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Research Article

SANATORIUM AND HEALTH RESORT TREATMENT AS SOCIAL SUPPORT: A COMPARATIVE LEGAL ANALYSIS

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The generally-recognized principles and international norms of law, the Constitution of the Russian Federation enshrine the right of every person to health protection. However, implementation of this right often faces difficulties. The analysis of the legislation of the Russian Federation, and that of the post-Soviet states, is carried out on the example of social support for certain categories of citizens, including free sanatorium and health resort treatment, in order to identify similarities and differences, as well as legal structures that can be perceived by Russian social security law with a focus on increasing its effectiveness. A differentiated approach to determining the frequency of sanatorium and health resort treatment, its free character for some former beneficiaries, is proposed. The conclusion is substantiated that such proposals will make it possible to implement the principle of social justice, which presupposes an equal, but not equalizing approach to social protection and social support. This principle assumes that within the framework of society the disabled people must take into account not only their individual interests and needs, but also the interests and needs of other citizens and society as a whole. It was concluded as a result of the study that a change in the procedure of providing sanatorium and health resort treatment, as well as the scope of services being provided on the basis of a differentiated approach, will allow not only to implement the principle of social justice, not only to proclaim the right to such treatment in order to protect the health of citizens, but make it accomplishable too.

Key words: *health care, sanatorium and health resort treatment, a set of social services, disabled people, social support*

Introduction

The generally-recognized principles and international norms of law as well as the international treaties of the Russian Federation make a part of the legal system of Russia (part 4, art. 15 of the Constitution of the Russian Federation¹). The foregoing principles are the fundamental imperative norms of international

¹ Constitution of the Russian Federation. Official website of legal information <http://pravo.gov.ru/>. Available at: <http://www.pravo.gov.ru> [Accessed: 04 July 2021].

law, which are accepted and recognized by the international community and deviation from these is impermissible².

The rights and freedoms of an individual and a citizen in the Russian Federation are not only recognized but guaranteed too according to generally-recognized principles and norms of international law (art. 17 of the Constitution of the Russian Federation). They determine the meaning, content and application of laws, activity of legislative and executive authority, local government and are provided by the administration of justice (art. 18 of the Constitution of the Russian Federation).

One of such fundamental rights enshrined at the international level is the right of every person for health. According to the Universal Declaration of Human Rights³ every person has a right for such living standards, including medical care and necessary social services, which are required to maintain health and well-being of its own and of its family, and a right to benefits in case of illness, disability or any other case of loss of means of support owing to circumstances beyond its control (art. 25). The International Covenant on Economic, Social and Cultural Rights⁴ also enshrines in its most general form the right of every person for the highest attainable level of physical and psychic health, including creation of conditions, which would provide medical assistance and medical care in case of illness to all (art. 12). The European social charter⁵ enshrines in art. 11 a right for health protection, including rendering services of consultative and educational character aimed at promotion of health and stimulation of personal responsibility for own health.

The World Health Organization (hereinafter referred to as 'WHO') states that attainment of the highest health level at all stages of life is the fundamental right of everyone, but not a privilege of the chosen ones. Good health of people is a valuable resource and source of economic and social stability⁶.

Materials and methods

The Russian Federation being the member of these international treaties and recognizing the priority of norms of international law takes measures to bring national legislation to compliance with the norms of international law. The right of everyone to health protection and medical assistance is enshrined particularly in the Constitution of the Russian Federation (art. 41).

It should be noted that health as the baseline category is not confined exclusively to understanding it as the absence of diseases. It is more capacious in content and corresponds to the state of physical, psychic and social well-being of an individual, when there are no illnesses as well as dysfunctions of bodily organs and systems. Therefore, health protection of citizens as integrated character system includes measures of political, economic, legal, social, scientific, medical, as well as sanitary-and-anti-epidemic (preventive) character for ill-health prevention, maintaining and strengthening physical and psychic health of every person, sustentation of its longstanding active life, providing medical assistance to him (art. 2 of Federal law No. 323-FZ of November 21, 2011 'On fundamental healthcare principles in the Russian Federation'⁷).

Therefore, according to the above Federal law health protection will be effected not only in the way of rendering all types of medical assistance, but by providing some people with medicinal products, medical articles, as well as medical rehabilitation and sanatorium and health resort treatment. Such approach is fully compatible with

² Resolution of Plenum of the Supreme Court of the Russian Federation No. 5 of October 10, 2003 'On Application of Generally-recognized Principles and Norms of International Law as Well as the International Treaties of the Russian Federation by General Jurisdiction Courts'. Bulletin of the Supreme Court of the Russian Federation, 2003. No. 12.

³ The Universal Declaration of Human Rights. Adopted by the United Nations General Assembly on December 10, 1948. Rossiyskaya gazeta, 1998, December 10.

⁴ International Covenant on Economic, Social and Cultural Rights. Adopted on December 16, 1966 by Resolution 2200 (XXI) at the 1496th Plenary Session of the United Nations General Assembly. Bulletin of the Supreme Court of the Russian Federation, 1994. No. 12.

⁵ European Social Charter. Adopted in Strasbourg on May 03, 1996. Bulletin of International Treaties, 2010. No. 4.

⁶ WHO Regional Committee for Europe (2013) Zdorov'ye-2020: osnovy yevropeyskoy politiki i strategiya dlya XXI veka [Health 2020: a European Policy Framework and Strategy for the 21st Century]. Available at: https://www.euro.who.int/__data/assets/pdf_file/0017/215432/Health2020-Long-Rus.pdf [Accessed: 17 November 2021].

⁷ Federal Law No. 323-FZ of November 21, 2011 'On Essentials of Protecting Health of General Public in the Russian Federation'. Official website of legal information <http://pravo.gov.ru/>. Available at: <http://www.pravo.gov.ru> [Accessed: 02 July 2021].

