

**Kolosov I. V.,**  
*Dr Hab. (in Poland), PhD in Law (in Ukraine),*  
*Private Expert in Law*

## MEDICAL LAW DEVELOPMENT ON CAPITALIST ERA (1639–1917)

**Summary.** Article proposed discusses the historical development of medically-social relations and medical law in European states of the Capitalist era. The purpose of present survey is a retrospective review of public relations, scientific doctrine and legal acts that led to the development of medical law during the periods of the aforesaid period of time; identification of their patterns, features and dialectical connections; derivation of relations in the field of medicine, which, due to their social significance, need and needed legal regulation, in particular, due to labour law; development of author's conclusions and outlining perspective directions of further scientific investigation.

Research methodology is based on general scientific methods such as analysis, synthesis, induction, deduction, analogy, and empirical methods. Research materials are rare publications and modern sources for the period from 1828 to 2022. In particular, it was concluded that these relations were caused by the development, maturation of labour, criminal and administrative law. The issues of criminal liability of doctors in the Capitalist era were some shifted towards, but put forward the Housing law impact on medicine and occupational diseases. Consequently, the medically-legal paradox remained relevant; however the medically-legal triad transformed to tetrarch: labour, criminal, housing and administrative law – **LCHA impact factor**. Labour law development and requests became a priority.

It is concluded that capitalist medical law in Europe characterized by the poor physical condition of the working people of the capitalist countries at the beginning of the 20th century; a huge rate of dismiss due to illness and physical unsuitability in recruiting to the army; meanwhile, the armies' need was great, which also gave rise to a number of healthcare events. The ruling classes were have to find measures to combat the causes of occupational diseases and to yield to the requirements of workers aimed to improving medical care in cases of accidents at work and occupational diseases, to pay for temporary disability due to illness and so on and so forth.

**Key words:** Europe, medical law, capitalist era, medically-legal tetrarch, LCHA impact factor, labour law, occupational hygiene, preventive medicine.

**Introduction.** Continuing scientific exploration of the medically-labour relations' problems, it is inappropriate to pay no attention to their development and the degree of legal adjustment in capitalist era, which is logical given our previous research.

In respect to these circumstances, we repeatedly constituted about its significance for social relations, firstly, in field of labour [1, p. 104], and secondly, it should be deeply understood its value and place in the system of state-legal guarantee of labour relations in the future [2, p. 105].

Same approach will allow us to consider medical law not only as a separate branch, but also as a guarantor of social stability, labour protection and industrial relations, a regulator of labour

and work's safety, which gives conducted study an increased relevance and social demand.

At different times, the general issues of the history of medicine of the capitalist era were devoted to the works of such domestic scientists as Batkis G.A., Borodulin F., Zabludovski P.E., Losinski A.A., Lebedev K., their foreign colleagues: McCurich, Sand, Galdston, Aubery J. and so on and so forth.

The general issues of the development of medical law, in particular, in the context of labour law were devoted to the works of Moskalenko V.F., Yaroshenko O.M., Prylipko S.M., Inshyn M.I., Zhernakov V.V., Stetsenko S.G., Senyuta I.A., Sereda O.H., Yakovlev O.A., Viennikova V.V., Kolosov I.V. [3, p. 221; 4, p. 126–138; 5, p. 93; 6, p. 86–88] etc.

For all the respect to the scientific achievements of the aforesaid scholars, the issues of the development of medical and social relations and medical law in the capitalist era, their peculiarities and relationships with the norms of labour law, in our viewpoint, were not given sufficient attention.

**Materials and Methods.** Presented survey has done with assistance of formal and compares methods as special and ontology, deduction, analysis ad synthesis as common, which led to obtain a new data and background for discussion and further investigations from contemporary scientific viewpoint. Thus, research methodology is based on general scientific methods such as analysis, synthesis, induction, deduction, analogy and empirical methods – observation, comparison and statistical ones.

A qualitative research used content analysis of publications during 1828-2022 to examine the extent to which State's policy impacted on medical law norms development. Search for publications was carried out in databases of rarely editions, contemporary papers, encyclopedically data and so on and so forth. The search was carried out by keywords: 1) Europe; 2) medical law; 3) capitalist era; 4) medically-legal tetrarch; 5) LCHA impact factor; 6) labour law; 7) occupational hygiene; 8) preventive medicine.

