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EUROPEAN MEDICAL LAW DEVELOPMENT ON MIDDLE AGES AND RENAISSANCE

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Article proposed discusses the historical development of medically-social relations and medical law in European states of the Middle Ages and Renaissance. The purpose of present survey is a retrospective review of public relations, scientific doctrine and legal acts that led to the development of medical law during the periods of the Middle Ages and the Renaissance; identification of their patterns, features and dialectical connections; isolation of relations in the field of medicine, which, due to their social significance, need and needed legal regulation, in particular, due to labour law; development of author's conclusions and outlining perspective directions of further scientific investigation. Research methodology is based on general scientific methods such as analysis, synthesis, induction, deduction, analogy, and empirical methods. Research materials are rare publications and modern sources for the period from 1872 to 2022. In particular, it was concluded that these relations were regulated by the norms of labour, criminal and administrative law, which created a medically-legal triad in this area. It was established that in the Middle Ages and Renaissance, the medically-legal paradox also remained relevant, since labor law as an independent industry is not recognized as a scientific doctrine for that period of time. This leads to certain doubts about the correctness of approaches in determining the time of acquiring independent status by the branch of labour law.

It is concluded that medieval medical law in Europe was based on the principles of workshop distribution, classes, and its rapid development in the Renaissance was mediated by the complexity of industrial production, emergence of manufactures and the new distribution of labor.

Key words: Europe, medical law, Middle Ages, Renaissance, medically-legal triad, medically-legal paradox, labour law.

Колосов Ілля Вадимович. Розвиток європейського медичного права у епоху Середньовіччя та Відродження

У пропонованій статті обговорено проблеми історичного розвитку медико-суспільних відносин та норм медичного права у європейських державах епохи Середньовіччя та Відродження. Мета цієї роботи полягає у ретроспективному огляді суспільних відносин, наукової доктрини та правових актів, що зумовили розвиток медичного права за часів епох Середньовіччя та Ренесансу; виявлення їх закономірностей, особливостей та діалектичних зв'язків; виокремлення відносин у галузі медицини, котрі в силу своєї суспільної значущості потребували та потребують правового урегулювання, зокрема і за рахунок норм трудового права; напрацювання авторських висновків та окреслення перспективних напрямків подальшої наукової розвідки. Методологія дослідження базується на загальних наукових методах, таких як аналіз, синтез, індукція, дедукція, аналогія, і емпіричних методах. Матеріали дослідження складають рідкісні видання та сучасні джерела за період з 1872 по 2022 роки. Зокрема, зроблено висновок, що згадані відносини були врегульовані нормами трудового, кримінального та адміністративного права, що створювало собою медико-правову тріаду у означеній сфері. Встановлено, що у епоху Середньовіччя та Відродження зберігав актуальність також медико-правовий парадокс, оскільки трудове право як самостійна галузь не визнається науковою доктриною для того проміжку часу. Наведене призводить до певних сумнівів у аксіоматиці формаційного критерію суспільного розвитку та правильності підходів у визначенні часу набуття самостійного статусу галуззю трудового права.

Зроблено висновок, що середньовічне медичне право у Європі базувалось на принципах цехового розподілу, класовості, а його бурхливий розвиток у епоху Відродження був опосередкований ускладненням промислового виробництва, появою мануфактур та новим розподілом праці.

Ключові слова: Європа, медичне право, Середньовіччя, епоха Відродження, медико-правова тріада, медико-правовий парадокс, трудове право.

Introduction. Sufficient European integration and successful reform of Ukrainian legislation in the spirit of European law are impossible without a thorough study of the Western European historical experience in matters of legal regulation of public relations in a specific branch.

In respect to these circumstances, it is impossible to pay no attention to the development of medical law, since, firstly, we said earlier about its significance for social relations in the field of labour [1, p. 104], and secondly, it should be deeply understood its value and place in the system of state-legal guarantee of labour relations in the future [2, p. 105].

Same approach will allow us to consider medical law not only as a separate branch, but also as a guarantor of social stability, labour protection and industrial relations, a regulator of labour and work's safety, which gives conducted study an increased relevance and social demand.

At different times, the general issues of the history of medicine of the Middle Ages and the Renaissance were devoted to the works of such domestic scientists as Batkis G.A., Kovner S., Levin A.M., Ternovsky V.M., Tikotin M.A. and their foreign colleagues: Ford, Hensier, Hughes, Kotelmann, Sudhoff and many others.