WHO position, which is reflected in Tallinn Charter 'Healthcare systems for health and well-being'⁸, where article 5 enshrines that the healthcare system means more than rendering medical assistance, it also includes prevention of diseases and health promotion.

Therefore, implementation of rights for health protection has found its enshrinement not only in Federal law No.178-FZ 'On fundamental healthcare principles in the Russian Federation', but in other statutory and regulatory enactments, e.g., Federal law 'On state social assistance' of July 17, 1999⁹ enshrines the right of some people for social support measures in the form of a set of social services. It includes not only provision with necessary medical products according to the standards of medical assistance, but affordance of travel and accommodation warrant for sanatorium and health resort treatment in case of available therapeutic indications.

The sanatorium and health resort treatment corresponding to medical assistance provided by medical organizations (sanatorium and health resort organizations) for preventive, remedial and rehabilitation purposes should be acknowledged as a tradition of the national healthcare system and social assistance being established back in the period of existence of the USSR¹⁰. It helps to give consideration to this treatment in a number of aspects, not only as the social support to general public, but also as the direction of health protection.

Moreover, the significance of sanatorium and health resort treatment considerably increases recently in the context of solving strategic tasks facing the state. So, for instance, the Concept of demographic policy of the Russian Federation for a period up to 2025¹¹ relegates the maintenance and promotion of population's health, increases of duration of active life, creation of conditions and forming motivation for running healthy life, significant reduction of incidence of diseases socially significant and posing hazard for wider public, improvement of quality of life of ailing people suffering from chronic problems and disabled people, to the main tasks.

Solution of this task assumes incorporation of integrated therapeutic and rehabilitation programs for reducing the periods of health recovery after past diseases and personal injuries, development of services to be rendered by sanatorium and health resort organizations and therapeutic establishments.

⁸ Tallinn Charter: Healthcare Systems for Health and Wealth. Adopted in Tallinn on July 27, 2008. Available at: <https://www.euro.who.int/ru/publications/policy-documents/tallinn-charter-health-systems-for-health-and-wealth> [Accessed: 03 July 2021].

⁹ Federal Law No. 178-FZ of July 17, 1999 'On State Social Assistance'. Official website of legal information <http://pravo.gov.ru/>. Available at: <http://www.pravo.gov.ru> [Accessed: 12 June 2021].

¹⁰ At that date rate of growth of number sanatoriums, rest homes with treatment, recreation houses and centers was quite considerable. In 1950 the number thereof was 3,640 only, in 1960 – 4,059, and in 1970 – there were already 5,230. The number of people, who had treatment and recreation therein, amounted to 3,745 thous. people in 1950, in 1960 this figure increased practically twofold – 6,182 thous. people, and in 1970 it reached 10,138 thous. people. In 1971 19.7 mln. people received treatment and recreation in sanatoriums, recreation houses, health resort polyclinics, recreation centers. (The National Economy of the USSR 1922-1972 (1972). Anniversary Statistical Yearbook. Moscow, Statistics. (in Russian)). Moreover, Decree of the Council of Ministers of the USSR No. 590 'On construction of sanatoriums, recreation houses and summer resort towns' (Collection of Decrees of the USSR. 1959. No. 12, art. 74) was adopted on June 01, 1959, которое which provided for the development of health resort network in 1959–1965 in the Caucasus, in the Crimea, as well as in the European part of the country. Even at the end of 80s of the past century, when economic situation in the country became very difficult, the protection and promotion of health of the Soviet people remained to be one of the priority directions of state activity. An important role in implementation of this direction was played by sanatorium-and-health-resort treatment. Decree of the CPSU Central Committee, Council of Ministers of the USSR and All-Union Central Council of Trade-Unions No. 7 of January 07, 1982 (Collection of Decrees of the USSR. 1982. No. 5. art. 26) underlined that the development of sanatorium and health resort treatment and organized recreation of general public in the country still lagged behind the growing demands. In this respect it was planned to implement a wide scale program aimed at further improvement of sanatorium-and-health-resort treatment and recreation of working people, measures on expanding the network of sanatorium-and-health-resort establishments and recreation establishments in 1982 -1985 and in the period up to 1990.

¹¹ Decree of the President of the Russian Federation No. 1351 of October, 09 2007 'On Approval of the Concept of Demographic Policy of the Russian Federation for a Period up to 2025. Collection of legislative documents of the Russian Federation. 2007. No. 42. P. 5009.

The forecast of social and economic development of the Russian Federation for a period up to 2024¹² developed by the Ministry of Economic Development and Trade of the Russian Federation enshrines the increase of life expectancy up to 78 years, reduction of death rate among people among basic indicators that should be attained in the sphere of healthcare. Moreover, the forecast of social and economic development of the Russian Federation for a period up to 2036¹³ envisages survival rate of people with serious diseases, which will necessitate development of system of medical rehabilitation and sanatorium and health resort treatment, including children.

According to Programs it will be necessary to continue with implementation of the Strategy of sanatorium and health resort complex of the Russian Federation¹⁴ as one of directions of government policy on preservation and promotion of health of people in the framework of these measures. It is necessary to provide development of health and recreation areas and resorts, efficient utilization of natural curative resources, material and technical foundation of sanatorium and health resort organizations, increase capacity of the Russian Federation in the sphere of health tourism in the framework of the Strategy.

However, it should be noted that implementing the right of some categories of people for sanatorium and health resort treatment as the measure of social support periodically encounters certain difficulties since the instance of putting it into effect (in the form and manner of substitution of benefits existing earlier). It is proven by the number of recourses to the courts of general jurisdiction¹⁵ for protection of violated rights, as well as recourses to the Constitutional court of the Russian Federation¹⁶. The case law analysis shows that the recourses concern basically the following issues:

1) procedures of implementation of a right for sanatorium and health resort treatment, including an opportunity to lodge an application on the refusal to provide social services at any moment, but not within time limits established by legislation (before October of the current year),

2) time limits of providing travel and accommodation warrant for sanatorium and health resort treatment. This category of recourses appeared to be the most numerous, since the calendar year is the period for providing warrant according to legislative provisions, though the warrant is provided in order of precedence,

3) refusal to provide warrant for the previous year (for those years, when a citizen received service) in case of refusal of receiving social service the next year.

