АДМИНИСТРАТИВНОЕ ПРАВО

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A.M. Satbayeva[1]
[1]**candidate of law sciences,**
High School of Business and Law,
Kazakh National Agrarian Research University,
Republic of Kazakhstan, Almaty
E-mail: satbayeva.aizhan@kaznaru.edu.kz

A.R. Kalimbekova[2]
[2] **candidate of law sciences,**
Caspian Public University,
Republic of Kazakhstan, Almaty
E-mail: akalimbekova@mail.ru

FEATURES OF LEGAL RESPONSIBILITY IN THE MEDICINES MARKET

Summary

The presented article reveals the issue of the procedure for bringing to legal responsibility for causing harm with low-quality or expired medicines. Considering that causing harm to a citizen's life or health diminishes his personal intangible goods, entails physical or moral suffering, the victim has the right to compensation for moral and material damage. Despite the specific obligation of the seller - to transfer the drug to the buyer in the amount and assortment in which it is indicated in the prescription for the purchase of a prescription drug, no special civil liability for violation of this obligation by the legislator is provided. It seems that, in this case, one should be guided by the general norms on liability for violation of the obligation, and property liability in the form of compensation for losses will arise for the seller of medicines. Illegal behavior also includes violation of the rules for the storage of medicines, the rules for the sale of medicines, and the rules for the manufacture. The cause of harm may be the introduction of a poor-quality medicinal product into civil circulation, inaccurate information contained in the instructions for use of the medicinal product, the use of a medicinal product that has become unusable as a result of violation of storage rules, rules for the wholesale of medicinal products, rules for the distribution of medicinal products, rules for the manufacture and distribution of medicinal products.

Keywords: harm to human health, medicinal product, liability, cause of harm, entrepreneur, consumer, source of increased danger, moral damage, compensation for non-pecuniary damage, liability of a medical organization, pharmaceutical activity, retail sale agreement

А.М. Сатбаева[1]
[1] з.ғ.к., Бизнес және құқық жоғары мектебі,
Қазақ ұлттық аграрлық зерттеу университеті,
Қазақстан Республикасы, Алматы қ.
E-mail: satbayeva.aizhan@kaznaru.edu.kz

А.Р. Калимбекова[2]
[2] з.ғ.к., Каспий қоғамдық университеті,
Қазақстан Республикасы, Алматы қ.
E-mail: akalimbekova@mail.ru

ЗАҢДЫ ЖАУАПКЕРШІЛІКТІҢ ЕРЕКШЕЛІКТЕРІ ЕСІРТКІ НАРЫҒЫНДА

Аңдатпа

Ұсынылған мақалада сапасыз немесе жарамдылық мерзімі өтіп кеткен дәрілік заттармен зиян келтіргені үшін заңды жауапкершілікке тарту тәртібі туралы мәселе ашылған. Азаматтың өміріне немесе денсаулығына зиян келтіру оның жеке материалдық емес игіліктеріне нұқсан келтіріп, дене немесе моральдық азап шегуге әкеп соғатынын ескере отырып, жәбірленуші сатушының нақты міндеттемесі болғанына қарамастан, моральдық және материалдық зиянды өтеуге құқылы - рецепт бойынша дәрілік затты сатып алу туралы рецептте көрсетілген мөлшерде және ассортиментте дәріні сатып алушыға беру үшін заң шығарушы бұл міндеттемені бұзғаны үшін ерекше азаматтық-құқықтық жауапкершілікті көздемейтін сияқты Міндеттемені бұзғаны үшін жауапкершілік туралы жалпы ережелерді басшылыққа алу керек, ал дәрілік заттарды сатушы залалды өтеу түрінде мүліктік жауапкершілікке тартылады, сонымен қатар заңсыз мінез-құлық дәрілік заттарды сақтау ережелерін, ережелерін бұзуды қамтиды дәрілік заттарды сату және өндіру ережелері. Азаматтық айналымға сапасыз дәрілік затты енгізу, дәрілік затты қолдану жөніндегі нұсқаулықта көрсетілген сенімсіз ақпарат, сақтау ережелерін бұзу нәтижесінде жарамсыз болып қалған дәрілік затты пайдалану зиян келтіру себебі болуы мүмкін. , дәрілік заттарды көтерме саудада өткізу ережелері, дәрілік заттарды беру ережелері, дәрілік заттарды дайындау және жіберу ережелері.