The general issues of the development of medical law, in particular, in the context of labour law were devoted to the works of Moskalenko V.F., Yaroshenko O.M., Inshyn M.I., Zhernakov V.V., Stetsenko S.G., Senyuta I.A., Sereda O.H., Yakovlev O.A., Viennikova V.V., Kolosov I.V. etc.

For all the respect to the scientific achievements of the mentioned scientists, the issues of the development of medical and social relations and medical law in the Middle Ages and Renaissance, their peculiarities and relationships with the norms of labour law, in our viewpoint, were not given sufficient attention.

Materials and Methods. Presented survey has done with assistance of formal and compares methods as special and ontology, deduction, analysis ad synthesis as com-

mon, which led to obtain a new data and background for discussion and further investigations from contemporary scientific viewpoint. Thus, research methodology is based on general scientific methods such as analysis, synthesis, induction, deduction, analogy and empirical methods – observation, comparison and statistical ones.

A qualitative research used content analysis of publications during 1872-2022 to examine the extent to which State's policy impacted on medical law norms development. Search for publications was carried out in databases of rarely editions, contemporary papers, encyclopedically data and so on and so forth. The search was carried out by keywords: 1) Europe; 2) medical law; 3) Middle Ages; 4) Renaissance; 5) medically-legal triad; 6) medically-legal paradox; 7) labour law.

The methodological basis of the survey, undoubtedly, is a dialectical method, the introduction of which provides an opportunity to study the object and subject of research in their gnoseological unity, as well as the nature of European medical law development and their impact, as cause and effect. Due to the historical method, the periods and peculiarities of the formation of the European medical law notified separately: on Middle Ages and on Renaissance. Using the structural and functional method in combination with the methods of classification and grouping, the social relations and legal framework cause European medical law development both on Middle Ages and on Renaissance was carried out. Based on the formal-logical and formal-legal methods, it was developed author's viewpoint about the foreign European medical law development in aforesaid period of history, their features as well as presented author's conclusions in giving investigation field.

Tasks and Aims. Consequently, the purpose of the proposed study is to:

1) retrospective review of public relations, doctrines and regulations that created a system of medical law of the states of medieval Europe;

2) clarification of their patterns, features and dialectical connections;

3) derivation of relations in the field of medicine, which, due to their social significance, need and needed legal regulation, in particular, due to labour law;

4) providing of author's conclusions and outlining perspective directions of further scientific investigation.

The object of the study will be medical-social systems of the Western Europe states on Middle Ages and Renaissance.

Results and Discussion. During the early Middle Ages, large hospitals for the civilian population arose in Europe, and later pharmacies. Roman Valetudinarians were medical institutions for troops. In the Middle Ages, the church, which occupied a dominant position, concentrated the structure and maintenance of hospitals in its authority. Hospitals served at the same time as almshouse shelters for some categories of elderly and casualties. The procedure for the treatment of patients and charity of the elderly and the casualties was provided for by a certain charter. Subsequently, the charters of Byzantine monasteries contained a detailed description of the hospital economy, treatment of patients, training in medical affairs. Hospitals arose from a number of institutions: isolation wards for infectious patients, shelters for traveling and almshouse shelters for the elderly and casualties. Byzantine hospitals served as a prototype for the creation of similar institutions in Western Europe [5].

After the fall of the Western Roman Empire in the 5th century AC, the conquest and destruction of it by Teutonic, Celtic tribes, Goths, Western Europe were in economic and cultural decline for several centuries. The conquerors brought with them remnants of the clan system with features characteristic of it. While various branches of knowledge developed in the countries of the East along with the economy, church scholasticism dominated in Western Europe. The essence of scholastic medicine was vividly displayed in his drawing by the French cartoonist O. Domier: two doctors dressed in traditional academic togas argue furiously over texts; holding open large tomes, each proves other the advantage of its interpretation. They do not look at the patient, turned their

backs on him. And while they argue about the texts, death takes the sick away [11].

