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## REGULATORY REGULATION OF THE HEALTHCARE SYSTEM AT THE LEGISLATIVE LEVELS IN AN EMERGENCY

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**Abstract.** *The article examines the problems of organizing the health care system in the Republic of Kazakhstan in the context of a pandemic of coronavirus infection and other infectious diseases. Based on general and special scientific methods, the discourse of the legal regulation of the health care system in a pandemic is presented. The coronavirus factor has exacerbated the need to legitimize the transformation of the legal regulation of public relations in a pandemic, since the current regulatory framework has demonstrated the imperfection of the legal mechanisms responsible for ensuring the regulation of health systems. The effective use of legal mechanisms depends on the level of democracy of the legislative framework based on international legal and constitutional principles.*

*The main scientific hypotheses of the study justify the problems of the health care system that require regulatory solutions at the managerial and legislative levels in emergency situations. The legislation of the Republic of Kazakhstan on the state of emergency, on the sanitary and epidemiological well-being of the population was analyzed. It was revealed that there is no direct connection between the norms of legislation on the sanitary and epidemiological well-being of the population and the norms of legislation on the state of emergency in terms of direct indication of the possibility of applying measures and implementing the requirements of a sanitary and epidemiological nature in emergency situations. It was concluded that the decisive role of law as a universal regulator of public relations during the spread of coronavirus infection is justified; the need to use the resources of law in the prevention of pandemics in the future is justified. The national health care system of Kazakhstan, as well as the system of public administration as a whole, has demonstrated the inability to ensure a timely response to challenges and threats by creating subordinate legislation in pursuance of legislative acts has led to negative results. This circumstance is the basis for taking measures to create an effective set of measures for the legal regulation of public relations in an emergency.*

**Keywords:** *legal regulation, health care, COVID-19, pandemic, emergency, state of emergency, sanitary and epidemiological well-being.*

## ТӨТЕНШЕ ЖАҒДАЙ КЕЗІНДЕ ЗАҢНАМАЛЫҚ ДЕҢГЕЙДЕ ДЕНСАУЛЫҚ САҚТАУ ЖҮЙЕСІН НОРМАТИВТІК-ҚҰҚЫҚТЫҚ РЕТТЕУ

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**Аннотация.** Мақалада коронавирустық инфекция және басқа да жұқпалы аурулар пандемиясы жағдайында Қазақстан Республикасында денсаулық сақтау жүйесін ұйымдастыру мәселесі зерттеледі. Жалпы және арнайы ғылыми әдістердің негізінде пандемия жағдайында денсаулық сақтау жүйесін құқықтық реттеу дискурсы ұсынылған. Коронавирус факторы пандемия жағдайында қоғамдық қатынастарды құқықтық реттеудің трансформациясын заңдастыру қажеттілігін күшейтеді, өйткені қолданыстағы нормативтік-құқықтық база денсаулық сақтау жүйелерін реттеуді қамтамасыз етуге жауапты құқықтық тетіктердің жетілмегендігін көрсетті. Құқықтық тетіктерді тиімді пайдалану халықаралық-құқықтық және конституциялық қағидаттарға негізделген заңнамалық базаның демократиялық деңгейіне байланысты.

Зерттеудің негізгі ғылыми гипотезалары ТЖ жағдайында басқарушылық және заңнамалық деңгейде нормативтік-құқықтық реттеу шешімдерін талап ететін денсаулық сақтау жүйесінің мәселелерін негіздейді. Қазақстан Республикасының Төтенше жағдай туралы, Халықтың санитарлық-эпидемиологиялық салауаттылығы туралы заңнамасы талданған. Төтенше жағдайлар кезінде санитариялық-эпидемиологиялық сипаттағы шараларды қолдану және талаптарды іске асыру мүмкіндігін тікелей көрсету бөлігінде Халықтың санитариялық-эпидемиологиялық салауаттылығы туралы заңнама нормалары мен төтенше жағдай туралы заңнама нормалары арасында тікелей байланыстың болмауы анықталды. Коронавирустық инфекцияның таралуы кезіндегі қоғамдық қатынастардың әмбебап реттеушісі ретіндегі құқықтың шешуші рөлі туралы қорытынды жасалды, болашақта пандемияның алдын алуда құқық ресурстарын пайдалану қажеттілігі негізделген. Қазақстанның ұлттық денсаулық сақтау жүйесі, жалпы мемлекеттік басқару жүйесі сияқты, заңнамалық актілерді орындау үшін заңға тәуелді нормативтік актілерді жасау арқылы сын-тегеуріндер мен қауіп-қатерлерге уақтылы ден қоюды қамтамасыз етуге қабілетсіздігін көрсетті. Бұл жағдай төтенше оқиға жағдайында қоғамдық қатынастарды құқықтық регламенттеу шараларының тиімді кешенін құру жөнінде шаралар қабылдау үшін негіз болып табылады.