The methodological basis of the survey, undoubtedly, is a dialectical method, the introduction of which provides an opportunity to study the object and subject of research in their gnoseological unity, as well as the nature of medical law development and their impact, as cause and effect. Due to the historical method, the periods and peculiarities of the formation of the European medical law notified separately: on pre-industrial and industrial capitalism. Using the structural and functional method in combination with the methods of classification and grouping, the social relations and legal framework cause medical law development both on pre-industrial and industrial capitalism was carried out. Based on the formal-logical and formal-legal methods, it was developed author's viewpoint about the medical law development in aforesaid period of history, their features as well as presented author's conclusions in field showed.

**Tasks and Aims.** Consequently, the purpose of the presented study is to:

1) retrospective review of public relations, doctrines and regulations that created a system of medical law of the states on capitalist era (1639–1917);

2) clarification of their patterns, features and dialectical connections;

3) derivation of relations in the field of medicine, which, due to their social significance, need and needed legal regulation, in particular, due to labour law;

4) providing of author's conclusions and outlining perspective directions of further scientific investigation.

The object of the study will be medically-social systems of the European states on capitalist era.

**Results and Discussion.** Transition from the feudal era to capitalist development on a world-historical scale usually dates from the mid-17th century – the victory of the bourgeois revolution in England. In the field of medicine, the social features of the new period were reflected in the fundamental work “On the Diseases of Artisans” (“De morbis artificum diatriba”) by B. Ramazzini (1633–1714), which describes more than 60 professions. The author paid attention to the impact of professional work on health, made an attempt for the first time to cover with his systematic description all the types of labour known to him, including mental labour, singing, sports, the work of breadwinners, gravediggers, sewers, pharmacists, as well as soldiers and hunters. The method he showed, enriched with new accumulated factual data, observation and research means, and then led to the emergence of a new science – occupational hygiene [7, p. 771].

Among the numerous infectious diseases that epidemically affected all countries, typhus, intestinal infections, malaria and pox were prominent. The chief physician of the English army, J. Pringle (1707–1782), who sought to reduce epidemic diseases, initiated a number of hygienic measures in barracks and camps. Simultaneously with him, aforesaid work in the navy was carried out by J. Lind (1716–1794). Due to the significant spread of zingot diseases among sailors in long voyages, Lind paid the main attention to mourning. In 1753, he pointed to the importance of fresh vegetables and lemon juice in preventing scurvy in sailors. His paper called “Essay on the means of preserving the health of seaman” (1757) took a prominent place in marine hygiene [8, p. 217].

The fight against pox was carried out in the 18th century in the form of variolation – vaccination of pox. J. Gunter led his student's years of experiences and observations of E. Jenner over pox diseases of different animals, transmission of infection, over cases of immunity. The huge material systematized by E. Jenner of observations and experiments on animals gave him the opportunity to begin vaccination of people on May 14, 1796 [9, p. 46].

Industrial capitalism demanded someone reforms caused the changes of Parisian, Montpellier and Strasburg's medical schools to *Ecoles de sante*, in the teaching of which anatomy and surgery took a prominent place for the training of surgeons of the revolutionary armies [10].

In Paris, the Department of Hygiene was created, headed by J.N. Halle (1754–1822). In 1803, the Anatomical and Pharmaceutical Societies were organized in Paris, in 1805 a medical and surgical society arose in London, and then the Swedish Medical Society [11].

In 1820, the Medical Academy was created in Paris, which played an advisory role under the government in the field of public

hygiene and had the task of promoting the development of medical sciences, veterinary medicine and pharmacy. It originally had the following sections: anatomy and physiology, medical pathology, surgical pathology, therapy, operative medicine, pathological anatomy, obstetrics, public hygiene, forensic medicine and medical police, veterinary medicine, medical physics and chemistry, pharmacy [12].

The activities of British hospitals developed mainly under the influence of the tasks of combating industrial injuries [13].

At beginning of the 19th century P. Kabanis in his essay “On the relationship between the physical and moral nature of man” dealt with the issue of the dependence of diseases on the living conditions of the people (unhealthy conditions of cities, untidy dwellings, poor quality of edible supplies). He came to the point that even the climate acts differently on the rich and on the poor, on various groups of artisans and workers. The reason for everything is the imperfection of the social system, which the supreme rulers of the people must change. A comprehensive scientific study of the causes of diseases of the unsecured classes and primarily workers was launched in England. The Parliamentary Bill on the survey of the factories' conditions (1832), which appeared on the basis of the developed contradictions between the landowning aristocracy and industrial bourgeoisie, opened a wide field for research in the hitherto undeveloped field of factory hygiene [14, p. 9].