Түйінді сөздер: адам денсаулығына зиян келтіру, медицина, жауапкершілік, қиянат жасаушы, кәсіпкер, тұтынушы, жоғары қауіп көзі, моральдық зиян, моральдық зиянды өтеу, медициналық ұйымның жауапкершілігі, фармацевтикалық қызмет, бөлшек сауда шарты

А.М. Сатбаева[1]
[1] к.ю.н., Высшая школа бизнеса и права,
Казахский национальный исследовательский аграрный университет,
Республика Казахстан, г. Алматы
E-mail: satbayeva.aizhan@kaznaru.edu.kz

А.Р. Калимбекова[2]
[2] к.ю.н., Каспийский Общественый университет,
Республика Казахстан, г. Алматы
E-mail: akalimbekova@mail.ru

ОСОБЕННОСТИ ЮРИДИЧЕСКОЙ ОТВЕТСТВЕННОСТИ НА РЫНКЕ ЛЕКАРСТВЕННЫХ СРЕДСТВ

Аннотация

В представленной статье раскрывается вопрос порядка привлечения к юридической ответственности за причинение вреда некачественными либо просроченными лекарственными средствами. Учитывая, что причинение вреда жизни или здоровью гражданина умаляет его личные нематериальные блага, влечет физические или нравственные страдания, потерпевшийимеет право на компенсацию морального и материального вреда. Несмотря на наличие специфической обязанности продавца - передать покупателю лекарственное средство в том количестве и в том ассортименте, в каком указано в рецепте на приобретение рецептурного препарата, никакой особенной гражданско-правовой ответственности за нарушение данной обязанности законодателем не предусмотрено.Представляется, что, в данном случае следует руководствоваться об-

щими нормами об ответственности за нарушение обязательства, и для продавца медикаментов будет наступать имущественная ответственность в форме возмещения убытков.К противоправному поведению также относится нарушение правил хранения лекарственных средств, правил торговли лекарственным средством, правил изготовления. Причиной вреда может явиться ввод в гражданский оборот недоброкачественного лекарственного препарата, недостоверная информация, содержащаяся в инструкции по применению лекарственного препарата, применение лекарственного препарата, пришедшего в негодность в результате нарушения правил хранения, правил оптовой торговли лекарственными препаратами, правил отпуска лекарственных препаратов, правил изготовления и отпуска лекарственных препаратов.

Ключевые слова: вред здоровью человека, лекарственное средство, ответственность, причинитель вреда, предприниматель, потребитель, источник повышенной опасности, моральный вред, компенсация морального вреда, ответственность медицинской организации, фармацевтическаядеятельность, договор розничной купли-продажи

The basis for the emergence of liability in private law relations is most often a violation of the terms of the contract or causing harm. Responsibility in such relations is mainly compensatory in nature, imposing on the offender the obligation to compensate the damage to the injured person.

In accordance with the Code of the Republic of Kazakhstan On health in the market of medicines, criminal, administrative and civil liability arises for violation of the legislation on their circulation [1].

An analysis of judicial practice in cases of violation of the legislation on the circulation of medicines showed that most often administrative liability occurs in the consumer market of medicines, while for the most part responsibility occurs for officials. For a person using counterfeit goods, in addition to civil liability, administrative liability also occurs. Among criminal cases, the most common violation is the distribution of an unregistered drug. Court practice in civil cases is represented mainly by disputes on the recognition of information disseminated by retailers of medicines on the Internet that is untrue and unreliable.

We can say that different measures of legal liability for violation of the legislation of the Republic of Kazakhstan on the circulation of medicines can be applied to the subject of the drug market at the same time. Thus, the seller will be doubling liable for the same offense, as there is liability in public-legal relations and liability in private-law relations. An example is when a retailer transfers a poor-quality drug to a customer that has become unusable as a result of a violation of storage standards. In this case, property (civil) liability comes for violation of the contractual obligation and administrative liability for violation of storage standards.

Administrative liability is the most common type of legal liability in business. This institution is actively used in ensuring the legal order and increasing guarantees of the protection of the rights of citizens, legal entities and thereby acquires the importance of an effective legal way to influence public relations [2, C.4].

Administrative liability for violation of the legislation on the circulation of medicines can only be provided for by the Administrative Code of the Republic of Kazakhstan, since the legal regulation of the circulation of medicines is carried out only at the republican level. Despite the fact that the executive authorities make decisions on establishing the maximum size of wholesale premiums and the maximum size of retail premiums to the actual selling prices set by manufacturers of medicinal products for medicinal products included in the list of Vital and Essential Medicinal Products (VED), and carry out regional state control over the use of prices for drugs, responsibility for violation of the pricing procedure is provided for in the Code of Administrative Offenses of the Republic of Kazakhstan.

The circulation of medicinal products consists of various stages and, accordingly, responsibility may arise on any of them. However, such responsibility will be mainly administrative. Since we are considering the turnover of medicines in the consumer market, the main attention in this study will be paid to property (civil) liability in the consumer market.

The basis for civil liability is a civil offense, i.e. non-fulfillment or improper fulfillment by the debtor of certain contractual obligations or causing harm.

The purpose of civil liability is the restoration of the property rights of the victim at the expense of the person responsible for their violation.

It seems interesting to consider the property responsibility of the subjects implementing the sale of medicines to the consumer. Since the

proper performance of the duties of drug retailers depends not only on the quality supply of medicines to the country's population, but also on ensuring the profitability of the entire pharmaceutical industry.

In the drug market, property liability has a number of features. Firstly, the basis of its onset can be both a violation of a contractual obligation and causing harm to health. Secondly, in addition to civil law, it is also regulated by a special law - the Code of the Republic of Kazakhstan on health. Thirdly, specific subjects of property liability to consumers have been established. Fourth, as a general rule, liability comes regardless of guilt.