**Түйін сөздер:** құқықтық реттеу, денсаулық сақтау, COVID-19, пандемия, төтенше оқиға, төтенше жағдай, санитарлық-эпидемиологиялық салауаттылық.

**НОРМАТИВНО-ПРАВОВОЕ РЕГУЛИРОВАНИЕ СИСТЕМЫ  
ЗДРАВООХРАНЕНИЯ НА ЗАКОНОДАТЕЛЬНОМ УРОВНЕ  
В УСЛОВИЯХ ЧРЕЗВЫЧАЙНОЙ СИТУАЦИИ**

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**Аннотация.** В статье исследуется проблематика организации системы здравоохранения в Республике Казахстан в условиях пандемии коронавирусной инфекции и других инфекционных заболеваний. На основе общих и специальных научных методов представлен дискурс правового регулирования системы здравоохранения в условиях пандемии. Фактор коронавируса обострил необходимость легитимации трансформации правового регулирования общественных отношений в условиях пандемии, поскольку действующая нормативно-правовая база продемонстрировала несовершенство правовых механизмов, ответственных за обеспечение регулирования систем здравоохранения. Эффективное использование правовых механизмов поставлена в зависимость от уровня демократичности законодательной базы, основанной на международно-правовых и конституционных принципах.

Основные научные гипотезы исследования обосновывают проблемы системы здравоохранения, требующие решений нормативно-правового регулирования на управленческом и законодательном уровнях в условиях ЧС. Проанализировано законодательство Республики Казахстан о чрезвычайном положении, о санитарно-эпидемиологическом благополучии населения. Выявлено отсутствие прямой связи между нормами законодательства о санитарно-эпидемиологическом благополучии населения и нормами законодательства о чрезвычайном положении в части прямого указания на возможность применения мер и реализации требований санитарно-эпидемиологического характера в условиях чрезвычайных ситуаций. Сделан вывод о решающей роли права как универсального регулятора общественных отношений в период распространения коронавирусной инфекции, обоснована необходимость использования ресурсов права в предупреждении пандемий в будущем. Национальная система здравоохранения Казахстана, как и в целом система государственного управления продемонстрировала неспособность обеспечить своевременное реагирование на вызовы и угрозы путем создания подзаконных нормативных актов во исполнение законодательных актов привело к негативным результатам. Данное обстоятельство является основанием для принятия мер по созданию эффективного комплекса мер правовой регламентации общественных отношений в условиях чрезвычайной ситуации.

**Ключевые слова:** правовое регулирование, здравоохранение, COVID-19, пандемия, чрезвычайная ситуация, чрезвычайное положение, санитарно-эпидемиологическое благополучие.

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**Introduction**

The most pressing issue of recent years is the problem of managing the public health emergency associated with the outbreak and spread of the COVID-19 epidemic. The coronavirus pandemic represents the most serious challenge in human history to the global health system, characterized by lightning speed of spread, the scale of human casualties and material damage.

The COVID-19 pandemic was the basis for the introduction of emergency measures in almost all countries of the world, respectively, the reaction of national parliaments and governments was not the same, expressed in a wide range of practices - from the ability to properly continue the implementation of legislative, executive and control functions to the loss of the ability to function in the proper mode, refusal to fulfill their functions. The decision to

introduce a state of emergency was made by 100 states of the world [1, p. 57].

