organized, unlike, for example, the pediatric area of medicine. Geriatric hospitals and departments in the general healthcare system function in less than half of the constituent entities of the Russian Federation (Med Advisor, n.d.). Only a few dozen doctors and several hundred other geriatric medical personnel are trained annually in medical education institutions. The geographic size of Russia and the number of its population, as well as the growing proportion of elderly people, all point to the insufficiency of legal protection for the health of seniors in the Russian Federation. Table 2 presents the percentage distribution of experts' opinions on the problem in question.

Table 2

Effectiveness of the application of legal means for the protection of older persons' health in the Russian Federation

Question	Response		
How effective are the legal means of protection for the health of older persons?	Quite effective		Ineffective
	90%		10%
What level of legal acts should regulate health care for older persons to be most effective?	Local government acts	Regional and federal acts	International legal acts
	5%	30%	65%

Source: Authors development

Based on the survey results, the conclusion is that most experts see a legal solution to the health problems of older persons primarily at the international level.

The table below presents the results of the comparative analysis of the features of the realization of older persons' right to health care.

Table 3
Results of comparative analysis of the legal regulation of health care and organization of medical care for the elderly

Country	Presence of specialized legal regulation of health care for the elderly	Specifics of the organization of medical care for the elderly
USA	At the level of state law	A network of special geriatric clinics and centers, at-home medical care, a wide range and accessibility of geriatric services
Japan	At the level of state law	A comprehensive, specialized system of medical care, organized education and training, and preventive measures
Great Britain	At the level of local government acts	A network of geriatric hospitals, at-home care, with broad participation of charitable organizations
Russia	At the level of departmental acts of federal ministries	No specialization in medical care, care is provided on a general basis, geriatric care is available in a limited number of regions

Source: Authors development

4. Discussion

Many researchers (Abashidze & Malichenko, 2014; Bezzubko, 2015; Drozdova, 2019) believe that today neither international legislation nor national legal mechanisms to protect the rights of older people meet the contemporary needs of this population group. For many reasons, primarily economic, only a few states can develop and implement the very costly national policies and programs to protect the rights of older people in accordance with the principles of equality, ensuring adequate access to health care for older people. In addition, the rights of older persons are often overlooked in the development of national legislation (Kuzubova et al., 2022). With regard to health care, many national systems lack specialized geriatric and gerontological care, which hampers the relevance of the health care provided to the specific needs of older people. States sometimes fail to pay adequate attention to increasing the number of geriatric specialists and improving the training of various specialists in this field to provide effective care for the elderly population with age-associated conditions (Abashidze & Malichenko, 2014).

L.D. Shamrin (2016) rightfully argues that the above-considered acts formed under the auspices of global human rights organizations, generally fail to enshrine any subjective rights of the elderly, identifying only the problems that exist and the measures by which they can be overcome. While agreeing with the above views of the authors on the whole, we should note that in the absence of responsibility of a particular state that

violates the rights of the elderly, there can be no fully-fledged protection of this right (Van Tien et al., 2021). Such responsibility, as well as the state's obligation to secure the right of the elderly to health care in accordance with internationally recognized standards, the standards themselves must be established at the international level by an act that all states concerned can ratify and accede to. Such an instrument could be a new world convention, similar to other conventions on the protection of the rights of different population groups, including age groups (e.g., Convention on the Rights of the Child, 1989) (Ferreira et al., 2022). Virtually all of the necessary legal developments needed to prepare such a convention are contained in the legal acts discussed above. All that remains to be done is to combine all of the existing works, identify and eliminate all the ambiguities in them, and prepare additional documents, if necessary. The developers of the convention should also design mechanisms to monitor and prosecute violations of the rights of older people in individual states that ratify the convention.

5. Conclusion

The research presented in this paper suggests that the state of protection for the right of elderly people to health around the world is inconsistent with the ongoing demographic changes toward an increasing proportion of this category of persons in the world's population. We find that the national characteristics and level of implementation of this right vary significantly from country to country due to differing economic, legal, historical, cultural, and many other prerequisites. The use of legal instruments, primarily at the international (global) level, can substantially remedy the situation. The international level of regulation will ensure the harmonization of national legislation, the adoption of uniform standards close to those in advanced countries in the sphere in question, supranational control, and the ability to hold offending states accountable in appropriate supranational bodies. Thus, the research question about the need to proceed to a higher level of international regulation to protect the health rights of the elderly appears proven.

Due to the limited scope of this study, it has only briefly touched on such important aspects as the development of geriatric and gerontological medical care in various countries and the training of medical personnel in these areas. These aspects deserve detailed consideration in further research.

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