Identical were the grounds for recourses of citizens to the Supreme Court of the Russian Federation¹⁷. The most frequent recourses pertain to providing travel and accommodation warrants for sanatorium and health resort treatment during calendar year. Apart from the above issues the people contended for providing warrants for treatment within particular season, in definite area (including requirement for providing warrants for treatment to sanatorium and health resort organization abroad).

¹² The Forecast of Social and Economic Development of the Russian Federation for a Period up to 2024. Developed by the Ministry of Economic Development and Trade of the Russian Federation. Bulletin of Price Formation and Standard Cost Estimation. 2018. Issue 11.

¹³ The Forecast of Social and Economic Development of the Russian Federation for a Period up to 2036. Developed by the Ministry of Economic Development and Trade of the Russian Federation. Available at: <http://www.economy.gov.ru> [Accessed: 01 October 2021].

¹⁴ The Strategy of Sanatorium and Health Resort Complex of the Russian Federation. Approved by Directive of the Government of the Russian Federation No. 2581-p of November 26, 2018. Collection of legislative documents of the Russian Federation. 2018. No. 49 (part VI). P. 7670.

¹⁵ e.g.: Judgment in case No.2-4590/2019 of November 14, 2019 (Kuibyshevsky district court of Omsk (Onsk region)); Judgment in case No.2-6035/2019 of December 16, 2019 (Sovetsky district court of Bryansk (Bryansk region)), Judgment in case No.9-667/2018~M-7284/2018 of July 07, 2020 (Krasnogorsky city court (Moscow region)). Available at: <https://sudact.ru/> [Accessed: 01 October 2021].

¹⁶ e.g.: Ruling of Constitutional Court of Russian Federation No. 2111-O of September 28, 2017 'On Refusal to Accept for Consideration of Complaint of Citizen Roman Vasilievich Marchenko of Violation of His Constitutional Rights by Provisions of Subordinate Legislation'; Ruling of the Constitutional Court of the Russian Federation No.1103-O of May 26, 2020 'On Refusal to Accept for Consideration of Complaint of Citizen Anatoly Stepanovich Daineko of Violation of His Constitutional Rights by Part 2, Article 6.3, Part 1, Article 6.4 and Part 3, Article 6.5 of Federal Law 'On State Social Assistance', as well as by Clause 8, Article 23.1 of Federal Law 'On veterans', etc. Available at: <http://www.ksrf.ru/ru/decision/pages/default.aspx> [Accessed: 01 October 2021].

¹⁷ e.g.: Appellate Ruling of the Supreme Court of the Russian Federation No.APL18-639 of February 05, 2019, Ruling of the Supreme Court of the Russian Federation No.58-KG16-8 of July 25, 2016, Ruling of the Supreme Court of the Russian Federation of October 15, 2020 (Case No. AKPI20-603). Available at: <http://www.supcourt.ru/> [Accessed: 01 October 2021].

It appears that despite the reasons, for which the citizens appeal to the courts, are miscellaneous, the majority of recourses were related in this way or the other to such problem as inconsistency of a number of people applying for warrants for sanatorium and health resort treatment and the number of provided warrants.

Statistics is disappointing in this respect. The number of people applying for warrants for sanatorium and health resort treatment considerably exceeds the number of warrants acquired using the funds of federal budget. For instance, according to data of regional division of the Social Insurance Fund of the Russian Federation for the Udmurt Republic 1,178 warrants for sanatorium and health resort treatment were allocated in 2020 in the framework of a set of social services, while the number of applications amounted to 4,015, and the number of applications amounted to 3,861 as of January 1, 2021¹⁸. Vladimir regional division of the Social Insurance Fund of the Russian Federation provided the citizens, recipients of the set of social services with 1,390 warrants, when there were 7,556 warrants in 2018, in 2019 there were 1,432 warrants and 7,220 applications¹⁹.

At that, despite the fact that the Constitutional court of the Russian Federation highlighted in one of its judgments that the provisions of effective legislation in the sphere under consideration does not contradict the Constitution of the Russian Federation, though resulting from application thereof a citizen can fail to get a warrant for sanatorium and health resort treatment throughout the year, when it applied for it, i.e., establishment of order of precedence for providing the citizens with warrants is permissible²⁰, from our point of view this is not the ground for obstacles in implementing the rights of citizens in this sphere.

It is believed that indicated problems are substantiated not only by the limited financial capabilities of the state but, first of all, by principled approach to identifying the categories of citizens enjoying the right for this treatment, as well as by conditions of implementing this right. It makes it possible to speak about necessity of reconsidering conditions for receiving sanatorium and health resort treatment as a measure of social support.

The new approach, from our point of view, should be built taking into consideration the principle of social justice. As noted truly by P. A. Borisova the 'experience of social transformations going on in Russia for more than a quarter of the century now offers the possibility to state that constitutional changes will turn out to be efficient in that case only, when they are focused on public needs and interests of general public, as well as meet the everyday needs and concerns of an individual. Hence, the main key to productivity of transformations will be the compliance of these transformations with the concepts of Russian people of social justice'(Borisova, 2016: 3).

It should be noted that 'social justice belongs to the number of those phenomena reflecting in tabloid form economic, political, legal, moral conditions of public life' (Grigorieva, 2008: 112). Therefore, addressing this category as the basic principle of sustainable development of the society seems to be very important.