In accordance with the documents of the Venice Commission on the state of emergency, all measures in crisis conditions should be built and assessed in accordance with the criteria of necessity, proportionality and temporality (conclusion in time within the framework of the pandemic period) with constant monitoring of the emergency. Studies by the Venice Commission have attempted to find an adequate balance between the tasks facing the State in the context of emergency and fundamental values such as democracy, human rights and the rule of law [2, p. 11]. The need for reform in the global health system is confirmed by the relevance of the problems associated with the lack of funding, accountability and enforcement powers in existing global health structures [3; 4; 5; 6]. The

research substantiates the decisive role of law as a universal regulator of social relations during the spread of coronavirus infection, which has been confirmed by practice, as well as the need to use the resources of law in preventing pandemics in the future [7, p.11].

The subject of the study is the organization of the health care system as a legal phenomenon and legal category, legal mechanisms intended for use in crisis situations.

The purpose of the scientific article is to conceptualize the main provisions of the legal regulation in the field of healthcare in crisis situations, to analyze the legal regulation in the field of healthcare in the Republic of Kazakhstan.

### Materials and Method

In the process of research, an analysis of numerous international legal acts and regulatory legal documents related to the activities of the health care system in the countries of the world was carried out: the basis of the study was international legal acts, as well as regulatory acts of the Republic of Kazakhstan.

The research of the scientific problem was carried out on the basis of a set of methods for achieving the set goal and solving mutually agreed problems: methods of empirical research (observation, comparison, measurement, experiment), methods of theoretical research (idealization, formalization, logical and historical methods) were used. The work also uses a system-structural method, a formal-legal method, a comparative-legal method, a method of legal modeling.

### Discussion and results

The Constitution of the Republic of Kazakhstan contains provisions on the grounds for the introduction of a state of emergency on the territory of the republic, on the competence of the President, who makes such a decision after official consultations with the Prime Minister and the chairmen of the Chambers of Parliament, with immediate notification of the Parliament - these are cases when democratic institutions, independence and territorial integrity, political stability of the Republic, the security of its citizens are under serious and immediate threat and the normal functioning of the constitutional bodies of the state is disrupted<sup>2</sup>. A special law

regulating public relations on the introduction of a state of emergency is the law of the Republic of Kazakhstan of February 8, 2003 No. 387 "On a state of emergency." The law defines among emergencies natural and man-made situations caused by epidemics and epizootics<sup>3</sup>. The set of measures of the state of emergency is wide: quarantine; suspension of the activities of shopping and entertainment centers, cinemas, theaters, exhibitions and other facilities with a massive crowd of people; a ban on holding family, commemorative, entertainment, sports and other public events; implementation of large-scale sanitary and anti-epidemic measures, including with the participation of structural units of the Ministry of Defense of the Republic of Kazakhstan and internal affairs bodies operating in the field of sanitary and epidemiological well-being of the population; establishing restrictions on entry into and exit from the territory of Kazakhstan by all means of transport (except for personnel of the diplomatic service of the republic and foreign states, as well as members of delegations of international organizations traveling to Kazakhstan at the invitation of the Ministry of Foreign Affairs of the Republic of Kazakhstan); strengthening control over persons evading medical examination, treatment and compliance with the quarantine regime.

In accordance with the norms of the Law of the Republic of Kazakhstan of December 4, 2002 No. 361-II "On Sanitary and Epidemiological Well-Being of the Population," the epidemic is recognized as a massive spread of an infectious disease, significantly exceeding the usually recorded incidence rate<sup>4</sup>.

