УДК 342.9:5.08
DOI https://doi.org/10.32847/ln.2022.18.22

Легеза Ю. О.
професор кафедри цивільного, господарського та екологічного права,
доктор юридичних наук, професор
Національний технічний університет «Дніпровська політехніка»

Пушкіна О. В.
доктор юридичних наук, професор, завідувач кафедри цивільного,
господарського та екологічного права
Національного технічного університету

МІЖНАРОДНІ СТАНДАРТИ ПРАВОВОГО РЕГУЛЮВАННЯ РЕАЛІЗАЦІЇ ТА ЗАХИСТУ ПРАВА НА ОХОРОНУ ЗДОРОВ'Я

The relevance of the problem. The normative establishment of a system of guarantees and a mechanism for exercising the human right to health care was firstly reflected in certain legislative and by-laws adopted in the middle of the 20th century. However, separate references to the need to consolidate the legal mechanisms of a person's right to health care appear as early as the 19th century. At the same time, it cannot be said that the state and society, starting from the 19th century, began to think about the issue of regulating the rights of patients and protecting their interests in protecting their health and the safety of treatment. Separate references to the right to health care still belong to the times of the legislation of Kievan Rus, where there were references to the grounds for applying criminal liability for committing unlawful acts, the negative consequences of which were harm to human life and health. The rapid development of industry, which has been characteristic since the beginning of the 17th century, raises the urgent issue of protecting the health of workers, in particular, due to harm to human health at work. Such a legislative act, which was one of the first to consolidate the mechanism for protecting the human right to health care, is the English Poor Law, which became the regulatory basis for the future Public Health Law. Thus, gradually, since the 19th century, legislation in the field of healthcare (medical legislation) has been formed.

Analysis of recent research and publications. The issues of research into the normative regulation of the rights of the patient as subjects of medical law are the subject of separate scientific developments of such scientists as Yu.A. Volkova, R.Yu. Grevtsova, L.A. Zolotukhina, B.A. Logvinenko, G.M. Sarybaeva, S.G. Stetsenko and others. However, the problems of studying the issues of establishing the status of a patient as a subject of a medical legal relationship in general, and in particular, on the issues of conducting medical experiments and complying with the requirements of bioethics, are defined as fragmentary, which justifies the grounds for the relevance of this publication.

This scientific development and its issues correlate with the conceptual foundations for the development of medical reform in Ukraine, the postulates of which are approved in accordance with the Sustainable Development Strategy "Ukraine - 2020", approved by Decree of the President of Ukraine dated January 12, 2015 No. 5/2015, the National Strategy for Activity in Ukraine for the period up to 2025 "Motor activity - a healthy lifestyle - a healthy nation", approved by the Decree of the President of Ukraine dated February 09, 2016 No. 42/2016, the Concept for the Development of the Public Health System, approved by the Order of the

Cabinet of Ministers of Ukraine dated November 30, 2016. No. 1002-r, Concepts for the reform of financing the healthcare system, approved by the Order of the Cabinet of Ministers of Ukraine dated November 30, 2016 No. 1013-r and other strategic documents.

The purpose of the article is to characterize the international standards of legal regulation of the implementation and protection of the right to health care. The achievement of the goals set by the authors is associated with the solution of such problems as: 1) establishing the content of international standards in the field of healthcare; 2) search for directions to ensure the effectiveness of legislative regulation of the right to health care through the prism of the implementation and protection of personal non-property rights of the individual, ensuring his physical existence.

Presentation of the main material of the study. At the normative level, the subjective private (personal) right to health care, which should be guaranteed by the state, was enshrined in the middle of the 20th century. At the same time, in separate documents, starting from the 19th century, the concept of "right to health" is mentioned here and there. However, even before, society and the state understood the need and expediency of taking measures aimed at ensuring the requirements of sanitary and hygienic safety. Even in the days of ancient Rome, Egypt and India, measures were taken to ensure the requirements of sanitation and hygiene.