At the same time, justice is a complex and multi-aspect concept. The data of sociological investigations testify clearly to the fact that the concepts of stability, order, equality, legitimacy, strong nation, social protection of population are closely connected with ideas on social justice at the level of public awareness. Moreover, one can speak currently with confidence that social justice is in the framework of Russian reality practically in seamless synthesis with these concepts (Borisova, 2016: 93–96).

The Russian Federation has signed the Program of cooperation with the International Labor Organization for 2021–2024²¹, which is based on national priorities in social labor sphere. The Program has been structured considering new social and economic realities and proceeds from the guidelines of the Forecast

¹⁸ Available at: <https://r18.fss.ru/232751/index.shtml> [Accessed: 01 October 2021].

¹⁹ Available at: <https://fss33.ru/citizen/treatment/view/41/> [Accessed: 01 October 2021].

²⁰ Ruling of the Constitutional court of the Russian Federation No.1102-O of May 26, 2020 'On Refusal to Accept for Consideration of Complaint of a Citizen Lyubov Vasilievna Smirnova of Violation of Her Constitutional Rights by Part 2, Article 6.3 of Federal Law 'On State Social Assistance'. Available at: <http://www.ksrf.ru/ru/decision/pages/default.aspx> [Accessed: 01 October 2021].

²¹ Program of Cooperation with the International Labor Organization for 2021–2024. Available at: <https://mintrud.gov.ru/uploads/editor/bc/28/%D0%9F%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%BC%D0%B0%20%D1%81%D0%BE%D1%82%D1%80%D1%83%D0%B4%D0%BD%D0%B8%D1%87%D0%B5%D1%81%D1%82%D0%B2%D0%B0%20%D0%BC%D0%B5%D0%B6%D0%B4%D1%83%20%D0%A0%D0%A4%20%D0%B8%20%D0%9C%D0%9E%D0%A2%202021-2024.%20RUS.%20FINAL.pdf> [Accessed: 10 October 2021].

of longtime social and economic development of the Russian Federation for a period up to 2030²², which states that the baseline scenarios of longtime social and economic development of the Russian Federation will be determined by the degree of implementation of a number of key factors, including strengthening confidence in the society and social justice.

The principle of social justice is regarded by the world community as the basis of efficient social and economic development. According to WHO the social justice with respect to health is an ethic principle closely connected with standards of human rights, where the main position is occupied by distribution of resources and other processes capable of creating dismissible inequalities. The social justice assumes not only availability of just relations between an individual and the community, but the presence of equal abilities and social privileges with social groups too.

Since the principle of social justice is generally recognized and becomes the basis of legal regulation of relations in different spheres and in different states, search for solution of social support problems, including sanatorium and health resort treatment, can lie in a plane of comparative law research. However, it should be noted that though the 'developed western countries, among other things owing to a durable influence of ideology of socialist block countries, quite actively pursue financial redistribution of cash revenues and effect ambitious target cash payments to the poor, but there is neither a problem, nor the very concept of social, benefits abroad' (Goncharova, 2005: 13). Since, as previously noted, provision of sanatorium and health resort treatment to certain categories of citizens free of charge is a specific feature of the Soviet period of development of social security system, the investigation of foreign experience should be based on the analysis of regulatory legal acts of the states of post-Soviet territory.

Results

The scientific interest from the positions of analysis of legal regulation of sanatorium and health resort treatment as the measure of social support represents, from our point of view, not so much the categorical approach to identifying the list of people enjoying the right for the above support measure (it has been established perfectly well and is identical in legislations of different states), as the conditions of providing it.

For instance, the problems of providing the aforementioned treatment are regulated in the Republic of Belarus by two main statutory instruments: by the law of the Republic of Belarus No. 239-3 of July 14, 2007 'On state social benefits, rights and guarantees for some categories of people'²³, as well as by the Decree of the President of the Republic of Belarus No. 542 of August 28, 2006 'On sanatorium and health resort treatment health improvement of people'²⁴. What calls attention to itself is the order and conditions of sanatorium and health resort treatment, which can be provided both free of charge and in the form of monetary support for procuring warrant. Besides, a differentiation of the right of citizens is envisaged treatment is sanatoriums depending on whether they are working or non-working, as well as the intervals of providing treatment (every year or not oftener than once in two years).

The issues of providing sanatorium and health resort treatment in the legislation of the Kyrgyz Republic are also regulated by the number of statutory instruments: by law of the Kyrgyz Republic No. 38 of April 03, 2008 'On the rights and guarantees for people with health disabilities'²⁵, by law of the Kyrgyz Republic No. 14 of May 08, 1996 'On veterans of war, Armed Forces and Homefront workers'²⁶, by law of the Kyrgyz Republic No. 1196-XII of May 07, 1993 'On social protection of citizens of the Kyrgyz

²² Forecast of Longtime Social and Economic Development of the Russian Federation for a Period up to 2030, developed by the Ministry of Economic Development and Trade of the Russian Federation. Available at: <http://www.economy.gov.ru> [Accessed: 10 October 2021].

²³ Law of the Republic of Belarus No. 239-3 dd 14.07.2007 'On State Social Benefits, Rights and Guarantees for Some Categories of People'. Available at: <https://pravo.by/document/?guid=3961&p0=H10700239> [Accessed: 10 October 2021].

²⁴ Decree of the President of the Republic of Belarus No. 542 of August 28, 2006 'On Sanatorium and Health Resort Treatment Health Improvement of People. Available at: <https://pravo.by/document/?guid=3961&p0=P30600542> [Accessed: 10 October 2021].

²⁵ Law of the Kyrgyz Republic No. 38 of April 03, 2008 'On the Rights and Guarantees for People with Health Disabilities'. Available at: https://online.zakon.kz/Document/?doc_id=30342768 [Accessed: 10 October 2021].