Chapter 3 of the Law of the Republic of Kazakhstan of February 8, 2003 No. 387 "On the State of Emergency" regulates the status of special public administration bodies introduced during the state of emergency, which include the State Commission for Ensuring the State of Emergency under the President of the Republic of Kazakhstan and the commandant's office of the area. In accordance with the law, the State Commission for the Provision of a State of Emergency (hereinafter referred to as the State Commission) is created by an act of the President of the Republic of Kazakhstan when a state of emergency is introduced throughout the Republic of Kazakhstan or in its individual areas. The

<sup>2</sup> Constitution of the Republic of Kazakhstan. – URL: <https://adilet.zan.kz/rus/docs/K950001000> (access date: 04.12.2022)

<sup>3</sup> Law of the Republic of Kazakhstan dated February 8, 2003 No. 387 "On the state of emergency". – URL: [https://online.zakon.kz/Document/?doc\\_id=1036912](https://online.zakon.kz/Document/?doc_id=1036912) (access date: 04.12.2022)

<sup>4</sup> On the sanitary and epidemiological well-being of the population: Law of the Rep. Kazakhstan, 4 Dec. 2002, No. 361-II // Information and legal system of normative legal acts of the Republic of Kazakhstan. – URL: [https://online.zakon.kz/Document/?doc\\_id=1034904&pos=4;-88#pos=4;-88](https://online.zakon.kz/Document/?doc_id=1034904&pos=4;-88#pos=4;-88) (access date: 04.12.2022)

activities of the commandant's office are carried out on the basis of a model provision approved by the President of the Republic of Kazakhstan. The personnel composition of the State Commission is approved by the President of the Republic of Kazakhstan and depends on the circumstances that served as the basis for the introduction of a state of emergency.

The main tasks of the State Commission include the development of measures to eliminate the circumstances that served as the basis for the introduction of a state of emergency; organization of operational measures to manage and ensure the activities of the territory where the state of emergency was introduced; organization of accommodation of individuals affected by the circumstances that served as the basis for the introduction of a state of emergency in residential premises for temporary residence, provision of necessary assistance; coordination of the activities of central and local executive bodies, organizations, commandant's offices of the area where the state of emergency was introduced, to eliminate the circumstances that served as the basis for the introduction of the state of emergency; monitoring the implementation of measures carried out during the state of emergency.

To fulfill the main tasks, the State Commission performs the following functions: (1) develops proposals for coordinating the activities of central and local executive bodies, organizations, commandant's offices of the area where the state of emergency was introduced, to eliminate the circumstances that served as the basis for the introduction of a state of emergency; (2) hear the officials of the central, local executive bodies and commandants of the areas where the state of emergency was introduced on the issues of fulfilling the tasks assigned to the State Commission; (3) requests and receives from the central and local executive bodies, organizations the documents and information necessary to carry out the activities of the State Commission; (4) monitors the implementation by the central and local executive bodies, organizations, commandants of the area where the state of emergency was introduced, measures to eliminate the circumstances that served as the basis for the introduction of a state of emergency; (5) engage specialists of central and local executive bodies, organizations to carry out analytical, expert and other work necessary to resolve the issues of liquidation of the circumstances that served as the basis for the introduction of a state

of emergency; (6) consider the effectiveness of the introduction of additional measures and time restrictions, with the complete or partial elimination of the circumstances that served as the basis for the introduction of a state of emergency, make relevant proposals to the President of the Republic of Kazakhstan on the complete or partial abolition of additional measures, time restrictions or a state of emergency; (7) appeals to the President of the Republic of Kazakhstan with proposals on the need to apply in the area where the state of emergency was introduced, the Armed Forces of the Republic of Kazakhstan, additional measures and time restrictions provided for by this Law, ensures their implementation; (8) coordinates the activities of local executive bodies, organizations, territorial bodies of internal affairs, territorial units of the authorized body in the field of civil protection, military formations located (deployed) in the area where the state of emergency was introduced, and additional state bodies involved to ensure the state of emergency.

In accordance with article 13 of the law, the commandant's office of the area where the state of emergency was introduced carries out its activities to ensure the state of emergency in cooperation with local executive bodies. The President of the Republic of Kazakhstan, based on the analysis of the development of the situation in the area where the state of emergency was introduced, has the right, at his discretion, to appoint a representative of any state body as the commandant of the area<sup>5</sup>.