In 1833, as a result of the work of Lord Ashley's parliamentary commission, parliament passed an Act banning the night work of adolescents and children, limiting their daily work to 12 hours and establishing for the first time a government factory inspection. L. Horner, being a member of this commission, advocated a reduction in the working day and produced a number of studies proving the harmfulness of a long working day. He has also consistently championed the ideas of general and professional education for workers' children. He was also a fighter for the introduction of devices to protect workers from accidents and for establishing the responsibility of factory owners for injuries and industrial injuries. B. Ramazzini, E. Greenhow and Arlidge conducted a classic study of the working conditions of potters. The authors found that life expectancy in pottery districts is extremely short. Greenhow established unfavorable health conditions in factory districts compared to the agricultural ones. Simultaneously, Greenhow noted that, despite the reduction of the working day, the intensity of labour introduced by the manufacturer threatens the health of workers. The activities of factory medical inspectors involved hospital doctors in working areas to participate in the study of working conditions and their impact on public health [15; 16].

The survey of the situation of labour in factories could not but affect the issues of hygiene of dwellings, the improvement of new villages, and the nutrition of workers. The huge outbreak of cholera and typhus is also provokes to study these sides of the problem. In the 30s of the 19th century significant research is carried out in the field of epidemiology, communal and food sanitation. A scientific school of sanitary doctors arises. At the head of the new direction of medicine – preventive medicine – was T. Southwood Smith. This scientist worked in the commission for the study of child labour at manufactories and was one of the most active commissioners on the preparation of the Poor Law of 1834. His extensive reports on quarantines (1845), cholera (1850), yellow fever (1854) and the results of sanitarian activities (1854) were of exceptional importance. E. Chadwick, not being a doctor by education, greatly contributed to the development of public hygiene and creation

of sanitary laws based on research. In his report (1833), he persistently proposed to introduce inspection and limit the use of child labour. On his initiative, in 1838, a Law was adopted establishing an accurate system of reports on births and deaths and the position of chief registrar was established. Of the other merits of E. Chadwick, his role in the preparation of the 1848 Law on the elimination of sanitary hazards and the prevention of diseases should be noted. The first city to invite a sanitary doctor was Liverpool, followed by London. J. Simon owns the providing of a table of workers' mortality, illustrating the impact of working conditions in workshops on their health [17].

In another study, he found out the effect of the nutritional factor on health due to a change in the structure of the working budget [18].

If earlier work appeared in the field of occupational hygiene and occupational diseases, then in most cases they were based on the study of literature and episodic examinations of various industries. Studies of poisons and gases in production were transferred to experimental background at the initiative of M. Pettenkofer. In 1881, he commissioned M. Gruber to undertake research into the effects of carbon dioxide when it was inhaled, and later same year M. Ogata began developing the question of sulfuric acid. Since 1884, K. Lehman, one of the founders of professional toxicology, took up the continuation of these experiments. He and his school were subjected to a quantitative study of about 35 gases and vapors, and long-term experiments in factory conditions and in some cases laboratory tests on humans served as control [19].

In 1882-1894, the first major manual on occupational diseases was published. It was released under the joint editorship of M. Pettenkofer and G. Zimsen [20, p. 50].

Notwithstanding, the teaching of social Darwinism was a negative factor in the development of understanding of social etiology and social prevention of morbidity. To the favour of link of German hygienists, it must be said that among them at the beginning of the 20th century the views of social Darwinism were hardly appreciated. Thus, K. Kisskalt in the guide of 1912 especially emphasized the need to develop hygiene in the interests of low-income segments of the population. In 1913, the Institute of Occupational Health was opened in Berlin. The large German hygiene manual of Abel, published on the eve of World War I, refused Morel's views on the need to destroy inferior elements. It was pointed out that the ability of these people to work can be ensured by appropriate social and hygienic measures. The Malthus law on the need to reduce population due to food shortages was also rejected and, on the contrary, the need to develop food hygiene in the interests of the masses was emphasized [21].

At the same time, it was made a require for the participation of the State in the costs and debts of hygienic measures related to the general population. The role of health education was emphasized. This was the case on the eve of the First World War, but all this changed fundamentally after its end [22; 23].

In general, the poor physical condition of the working people of the capitalist countries at the beginning of the 20th century caused a huge rate of dismiss due to illness and physical unsuitability in recruiting to the army. Meanwhile, the armies' need was great, which also gave rise to a number of healthcare events. The ruling classes were have to find measures to combat the causes of occupational diseases and to yield to the requirements of workers aimed to improving medical care in cases of accidents at work and occupational diseases, to pay for temporary disability due to illness and so on and so forth [24, p. 143–207].