For the onset of property liability in the consumer market of medicines, it is necessary to have an offense. Traditionally, this is unlawful behavior, losses, the presence of a causal connection between them and the presence of guilt.

In civil law, there is no single concept of unlawful behavior, as well as the concept of lawful behavior. Unlawful can be understood as illegal actions, inaction of the perpetrator of harm, i.e. violation of an objective right, as well as such behavior that violates the subjective right of the victim or the terms of the contract. In the market of medicines, illegality is expressed in action or inaction, and more specifically in violation by a subject licensed for pharmaceutical activities of the obligations provided for in the contract, as well as in non-fulfillment or violation of the licensing requirements of pharmaceutical activities.

Harm in civil law is understood as negative consequences in the property or non-property sphere of a creditor who has suffered. The consumer of medicines can experience both property and non-property harm. As a result of violation of the terms of the concluded contract for the retail sale of medicines, the consumer has losses that represent a monetary expression of harm.

Losses include real damage and lost profits. Real damage refers to the costs that the lender has made or will have to make to restore the violated right, as well as the loss or damage to its property. The loss of profit is the income not received by the creditor, which he would have received taking into account the reasonable cost of obtaining them under the usual conditions of civil circulation, if his right had not been violated.

When causing harm to the health of a citizen (non-property good), property damage arises, which is expressed in the loss of wages and the need to bear the costs of restoring health, as well as compensation for moral damage.

The Civil Code of the Republic of Kazakhstan establishes the principle of general tort, according to which harm caused by one person to another is subject to full compensation by the person who caused harm [3]. At the same time, the victim should not prove the wrongfulness of the actions of the perpetrator of harm and his guilt, which are presumed. For the occurrence of civil liability in the consumer market of medicines in the form of compensation for losses, it is necessary to establish a causal relationship between the illegal behavior of the seller (debtor) and the harm to the consumer of medicines.

At the same time, the victim should not prove the wrongfulness of the actions of the perpetrator of harm and his guilt, which are presumed. For the occurrence of civil liability in the consumer market of medicines in the form of compensation for losses, it is necessary to establish a causal relationship between the illegal behavior of the seller (debtor) and the harm to the consumer of medicines.

When establishing a causal relationship between a breach of obligation and loss, it is necessary to take into account, in particular, what consequences, in the usual conditions of civil circulation, such a violation could lead to. If the occurrence of losses claimed by the creditor is a common consequence of the debtor's breach of obligation, then the existence of a causal relationship between the breach and the losses proved by the creditor is assumed.

Identifying the causal relationship between harm and the occurrence of contractual losses is generally not particularly difficult. The situation is more complicated in the tort obligations arising in the market for the turnover of medicines. A medicinal product is a substance or combinations of substances that come into contact with the human body, penetrating organs, human tissues, used for the prevention, diagnosis, treatment of a disease, capable of having not only a positive but also a negative effect on the human body (the so-called harm to health). In turn, a negative effect on the body can be caused by a side effect on the drug used, an overdose, and the use of a low-quality drug. Thus, the onset of adverse consequences does not always indicate the use of a low-quality drug. Due to the inability to predict the body's reaction to the drug and understand what caused the harm: due to the medication used or for other, natural reasons, it is difficult to establish a causal relationship between the harm and the use of the medication.

As noted, causation is the objective specific relationship of two phenomena, one of which - the cause - precedes and causes the other, and the other - the consequence - is the result of the action of the first [4, C.26].

The existence of a causal relationship in tort obligations is a prerequisite for tort liability. If the person did not cause this harm, his liability is excluded. Therefore, the law provides for compensation for the harm caused by the person who caused the harm [5, C.1079]. The burden of proving the causal relationship between the resulting harm and the drug taken is placed on the victim himself, which causes provingdifficulties.

Since harm to human health as a result of the use of medicines may occur due to incorrect prescribing by a doctor, or incorrect dosage of the drug, or due to the peculiarities of the body to the reaction of the drug itself, it is the victim who needs to establish the true cause of the deterioration in health. The debtor (seller, manufacturer) in the consumer market of medicines will be liable only as a result of harm due to a poor-quality drug, or inaccurate information contained in the instructions for use, or other grounds established by the legislator, i.e. as a result of illegal actions.

For the onset of responsibility, as a general rule, the guilt of the offender is necessary. Guilt is traditionally seen as a subjective condition of legal liability, expressing the offender's attitude to his own misconduct and its consequences. In civil law, guilt as a condition of liability has a very significant specificity. Guilt in civil law is considered not as a subjective, mental attitude of a person to his behavior, but as failure to take objectively possible measures to eliminate or prevent negative results of his actions dictated by the circumstances of a particular situation [6, C.607].