In connection with the declaration by the World Health Organization of a new coronavirus COVID-19 pandemic in order to ensure the safety of the population of the Republic of Kazakhstan in accordance with paragraph 16) of Article 44 of the Constitution of the Republic of Kazakhstan and Articles 4, 5, 6 of the Law of the Republic of Kazakhstan "On the State of Emergency" by presidential decree in accordance with the legislation of the Republic of Kazakhstan, a state of emergency was introduced throughout the Republic of Kazakhstan for the period from 08:00 on March 16, 2020 for a period up to 07:00 on April 15, 2020. In the future, taking into account the current situation, the head of state decided to extend the state of emergency throughout the Republic of Kazakhstan, introduced by Decree of the President of the Republic of Kazakhstan dated March 15, 2020 No. 285 "On the introduction of a state of emergency

<sup>5</sup> Law of the Republic of Kazakhstan dated February 8, 2003 No. 387 "On the state of emergency". – URL: [https://online.zakon.kz/Document/?doc\\_id=1036912](https://online.zakon.kz/Document/?doc_id=1036912) (access date: 04.12.2022)

in the Republic of Kazakhstan," until 00:00 on May 11, 2020<sup>6</sup> - changes were subsequently made to this decree<sup>7</sup>. After the abolition of the state of emergency, the State Commission was transformed into the State Commission for the Restoration of Economic Growth<sup>8</sup>.

In accordance with the Code of Administrative Offenses of the Republic of Kazakhstan of July 5, 2014 No. 235-V, violations of the state of emergency, as well as actions that provoke violation of law and order in a state of emergency entail a fine or administrative arrest (Art. 476, 478). The head of the state body in the field of sanitary and epidemiological welfare of the population, his deputies, heads of territorial divisions and their deputies (Article 701) are entitled to consider cases of administrative offenses and impose administrative penalties; heads and their deputies or authorized officials of structural divisions of internal affairs bodies, the National Security Committee of the Republic of Kazakhstan, the Ministry of Defense of the Republic of Kazakhstan, performing state sanitary and epidemiological control and supervision (Article 702). Citizens have the right to appeal against the decision in the case of an administrative offense, the order on the need to pay a fine, and prosecutors appeal against the decision in the case of an administrative offense, the order on the need to pay a fine to a higher authority (official) (Article 826-1). Article 826-2 of the Administrative Code of the Republic of Kazakhstan regulates the procedure and terms of appeal, appeal against the decision in the case of an administrative offense, the order on the need to pay a fine: complaint, protest against the decision in the case of an administrative offense, the order on the need to pay a fine is sent to the state authority (official) that issued the decision in the case, issued the order, which is obliged to send them with all the case materials to the relevant higher authority (official) within three days from the date of receipt of the complaint. A complaint, a protest can be filed directly with a higher authority (official) authorized to consider them. A complaint, a protest against the decision in the case of an administrative offense are filed within ten days from the date of delivery of a copy of the decision, and in certain cases

from the date of receipt of the decision. The Administrative Code also contains provisions on the procedure for appealing, challenging a decision on an administrative offense, an order on the need to pay a fine, a decision of a higher authority (official) on a complaint, a protest - a complaint is filed, a protest is submitted directly to the court authorized to consider them at the place of residence or location of a person (Article 829-3)<sup>9</sup>.

During the pandemic, acts of "soft law" were in demand. In the system of international law, the most common were the Technical Guidelines (WHO, CDC, ETC): WHO recommendations on the use of masks by children in society in the context of COVID-19; Sepsis survival campaign: a guide to managing seriously ill adults with coronavirus infection; Tips for using masks in the context of COVID-19; A practical guide to developing an LPU crisis preparedness plan with a particular focus on pandemic influenza; Conclusions based on a noticeable difference between two families infected with COVID-19; Surveillance in VA for coronavirus - WHO interim leadership and others. The National Law of the Republic of Kazakhstan has actively applied such types of acts as the decisions of the Chief State Sanitary Doctor of the Republic of Kazakhstan and the Chief Sanitary Doctors of the Regions, Orders of the Minister of Health of the Republic of Kazakhstan on the organization and implementation of sanitary, anti-epidemic and sanitary-preventive measures, as well as clinical protocols for the diagnosis and treatment of coronavirus infection COVID-19. It should be noted the inefficient arrangement, inconsistency and divergence of the norms of many of the decisions of the chief sanitary doctor of the republic adopted during the pandemic, the lack of verified statistics.

