

Legal And Social Nature Of The Human Right To Health Care In Post Sovietic Countries

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Abstract: This article analyzes the essence of the legal and social nature of the human right to health care. The content of social human rights to health care and medical care is revealed. It is concluded that the right to health care is inseparable from the right to a safe environment and safe working conditions as a social basis for maintaining a healthy nation.

Key words: the right to health care, the right of the person for health care, the rights of the patient, the right to medical information, the legislation of Ukraine on health care, the consolidation of the rights to health in international legal acts .

1. INTRODUCTION

The rights, freedoms and legitimate interests established by law play a vital role for every citizen who is covered by these documents. The very proclamation, recognition and consolidation of rights, freedoms and legitimate interests has a significant weight in order for Ukraine to become a social, democratic, legal state. However, the practical essence of securing human rights and freedoms is that members of the community are provided with conditions for applying them in order to meet their own needs. In order to realize the established rights, freedoms and legitimate interests of the individual, the state needs to set up legal procedures for ensuring human rights and freedoms, a system of methods aimed at creating and maintaining an atmosphere of respect for all the main rights, freedoms and legitimate interests of a citizen, which is the fulfillment of human dignity as a member of society.

A well-known researcher M. Gurenko, analyzing the characteristics of the development of political and legal views on the rights and freedoms of man and citizen, emphasized that the Basic Law is examined from social, political and legal positions: from the social one - as a manifestation of social harmony, the will of all members of Ukrainian society, a kind of contract, it creates a framework of state stability, development and growth of each individual; from the political one - as the basis for the exercise of state power, its functioning in accordance with the principle of dividing a single state power into branches; from the legal one - as a normative legal act that has the highest legal force and directly regulates public relations in various spheres of state life, establishes the foundations of the legal system [1, p.11]. It is in such components or elements that the socio-legal nature of the administrative and legal aspect of the human right to health care is manifested.

Problem statement.

The purpose of the scientific article is to characterize the legal and social nature of the right to health care in modern conditions. Conceptual theoretical and legal problems in understanding the legal and social nature of law have been studied in the works of such scientists as: M.

Gurenko, A. Shamich, D. Gorbatov, L. Rusnak, A. Borko, A. Druccheck, A. Semenov, Yu. Kundiev and others. At the same time, given the relevance and importance of the objective need to develop the system of social security law sources in the new conditions of democratic transformations and the development of civil society, this issue has not lost its relevance, but has become vitally important as a component of social changes. Without belittling the scientific achievements of these authors, we believe that today it is worth paying attention to research on the legal and social nature of the human right to health care.

2. RESEARCH RESULTS

Ensuring the human right to health care is an integral part of general human rights. This right is granted to everyone, so it is declared in international and national documents. The growing importance of ensuring this right should be linked to the instability and variability of the state's health policy, as well as to the influence of socio-economic factors of primary importance. This is due to the fact that the financial support of the industry has a direct impact on the ability of health care to effectively strengthen and maintain the health status of the population and respond to urgent needs for its recovery in a timely manner. Therefore, in our view, developing legislation, programs and strategies of health development, it is important to consider a number of features of the economic situation in the country, demographic situation, availability of internal and external conflicts, unequal distribution of financial support and the like.

Health is an important social and economic factor, the level of which significantly affects the economic resources, physical, spiritual and moral potential of the society. The great importance of health as the highest and natural good makes it necessary to care for it and protect it, including international law ones. Human health is one of the most important indicators of the level of socio-economic and environmental well-being of society, its demographic, spiritual, cultural, political, scientific, biological and moral potential. The considered benefit is the most objective criterion for the effectiveness of measures at the level of legislative and executive authorities. This term covers physical, mental, spiritual and social aspects of life [2, p. 79].

Researcher D. Gorbatova notes that "the administrative and legal basis of public administration in the field of health care is a system of legal relations in the field of health care, regulated by administrative and legal means. A real achievement in recent years has been the reform of public administration in the health sector, in particular, the definition of a new goal of public administration in the health sector as the implementation of public and managerial influence by executive authorities and the creation and implementation of a new model for the provision and financing of medical services. The task of public administration in the field of health care is to ensure and implement state guarantees in the provision of health care services, which should be brought into line with the economic capabilities of the society and the state and based on the priorities of public health care. Healthcare reform requires a qualitatively new public administration in accordance with European standards" [3].