The germs of medical legislation are observed in accordance with the laws of Kiyevska Rus, in particular, in the context of the application of criminal liability for causing harm to human life and health.

Starting from the 17th century, with the development of industry, the issue of protecting the health of workers, as well as compensation for harm caused by pollution and activities with chemicals, has become relevant. One of the first laws to protect the individual's right to health was the bill adopted in England - "On the Poor", which indicated the relationship between the human right to a safe environment and the right to receive medical care, which was later enshrined in 1848 by introduction of the Law "On Public Health" into the legal system [1]. In fact, this act fixed the healthcare structure at the state level in the form of the creation of special departments, which were engaged not only in the administration of the processes of organizing the provision of medical care, but also in ensuring the improvement of settlements.

Therefore, only in the middle of the XIX century. For the first time, the legal institution of health care was normatively fixed and certain approaches to the establishment of an administrative-legal mechanism and its structure were introduced.

The normative regulation of the right to health care is carried out at the international, national and local levels.

The beginning of the 20th century was outlined for the development of administrative and legal legislation on health issues by the conclusion on the eve of the First World War of an agreement on the formation of the International Organization of Public Hygiene (1907), the successor of which in 1919 became the International Labor Organization. Thus, the development of medical legislation has shown trends towards the normative consolidation of the institution of the healthcare system as a certain administrative-structured system, the effectiveness of which should be guaranteed by the state.

The history of the development and formation of the protection of the human right to health at the international level is associated with the UN conference in San Francisco in 1945, where it was determined that the functioning of the countries of the world community in accordance with Article 55 of the UN Charter should contribute to the settlement of socio-economic and social problems in the healthcare sector. To implement this strategy, the task was adopted by the Declaration on the Establishment of the World Health Organization in 1946, which is a special body of the UN (Article 57 of the UN Charter) [2]. According to the provisions of the WHO Charter, it is established that the right to

health care is one of the priorities of the structural development of the countries of the world, requiring the latter to create and implement high medical standards that do not depend on race, religion, political preferences, or socioeconomic status. Thus, in accordance with the provisions of the statutory documents of the UN and WHO, the responsibility of the state for violation and non-compliance with medical standards in the healthcare sector is fixed.

Despite the obvious need to create a WHO, its activities are often assessed negatively, as declarative, low effective. However, it should be emphasized that at the international legal level, a person, his right to life and health are recognized as the most important and valuable resource, which is also reflected at the level of national legislation of the countries of the world. Each person has the right to guarantee for him the highest standard of physical and mental health, which requires the activation of management processes for the implementation of public administration functions in the healthcare sector.

Thus, the international level of legal regulation of the healthcare sector is characterized mainly by acts, declarative conceptual provisions that are important in terms of determining the vector of development of modern states of the world. The international level of legal regulation of the right to health care includes such norms as the norms of the Universal Declaration of Human Rights of 1948 [3], the International Covenant on Economic, Social and Cultural Rights of 1966 [4], the Declaration on the Rights of Persons with Disabilities of 2006 [5] , Declaration on the Rights of Mentally Retarded Persons of 1971, etc. [6]. In particular, in accordance with the Declaration on the Rights of Mentally Retarded Persons, it is stated that a mentally retarded person has the same patient rights as any other person, in particular, the right to proper medical care and treatment, the right to information about the state of his health, the right to the restoration of working capacity and rehabilitation, the right to the spiritual and cultural development of the individual (clause 2); the right to material security and an adequate standard of living (paragraph 3); the right to be protected from exploitation, abuse and degrading treatment (paragraph 6). In the absence of the possibility of ensuring the realization of the rights of mentally retarded patients, such persons should live with their families or in other conditions that do not differ as much as possible from the usual living conditions of a person, which together should maximize the socialization of the individual. However, despite the obvious relevance and importance of the Declaration on the Rights of Mentally Retarded Persons, it is not ratified by the Verkhovna Rada of Ukraine, and therefore is not a source of the system of national law and legislation.