²⁶ Law of the Kyrgyz Republic No. 14 of May 08, 1996 'On Veterans of War, Armed Forces and Homefront Workers'. Available at: https://online.zakon.kz/Document/?doc_id=30213036 [Accessed: 10 October 2021].

Republic, who suffered as a result of Chernobyl disaster²⁷. The differentiation of frequency of the above treatment is even more essential in legal provisions of this state – from one time in two years to one time in five years. The warrants can be provided either free of charge or with 50% or with 30% discount.

No less interesting from the point of view of differentiated approach to providing sanatorium and health resort treatment to some categories of people is the legislation of the Republic of Kazakhstan. According to law of Republic of Kazakhstan No. 39 of April 13, 2005 ‘On social protection of disabled people in the Republic of Kazakhstan’²⁸, law of the Republic of Kazakhstan No. 322-VI LRK of May 6, 2020 ‘On veterans’²⁹, Resolution of the Government of the Republic of Kazakhstan No. 504 of May 21, 2013 ‘On approval of Typical rules of rendering social assistance, establishing amounts and identifying the list of some categories of distressed people’³⁰, Decision of Maslikhat of Almaty No. 347 of July 23, 2015 ‘On approval of Rules of rendering social assistance, establishing amounts and identifying the list of some categories of distressed people in Almaty’³¹, the right for treatment arises with different categories of citizens not considering (e.g., for participants and disabled veterans of the Great Patriotic war) or considering a per capita income, while the travel and accommodation warrant for sanatorium and health resort treatment is provided free of charge or with payment of 25% of the amount of received retirement benefit not taking into account the state baseline pension payment (e.g., to retirement pensioners).

The legislation of the Republic of Tajikistan, in particular, Law No. 59 of April 17, 1995 ‘On veterans’³² enshrine the right of some citizens for life-long exemption from payment for travel and accommodation warrants for sanatorium and health resort treatment (e.g., veterans of the Great Patriotic war provided that they have been awarded for deeds of arms with two and more orders of the USSR and the Republic of Tajikistan), for provision of some working citizens with the warrant once a year at the place of work, while the non-working people will be provided by the pension bodies. Law of the Republic of Tajikistan No. 675 of December 29, 2010 ‘On social protection of disabled people’³³ envisages provision of travel and accommodation warrants for sanatorium and health resort treatment free of charge or with payment of 50% of the warrant cost at the place of work to the working disabled people. Law of the Republic of Tajikistan No. 242 of March 05, 2007 ‘On social protection of citizens, who suffered as a result of disaster at Chernobyl Nuclear Power Plant’³⁴ establishes the right for annual free sanatorium and health resort treatment or compensation of average cost of the warrant at the place of work or by social security authorities at the place of residence for citizens, who suffered from radiation effect.

As for legislation of Ukraine, first of all, a considerable number of statutory instruments regulating relations in the sphere under consideration, can be noted. The sanatorium and health resort treatment as the measure of social support is provided on the basis of law of Ukraine No. 875-XII of March 21, 1991 ‘On fundamentals of social protection of people with permanent disability in Ukraine’³⁵, law of Ukraine

²⁷ Law of the Kyrgyz Republic No. 1196-XII of May 07, 1993 ‘On Social Protection of Citizens of the Kyrgyz Republic, Who Suffered as a Result of Chernobyl Disaster’. Available at: https://online.zakon.kz/Document/?doc_id=30211695 [Accessed: 10 October 2021].

²⁸ Law of Republic of Kazakhstan No. 39 of April 13, 2005 ‘On Social Protection of Disabled People in the Republic of Kazakhstan. Available at: https://online.zakon.kz/Document/?doc_id=30008935 [Accessed: 10 October 2021].

²⁹ Law of the Republic of Kazakhstan No. 322-VI 3PK of May 6, 2020 ‘On veterans’. Available at: https://online.zakon.kz/Document/?doc_id=33964161 [Accessed: 10 October 2021].

³⁰ Resolution of the Government of the Republic of Kazakhstan No. 504 of May 21, 2013 ‘On Approval of Typical Rules of Rendering Social Assistance, Establishing Amounts and Identifying the List of Some Categories of Distressed People’. Available at: https://online.zakon.kz/Document/?doc_id=31398292 [Accessed: 10 October 2021].

³¹ Decisions of Maslikhat of Almaty No. 347 of July 02, 2015 On Approval of Rules of Rendering Social Assistance, Establishing Amounts and Identifying the List of Some Categories of Distressed People in Almaty. Available at: <https://adilet.zan.kz/rus/docs/V15R0001194> [Accessed: 10 October 2021].

³² Law of the Republic of Tajikistan No. 59 of April 17, 1995 ‘On Veterans’. Available at: https://online.zakon.kz/Document/?doc_id=30581853 [Accessed: 10 October 2021].

³³ Law of the Republic of Tajikistan No. 675 December 29, 2010 ‘On Social Protection of Disabled People. Available at: https://online.zakon.kz/Document/?doc_id=30931074 [Accessed: 10 October 2021].

³⁴ Law of the Republic of Tajikistan No.242 of March 05, 2007 ‘On Social Protection of Citizens, Who Suffered as a Result of Disaster at Chernobyl Nuclear Power Plant. Available at: https://online.zakon.kz/Document/?doc_id=30593657 [Accessed: 10 October 2021].

³⁵ Law of Ukraine No. 875-XII of March 21, 1991 ‘On Fundamentals of Social Protection of People with Permanent Disability in Ukraine. Available at: https://online.zakon.kz/Document/?doc_id=30456394 [Accessed: 10 October 2021].

No. 3551-XII of October 22, 1993 'On status of veterans of war, guarantees of their social protection'³⁶, law of Ukraine No. 1584-III of March 23, 2000 'On the victims of Nazi's prosecution'³⁷, law of Ukraine No. 3721-XII of December 16, 1993 'On basic principles of social protection of veterans of labor and other people of advanced age in Ukraine'³⁸, law of Ukraine No. 796-XII of February 28, 1991 'On status and social protection of people, who suffered as a result of Chernobyl disaster'³⁹, other statutory instruments.

