



# National Health as a Condition and Factor of Economic Growth: Legal Aspects

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## Abstract

The paper provides a systemic account of scientific views on the strategy and challenges of legal regulation of healthcare and public health in the Russian Federation while showing their impact on the economic and social development of the country. The author examines global trends in the conceptual foundation of state regulation of healthcare and public health that have come to light in recent decades, with an increase in disability and mortality caused by lifestyle diseases and behavioral patterns. The paper analyses the interpretation characteristics of such trends in the Russian legal reality, factoring in the Russian Constitutional Reform of 2020. The main approaches to the way of holding the state and citizens responsible for health, developed in legal science and practice, are studied, taking into account historical data. The paper also shows how the digitalization of various areas of life affects the development of the public health system and offers some insights into it. Following the study, the author talks about the legal possibility of eliminating the factors that have a negative impact on public health, which is a significant factor in the development of the Russian economy.

## Keywords

Legal regulation · Right to healthcare · Public health · Economic activity · Responsibility for health · Behavioral risk factors · Deregulation paradigm · Concept of optimization of the state regulation of economy · COVID-19

## JEL Codes

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## 1 Introduction

The health of a nation is a complex social, economic, medical, and demographic phenomenon. This phenomenon can significantly affect the direction of and changes in the processes of economic and social development of society and the country.

The world currently faces fundamental changes in the architectonics of the global economic system because it is transitioning to a new technological paradigm. In this new world, a person's health, intellect, and creative potential may become just as significant for the development of the country as access to fuel, energy, and raw material resources, in other words, a key factor in the equitable integration of each state into the global economic system. These conditions dictate a new, central role for the value of health, which society must now prioritize. That is why law, which is, according to Pierre Bourdieu, "the quintessential form of "active" discourse, able by its own operation to produce effects" (Bourdieu, 2007), had to include this phenomenon in its scope of interests.

The research seeks to cover the mutual influence of the current state of public health and its determinants, on the one hand, and processes of economic and social development of the country, on the other hand. It also aims to determine whether the law can adjust the dynamics and direction of such mutual influence, being the regulator of social relations when it comes to public healthcare. The research thus achieves the following objectives:

- The mutual influence of public healthcare activities and social and economic development processes of the country was investigated, with such influence aimed at fostering this development;
- The status and trends of international and national legal regulation in healthcare and public health were analyzed;
- The basic idea behind the distinction between the responsibility for health assumed by a person and the state was explored;

- The influence of the “mindset” dominating the society on the general state of public health and the direction of and changes in social and economic development processes was studied.

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## 2 Methodology

Works of Russian general and sectoral researchers serve as the doctrinal basis for the research (Dudin et al., 2017; Dudin et al., 2017; Inshakova, 2021). The regulatory framework comprises the provisions of international legal acts regulating the observance and protection of human rights, as well as legislative acts regulating healthcare and public health adopted by the Russian Federation, the USSR, and foreign countries.

The research methodology is based on formal-legal, comparative-legal, historical-legal, and systemic methods.

The study of public healthcare in the light of the impact of nation’s and individual’s health on the economic and social development of the country is based on a systemic and structural analysis of Russian health legislation, international legal acts, acts of Russian and foreign legislation regulating the protection of human rights in general and the right to health protection in particular, as well as the precedents in its application, the practice of its application, and critical examination of the main findings of scientific and analytical research relating to public health issues and their impact on economic development. A comprehensive approach to study allowed the author to identify global trends in the conceptual foundation of state regulation of protection of public and individual health that have come to light in recent decades.

As the author used comparative-legal and historical-legal methods to research the Soviet and foreign experience in regulating public healthcare, the constitutional legislation of the most economically developed countries was studied first. This played an important role in comparing the dynamics and peculiarities of the legal regulation of public and individual health protection, as well as in identifying factors that threaten public health in the country and prevent the phenomenon of public health from becoming a driving force of economic and social development of the Russian Federation.

The formal-legal, comparative-legal, historical-legal, and systemic methods played a significant role in determining the ways healthcare legislation can be improved.