The studies of domestic scientists confirm the thesis about the imperfection of both the legal framework of the health care of the republic and law enforcement practice [7-11].

All the above aspects of the legal regulation of public relations in the health sector are updated in the light of the problem of eliminating existing shortcomings and gaps in legislation

<sup>6</sup> On the extension of the state of emergency in the Republic of Kazakhstan. Decree of the President of the Republic of Kazakhstan dated April 29, 2020 No. 310. – URL: <https://adilet.zan.kz/rus/docs/U2000000310> (access date: 04.12.2022)

<sup>7</sup> Decree of the President of the Republic of Kazakhstan of 08.07.20 No. 368; Decree of the President of the Republic of Kazakhstan dated 17.11.20 No. 450. – URL: <https://adilet.zan.kz/rus/docs/U2000000310> (access date: 04.12.2022)

<sup>8</sup> On the creation of the State Commission for the Restoration of Economic Growth under the President of the Republic of Kazakhstan. Decree of the President of the Republic of Kazakhstan of May 27, 2020 No. 340. – URL: <https://adilet.zan.kz/rus/docs/U2000000340/info> (access date: 04.12.2022)

<sup>9</sup> Code of Administrative Offenses of 5 July 2014 No. 235-V. – URL: [https://online.zakon.kz/document/?doc\\_id=31577399#sub\\_id=0](https://online.zakon.kz/document/?doc_id=31577399#sub_id=0) (access date: 04.12.2022)

during the period of return to the life of society to normal conditions, taking into account the possibility of pandemics in the future [12, p.34].

Considering that one of the factors negatively affecting the level of healthcare organization in Kazakhstan is underfunding of the industry, the countries of the European Union within the framework of the comprehensive package of solidarity assistance "COVID-19" in the countries of Central Asia: measures to respond to the crisis" (CACCR) with a budget of 3 million euros (1.4 billion tenge) aimed at meeting the needs of Central Asian countries, the main focus is on Kazakhstan. CACCR is a two-year regional program for Central Asian countries, which was launched in July 2020. It is carried out as part of a "solidarity assistance package" with a budget of 124 million euros, prepared by the European Union for the Central Asia region as part of the Team Europe global response to COVID-19. The CACCR program, implemented by the World Health Organization, will provide support in mitigating the effects of the current outbreak of the COVID-19 pandemic. The program will also contribute to the long-term sustainability of Central Asian national health systems through the strengthening of their capacity to respond to similar threats to public health if they appear in the future<sup>10</sup>.

### Conclusion

A priority area for the modernization of national health systems is the provision of quality health services as a prerequisite for universal health coverage at the global level. Global health is currently perplexed by the question of how to carry out a comprehensive analysis

of acceptable options for decision-making, taking into account the ongoing public policy, strengthening the capacity of key stakeholders in order to develop measures to improve the quality of health services<sup>11</sup>. World practice presents samples of state strategies in the field of quality, taking into account the specifics of the country and region - infrastructure, culture, and traditions of the health care system. The effectiveness in the era of the digitalization pandemic as a modern emergency management tool is obvious [13].

The effectiveness of the implementation of standards, incentives based on efficiency indicators, statutory regulation and other factors depend on the effectiveness of state regulation, the level of activity of health care institutions. Activating key actors - government agencies, health care organizations, clinical care providers, patients themselves and society at large - is a priority in a system of measures to improve the quality of health care services. The selection and implementation of measures to improve the quality of services should be based on a properly organized data collection and feedback process to ensure quality monitoring, which, in turn, will contribute to the integration of assessment systems into quality improvement processes and their full provision of resources. Government management, in close contact with the activities of medical organizations and civil society, should cover the entire management paradigm. This paradigm includes public policy functionalities and quality strategies; adoption and promotion of universal quality goals; monitoring and reporting on the results of quality improvement activities to ensure continuous improvement activities.

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<sup>10</sup> The EU is launching a program with a budget of 1.4 billion tenge to combat COVID-19 in Kazakhstan and Central Asia. – URL: <https://www.eeas.europa.eu/delegations/kazakhstan/%D0%B5%D1%81> (access date: 04.12.2022)

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