This is the reason why differentiation of legal regulation of the respective public relations in Ukraine is quite significant. So, free provision with sanatorium and health resort treatment warrants in the order of precedence with respect to people with childhood disability. The right for free acquisition of warrant or for monetary compensation of cost of the warrant acquired independently at least once a year is provided to combatants and to people with equal status, as well as to participants of war. The people, who performed special services for the Homeland, are enshrined with the right for free top-priority sanatorium and health resort treatment. The veterans of labor enjoy the prerogative right for provision of sanatorium and health resort treatment and for compensation of cost of warrant acquired independently. However, it should be noted that the aforementioned compensation does not cover all expenditures of a person for independent sanatorium treatment.

The aforementioned helps reveal both similarities and dissimilarities in implementing the right for sanatorium and health resort treatment of some categories of people.

It is necessary to proceed from the premise that not all citizens enjoy such right according to the legislation of Russia, as well as of the foregoing states. This list includes the persons, who need treatment for health reasons associated both with permanent disability, and with severe injuries or other injuries to health as a result of radiation or industrial disasters (e.g., accident at Chernobyl NPP) or as a result of tragic, socially significant events (armed hostilities, Great Patriotic war). At the same time the list of the above grounds varies in legislations of different states (for instance, certain support in this sphere is provided to the retirement pensioners in the Republic of Kazakhstan, and the Republic of Belarus it is provided to pupils). However, the key criterion is the requirement of health improvement.

It appears that such approach to identifying the categories of people enjoying the right for sanatorium and health resort treatment quite conforms to the principle of social justice. According to G. V. Maltsev the idea of justice expressed in the right should be associated with the necessity to assess contribution of an actor to the public system, individualize its status, consider its peculiarities and conditions of activity as accurately as possible (Maltsev, 1977: 54). Put it differently, the criteria of social justice in distributional relations are incorporated not only in human factors but in certain external circumstances (Maltsev, 1977: 111).

As for the order of providing sanatorium and health resort treatment, the comparative analysis makes it possible to speak on the following.

First of all, the right for sanatorium and health resort treatment arises with certain frequency. Unlike legislation of the majority of post-Soviet states, where the approach to frequency is differentiated depending on the category, to which the citizen belongs, in Russia the said right arises with citizens every year that in many respects creates difficulties of its implementation.

We consider that the foreign experience of legal regulation of social support is more consistent with the principle of social justice than that existing now in Russia. Article 9 of Tallinn Charter enshrines that every country seeks improvement of its system of healthcare for the purpose of health improvement on the basis of equality and justice and considering particular needs of people regarding health protection. We suppose that depending on the purposes of sanatorium and health resort treatment the frequency of providing it should be established. For instance, if it is carried out for therapeutic and rehabilitation purposes,

³⁶ Law of Ukraine No. 3551-XII of October 22, 1993 'On Status of Veterans of War, Guarantees of their Social Protection. Available at: https://online.zakon.kz/Document/?doc_id=30454558 [Accessed: 10 October 2021].

³⁷ Law of Ukraine No. 1584-III of March 23, 2000 'On the Victims of Nazi's Prosecution'. Available at: https://online.zakon.kz/Document/?doc_id=30544881 [Accessed: 10 October 2021].

³⁸ Law of Ukraine No. 3721-XII of December 16, 1993 'On Basic Principles of Social Protection of Veterans of Labor and Other People of Advanced Age in Ukraine. Available at: https://online.zakon.kz/m/document?doc_id=30454622 [Accessed: 10 October 2021].

³⁹ Law of Ukraine No. 796-XII of February 28, 1991 'On Status and Social Protection of People, Who Suffered as a Result of Chernobyl Disaster. Available at: https://online.zakon.kz/Document/?doc_id=30454071 [Accessed: 10 October 2021].

e.g., for the people with persistent bodily functional disorders (disabled people), they should enjoy the right for sanatorium and health resort treatment at regular intervals – annually, for provision and maintaining of their life-sustaining activity. In other cases, when such treatment is provided as a preventive measure, the intervals may be longer – once in two or three years depending on the state of health of an individual and other conditions. The particular people’s needs in the sphere of health protection should be laid as the basis of differentiation by frequency.

Secondly, the implementation of right for sanatorium and health resort treatment can be effected both in the form of providing service in natural way, and in the way of monetary compensation: full or partial. The Russian people as the recipients of the considered measure of social support are entitled to receive services in natural form or elect not to receive a set of social services in full or partially after receiving monetary compensation. It is worth noting that it is not a question of compensation of the cost of treatment (full or partial), but a question of certain amount of money to be forwarded for payment of this or the other social service, including services of sanatorium and health resort treatment. For example, 84 rubles are allocated monthly as payment for social service on sanatorium and health resort treatment (art.6.5 of Federal law ‘On state social assistance’, since 01 January 2021 this sum amounts to 144.37 rub.⁴⁰).

At the same time a distribution system is the important characteristic of justice. In every period a peculiar model of optimal individual’s needs is shaped depending on the level of development of society and economics, which satisfaction determines the progress of the mankind as a whole, and the development of a particular country, region, self-actualization of every person (Roshchina, 2004: 79).

Tallinn Charter states that the mechanisms of financing should provide for a possibility of resources distribution for optimal satisfaction of medical and social needs; reduction of financial barriers for providing access to necessary services; protection against financial risk related to receiving medical assistance under observance of responsible attitude to the available public resources.

Therefore, it appears that a differentiated approach to the social service scope, whether it is free provision of sanatorium and health resort treatment or compensation of its cost fully or partially, also corresponds to the principle of social justice, if the criterion of demand for such treatment is underlying differentiation. As previously noted, the sanatorium and health resort treatment becomes therapeutic and rehabilitation measure for some people, and is a vital need, for the others it is a preventive measure.