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## 3 Results

1. Health is a person’s most valuable treasure. It is a criterion of a person’s wellness, success, and strong social standing. Health is the main driver behind a worker’s concentration,

stamina, and overall physical and mental condition, which affects their performance and disposition to certain types of economic activity. A flippant attitude towards health sometimes leads to tragic consequences, and its loss overshadows almost all other social benefits. Apart from that, the current health of people greatly impacts their health tomorrow and has a pronounced hereditary effect, a factor influencing (and even predetermining) the health of future generations.

That is why during the history of humankind, the relations between the patient and the doctor almost always were regulated by legal norms. In particular, even the ancient Code of Hammurabi established the amount of remuneration that a doctor received for rendering different types of medical assistance and the doctor’s responsibility for damaging the patient’s health to various extent.

As the civilization developed and the ideas of humanism and justice spread through the world, healthcare issues were more and more frequently viewed as part of the core human rights and freedoms. Nowadays, the Universal Declaration of Human Rights and other international legal acts on human rights state that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . medical care and necessary social services, and the right to security in the event of . . . sickness, . . .” (UN General Assembly, 1948). International Covenant on Economic, Social and Cultural Rights dated December 16, 1966, indicates that the countries that ratified it should “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and defines the “steps to be taken by the States Parties to achieve the full realization of this right” (UN General Assembly, 1966) Moreover, these and other international legal acts proclaim life and health to be the priority value, the protection of which excuses the limitation of other civil, economic, and social rights, such as the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, the right to freedom of thought, conscience, and religion, etc.

The provisions of international legal acts are developed and elaborated in national legal norms, first of all, in states’ constitutions. Simultaneously, since an individual cannot independently eliminate all factors negatively affecting their health (Sharabchiev, 2015), many countries make it a mission to establish citizens’ rights and guarantees for healthcare in the principal laws and define the state’s responsibilities in this realm. In some countries, the discussed norms are declarative. For example, the Constitution of Japan commands the state to “use its endeavors for the promotion and extension of . . . public health” (Japan, 1947) Other countries, like the Swiss

Confederation, define core spheres that must be regulated by the state to protect citizens' health, and introduce some institutes of medical law related to new converging NBIC technology (Inshakova et al., 2021). Another set of countries (e.g., the People's Republic of China) defines the main directions of economic and other activities, which should be supported and developed by the country to increase the efficiency of healthcare.

The Constitution of the Russian Federation enshrines the right of everyone to health protection and medical care. It also indicates the obligation of the country to finance federal programs for the protection and promotion of public health and the need to take measures to develop the state, municipal, and private healthcare systems (Inshakova, 2021). Additionally, it dictates the need to establish the responsibility of officials for concealing facts and circumstances that pose a threat to the life and health of people. Moreover, concealment in this context is not only the withholding of information but also the dissemination of unreliable, deliberately false information about the state of the environment, the sanitary and epidemiological state, and other events and circumstances that threaten people's health. Citizens have the right to regularly receive reliable and timely information about factors that contribute to the preservation of health or have a harmful effect on it, including information about the sanitary and epidemiological state of the area of residence, rational nutritional standards, products, works, services, their compliance with sanitary norms and rules, etc. This information is provided by the local administration through the media or directly to citizens at their request. Constitutional provisions are elaborated in the different federal laws, codified acts imposing criminal or administrative liability for associated offenses, and other legal norms.

2. Researchers (Salagay & Soshkina, 2020; Sharabchiev, 2015) note that non-communicable diseases, often caused by destructive behaviors (e.g., alcohol and tobacco use, self-harm, disregard for safety in the workplace), are becoming increasingly common in many countries worldwide. Consequently, the paradigm stating that the country alone is responsible for a citizen's health by developing the necessary medical capacities is giving way to a different concept. It is a person responsible for their health first and foremost. It is a person who must refrain from behavior that could be detrimental to their health. The country is responsible for creating conditions for protecting and improving people's health. In its turn, the country forms a "field of opportunities" with its instructions, which helps citizens act accordingly and creates a "movement vector," using administrative and tax measures to this end. One of the most striking examples is the Federal law "On