The study by L. Rusnak also notes that "the reference point of the last decade and for the future for improving health in Europe and in each member country of the WHO European office is recognized as the pan-European policy "Health for all". It provides that all countries should not only have, but also implement policies to achieve health for all people at the regional and local levels, with the support of appropriate structures. The main goal of the "Health for all" policy is to ensure justice in the field of health and a high quality of life, and its main guideline is to eliminate differences in health status due to socio-economic factors" [4]. D. Gorbatova also notes that "due to the fact that Ukraine has signed an association agreement with the European Union in the field of health, our state should focus on the countries of the European Union. Health management under the influence of recent changes should be guided by a number of new principles of governance, including the principle of democracy, legality, publicity, unity

of command and collegiality, decentralization, efficiency, solidarity (subsidiarity), expediency, universality of coverage and equity of access to medical care, etc." [3].

Administrative and legal support is one of the main types of state influence on the relevant social relations, providing certain organizational and legal means for their regulation, consolidation, protection and development [5]. This fully applies to the field of relations in the health sector.

According to A. Druchek, administrative law is an independent branch of law that was created to regulate public relations in the sphere of public administration, the organization and direction of social processes defined by law. The main purpose of administrative law in the context of democratic development is to introduce regulation of relations that are democratic in fact, that is aimed at ensuring the rights and freedoms of citizens, fulfill its responsibilities and ensure the effective protection of these rights when they are violated. Given the specifics of the concept of "legal support", it is logical to assume that administrative and legal support is carried out by the state using special mechanisms for regulating relations in society, their legal regulation, protection, implementation and development [6]. A. Semenova believes that the main responsibilities of the state in the field of public health care are as follows:

- forming the basis of state policy in the field of health care;
- defining rules for the organization and operation of the health system;
- development, approval and implementation of state health programs;
- financing of the public health system;
- promoting the development of institutions
- healthcare of all forms of ownership and subordination;
- ensuring the availability of timely, high-quality and effective medical care;
- collecting, processing and analyzing medical statistical information;
- supervision and control in the field of health protection;
- implementation of international cooperation in the field of health.
- environmental protection and environmental safety;
- development of physical culture" [7].

Analyzing the general theoretical scientific literature to determine the essence of the legal nature of human rights in conjunction with other aspects of the study of this issue, we believe that the legal nature of the human right to health care is a person's access to the use of all social, primarily state, means aimed at preserving, strengthening or restoring the maximum attainable level of physical and psycho-emotional health.

At the same time, the study of the social nature of the right to health care is closely related to the definition of the very concept of "human health". In the scientific literature, there are different interpretations of this term, made according to certain methodological and theoretical positions. The starting point for the medical-social and legal interpretation of health is the approach proposed by the world health organization, according to which health is "a state of complete physical, mental and social well-being, and not only as the absence of diseases and physical defects" [8].

However, as the outstanding Ukrainian scientist academician Yu. Kundiev rightly noted, "every individual and the people as a whole should have not only a constitutional, but also a real right to health protection, and the responsibility for it lies with the society and the state" [9]. This idea is still relevant today. After all, analyzing the report submitted by the Commissioner of the Verkhovna Rada of Ukraine for human rights on the state and observance of human and civil rights and freedoms in Ukraine for 2016, numerous complaints of Ukrainian citizens about the inability to timely receive affordable medical services, medicines and medical devices, the right to free which is guaranteed by law, indicate the complete destruction and deep crisis of the medical industry creates a real threat to the lives of people who need medical care [10]. Therefore, the issue of finding effective mechanisms for the full

implementation of the administrative and legal aspect of the human right to health care remains relevant, including in the context of determining the social and legal component of this right. In Ukraine of the twentieth century, there is a growing demand for social justice and administrative and legal support for it. This is confirmed by the following subject characteristics of health as a legal value:

- 1) universality and fundamentality, since the whole society is interested in preserving health;
- 2) health is a good, valued by specific people, the society, and the state;
- 3) system of measures to promote and preserve health is guaranteed not only by the power of the state, but also by the resources of the society itself.

The normative character of the value of the administrative and legal aspect of the right to health care has the following manifestations:

- regulatory impact of the specified right
- axiological marking of legal guarantees of the specified right and levels of their provision
- achieving a balance of legal institutions and values;
- existence of the value content and meaning of a legal norm aimed at regulating relations that are significant from the point of view of law for the protection of the health of citizens and the population as a whole.

The concept of "health care" has a legal meaning, since it is enshrined in the Constitution [11], is more fully disclosed in the "Fundamentals of Ukrainian legislation on health care" and is specified in industry legislation.

The right to health care and medical aid is a norm-principle. This right is continuously implemented, which means not just an opportunity, but the possibility of products being realized. In its implementation, legal relations of a general nature arise, in which the subjects are not specifically defined, their specific rights and obligations are not established. All citizens are involved in the field of these legal relations. In the process of implementing the right to health care and medical aid, specific legal relations arise that cause certain facts, cases, disputes and claims. For example, in the case of applying for medical aid, specific legal relations arise, where the subjects are a medical institution, a doctor, and a patient, each of whom has specific rights and obligations.