**Conclusions.** 1. In capitalist (1639-1917) European states for the first time: 1) occupational and factory hygiene arose as scientific doctrine and state's policy with concrete regulations and charters for the treatment of vary kind of professions; 2) military medicine were summarizing as science and standards for their care were developed; 3) activities of hospitals developed mainly under the influence of the tasks of combating industrial injuries; 4) vaccination of pox stopped the pandemics; 5) many sources of medical law – Bills, Acts and Laws – have passed; 6) vary of Academies and medical societies have arisen; 7) preventive medicine arose so as...; 8) a table of workers' mortality, illustrating the impact of working conditions in workshops on their health; 9) the effect of the nutritional factor on health due to a change in the structure of the working budget were searched; 10) studies of poisons and gases in production were transferred to experimental background in respect to study production conditions; 11) major manual on occupational diseases was published.

2. Notwithstanding, the teaching of social Darwinism was a negative factor in the development of understanding of social etiology and social prevention of morbidity and became as background for furthermore fascist doctrine.

3. These relations were characterized by the poor physical condition of the working people of the capitalist countries at the beginning of the 20th century; a huge rate of dismiss due to illness and physical unsuitability in recruiting to the army; meanwhile, the armies' need was great, which also gave rise to a number of healthcare events. The ruling classes were have to find measures to combat the causes of occupational diseases and to yield to the requirements of workers aimed to improving medical care in cases of accidents at work and occupational diseases, to pay for temporary disability due to illness and so on and so forth.

4. As in the Ancient World and Middle Ages, medical law developed and was caused by the development, maturation of labour, criminal and administrative law. The issues of criminal liability of doctors in the Capitalist era were some shifted towards, but put forward the Housing law impact on medicine and occupational diseases.

5. Consequently, the medically-legal paradox remained relevant; however the medically-legal triad transformed to tetrach: labour, criminal, housing and administrative law – **LCHA impact factor**. Labour law development and requests became a priority.

6. In respect to these circumstances, the development of medically-legal relations in 20-th century is to be further studied in order to consolidate the existing conclusions and identify new features of development, for instance, European medical law.

#### *Bibliography:*

1. Колосов І. В. Історичні передумови виникнення правових актів у галузі медицини в державах Стародавнього Світу. *Вісник НТУУ «КПІ» Політологія. Соціологія. Право.* 2022. № 1(53). С. 94–104. doi: [https://doi.org/10.20535/2308-5053.2022.1\(53\).261124](https://doi.org/10.20535/2308-5053.2022.1(53).261124)
2. Серета О. Г., Колосов І. В. Державно-правовий механізм захисту прав працівників в азійсько-тихоокеанському регіоні: порівняльно-правове дослідження. *Актуальні проблеми держави і права.* 2021. Вип. 92. С. 88-105. doi: <https://doi.org/10.32837/apdr.v0i92.3266>
3. Прилипка С. М., Колосов І. В., Веннікова В. В. Профспілки у Північній Америці та Австралії: ключові особливості, вплив та роль у підтриманні соціального діалогу. *Вісник Національної академії правових наук України.* 2022. Т. 29. № 3. С. 205–221. doi: <https://doi.org/10.31359/1993-0909-2022-29-3-205>