The consolidation of the human right to health care at the international level is enshrined in the Universal Declaration of Human Rights, adopted on December 10, 1948 [3]. The right to health care belongs to the system of social human rights. According to the provisions of Article 25 of the Universal Declaration of Human Rights of 1948, it is enshrined that a person has the right to an appropriate "quality" standard of living, which contains the human right to food, clothing, housing, medical care and necessary social services, which constitute the basis for physical. the existence of man. The human right to health includes the human right to a healthy physical and social environment, including the human right to a safe environment; the right to clean water; the right to quality, safe food; the right to comfortable living conditions; the right to privacy.

Subsequently, the human right to health care was detailed in the International Covenant on Economic, Social and Cultural Rights of 1966 [4]. In particular, according to article 12 of the International Covenant on Economic, Social and Cultural, it is established that the right to health care is the creation of conditions for maintaining the physical and mental health of a person, requiring the state to take appropriate organizational and legal measures that require the development and implementation of regional, national and interstate cooperation programs. At the international level, the legal status of patients

is enshrined in a number of international legal instruments, in particular in the Convention on the Elimination of All Forms of Discrimination against Women (1979) [7], the Convention on the Rights of the Child (1989) [8], the International Convention on the Elimination of All Forms of Racial Discrimination (1965)[9].

The standards of social protection and security, medical care and assistance are established in accordance with special international documents adopted by the UN, in particular, in accordance with the Declaration of Social Progress and Development (1969)[10], the Convention on the Protection of the Rights of Foreign Workers and Members of Their families (1990) [11], the Standard Minimum Rules for the Treatment of Prisoners [12], a number of ILO Conventions (for example, the Convention on the Elimination of All Forms of Discrimination Against Women of 1979 [13], the right of women "to health care" is enshrined and safe working conditions, including protection of the reproductive function" (art. 11), which means that working conditions should not interfere with or in any other way affect the right of a woman to have children, have a family, etc. 1969) is valuable setting goals for the functioning of the health care system, one of which is "<...> achieving the highest level of health, providing, if possible, free health care for of the entire population", correlated with the provisions of the Constitution of Ukraine.

A child has a special administrative and legal status as a patient, as a consumer of medical services, which is enshrined at the international level in the Convention on the Rights of the Child [14], which enshrines the inalienable right of every child to life, and also guarantees the fulfillment of the obligations of the state to promote spiritual, cultural and physical development of the child, which is associated with the creation of conditions for the consumption of medical services at the proper level in institutions providing healthcare services.

Thus, it is reasonable to conclude this. The international level of legal regulation of the individual's right to health care refers to the system of guarantees of belonging to the fulfillment of social functions assigned to the modern state. The purpose of these documents is to classify workers into certain categories and define work standards that do not adversely affect health. In the context of the formation and constant reformation of the system of medical legislation in Ukraine, international legal acts and treaties are a necessary basis that should be used to form the foundation of rule-making and adapt national regulations to European and world standards.

Further development of international legislation in the field of healthcare is linked to the adoption in 1995 of the Copenhagen Declaration and Program of Action [15]. The Copenhagen Declaration on Social Development dated 01.01.1995 contains a provision on establishing the expediency of introducing guarantees for the effectiveness of the healthcare sector, administrative and legal support for its mechanism, creating effective institutions for the provision of medical services, medical care, the fight against AIDS and global pandemics, reproductive activities , quality environment, social protection of vulnerable segments of the population.

In 1995, the Beijing Resolution on Human Rights was adopted on the need for equal rights for women and men in the provision of medical care, creating equal conditions for access to medical institutions, mental health protection, and educational work. The provisions of the Beijing Resolution determined that the health care system includes the prevention of sexually transmitted diseases; activation of scientific and practical research on the problems of solving problems of reproductive health and its resource intensity.