Public relations in the field of health care are complex, since they are regulated both by the norms of constitutional law, and by the norms of civil, administrative, criminal, labor law, etc. Almost every branch of Ukrainian legislation contains norms regulating these relations. This makes it difficult for the subjects of legal relations to apply the relevant rules of law. Moreover, these subjects of legal relations are diverse: the state, citizens, institutions and organizations.

Now the discussion about somatic rights has revived. Researchers usually include the following in the complex of such rights: the right to transplant human organs and tissues, the right to abortion, cloning, artificial reproduction, and the right to death. That is, somatic rights give a person the right to dispose of their body at their own discretion. But all these rights are more or less related to the state of human health. For example, a change in gender is associated with the fact that a person feels uncomfortable performing a gender role that is immanently alien to their inner world, which causes their psychotrauma. Human organ and tissue transplantation is directly related to a person's physical health. Therefore, somatic rights should not be considered as an independent group, but should be included in the content of the right to health care as a transaction. In most specified somatic rights, along with the legal nature of the right to health care, such a component as the social nature of the right is manifested. For example, an element of the social nature of the right to health care is the inseparability of the human right to life. At the same time, the issue of the beginning and end of a person's life has not yet been resolved, and probably will not be resolved in the near future, which is related to such issues as abortion, euthanasia and suicide. Currently, there is no direct ban on performing artificial termination of pregnancy (abortions) in Ukraine. Despite this, the Verkhovna Rada of Ukraine registered a

draft law on amendments to certain legislative acts of Ukraine regarding restrictions on performing operations of artificial termination of pregnancy (abortion) [12], according to the explanatory note of which, granting women the right to make a decision on abortion intervention, the leaders of most countries did not take into account the human right to preserve paternity, as an equal partner on reproductive grounds. A number of international non-governmental organizations take the position that the arbitrary implementation of abortion interventions is a violation of the child's right to life. This approach corresponds to the point of view of modern embryological science. Analyzing the human right to make reproductive choices on a global scale, it is worth noting that a number of countries have a tendency to popularize criminal business with the purchase of abortive biological material. Despite the fact that there is an increased illegal demand for stem cells - embryonic or fetal - not respectable businessmen are agitating young people to perform abortive interventions.

The experience of the Netherlands in addressing the legal and social nature of abortion is quite interesting, given the possible implementation. Thus, despite the availability of abortions, the Netherlands has a fairly low percentage of them. As noted in the abortion act, adopted in the period of 1981-1984, performing operations for artificial termination of pregnancy can be lawful only in the following conditions:

- there are indications for abortion (the so-called "emergency situation");
- doctor gives advice, but the final decision is made by the woman herself;
- after submitting the application, a five-day period must pass, given "for consideration";
- abortion is allowed until the fetus becomes viable (the upper limit is the twenty-second week of pregnancy) " [13, p. 72-73].

We should add that the legislation of most European countries allows for free abortion at the request of a woman, and in Poland, Iceland, Finland, Luxembourg, Switzerland, Spain, Portugal, Malta, Cyprus, Great Britain and Ireland there are certain legal restrictions.

There are conflicting views on euthanasia from both medical and moral-ethical and legal points of view. Euthanasia is prohibited in Ukraine. Euthanasia is allowed in some European countries - in the Netherlands, Belgium. At the same time, there is a distinction between active euthanasia (if the doctor intervenes in the patient's life, acting on his request, which accelerates their death) and passive euthanasia (if the doctor intervenes in the patient's life to accelerate their death without trying to provide the patient with the necessary assistance and prolong his life). Passive euthanasia is allowed in many countries - the United States, Switzerland, and others.

The difference between socio-economic and cultural rights, which include the right to health care, and other rights and freedoms, is that their consolidation at the regulatory level imposes on the state the obligation not only to refrain from interfering with the individual's personal freedom, but also obliges it to create conditions (legal, organizational, material and technical, etc.) for the use of these rights. The realization of the right to health care as one of the components of socio-economic rights is possible only in a legal, social state.

The right to health care is a "positive" human right.

The structure of the right to health care includes such powers as:

- right to favorable conditions of life that directly affect human health, namely, the right to favorable environment, right to a healthy and safe working conditions, the right to leisure, right to adequate living conditions right to a full and balanced diet ;
- right to social security by age and in case of illness;
- right to receive information about the impact of existing factors on health;
- right to favorable sanitary and epidemiological conditions;
- right to quality and affordable medical care to the extent required by the state guarantee program;
- right to apply to human rights organizations if necessary.