Thirdly, in some cases the categories of people enjoying the right for sanatorium and health resort treatment are determined with due account of the criterion of need (e.g., to some citizens of the Republic of Kazakhstan) identified by the fact of existence of gainful activity, or by the level of per capita income. Presently this criterion is not used in Russia.

We believe that the account of the criterion of need would help in the instant case implement the principle of social justice to the fullest extent possible. It can elicit a certain retort because of the fact that when applying such criterion of categorical order of establishment of a right for sanatorium and health resort treatment will be changed and the people, who belonged earlier to the unified category of ‘recipients of the set of social services’ will happen to be in unequal conditions. However, ‘not every social equality (e.g., one-size-fits-all approach) is a merit, not every inequality is evil and demonstration of social injustice’ (Samsonova, 1996: 4).

The differentiated approach to implementing the rights of citizens for sanatorium and health resort treatment, including consideration of the feature of need, should become a basis for demonstration of social justice. According to V. N. Pligin the ‘resources shrink, accordingly, the requirements of just distribution of resources will grow’, since the ‘state should provide minimum standards in the framework of implementing Constitution of the Russian Federation’(Pligin, 2014: 103). This, from our point of view, refers in full volume to implementing the right of people for health protection, including by means of sanatorium and health resort treatment.

It also agrees with the position of WHO enshrined in Tallinn Charter. So, art. 6 provides for that it is necessary to translate the common values of solidarity, justice and public participation into action actively in the policy of healthcare, in distribution of resources and other actions, paying due attention to meeting the needs of less wealthy population strata and other vulnerable groups. Besides, as referred to in the

⁴⁰ Website of Pension Fund of the Russian Federation Available at: https://pfr.gov.ru/grazhdanam/federal_beneficiaries/nsu/ [Accessed: 11 October 2021].

Charter, a general character of distributing resources should provide for a necessary balance between administering medical aid, diseases prevention and promotion of public health for more complete satisfaction of current and expected needs of health protection.

Discussion

The conducted analysis helps to reveal provisions possible for legal reception by the legislation of Russian Federation taking into account provisions of international standards in the sphere of health protection and social protection of population, as well as with due account of a principle of social justice.

It seems appropriate to introduce such additional grounds for providing sanatorium and health resort treatment to some categories of its recipients as the absence of gainful activity (e.g., for the members of families of deceased (dead) disabled veterans of war, participants of the Great Patriotic war and veterans of combat operations, some other citizens). Such condition will comply with the criterion of need and will help provide niche targeting in providing social services. Besides, it correlates to the norms of international law, particularly, to the right for social assistance of a person, who has no sufficient means of sustenance and cannot receive these means due to its own efforts or from other sources, inter alia, due to benefits in the framework of social security system (art. 13, European social charter).

At the same time the criterion of effecting gainful activity in and of itself too not always is indicative of a possibility to independently provide itself with sanatorium and health resort treatment for health protection. At the present time as well a considerable number of people receive salary at the level of minimum rate of labor payment or a bit higher. Therefore, it seems reasonable to provide for such criterion of need, as per capita income. We believe that even in case of effecting gainful activity, if the per capita income of an individual does not exceed two subsistence wages, the inability to satisfy the life-critical needs in terms of health protection independently will be presumed with respect to it and such individual will need the measures of social support.

At the very root speaking the language of the ancient Book of books: ‘In the beginning was the Word’, ‘equality’ is, of course, such a word in the Constitution. ‘When the state undertakes to protect people and provide, at least, the starting standard of living to them... The juridical, i.e., legal, equality consists in the fact that the state does not rob the rich to the benefit of the poor, but equalizes a wide gap between them, provides equalization of starting capabilities’ (Zorkin, 2014: 28–29).

Besides, the prerequisite that the people enjoying the right for sanatorium and health resort treatment, in cases of independent warrant acquisition are entitled to get compensation of its cost within the limits of the guaranteed amount, can be considered a positive experience of legal regulation. At that, the amount of compensated cost can be differentiated depending on the category of people enjoying the right for treatment.

For instance, the disabled people of group I and handicapped children can be enshrined the right for compensation of warrant cost in full volume, but not exceeding the guaranteed amount. In case of acquiring the sanatorium and health resort treatment at the price exceeding the guaranteed amount, a disabled person will pay the difference at its sole cost and expense. The disabled people of groups II and III could gain the right for compensation of cost of sanatorium and health resort treatment in the volume of 50% and 30% accordingly, but not higher than foregoing percentage ratio of the amount of guaranteed sum. It would be reasonable to extend this rule to non-working disabled people only. It can be envisaged for working disabled people that the payment in volume specified above from the warrant cost should be provided at the place of work by an employer under conditions and in the order provided for by the collective employment agreement or by local regulatory instrument.

The provision on share participation in payment for treatment is compliant with Section II of International Labor Organization Convention No. 102 ‘On minimum standards of social assistance’⁴¹. According to provisions of this Section a recipient of social assistance or its family provider can be invited to participation in paying the cost of medical service provided that these rules of such share participation do not appear quite burdensome for these people. The last circumstance, from our point of view, can be ‘attached’ too

⁴¹ ILO Convention No. 102 Social Security (Minimum Standards) Convention, 1952. Available at: https://www.ilo.org/wcms-sp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_c102_ru.pdf [Accessed: 11 October 2021].

to the criterion of need identified as per capita income per one family member at the level not exceeding two subsistence wages.

‘The main task of the law with respect to social justice, – G. V. Maltsev wrote, – consists in minimization or even elimination of an element of randomness of distribution’ (Maltsev, 1977: 196). The criterion of need and the niche targeting help exclude random distribution of state resources allocated for sanatorium and health resort treatment, and make this distribution just to the maximum extent.