In civil law, as a general rule, the form of guilt does not matter. Since, as G.N. Shevchenko notes, in civil law guilt is a condition for the onset, and not a measure of responsibility, there is no need for a legislative definition of the form of guilt [7, C.27]. The form of guilt is taken into account in cases where it is indicated at the legislative level or established by the parties in agreements. At the same time, we should talk about the guilt of both a physical and a legal entity. Quite often, the fault of sellers of medicines is the guilty actions of its employees in the performance of official duties.

The Civil Code of the Republic of Kazakhstan enshrines the presumption of guilt of the offender (causer of harm) and if the debtor is responsible for causing harm regardless of guilt, then he is charged with the burden of proving the circumstances that are the basis for exemption from such liability.

The offender's lack of guilt thus absolves him of responsibility. As a general rule, the liability of entrepreneurs is characterized by the fact that in case of failure to fulfill or improper performance of obligations, the basis for exemption from liability is only evidence of the impossibility of fulfilling an obligation due to force majeure, i.e. the onset of liability without guilt. Tort liability also arises without guilt in the event of harm due to defects in goods, works or services.

Such an increased responsibility of the entrepreneur to the consumer is explained by the fact that consumer rights are most vulnerable, require special protection measures. Considering the fact that the most valuable thing is affected in the sale and purchase of medicines - health, and as a result of the use of medicines, intangible goods may be harmed, it is not allowed to limit the amount of liability in the contract with the consumer.

Undoubtedly, the rule on increased liability of an entrepreneur is important for protecting the rights and interests of consumers. It can be recognized that this responsibility is based on the basis of risk, which should stimulate the development of business and activities within the framework of the norms of law, that is, in compliance with the conditions provided for in this case for the implementation of pharmaceutical activities. In addition, liability without guilt occurs in the event of harm by a source of increased danger. The literature has repeatedly raised the issue of the need to recognize medicines as a source of increased danger in order to simplify the procedure for applying liability rules to sellers of medicines.

Lawyers proposing to recognize medicines as a source of increased danger proceed from the fact that the responsibility of the owner of the source of increased danger in accordance with Article 931 of the Civil Code of the Republic of Kazakhstan comes regardless of the guilt of the owner of the source of increased danger.

A lot of work is devoted to the study of the source of increased danger. There is no legally fixed term "source of increased danger" in the legislation, in connection with which a large number of definitions are proposed in the literature: what exactly should be understood as a source of increased danger.

Thus, a source of increased danger is understood as an activity that creates an increased

danger to others [8, C.22]; objects of the material world, the dangerous properties of which cannot be fully controlled by humans; objects, things, equipment that are in operation and at the same time create an increased danger to others [9, C.25].

The Civil Code of the Republic of Kazakhstan refers to compensation for harm caused not by the source of increased danger itself, but by activities that are associated with increased danger to others. A source of increased danger should be considered any activity, the implementation of which creates an increased likelihood of harm due to the impossibility of full control over it by a person, as well as activities for the use, transportation, storage of objects, substances and other objects of industrial, economic or other purpose that have the same properties.The list of objects whose use is associated with increased danger to others is open. And as it is correctly noted, such a list can only be approximate, since the constant development of science and technology introduces new and new objects into this list [7, C.93]. The court has the right to recognize as a source of increased danger other activities not indicated in the list. To do this, it must meet the criterion: to create an increased likelihood of harm due to the impossibility of full control over it by a person. In this case, harm is considered a caused source of increased danger if it was the result of its activities or the manifestation of its harmful properties.

The owner of a source of increased danger means a legal entity or a citizen who owns a source of increased danger on the right of ownership, economic management, the right of operational management or on another legal basis.

Thus, liability for harm caused by hazardous activities occurs when the activity is recognized as a source of increased danger and a subject of responsibility is determined. And also harm should result from the action of a source of increased danger or the manifestation of its harmful properties. Otherwise, thedamageiscompensatedonageneralbasis.

The drug as a commodity is the subject of a retail sale transaction and ownership of it as a general rule passes at the time of transfer of the goods to the buyer at the place of sale. Thus, the consumer is the owner of the drug, and in case of harm to health with a high-quality drug, it is impossible to apply the norms on liability to the seller of this product, provided for in Article 931 of the Civil Code of the Republic of Kazakhstan, since the seller is not the legal owner of the drug at the time of its use. In addition, since activity is recognized as a source of increased danger, activities for the sale of medicines, storage, and transportation do not pose a danger to others. In case of violation of the rules for the sale, transportation, storage of medicines, the physical and chemical properties of drugs may be lost, and they will become unusable. In addition, the use of drugs is under human control. All of the above indicates that the drug does not meet the signs of a source of increased danger. Therefore, there are no grounds for recognizing medicines as a source of increased danger.

Forms of civil liability in the consumer market of medicines are compensation for losses, compensation for moral damage and recovery of penalties.

The broadest understanding of moral damage is moral or physical suffering caused by actions (inaction) that encroaches on intangible goods belonging to a citizen from birth or by virtue of law (life, health, personal dignity, business reputation, privacy, personal and family secrecy, etc.), or violating his personal non-property rights (the right to use his name, the right of authorship and other non-property rights in accordance with the laws on the protection of rights to the results of intellectual activity), or violating the property rights of a citizen.