protecting the health of citizens from the influence of tobacco smoke and consequences of tobacco use or nicotine-containing products use" (February 23, 2013 No. 15-FZ). It does not prohibit tobacco smoking, but it establishes higher excise rates for tobacco products, allows the state to strictly regulate its retail prices, etc. (Russian Federation, 2013). As a result, more than 35.0% of smokers in Russia have attempted to quit smoking (33.4% of men and 39.3% of women) in the past 12 months (World Health Organization (WHO), 2016). During the Russian Constitutional Reform of 2020, the principle of personal responsibility for health has acquired the status of a constitutional principle. According to part 1 of Article 72 of the Constitution of the Russian Federation, creating conditions for a healthy lifestyle and fostering a culture of responsible attitudes towards health are areas of joint jurisdiction of the Russian Federation and subjects of the Russian Federation (Russian Federation, 1993). The development of constitutional amendments, which should encourage citizens to consider health and health care as a social value, requires changes in at least six federal laws. From a legal point of view, a healthy lifestyle includes four key aspects:

- Countering tobacco use and protection from tobacco smoke;
- Reducing alcohol use;
- Encouraging physical activity;
- Healthy eating (Matytsin & Anisimov, 2022).

In this regard, legislative acts regulating the relevant social relations fall into the orbit of constitutional reforms. The Federal law "On education in the Russian Federation" (December 29, 2012 No. 273-FZ) also falls into this area (Russian Federation, 2012). This is important because upbringing and education allow a person to perceive the arguments justifying the need to abandon bad habits. Accordingly, a person's rejection of unhealthy behavior patterns becomes conscious and, therefore, durable.

3. In the first decades of the twenty-first century, many countries returned to public health issues because they define "the potential and direction of the state's productive powers, the capacity and specifics of its (state's) inner goods and services market, export opportunities and structure, and, most importantly, the potential for geopolitical stability" (Kozin & Tsybusov, 2006). Public health and the economy, including separate sectors, are closely interconnected. Therefore, economic and other activities bring about new and induce old social and environmental issues, resulting in poor health for the population facing them (United Nations Department of Statistics, 2021). After all, the economy, in particular, industry, energy, and transportation, generates emissions and discharges of

pollutants into the environment, a factor that negatively affects local ecosystems and people's health. The human economic activity gave rise to such phenomena as occupational diseases, workplace injuries, and environmental diseases. Even though economic development eliminates factors negatively affecting human health and, therefore, public health, they are replaced by new ones, sometimes even more destructive. In part, the issues of overcoming the negative impact of these factors on human health are regulated by acts of environmental legislation, legislation on sanitary and epidemiological health of the population and territories, and legislation on industrial safety. However, the introduced regulators are insufficient. Under these conditions, countries (e.g., the United States, Japan, China, etc.) develop national programs to support public health and make it a factor in economic development as the world economic system transitions to a new technological model.

Under the Russian Constitutional Reform of 2020, ensuring public health in Russia is viewed as a result of encouraging citizens to consider health and healthcare one of social values. However, these constitutional novelties are yet to be elaborated within the framework of the norms of the Federal law "On basics of health care of citizens in the Russian Federation" (November 21, 2011 No. 323-FZ) (Russian Federation, 2011) and other regulatory acts because the notion of "public health" is still non-existent in the Russian healthcare legislation. This notion was first written down in the Passport of the National Project "Demographics" (Presidium of the Council under the President of the Russian Federation for Strategic Development and National Projects, 2018), approved by the Presidium of the Presidential Council for Strategic Development and National Projects. Under this project, a separate line of action was defined: the federal project "Strengthening public health," which emphasizes disease prevention and the development of a healthy lifestyle, including a healthy diet and avoidance of bad habits.

However, the efficiency of public healthcare may decrease under the influence of various factors. One of these factors is certain categories of citizens abusing their personal non-property right to health and, in a number of cases, their disregard for public and personal health for the benefit of their individual social or economic rights. This factor became very visible during the COVID-19 pandemic. Thoughts of S. Yu. Filippova, Associate Professor, Chair of Commercial Law and Basics of Law Department at Lomonosov Moscow State University, can illustrate this very well. "The natural right to life is a core value," says the Associate Professor. "However, what is more valuable in life: the biological life itself or its content? I believe that the world is not a hospital, and there are other values except for saving life and health.