Conclusions. Consequently, the effectiveness of ensuring human rights and freedoms in general, and in particular, the human right to health care, requires not only their normative consolidation, but also the creation of an administrative and legal mechanism for their implementation and protection.

Thus, it is necessary to conclude that fundamental rights and values are fixed at the international legal level, which, in their content, establish important guiding principles for organization and efficiency, determine the priority of the humanistic attitude of the doctor to the patient, overcoming the manifestations of any form of discrimination. Thus, at the international legal normative level, the human right to health care is enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the WHO Charter, a number of conventions ILO. The international institutions whose competence includes the protection of the human right to life and a quality healthcare system include the UN, WHO, and the ILO.

According to international law, the human right to health care is a socio-economic right, the success of its implementation and protection determines the quality of human life. The effectiveness of the implementation of the human right to health care should be fixed not only at the international level, but also at the level of national legislation in general, and in particular, in the field of preventing corruption.

Анотація

У статті досліджуються міжнародні стандарти правового регулювання реалізації та захисту права на охорону здоров'я. Авторами встановлено, що в умовах сьогодення визначаються кореляційні зв'язки міжнародних та національних стандартів реалізації та захисту права особи на охорону здоров'я. Метою статті є здійснення характеристики міжнародних та національних стандартів правового регулювання реалізації та захисту права на охорону здоров'я. Досягнення поставленої мети авторами пов'язується із вирішенням таких завдань, як: 1) встановлення змісту міжнародних стандартів у сфері охорони здоров'я; 2) пошук напрямів забезпечення ефективності законодавчого регулювання права на охорону здоров'я крізь призму реалізації та захисту особистих немайнових прав особи, що забезпечують її фізичне буття. Наукова новизна. У статті обґрунтовується доцільність нормативного розуміння права на охорону здоров'я як міжгалузевого правового інституту, що регулюється як в межах публічно-правових норм, так і із застосування приватно-правових стандартів захисту особистих немайнових інтересів. Як висновок, у статті урахуванням визначення пріоритету захисту життя та здоров'я людини обґрунтована доцільність здійснення конкретизації норм чинного законодавства з питань застосування обставин, що виключають злочинність діяння. Авторами визначено, що здійснення професійних обов'язків медичними працівниками пов'язується з існуванням щоденних ризиків, з прийняття нестандартних рішень, з необхідністю застосування інноваційних методів лікування, але подекуди без такого є неможливим дотриматися реалізації права особи на охорону здоров'я. Зроблено висновок, що міжнародно-правовому рівні закріплюються основоположні права та цінності, що за своїм змістом встановлюють важливі керівні принципи організації та ефективності, визначають пріоритетність гуманістичного ставлення лікаря до пацієнта, подолання проявів будь-яких форм дискримінації. Таким чином, на міжнародно-правовому нормативному рівні право особи на охорону здоров'я закріплено у Загальній декларації прав людини, Міжнародному пакті про економічні, соціальні і культурні права, Конвенції про права дитини, Конвенції про ліквідацію усіх форм дискримінації щодо жінок, Статуті ВООЗ, ряді конвенцій МОП. Міжнародними інституціями, до компетенції яких відноситься захист права особи на життя та якісну систему забезпечення охорони здоров'я відносяться ООН, ВООЗ, МОП.

Ключові слова: медичні правовідносини, захист, звільнення від покарання, медичний працівник, медичне право, пацієнт, правореалізація, юридична відповідальність.