Moral damage is an independent consequence of violation of the rights of citizens; therefore, it can be compensated independently regardless of the presence of property damage or together with property damage.

Considering that causing harm to a citizen's life or health diminishes his personal intangible goods, entails physical or moral suffering, the victim, along with compensation for property damage caused to him, and has the right to compensation for moral damage, provided that the perpetrator of the harm is guilty.

Thus, it seems that moral damage is always present when causing harm to the life and health of a citizen. Moral damage to the consumer due to violation of his rights provided for by regulatory legal acts shall be reimbursed if the perpetrator of the harm is guilty, unless otherwise provided by law. Compensation for moral damage is carried out in cash, regardless of the property damage subject to compensation, in accordance with Articles 951-952 of the Civil Code of the Republic of Kazakhstan. Thus, we can safely say that the responsibility for causing moral damage is compensatory.

The amount of compensation for moral damage according to the general rule enshrined in the Civil Code of the Republic of Kazakhstan is determined by the court depending on the nature of the physical and moral suffering caused to the victim, as well as the degree of guilt of the perpetrator of harm in cases where guilt is the basis for compensation for harm. However, the legislation does not exclude the possibility of setting the size by agreement of the parties in cases where voluntary, pre-trial compensation for moral damage occurs.

The subjects of responsibility for violation of the legislation on the circulation of medicines are legal entities and individual entrepreneurs licensed to carry out pharmaceutical activities, similar to how the responsibility of a medical organization for the actions of doctors comes when providing inappropriate medical services. For pharmacists there is no civil liability to consumers of medicines. In accordance with the Labor Code of the Republic of Kazakhstan, pharmacists are employees of the above-mentioned entrepreneurs; therefore, the obligation to compensate for harm caused by pharmaceutical employees, in accordance with the norms of the Civil Code of the Republic of Kazakhstan, is assigned to legal entities and individual entrepreneurs with whom the above-mentioned specialists are in labor relations. In the event of non-contractual liability, the subjects of responsibility may also be manufacturers and organizations of the wholesale trade in medicines.

Creditors (victims) in these legal relations can be both individuals, including individual entrepreneurs, and legal entities, provided that the contract for the retail sale of medicines is concluded for the use of goods not for business purposes.

The civil liability of the subjects of the drug market can be both contractual and non-contractual.

Contractual liability is associated with a violation of a specific obligation in the regulatory relative obligation existing between the parties, and is established in the law governing this obligation, as well as in the contract itself.

Contractual liability in the consumer market of medicines arises in case of violation of obligations arising from the concluded contract for the retail sale of medicines.

Since the contract for the retail purchase and sale of medicines is an accession contract, and often this contract is concluded orally, the legislator must ensure a guaranteed minimum of the rights of consumers of medicines, including by establishing the seller's liability for non-fulfillment or improper fulfillment of obligations. Above it was said that the Code of the Republic of Kazakhstan On Health provides for the norms of responsibility of the subjects of the drug market. At the same time, the contractual liability of the seller is regulated by the same norms as the liability of the seller of other goods, but with some peculiarities.

The basis for the occurrence of the seller's contractual liability is non-fulfillment or improper fulfillment of the concluded contract for the retail sale of medicines. Thus, violation of the conditions on the subject of the contract may be expressed in providing the buyer with a low-quality drug. However, due to the specific properties of the drug, it is impossible to reduce the purchase price, reimburse the costs of eliminating the shortcomings of the product, since it is physically impossible to eliminate the shortcomings in the drug. Thus, the buyer of medicines has the right to demand either the replacement of poor-quality goods with good quality goods, or to abandon the concluded purchase and sale agreement.

Despite the specific obligation of the seller - to transfer the drug to the buyer in the amount and assortment in which it is indicated in the prescription for the purchase of a prescription drug, no special civil liability for violation of this obligation by the legislator is provided. Here you should be guided by the norms of the Civil Code of the Republic of Kazakhstan on the consequences of violation of conditions on the quantity of goods or on the consequences of violation of conditions on the assortment of goods. However, if the seller violates the deadlines established by the legislator for servicing the provided prescriptions, the norms provided for in the Code of the Republic of Kazakhstan On Health on the subsequent violation by the seller of the deadline for the transfer of pre-paid goods to the consumer do not apply, since the legislator does not oblige the buyer to pay for the missing drug at the time of circulation. It seems that, in this case, one should be guided by the general norms on liability for violation of the obligation, and property liability in the form of compensation for losses will arise for the seller of medicines.

Sometimes a customer can get a drug without packaging. Legislation on the circulation of medicinal products allows violation of secondary packaging in cases where it is impossible to fulfill a doctor's appointment and it is necessary to separate the secondary packaging. A violation of the

packaging conditions in this case will be the case when the seller independently decides to violate the secondary packaging. At the same time, the buyer has the right to demand to pack the medicine or present requirements arising from the transfer of goods of improper quality.