Boundaries of a person's autonomy and personal freedom, which in private law manifest themselves in the ability to enter into legal relations of their own free will and discretion, stipulate the ability and possibility of the subject to fill their life with content on their own: choose exactly what they want to do with their life. The right to life also entails the right to control that life, in particular, to risk it. . . . Seems like we should give people the right to life, as well as the right to risk their life, providing protection only on request" (Filippova, 2020). If we think of the scale of marches and other protests against "anti-COVID" measures, which took place in France and other European countries during the pandemic, we will have to admit that S. Yu. Filippova is not the only one thinking like that. However, neither she nor other "COVID dissidents" consider that the right to life and the right to control this life, which is stipulated in the Constitution of the Russian Federation, the Constitution of the French Republic, constitutions of other countries, and even the Universal Declaration of Human Rights, means the right to dispose of their life, not another person's life. However, with the spread of diseases that pose a danger to others (e.g., COVID-19), a breach of safety rules by a citizen may entail a threat not only to the health and even life of the offender but also to others who may well not have intended to risk their lives at all.

The public debate about vaccination against the COVID-19 is quite indicative of that. Some researchers (Vinokurov, 2021) argue that the country does not have the right to require employers to ensure mandatory vaccination of 60%, 65%, or even 80% of employees; the employers, in their turn, do not have the right to require employees to get vaccinated. What advocates of this point of view do not consider is the fact that, in the case of COVID-19, it is not about vaccines that are administered according to the national immunization calendar, which can be considered medical activities, but epidemic vaccines, "the purpose of which is not only to safeguard the health of the individual but also to prevent the mass spread of the disease" (Putilo & Volkova, 2011). That is, it is about measures to contain the disease. They also dismiss the fact that the transformation of the right to preventive vaccination into an obligation to undergo vaccination most likely results from labor legal relationships, not public healthcare relationships.

This leads us to the question: "What is the reason behind the emergence of people who are ready to risk public and private, individual health for the sake of fleeting pleasures or the mythical aspiration to "fill their life with their own content?" Considering that "health affects the key element of productive forces: the producers themselves" (Samutin, 2012), how does it affect the level and dynamics of economic development? In our opinion, the answer to these two questions is linked to two factors:

- The destructive influence of digitalization on various areas of the life of an individual and the society on the collective, individual, and personal identity of the person. In the research we conducted earlier (Lukyanova, 2022; Lukyanova, 2017), we have already noted that intensive development of digitalization processes leads to the “culture of the book” gradually turning into the “culture of the screen.” This leads to worldview being replaced with world perception; humanity leaves the rational ideal of knowing to the aesthetic and emotional one (Morgunov, 2013). We, humans, are no longer capable of shaping a comprehensive worldview, and, as a consequence, we lose our positions as subjects of right. Therefore, law regulators that operated earlier, addressing human willpower and mind, are not effective enough. Under these conditions, individual responsibility is almost never realized, which forces the government to require citizens to abide by the rules and act for the society’s benefit or to use other regulators, for example, extralegal and quasi-legal;
- The dominance of the “mindset” (Ganopolsky, 2001), which regulates the life of Russian society since the transition of the system of state management of the economy to the implementation of the “deregulation paradigm” (Khabrieva & Lukyanova, 2016), remains in the public consciousness. Two widely-known advertising slogans can be identified as the embodiment of this “mindset”: “because I’m worth it” and “don’t think about work—think about your life.”

At any moment in time, people’s practical (everyday) activities are regulated by a “mindset” adopted by their society at a certain stage of its development and realized in the economic reality, social technology, the customary labor organization types, and the “mindset.” The popular motto “Labour is noble, courageous, and heroic” pretty much embodied the “mindset” that regulated the life of the Soviet people for many years and which was, let us emphasize, endorsed by many millions of Soviet people. This “mindset” was reflected in all areas of the life of Soviet society. In particular, it is this “mindset” that can be called one of the factors that contributed to the relatively low level of corruption in the Soviet Union. In economics, the rule of this “mindset” (“labor = heroism”) led to a number of workers neglecting personal protective equipment, which resulted in a high level of workplace injuries and occupational diseases. This, in turn, it led to a decline in public health and consequently had a negative impact on the social and economic development of the country. Under the Soviet paradigm of state management of the economy, the effect of the said “mindset” was partly offset by the state’s total control of economic agents.

