

THE RIGHTS OF MINOR CITIZENS OF THE RUSSIAN FEDERATION TO UNCONSTRAINED AND CONSCIOUS CONSENT TO MEDICAL TREATMENT

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Introduction.

According to the Constitution of the Russian Federation a person becomes the subject of the citizen rights when he / she becomes of lawful age, in other words at the age of eighteen. It relates to the issues like electing local and federal authorities, dealing with properties and finances and so on.

In case the person is under the lawful age, competent adults, like parents, trustees, officials from state trust organizations, present and defend his / her interests. Being under eighteen, children are unable to evaluate the situation due to their physical and mental immaturity and lack of personal experience. Meanwhile, Law of the Russian Federation defines the age of fifteen as the age when a person obtains full 'medical' legal capacity. This statement doesn't seem perfectly accurate and correct.

The right to dispose of their own bodies and to accept the responsibility for their own physical and mental state should be granted to the juvenile citizens stage-by-stage, gradually expanding their independence up to the moment of their coming of age. This is logical in connection with the peculiarities of the process of physical and mental development of a person, his / her ability to realize the civil rights and defend his / her interests. At the same time the child should be given the right to take part in making decisions about his / her health including decisions on medical intervention issues. The degree of the freedom in realization of this right should correspond to the age and the level of the development of the child.

Main part

A need to ensure special protection of children was acknowledged for the first time by the international community in 1924 Geneva Declaration of children's rights protection. This declaration provisions were later acknowledged in the Declaration of human rights dated December 10, 1948 and then developed in the Declaration of the children's rights adopted by the UN General Assembly on November 20, 1959.

The United Nations Organizations adopted "Children's rights Convention" on November 20, 1989. The Convention provides that every human being under 18 years of age is deemed a child.

This Convention was ratified in the USSR on July 13, 1990. The Russian Federation as the legal successor of the USSR is committed to fulfilling obligations to comply with the Convention provisions. The only countries which have not ratified this Convention yet are the USA and Somalia.

The standing law of the RF “Fundamental legislation principles of public healthcare” (1993) defines the age of 15 as the age upon which minors obtain the right to independent decision on seeking (refusing) medical care.

Minors under 15 years of age do not have a right to take independent decisions on authorizing any kind of medical intervention. In this case, their legal representatives: parents, adoptive parents etc. are responsible for taking decisions on authorizing medical intervention for minors.

According to the standing Civil code of the RF, minors under 14 years of age are entitled only to independently engage in petty daily transactions.

Only legal representatives of minors under 14 years of age are entitled to engage in civil law actions for such minors.

In this respect the law of the RF “Fundamental legislation principles of public healthcare” is in accordance with the Civil code of the RF, as only legal representatives of a minor’s interests can grant consent for medical intervention justified for such minor under 14 years of age.

Minors aged from 14 to 18 years of age obtain a considerably broader civil competency.

They are entitled not only to engage in petty daily transactions independently without obtaining prior consent of their legal representatives but they also are entitled to dispose of their earnings, stipends; exercise their rights of author to works of science, literature, art, inventions; make depositions to credit organizations and dispose of such.

However minors aged from 14 to 18 years of age can enter agreements only with written consent of their legal representatives. If such deal has already been executed, it shall come into legal force only upon obligatory written approval of such minor’s legal representatives.

A patient’s consent for medical intervention should be deemed as a civil law deed, because the two parties enter an agreement under which the one party (a medical worker) shall provide a requested service, and the other party (a patient) shall grant its consent for receiving such service. However, according to the law of the RF “Fundamental legislation principles of public healthcare” a minor is entitled to exercise its inherent right to life upon reaching the age of 15.

According to the Civil Code of the RF competency of minors is seen as ability to engage in actions related with acquiring material benefits. However, health is a more valuable minor’s right, with its legal representatives bearing responsibility for it, not such minor itself. Nevertheless a minor is granted a larger discretion to decide on matters of fundamental benefits such as its life and health, than to engage in civil law deals related to materials benefits only.

In accordance with the standing Family code of the RF (1995) a minor’s parents bear responsibility for his/her upbringing and education until such minor has become of age. They must take care of their children’s physical and mental health, intellectual and moral education.

Under these conditions it becomes rather problematic for parents to fulfill their obligations of ensuring their minor children’s rights, protecting their legal interests and providing comprehensive physical, mental and moral education for them.

On the one hand, a minor incompetent child is granted a right to take independent decisions on quality and quantity of medical care upon reaching the age of 15. On the other hand, parents continue to bear full responsibility in case such minor’s status of physical, mental and moral health is aggravated.

That is why defining 15 years of age as the competency divide for obtaining by a minor of a right to take independent decisions on medical intervention is considered to be incorrect.

Due to their physical and mental immaturity children need social care and protection, including legal protection, before and after their birth, - as it is stated in the preamble to the UN “Children’s rights Convention”.

A child’s status is aggravated yet more in the state of disease when such child finds it difficult and sometimes even impossible to realize or comprehend his/her state; or a need for a certain kind of medical interventions and related risks.

Moreover, there are age-related patterns of subjective perception by a patient of its disease. Children, adolescents, youth tend to cope harder in psychological respect with those diseases which change their appearance, but do not pay attention at all to such serious and dangerous diseases which do not manifest themselves in expressed way. This is related to minors’ value system and priorities.

With this respect they can relate a decision on possible medical intervention to expected cosmetic results or a possible sense of discomfort associated with such medical intervention. In this situation legal representatives must assist such minor patient to take a well-reasoned decision on required medical intervention.

The author of this article believes that only legal representatives of a minor shall be entitled to grant consent for medical intervention should any medical care be provided to such minor under 14 years of age. Though no signature of such patient is required, a minor’s opinion starting from 10 years of age (and probably even at a younger age) shall be taken into consideration as much as possible. Such practice has been provided by the Russian legislation for procedures of adopting, a child’s family name changing, restoring parenthood rights with respect to a child over 10 years of age.

Upon reaching the age of 14, consent for medical intervention shall be signed by both legal representative and such incompetent child.

It should be not principle but obligatory for a minor to take part in decision-making process on medical intervention if due to his/her state and education such child is able to realize medical information – a requirement provided under international agreement and the Russian legislation.

Upon becoming of age a citizen obtains full competency and is entitled to independently exercise its natural inherent birthrights to life and health among its other civil rights.

Proposed procedure of obtaining unconstrained and conscious consent to medical intervention when providing medical care to minor patients will allow to gradually extend freedom of such minor patient and ensure reasonable guardianship by his/her adult representatives and advocates of his/her legal interests.