Also, a violation of the conditions on the subject of the contract is the transfer to the consumer of the drug without instructions for use. For the subject of the drug market, liability comes in the form of compensation for losses. In addition, the consumer has the right to compensation for moral damage.

Another violation of the conditions on the subject can be called the sale of a drug included in the VED list, which, in accordance with the Code of the Republic of Kazakhstan On Health, is not allowed for sale due to the lack of registration of the maximum selling price of the drug. In this case, the consumer has the right to make a claim for damages and compensation for moral damage.

Failure to provide the buyer with the necessary and reliable information also entails property liability for the seller. The list of information provided to the buyer of medicinal products has been expanded by the legislator in comparison with other goods, and, therefore, if the consumer does not receive information about the presence of other medicinal products, having the same international non-proprietary name and prices for them, as well as failure to provide information on the procedure for generating prices for VEDs, the consumer has the right to refuse to fulfill the contract of sale, demand the return of the paid amount and compensation for losses.

For the seller of medicines in the consumer market of the Republic of Kazakhstan, responsibility may arise for the delay in fulfilling the consumer's requirements provided for in the Code of the Republic of Kazakhstan On Health, according to which the seller pays a penalty to the buyer.

Non-contractual liability is not related to violation of the terms of the concluded contract, therefore it is not subject to establishment by the parties. A type of non-contractual liability is tort liability arising from harm. Obligations from harm in the Civil Code of the Republic of Kazakhstan are devoted to a separate chapter 47. As noted in the literature, the concepts of "obligations from causing harm" and "responsibility for causing harm" are often used as identical, and the concept of "responsibility" is given the main place.

The very fact of harm to another person in the presence of other circumstances provided for by law means the emergence of an obligation due to harm, according to which the person who caused the harm or another person responsible for the actions of the causer is obliged to compensate the victim for it.

Compensation for harm caused to human health as a result of the use of the medicinal product is carried out according to the rules of Chapter 47 of the Civil Code of the Republic of Kazakhstan with the features established in the Code of the Republic of Kazakhstan On Health. As previously said, compensation for harm occurs in the form of compensation for losses. Moral damage is also compensated, since the irrelevant benefit of the victim (creditor) is violated - the right to life and health.

The Code of the Republic of Kazakhstan On Health provides for a special type of civil liability for causing harm to the health of a citizen due to the use of medicines. At the same time, the article contains norms on compensation for harm caused to the health of a citizen due to the use of a poor-quality drug and due to inaccurate information, contained in the instructions for use of the medicinal product issued by the manufacturer of the medicinal product, and also if harm to the health of citizens is caused due to the use of a medicinal product, which has become unusable as a result of violation of the rules for the storage of medicines, rules for the wholesale of medicines, rules for the distribution of medicines, rules for the manufacture and distribution of medicines.

In this case, the legislator does not contain an indication of falsified and counterfeit medicines. This raises the question whether the harm caused to health in the case of the use of a falsified drug under the rules of the Code of the Republic of Kazakhstan On Healthor according to the general rules of the Civil Code of the Republic of Kazakhstan. Falsified medicinal product means a medicinal product accompanied by false information about its composition and/or manufacturer.

According to the definition of the World Health Organization, a falsified medicinal product is a product deliberately and unlawfully provided with a label that incorrectly indicates the authenticity of the product and/or the manufacturer [10] As a rule, there are two types of falsified drugs: these are those that do not contain any medicinal or other potent substances, and those that contain dangerous substances.

Thus, in the Code of the Republic of Kazakhstan on Health, the legislator speaks of a high-quality drug, but containing inaccurate information in the instructions, otherwise the legislator would use the phrase falsified drug, since there is a definition of a falsified drug. Thus, liability for harm caused to the health of citizens due to the use of a falsified drug is provided only by the norms of the Civil Code of the Republic of Kazakhstan.

The illegal actions of the obliged subject include the introduction of a poor-quality drug into civil circulation, as well as the publication by the manufacturer of instructions for the use of the drug with inaccurate information. Illegal behavior also includes violation of the rules for the storage of medicines, the rules for the sale of medicines, and the rules for the manufacture. In the case of the sale of a falsified drug, the very sale of such a drug will be illegal.

The legislator has established a rule different from the norms of the Civil Code of the Republic of Kazakhstan, from which it follows that in order to compensate for harm by the manufacturer, it must be proved to the victims that the drug was used as prescribed, in accordance with the instructions and that the reason for the harm is that the drug is poor. When compensating for harm caused to the health of a citizen as a result of the use of a falsified drug, in accordance with the norms of the Civil Code of the Republic of Kazakhstan, the fact that the drug is falsified is enough.

The norms of Chapter 47 of the Civil Code of the Republic of Kazakhstan and the Law On Protection of Consumer Rights establish that harm caused to the life, health or property of a citizen or property of a legal entity due to constructive, prescription or other shortcomings of a product, work or service, as well as due to inaccurate or insufficient information about the product (work, service), subject to reimbursement by the seller or manufacturer of the goods, the person who performed the work or rendered the service (the executor), regardless of their guilt and whether the victim was in a contractual relationship with them or not. Damage caused due to defects of the goods, due to failure to provide complete or reliable information about the goods, is subject to compensation at the choice of the victim by the seller or manufacturer of the goods.