4. Ilya Kolosov. MILITARY'S MEDICAL COOPERATION BETWEEN POLAND AND UKRAINE: LABOUR LAW FEATURES. The security architecture of European and Euro-Atlantic spaces: Scientific monograph [science eds. T. Astramovich-Leik, Ya. Turchyn, R. Kordonskyi]. Riga, Latvia: "Baltija Publishing". 2022. 268 p. doi: <https://doi.org/10.30525/978-9934-26-225-8-9>
5. Kolosov I. Impact of the International Labour Organization Acts on public relations in field of medicine. International scientific conference «The role of legal science in establishing a new world order in wartime and post-war period»: conference proceedings, July 29–30, 2022. Riga, Latvia: «Baltija Publishing», 2022. P. 93–96. doi: <https://doi.org/10.30525/978-9934-26-229-6-24>
6. Веннікова В. В., Колосов І. В. Напрямки реформування галузі трудового права у Катарі: порівняльно-правове дослідження. *Проблеми законності*. 2021. Вип. 155. С. 76–88. doi: <https://doi.org/10.21564/2414-990X.155.231916>
7. Баткис Г. А. Фашизм и медицина. *Советский врачебный журнал*. 1938. № 10. С. 771.
8. Бородулин Ф. Кризис современной медицины. *Под знаменем марксизма*. 1928. № 7–8. С. 217.
9. Заблудовский П.Е. Утопический социализм Фурье и медицина. *Советская медицина*. 1937. № 13. С. 46.
10. Иовский А. Обзорение медицинских систем в начале 19-го столетия. *Вестник естественных наук и медицины*. 1828. № 5, 7. № 3–7, 11, 12. 1829. № 1. 1831.
11. Линдеман В. К. Главнейшие течения в общей патологии 19 в. Киев, 1911.
12. Лозинский А. А. К истории некоторых важнейших медицинских систем 18 и 19 вв. : дисс. Спб. 1905.
13. Образцов П. М. Исторический очерк литературы практической медицины в 19 столетии. Спб. 1862.
14. Радумовский В. И. Медицина и хирургия в 19 столетии. *Труды 8-го Пироговского съезда*. 1903. Вып. 7. С. 9.
15. Рубакин А.Н. Империализм и ухудшение здоровья трудящихся. М., 1959.
16. Тимирязев К. А. Основные черты истории развития биологии в 19 столетии. М., 1908.
17. Якубова Е. Н. Вопросы здравоохранения во Франции в период революции 1848 года и Парижской коммуны. М., 1958.
18. Aubery J. Les grandes victoires de la medicine. P., 1956.
19. McCurich H.J. The treatment of the sick poor of this country and the preservation of the health of the poor in this country. Oxford. 1929.
20. Redetzky H. Zur Geschichte der Organisation des Gesundheitswessens. В., 1953. 50.
21. Sand R. Vers la medicine sociale. P., 1948.
22. Schwetz J. L'evolution de la medicine au Congo belge. Bruxells, 1946.
23. Seventy-five years of medical progress 1878–1953 / edited by L. H. Bauer. Philadelphia, 1954.
24. Большая медицинская энциклопедия / гл. ред. акад. Бакулев А. М. М. : Государственное научное издательство «Советская энциклопедия», 1960. Том 17. 1184 с.

#### Колосов І. Розвиток медичного права у епоху капіталізму (1639–1917)

**Анотація.** У статті розглядаються питання історичного розвитку медико-соціальних відносин і медичного права в європейських державах капіталістичної епохи. Метою даного дослідження є ретроспективний огляд суспільних відносин, наукової доктрини та нормативно-правових актів, які призвели до розвитку медичного права у вищевказаний період часу; виявлення їх закономірностей, особливостей і діалектичних зв'язків; виведення відносин у сфері медицини, які в силу своєї соціальної значущості потребують і потребували правового регулювання, зокрема, нормами трудового права; розробка авторських висновків та окреслення перспективних напрямів подальшого наукового дослідження.

Методологія дослідження базується на загальних наукових методах, таких як аналіз, синтез, індукція, дедукція, аналогія та емпіричні методи. Матеріали досліджень є рідкісними виданнями та сучасними джерелами за період з 1828 по 2022 роки. Зокрема, було зроблено висновок, що вищезгадані суспільні відносини були нерозривно пов'язані з розвитком, визріванням норм трудового, кримінального та адміністративного права. Питання кримінальної відповідальності лікарів в капіталістичну епоху були дещо зміщені в бік, але на порядок денний поставлені питання впливу житлового права на медицину та професійні захворювання. Отже, медико-правовий парадокс залишався актуальним; однак медико-правова тріада перетворилася на тетрархію: трудове, кримінальне, житлове та адміністративне право – ЛСНА імпакт-фактор. Пріоритетного характеру для медицини набув розвиток і запити трудового права.

Зроблено висновок, що капіталістичне медичне право в Європі характеризується поганим фізичним станом трудящих капіталістичних країн на початку ХХ століття; величезною кількістю звільнень через хвороби і фізичну непридатність при наборі в армію; тим часом, потреба армій була великою, що також породило низку медичних заходів. Правлячі класи повинні були знайти заходи по боротьбі з причинами професійних захворювань і поступитися вимогам працівників, спрямованим на поліпшення медичної допомоги у випадках нещасних випадків на виробництві та професійних захворювань, на оплату тимчасової непрацездатності внаслідок хвороби тощо.

Незважаючи на це, вчення соціального дарвінізму було негативним фактором у розвитку розуміння соціальної етіології та соціальної профілактики захворюваності і стало основою для подальшого утвердження фашистської доктрини.

У зв'язку з цим, має бути додатково вивчений розвиток медико-правових відносин у 20 столітті, з метою закріплення існуючих висновків та виявлення нових особливостей розвитку, зокрема, європейського медичного права.

**Ключові слова:** Європа, медичне право, капіталістична епоха, медико-правова тетрархія, ЛСНА імпакт-фактор, трудове право, гігієна праці, профілактична медицина.