Nevertheless, pharmacy of the Middle Ages is characterized by complex drug prescriptions. Among the universities of Western Europe, two – Salerno and Padua – differed from the rest and were relatively less impacted by church scholasticism. The healing climate of Salerno – an area on south of Naples, near the sea bay – from ancient times attracted patients and doctors. The university that arose here in the 11th century had a practical direction. The 'antidotary' compiled in Salerno – a collection of antidotes – for the first time indicated the number of drugs not 'by eye', not 'by handfuls', etc., but in the exact weight prescription: grams, ounces, scrupulas, drachmas. The medical literature includes the 'Salerno's Sanitary Regulations' – guideline on the observance of hygiene rules. At the beginning of the 14th century, this instruction was processed by Arnold from Villanova (1235–1312) – a prominent doctor and writer, and with the emergence of printing was repeatedly reprinted. The traditions of the Salerno School were partly continued by the Montpellier Medical School in southern France. Its activities were also positively impacted by the heritage of Arab medicine [12].

The accumulation of surgical knowledge, firstly practical skills, was facilitated by numerous wars and crusades. Surgeons in the Middle Ages were sharply separated from scientific doctors who graduated from universities, and were in the majority in the position of performers, almost servants. The sharp legal and everyday separation was a reflection of the general estate and workshop system of the Middle Ages. The monks, in whose hands the cause of enlightenment was concentrated, were forbidden to engage in surgery: 'churches hate bloodshed,' said the decrees of a number of church cathedrals [13].

One of the largest surgical scientists of the Middle Ages was Guy de Scholiac, a student of the schools of Montpellier and Bologna, who taught in Paris and compiled a large guide to surgery. There was a struggle between different groups of doctors and surgeons, dictated by pressing merchant interests and reflected in numerous lawsuits. Especially great development of the work-

shop system of surgery received in France. In aforesaid state, additionally, where official medicine most stubbornly resisted the equality of surgery, surgeons achieved this one before rest. Professional associations (fraternities) of surgeons received, in addition, the right to individual craft apprenticeships, the opportunity to open schools, colleges of surgeons, which gained increasing importance and a better reputation [14].

The greatest experience of medieval medicine was enriched in field of infectious diseases. In large port cities of Europe, where epidemics could be introduced by merchant ships, special anti-epidemic institutions arose – insulators, observatories, quarantine was established (literally ‘forty-day’ – the period of isolation and observation of ships and their crew). In Venice, such quarantine arose in 1374, in Ragusa (Dalmatia, Dubrovnik) – in 1377, in Marseille – in 1383. The rules of the Marseille’s quarantine required the stay of people and goods from a suspicious vessel for forty days ‘in the air and under sunlight.’ In Italian ports, special overseers appeared – ‘health trustees.’ Later, also in connection with the economic interests of medieval cities, the stuffs of ‘city physicists’ (doctors) were established in them, performing mainly anti-epidemic functions. In link of large cities (Paris, London, Nuremberg, etc.), were published rules/regulations aimed to preventing of skidding and the spread of contagious diseases [15].

In connection with task of preventing epidemics, some general sanitary measures were carried out, primarily providing cities with benign water. To prevent leprosy widespread in the Middle Ages, various measures were taken: isolation of lepers and infirmaries, supply of lepers with a horn, ratchet or bell to prevent healthy people from afar in order to avoid contact; special gatekeepers were placed at the city gates to inspect and delay those suspicious of leprosy. Rules were issued according to which lepers were prohibited from visiting churches, mills, bakeries, wells, sources [16].

Largely, the emergence and establishment of hospitals was caused by the spread of infectious diseases. In accordance with all structures of medieval life and the dominant position of the church, hospitals were most often arranged at monasteries [17, p. 126].

During the period of the decomposition of feudalism and the birth of capitalist relations, medicine acquired new features. In the bowels of feudal society, a new class formed and gradually became stronger – the bourgeoisie, which grew out of medieval workshop associations of artisans and traders. The emergence of manufactory – craft cooperated in large associations with some division of labour, great geographical discoveries; the emergence of new industries significantly strengthened the social role and economic influence of the new estate. The ideology of the advanced bourgeoisie was directed against the main ideological support of feudalism – official theology and scholasticism. As a result, branches of knowledge that met practical needs, i.e. nature sciences, were developed [3, p. 863].

In papers of utopian socialists of the Renaissance – ‘Utopia’ by Thomas More (1478–1535), ‘City of the Sun’ by Tomaso Campanella (1568–1639), etc. – interest in medicine and medical affairs was reflected; they raised issues of health protection and promotion; the doctor was given an important place in resolving issues of public life. By the 15th century, Europe had more than 40 universities; many established medical faculties. Medicine received the greatest development in those universities that were associated with the advanced centers of public life of that time [4, p. 935].