The entities compensating for harm are the manufacturer of the drug, the organization of the wholesale trade in medicines, pharmacy organizations, individual entrepreneurs licensed for pharmaceutical activities or a license for medical activities, medical organizations licensed for pharmaceutical activities.

The Code of the Republic of Kazakhstan On Health specifies the conditions under which one should contact a particular subject: if it is proved that the medicinal product was used as prescribed in accordance with the instructions for use of the medicinal product and the cause of harm was the introduction of a poor-quality medicinal product into civil circulation, as well as that health damage was caused due to inaccurate information contained in the instructions for use of the medicinal product issued by the manufacturer of the medicinal product, then the manufacturer of the medicinal product is obliged to compensate for the harm caused to the health of citizens; subject to harm to health due to the use of a medicinal product that has become unusable as a result of violation of the rules for the storage of medicines, the rules for the wholesale of medicines, the rules for the distribution of medicines, the rules for the manufacture and distribution of medicines - compensation for damage is carried out accordingly by the organization of wholesale trade in medicines, a pharmacy organization, an individual entrepreneur who has a license for pharmaceutical activities or a license for medical activities, a medical organization that has a license for pharmaceutical activities (its separate unit (outpatient clinic, feldsher and feldsher-midwife stations, center (department) of the general medical (family) practice) located in a rural settlement in which there is no pharmacy organization) who allowed the sale or issue of such a drug product.

However, in this paragraph, among the numerous subjects, a subject such as a manufacturer is not listed. In accordance with the Code of the Republic of Kazakhstan on Health, storage can also be carried out by the manufacturer of medicines. It seems that violation of the storage rules of the manufacturer may also lead to the unsuitability of the drug product. It would be advisable to attribute the manufacturer to the subjects compensating for harm in the event of the use of a medicinal product that has become unusable as a result of violation of storage rules. Although, on the practical side, it is quite difficult for the consumer, or even impossible to establish the subject who violated the storage rules, which caused the drug to become unusable.

In addition, the Code of the Republic of Kazakhstan On Health refers only to the harm caused to the health of a citizen. The possibility of death due to the use of a poor quality medicinal product

or a medicinal product that has become unusable due to violation of storage rules or any other requirements for the circulation of medicinal products cannot be ruled out. In case of compensation for harm to persons who have suffered damage as a result of the death of the breadwinner, it will definitely have to be guided by the norms of Articles 947, 948 of the Civil Code of the Republic of Kazakhstan and present requirements either to the seller or to the manufacturer. But in this case, will the organization engaged in the wholesale of medicines compensate for the harm caused to life in case of violation of storage requirements. Does it fall under the term "seller" in accordance with this article? Most likely, to resolve this issue, it will be necessary to refer to the Code of the Republic of Kazakhstan on Health by analogy with compensation for harm caused to health.

Thus, the legislator in the Code of the Republic of Kazakhstan On Health establishes a closed list of grounds for the consumer to apply for compensation for harm caused to health due to the use of drugs. As a special law, the Code of the Republic of Kazakhstan On Health has priority over the Civil Code of the Republic of Kazakhstan, establishes specific subjects to which the consumer should turn. In practice, a small number of applicants apply to the court for compensation for harm caused to health due to the use of drugs. This indicates not the quality of drugs circulating on the market, but that it is quite difficult to establish a causal relationship between the adverse consequences that have occurred and the unlawful behavior of the manufacturer, seller, as well as that it is necessary to determine the subject responsible for the harm that has arisen.

Thus, it can be said that the legislator has complicated the consumer's conditions for obtaining compensation for harm caused to health due to the use of a medicinal product, which in turn is deterioration in the position of the consumer of medicines compared to consumers of other goods on the consumer market.

The Code of the Republic of Kazakhstan On Health does not provide for special civil liability for violation of the ban on the sale of counterfeit medicines, i.e. medicines, on the label and packaging of which a trademark or a similar designation is illegally placed to the extent of confusion, as well as on which the name of the place of origin of the goods is illegally used or similar to them to the degree of confusion of the designation.

In the case of the use of a counterfeit medicinal product in the consumer market, liability arises both to the copyright holder of the trademark and to buyers. The sale of counterfeit medicine on the consumer market is a violation of intellectual rights, even if the seller did not know about the counterfeit product.

For the seller of a counterfeit medicinal product, both contractual and non-contractual civil liability to the consumer is possible. If a counterfeit medicinal product contains signs of a poor-quality medicinal product, including a falsified or poor-quality medicinal product, then contractual liability for the transferred low-quality goods arises, and in case of harm to the life or health of the consumer, tort liability arises in the form and on the grounds that were considered above when selling falsified and poor-quality medicinal products. When selling a high-quality counterfeit drug product, contractual responsibility will come for providing inaccurate or incomplete information about the drug product.