Leheza Yu.O., Pushkina O.V. International standards of legal regulation of the implementation and protection of the rights to health care

The article studies international standards of legal regulation of the implementation and protection of the right to health care. The authors found that in today's conditions, correlations between international and national standards for the implementation and protection of the human right to health care are determined. The purpose of the article is to characterize international and national standards of legal regulation of the implementation and protection of the right to health care. The achievement of the goals set by the authors is associated with the solution of such problems as: 1) establishing the content of international standards in the field of healthcare; 2) search for directions to ensure the effectiveness of legislative regulation of the right to health care through the prism of the implementation and protection of personal non-property rights of the individual, ensuring his physical existence. Scientific novelty. The article substantiates the expediency of a normative understanding of the right to health care as an intersectoral legal institution, regulated both within public law norms and by the application of private law standards for the protection of personal non-property interests. As a conclusion, taking into account the determination of the priority of protection and human health, the article substantiates the expediency of concretizing the norms of the current legislation on the application of circumstances precluding the criminality of the act. The authors determined that the implementation of professional duties by medical workers is associated with the existence of daily risks, with the adoption of non-standard decisions, with the need to use innovative methods of treatment, but sometimes without this it is impossible to observe the realization of a person's right to healthcare. It is concluded that fundamental rights and values are fixed at the international legal level, which, in their content, establish important guidelines for organization and efficiency, determine the priority of the humanistic attitude of the doctor to the patient, overcoming the manifestations of any form of discrimination. Thus, at the international legal normative level, the human right to health care is enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the WHO Charter, a number of conventions ILO. The international institutions whose competence includes the protection of the human right to life and a quality healthcare system include the UN, the World Health Organization, and the International Labor Organization.

Key words: medical legal relationship, protection, release from punishment, medical worker, medical law, patient, law enforcement, legal liability.

Список використаних джерел:

1. Москаленко В.Ф., Грузєва Т.С., Іншакова Г.В. Регламентація права на охорону здоровя у міжнародних нормативно-правових актах. *Медичне право України: правовий статус пацієнтів в Україні та його законодавче забезпечення (генезис, розвиток, проблеми і перспективи вдосконалення).* Матеріали ІІ Всеукраїнської науково-практичної конференції 17—18.04.2008, м. Львів. С. 186-201.
2. United Nations Charter (full text). https://www.un.org/en/about-us/un-charter/full-text
3. Загальна декларація прав людини, прийнята і проголошена резолюцією 217 А (ІІІ) Генеральної Асамблеї ООН від 10 грудня 1948 року. URL.: https://zakon.rada.gov.ua/laws/show/995_015#Text
4. Міжнародний пакт про економічні, соціальні і культурні права 1966 року. URL.: https://zakon.rada.gov.ua/laws/show/995_042#Text
5. Конвенція про права осіб з інвалідністю від 13.12.2006 року. URL: https://zakon.rada.gov.ua/laws/show/995_g71#Text

6. Декларация о правах умственно отсталых лиц, принята резолюцией 2856 (XXVI) Генеральной Ассамблеи от 20 декабря 1971 года. URL.: https://zakononline.com.ua/documents/show/169900___169900
7. Конвенція про ліквідацію всіх форм дискримінації щодо жінок. URL.: https://zakon.rada.gov.ua/laws/show/995_207#Text
8. Конвенція про права дитини. URL: https://zakon.rada.gov.ua/laws/show/995_021#Text
9. Міжнародна конвенція про ліквідацію всіх форм расової дискримінації. URL: https://zakon.rada.gov.ua/laws/show/995_105#Text
10. Декларація соціального прогресу і розвитку. URL: https://www.un.org/ru/documents/decl_conv/declarations/socdev.shtml
11. Конвенція про захист прав іноземних робітників і членів їх сімей. https://zakon.rada.gov.ua/laws/show/997_j82#Text
12. Мінімальні стандартні правила поводження з ув'язненими. URL.: https://zakon.rada.gov.ua/laws/show/995_212#Text
13. Конвенція Організація Об'єднаних Націй про ліквідацію всіх форм дискримінації щодо жінок. URL.: https://zakon.rada.gov.ua/laws/show/995_207#Text
14. Конвенція про права дитини. URL.: https://zakon.rada.gov.ua/laws/show/995_021#Text
15. Копенгагенская декларация о социальном развитии від 01.01.1995 року. URL.: https://ips.ligazakon.net/document/view/MU95379?ed=1995_01_01