In the 1990s, when the country was “transitioning from building developed socialism to capitalism,” the “deregulation paradigm” was adopted by the country, and the society adopted the abovementioned “I’m worth it” “mindset.” The dominance of this paradigm and its corresponding “mindsets” has led to many negative social and economic consequences. That is why the “deregulation paradigm” is giving way to the concept (paradigm) of optimization in the area of state management of economics (Khabrieva & Lukyanova, 2016). However, the “I’m worth it” “mindset” continues to rule in the minds of Russian society, which entails, as we have already mentioned, their disregard for the principles of protection of public and individual health in favor of momentary wishes and preferences. This negatively affects public health and the country’s economy.

Under these conditions, encouraging citizens to consider health, healthcare, and public health as one of the social values requires the development and introduction of medical and sanitary measures and the formation of a new “mindset” that corresponds to the concept (paradigm) of optimizing state management of the economy. Without a doubt, Federal law “On basics of health care of citizens in the Russian Federation” (November 21, 2011 No. 323-FZ) (Russian Federation, 2011), as the main and system-forming piece of legislation in healthcare, should reflect new goals of the society’s development in healthcare and determine and detail legal means of achieving them. However, lawyers, public administration bodies, and their officials are unable to solve this problem alone; philosophers, cultural figures, and the entire civil society should be involved as well.

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## 4 Conclusion

The conducted analysis showed the following:

1. Public health and economic development are closely interconnected. On the one hand, public health, which reflects the state of the key element of productive forces, the producer, is one of the most important factors in the economic and social development of the country and the society and, consequently, the country’s competitive ability within the global economic system. On the other hand, it is the economy that lays the material and financial ground for developing the healthcare system and public healthcare.
2. Since the dawn of time, humankind has been trying to regulate healthcare issues with legal acts of various legal forces. Nowadays, a massive base of legal norms uniting international legal norms (universal and regional) and norms of national legislation (interpreted broadly in this case), first and foremost, states’ constitutions, is the legal basis of activities in healthcare. This massive base shows



signs of a system that has two interacting subsystems: the international and the national one.

3. Nowadays, non-infectious diseases, which have become common due to behavioral risk factors related to a person's lifestyle, are the main threat to the health of an individual and society. This leads us to the issue of separating responsibility for a person's health between the country and the individual. Different countries offer different approaches to this separation. The Russian Federation is shaping the following approach: the country takes on the responsibility for creating the conditions for protecting and improving people's health, creating legal tools and regulators that only indirectly affect human behavior, whereas citizens are responsible for taking care of their own health. As a result of the constitutional reform of 2020, this approach gained a sound legal basis in the form of part 1 of Article 72 of the Constitution of the Russian Federation. Further development of constitutional novelties that will encourage citizens to consider health and healthcare as one of the social values to ensure public health will require amending some federal laws containing regulators that are aimed at eliminating the impact of behavioral risk factors on human health.
4. Among other things, fostering digitalization, which transforms the "culture of the book" into the "culture of the screen" and influences people in a way that makes them unable to form a comprehensive world view, replacing it with a world perception and, consequently, losing the features of a subject of right, negatively affects the effectiveness of legal regulators that regulate the protection of public and individual health. Under these conditions, individual responsibility is almost never realized, which forces the country to require citizens to abide by the rules and act for the society's benefit or use other regulators, for example, extralegal and quasi-legal.

The situation in the Russian Federation is made more difficult due to the rule of "mindset" formed at the beginning of the 1990s under the influence of an almost complete rejection of state regulation of economic and other activities. The prevalence of this mindset in Russian society leads to disregard for the principles of protection of public and individual health in favor of momentary wishes and preferences. This negatively affects public health and the country's economy.

Under these conditions, encouraging citizens to consider health, healthcare, and public health as one of the social values requires the development and introduction of medical and sanitary measures and the formation of a new mindset. However, lawyers, public administration bodies, and their officials are unable to solve this problem alone; philosophers,

cultural figures, and the entire civil society should be involved as well.

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