As a result of the above, we conclude that for administrative and legal support of health care, many regulatory legal acts are applied, which differ in accordance with the legal force, functional purpose, territory of acts, nature of the subject of regulation and the significance during the execution of public health management. That is why, in our opinion, it is necessary to systematize the laws of Ukraine in the field of health care by combining them into a single structure that is coordinated at the internal level. In other words – by forming a reference document, for example, Code of laws of Ukraine on health care (Medical code) that will be able to establish the concept of health, as at present, even sectoral legislation of Ukraine in the sphere of health protection is not regulated by laws of direct action, because they do not prescribe the actual procedures of their execution. The variety of legal acts at different levels related to the same issue is not always explained in the same way. In addition, the by-laws do not prohibit re-interpretation, and due to the large number of legal acts, it is not possible to identify legal omissions and conflicts.

3. CONCLUSIONS

The study of the social and legal nature of the administrative and legal aspect of the human right to health care has allowed us to consider health as an inalienable primary human right, which is the basis for the formation of all other benefits. In addition, public health is one of the components of the national security of the state. It is because of the importance of this good that the state and law protect it from unlawful encroachments. This is typical for all democratic, legal states with a developed civil society. This is why the right to health care will always be viewed through the lens of law. In our opinion, when ensuring the human right to health, as well as any other human right, it is necessary to consider the subject component of security, namely the state, society and the individual as the main subjects of security.

The right to health care has all the features and characteristics of social rights: social rights are an integral part of the system of inalienable human rights; a key characteristic of social rights is that they are designed to provide essential life needs, without which normal human being is impossible; social rights are the base for the formation of a really social state; realization of social rights becomes problematic in conditions of lack of material and financial resources. These are the main postulates, the observance of which will contribute to the full implementation of the administrative and legal aspect of the right to health care.

The legal nature of the human right to health care is a person's access to the use of all social, primarily state, means aimed at preserving, strengthening or restoring the maximum attainable level of physical and psycho-emotional health. The definition of the social nature of the right to health care is closely related to the definition of the very concept of "human health" as an important socio-economic factor that affects the quality of the derived physical, spiritual and moral potential of society.

4. BIBLIOGRAPHY:

- [1] Gurenko M. M. Development of political and legal thought about guarantees of human and civil rights and freedoms: [monograph]. - Kiev: Logos, 2002. - 252 p.
- [2] Shamich A. N. Concept and structure of the natural human right to health care. Actual problems of education and upbringing of people with special needs. 2014. No. 11. Pp. 75-92.
- [3] Gorbatova D. I. Administrative and legal bases of public administration in the sphere of health care / D. I. Gorbatova // Bulletin of V. N. Karazin Kharkiv National University. Series: Pravo. - 2018. - Vol . 25. - Pp. 178-180.

- [4] Rusnak L. N. Legal nature of the "health care" concept // Prykarpathian legal bulletin. - 2019. - №. 1 (26). - Pp. 109-112.
- [5] Borko A. Concept and main features of administrative and legal support of the functioning of the judicial system of Ukraine [Electronic resource] / A. Borko // Public law. - 2013. - 2 (10). P. 71-77.
- [6] Druchek A.M. Concept of administrative and legal support of the rights, freedoms and interests of the child by the internal affairs bodies of Ukraine [Electronic resource] / A. N. Druchek // Forum of law. - 2013. - No. 2. - Pp. 123-128
- [7] Semyonova A.V. Legal nature of the right to health care / A.V. Semyonova // Public law, 2014, no. 4, Pp. 145-149.
- [8] Charter (Constitution) of the World health organization: international document of 22.07.1946. [Electronic resource]. - Access mode: http://zakon2.rada.gov.ua/laws/show/995_599
- [9] Kundiev Yu. From a height-headlong, or why health care reforms are not effective? // Zerkalo nedeli. - 2008. - № 1 (680) 12 January. - p. 8
- [10] Annual report of the Commissioner for human rights of the Verkhovna Rada of Ukraine on the state of observance of human and civil rights and freedoms in Ukraine for 2016 / Annual and special reports. - 2017 [Electronic resource]. - Access mode: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=3>
- [11] Constitution of Ukraine: Basic Law of Ukraine No. 254k / 96-BP of 28.06.1996. [Electronic resource]. - Access mode: <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>
- [12] On modification of some legislative acts of Ukraine concerning restrictions on carrying out operations of artificial termination of pregnancy (abortions): draft law No. 6239 of 27.03.2017 [Electronic resource]. - Access mode: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61424
- [13] Styczeń T. Moralny fundament Europy czyli o cywikizację życia / T. Styczeń , S. Majdański , C. Ritter // Moralny fundament Europy czyli o cywikizację życia . mat . Sympozjum " O solidarność rodziny narodów Europy " , 13-14 maja , 2012 r. - Lublin , 2012. - S. 71-89