It should be noted as well that a differentiated approach to periodicity of providing sanatorium and health resort treatment to some categories of citizens is quite frequently applicable in the legislation of CIS states. For example, for such categories of people as the disabled veterans of war, participants of the Great Patriotic war, veterans of combat operations, invalids of group I, handicapped children, for whom the abovementioned treatment is the condition of maintaining their active life, this social service should be provided annually. The invalids of group II taking into account therapeutic indications most frequently need such service for rehabilitation purposes, therefore, its provision is possible once in two years. The above service will be provided most frequently for prophylactic purposes to the members of families of deceased (dead) disabled veterans of war, participants of the Great Patriotic war and veterans of combat operations, invalids of group III, therefore, it could be carried out no more than once in three years.

We agree to the fact that dialectic combination of elements of equality and inequality is implemented in the law-making through individual approach to legal regulation of different types of relations based on combination of equalization and distributional justice. For instance, it is just to say that all should be equal in the eyes of the law and court, but not all should pay equal taxes (Chechelnskiy, 2014: 105). It enables us to say that implementation of the principle of social justice does not assume establishing equal abilities in the sphere of social support, in particular, in sanatorium and health resort treatment.

It appears that equality and equalization are multi-ordinal categories. Presently, the Federal law ‘On state social assistance’ actually anticipates implementation of the right for sanatorium and health resort treatment on the basis of one-size-fits-all solution. At the same time the degree of disability is established in the way of performing medical and social assessment, when the respective degree of disability is established proceeding from integrated estimation of the state of individual’s organism on the basis of analysis of its clinical and functional, social and domestic, professional and occupational, and psychological data with the use of classifications and criteria⁴². So, the individual’s health problems expressed in steady dysfunctions of human body (in the range of 90 to 100 percent with respect to basic categories of human life-sustaining activity: ability of self-servicing, ability of independent movement, ability of labor activity, etc.) associated with diseases, consequences of personal injuries or defects⁴³ are used as the grounds for approval for disability of group I. The invalids of group I are, as a rule, incapable for work and need physical assistance for self-servicing and maintenance of own life-sustaining activity.

The invalids of group III have steady, though insignificant dysfunctions of bodily organs determined by diseases, consequences of personal injuries or defects (in the range from 10 to 30 percent). Typically, these are the people capable to work. Moreover, according to labor legislation they work practically on equal terms with other employees. So, according to article 92 of the Labor Code of the Russian Federation⁴⁴ the invalids of groups I and II only enjoy the right for short working time.

Hence, the disabled people depending on the established disability group have different abilities for independent implementation of right for health protection. This is precisely why we consider it socially unjust to provide them with absolutely identical social guarantees. Different volume of provided social services could help level their position with respect to each other by placing them into equal positions.

⁴² Resolution of the Government of the Russian Federation of February 20, 2006 No. 95 ‘On Order and Conditions of Approval for Disability’. Official website of legal information. Available at: <http://pravo.gov.ru> [Accessed: 27 November 2020]

⁴³ Order of the Ministry of Labor and Social Security of the Russian Federation No. 585n of August 27, 2019 ‘On Classifications and Criteria Used When Performing Medical and Social Assessment of People by the Federal State Establishments of Medical and Social Assessment’. Official website of legal information. Available at: <http://pravo.gov.ru> [Accessed: 26 February 2021].

⁴⁴ Federal Law No. 197-FZ of February 30, 2001 ‘Labor Code of the Russian Federation’. Collection of legislative acts of the Russian Federation. 2002. No. 1 (p. 1). Art. 3.

Conclusion

The principle of social justice has been considered since long by the world community as the basis for efficient social and economic development. Declaration of International Labor Organization ‘On social justice for just globalization’⁴⁵ adopted on June 10, 2008 in Geneva testifies to this fact. Besides, WHO noted in art.12 of Tallinn Charter that it is necessary to articulate particular tasks in every country objectively ‘solvable’ taking into account material and financial resources.

M. Sandel said that ‘justice demands taking measures that remove social and economic drawbacks and provide just chances’ (Sandel, 2013: 32). The differential approach to providing sanatorium and health resort treatment will reflect the principle of social justice to the full extent. The social justice is based on the concept of must, which is based on correspondence of act and obligation. In the sphere of support it is the volume of assistance depending on the volume of need for it.

It is believed that taking into account compliance practices and problems being revealed in the course of implementing the right for sanatorium and health resort treatment by some citizens, presently it is necessary to update the approaches to providing it. New approaches should be based not only on principle of social justice, but take into consideration financial resources available with the state. It will bring about not only the review of standards of providing sanatorium and health resort treatment to some categories of citizens, but also differentiation of minimum standards of social security. In reality it can be expressed for some people in reducing already available social payments and services. It should be assumed that not all will perceive it positively as socially just solution.

However, V. N. Pligin underlined truly that ‘minimum standards are minimum requirements, though no one is eager to agree to the fact that you have a right to produce minimum requirements, one is inclined to produce maximum aggressive requirements: just give it to me, I have a right’ (Pligin, 2014: 103). At that, nobody wants to take into account either presence or absence of possibilities with other citizens, or possibility of the state. The principle of social justice assumes that within the framework of society we should consider not only our individual interests and needs but the interests and needs of other people and country as a whole. The changed order of providing sanatorium and health resort treatment, as well as the scope of services being provided on the basis of differentiated approach will help not only implement the principle of social justice, not just proclaim the right for such treatment with the aim of protecting the health of people, but make it implementable in reality.

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⁴⁵ ILO Declaration on Social Justice for a Fair Globalization Adopted in Geneva on 10 June 2008 at the 97th session of ILO General Conference. Available at: http://www.ilo.int/moscow/information-resources/publications/WCMS_100193/lang--ru/index.htm [Accessed: 11 October 2021].

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