The liability of the violator of counterfeit goods to the copyright holder for the circulation of counterfeit medicines in accordance with the norms of the Civil Code of the Republic of Kazakhstan comes in the form of compensation for losses or instead of compensation for losses at the choice of the latter in the form of payment of compensation in the amount determined according to the rules provided for by the Civil Code of the Republic of Kazakhstan. At the same time, the court is not deprived of the right to recover the amount of compensation in a smaller amount compared to the stated requirement. And here it should be said that the above-mentioned measures of liability in the form of compensation for losses or payment of compensation instead of compensation for losses for violation of intellectual rights committed by the violator in the course of his entrepreneurial activity are subject to use, regardless of the fault of the violator, if such a person does not prove that the violation of intellectual rights occurred due to force majeure, that is, extraordinary and unavoidable circumstances under these conditions. Thus, the retailer of medicines, which, in the absence of its guilt, reimbursed losses or paid compensation to the copyright holder, has the right to present to the wholesale organizations of medicines that sold such a drug a recourse claims for compensation for losses incurred, including amounts paid to third parties.

In addition to compensation for losses or payment of compensation, the possessor of a right has the right to demand withdrawal from circulation and destruction at the expense of the viola-

tor of counterfeit goods, labels, packages of goods on which an illegally used trademark or a similar designation is placed to the degree of confusion, as well as on which the used name of the place of origin of the goods is illegally placed or similar to it to the degree of confusion. In cases where the introduction of such goods into circulation is necessary in the public interest, the possessor of a right has the right to demand the removal at the expense of the violator from counterfeit goods, labels, packages of goods, an illegally used trademark or similar to it to the degree of mixing the designation, as well as an illegally used name of the place of origin of the goods or similar to it to the degree of mixing the designation.

The issue of responsibility for the sale of medicines to children remains is still open. Analysis of regulatory legal acts regulating responsibility for violation of the legislation on the circulation of medicines shows that the legislation of the Republic of Kazakhstan does not provide for special responsibility for the sale of medicines to children. This absence is explained by the fact that there is no ban on their sale to minors.

There may be cases when drugs purchased by minors can harm their health. Consider liability in this case. Depending on which drug was purchased - prescription or over-the-counter, this or that responsibility comes. So, if a minor purchased a prescription drug without a prescription, then the seller who released the drug without a prescription will bear administrative responsibility provided for violation of these requirements. However, this responsibility will not be special in relation to the saleto minors. Liability for this offence comes no matter who the buyer is: adult or child. Harm caused to the health or life of a minor as a result of the use of a self-purchased prescription drug without a prescription is subject to compensation according to the rules of Chapter 47 of the Civil Code of the Republic of Kazakhstan.

If the drug product was issued on the basis of a prescription both issued in the name of a minor and in the name of another citizen, administrative responsibility does not arise for the seller, since the norms on the sale of medicines were not violated during the sale. Also, there will be no administrative responsibility in the event of the sale of a non-prescription drug to children. In the event of harm to the health of a child purchased by the self-mentioned medicinal product, the seller will be responsible for causing harm to the health or life of the child only in cases provided for by the Code of the Republic of Kazakhstan On Health. If the harm occurs as a result of the incorrect use of the drug by the child, then the seller is not responsible for causing harm to health, since there is no illegal behavior.

Therefore, for the onset of civil liability in the event of harm to the child's health as a result of the use of independently purchased medicine, it is necessary to provide for administrative liability for violation of the rules for the sale of medicines to children and civil liability. To do this, an article "Compensation for harm caused to the health of citizens due to the use of medicines" should be added to the Code of the Republic of Kazakhstan on Health as follows: "If harm to the health of a minor is caused due to the use of a medicinal product purchased independently, compensation for damage is carried out by a retail organization of medicines, an individual entrepreneur who has a license for pharmaceutical activities or a license for medical activities, a medical organization that has a license for pharmaceutical activities (its separate unit (outpatient clinic, feldsher and feldsher-midwife stations, center (department) of the general medical (family) practice) located in a rural settlement in which there is no organization of the retail trade in medicines) that allowed the sale of such a drug".

The study of contractual and non-contractual liability allows us to draw an important conclusion that the current trend in the legislation of the Republic of Kazakhstan is observed in the consumer market of medicines - the coincidence of two types of civil liability. This arises when the harm caused to the life and health of a citizen in the implementation of contractual obligations is compensated according to the rules on torts. In this case, this is due to the fact that in the event of harm to the health of a citizen in the event of the sale of a low-quality drug, and/or the provision of inaccurate/inauthentic information about the drug, the contractual obligation to transfer high-quality goods, provide information about the product is violated, and compensation for damage occurs both according to the norms on contractual liability, and according to the rules of Chapter 47 of the Civil Code of the Republic of Kazakhstan.

Such a coincidence of liability should be recognized as positive for the consumer, as it allows him to protect his rights to a greater extent, providing more complete compensation for the damage caused and compensation for moral damage.

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