In the cities of Northern Italy, especially port ones; previously there was a decomposition of feudal and the development of capitalist relations. Medieval craft quickly grew into a manufactory, the merchant became an industrialist. In particular, the Venice Trade Republic set before its new academic center – Padua – practical tasks for servicing navigation and manufactories. Renaissance natural science was characterized by the rejection of the former blind submission to authorities, the desire to test all provisions through experience, in practice [6].

Enormous attention was paid to the experimental method in medicine by a prominent representative of the philosophy, F. Bacon (1561–1626), who paid special sections to medical science in his work ‘On the Dignity and Multiplication of Sciences’ and in the utopia ‘New Atlantis.’ Bacon required doctors to carefully record everything happens

with sick, i.e., keep a 'disease history', and assume these records into medical descriptions carefully compiled and discussed. Believing that descriptive anatomy was insufficient, he insisted on the development of pathological anatomy: '...it would be necessary in anatomical studies to carefully observe the traces and results of diseases, lesions and damage caused by them in the internal parts.' [18, p. 304–306]

Since epidemics were widespread in the Middle Ages and later, the predominant place in the medical literature was occupied by descriptions of contagious diseases and measures against them (epidemiography). A significant role in clarifying the nature of contagious diseases and their systematization was played by the work of Padua professor J. Fracastoro (1478–1553) 'On contagion, contagious diseases and treatment' (1546). He also described syphilis in the poem 'On Syphilis or Gallic Disease' (1530) [7].

The epidemic outbreak of syphilis at the turn of the 15th-16th centuries and its subsequent spread in an extremely severe form around the world was the focus of attention of all doctors of that time [8].

Of the clinicians who described contagious diseases after J. Fracastoro, G. Mercuriali and T. Sydenham occupy a prominent place [9].

In theoretical views, T. Sydenham, unlike J. Fracastoro, remained entirely in miasmatic positions and developed the doctrine of 'epidemic constitutions' as the causes of contagious diseases. Both – Mercuriali and Sydenham – had significant impact and left outstanding papers on childhood and infectious diseases [10].

Conclusions. 1. In medieval and Renaissance European states for the first time: 1) hospitals arose as state institutions with strict regulations and charters for the treatment of patients; 2) almshouses for the elderly and the casualties were set up and standards for their care were developed; 3) a collection of antidotes was developed; 4) there was a legal distinction between the participants of medical law; 5) the norms of church law have become sources of medical law; 6) the struggle for equality of various medical professions has become the subject of lawsuits; for the first time, judi-

cial precedent became a source of medical law; 7) the first trade unions of doctors appeared; 8) surgeons were entitled with the right of individual craft apprenticeship; 9) special anti-epidemic institutions arose – infirmaries, isolators, observatories; 10) the legal status and significance of the doctor in the public health system was discussed; 11) received a thorough development of epidemiography and pediatrics; 12) appeared new participants of medical law – 'health trustees' and special gatekeepers; 13) arose the first 'diseases histories' as a carefully medical record everything happens with sick.

2. Quarantine and anti-epidemic measures were further developed as well as the fight against the spread of contagious infectious diseases.

3. These relations were characterized by workshop isolation, professional discrimination, the excessive impact of dogmatic scholasticism, the struggle for equality of rights of representatives of various medical professions, the mediation of the development of medical law by the needs of servicing further industrialization, the division of labour, the complication of production methods, the appearance of the first manufactories.

4. As in the Ancient World, medical law developed and was caused by the development, maturation of labour and administrative law. The issues of criminal liability of doctors in the Middle Ages were some shifted towards the fight against heresy and the church inquisition, which is related more to sacred than secular law.

5. As a result of aforesaid, the medically-legal paradox and the medically-legal triad remained relevant; however, in the Middle Ages, the very development of medicine and medical legal norms was directly dictated by the complication of industrial relations, which, in combine with the historically-chronological primacy of law sources, brought medical law closer to the subject of labour law.

6. In respect to these circumstances, the development of medically-legal relations in the era of capitalist relations is to be further studied in order to consolidate the existing conclusions and identify new features of development, particularly, European medical law.

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