

FOREIGN EXPERIENCE OF LEGAL PROTECTION OF THE RIGHT TO HEALTH CARE

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Abstract. *The article emphasizes that the health sector is one of the leading links in the social sphere of the leading countries of the world, where human life and health are recognized as one of the most important values. Therefore, one of the most important state tasks for the Ukrainian state is to effectively and professionally ensure the proper state of health care for all segments of the population. On this basis, in order to borrow foreign experience in legal support for the implementation of the right to health care in Ukraine, a study of international regulatory legal acts was carried out, which deal with the principles and standards in the field of health care, the human right to pay attention to the important role of the health care system in the leading countries of the world. For this purpose, in particular, the following were analyzed: the Universal Declaration of Human Rights; the Convention for the Protection of Human Rights and Fundamental Freedoms; the International Covenant on Civil and Political Rights of the UN; the International Covenant on Economic and Cultural Rights; the European Convention on Social and Medical Assistance; International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights; European Code of Social Security; European Social Charter. Attention is drawn to the gaps in the regulatory and legal regulation of healthcare in Ukraine. It is established that the leading countries of the world demonstrate the presence of an effective healthcare system, a high level of private and public sector activity of medical clinics is demonstrated by Taiwan and Switzerland. Attention is drawn to the high level of medicine in the treatment of cardiovascular system and oncological diseases in South Korea, as well as medicine in Japan. Attention is focused on free medicine in France for residents and free medicine in public clinics and hospitals in Denmark, as well as accessibility to the public healthcare system in Spain. Australia has achieved significant success in state medical insurance, free treatment in public hospitals for both residents and foreigners. In Norway, free medical care is available to residents and foreigners who live and work for more than a year, while Austria has a large number of medical personnel and medical hospitals.*

It is proven that the experience of these and other countries in the legal regulation of health care indicates that Ukraine needs to borrow the experience of the functioning of the health care system of the best countries in the world, which covers a variety of components aimed at ensuring the implementation of the right to protection of citizens.

Key words: *health care, legal regulation, international principles and standards, improvement.*

1. Introduction

Legal support for healthcare plays an important role in the activities of the entire healthcare system of the state. The problems of legal regulation of healthcare, including in foreign countries, have only been studied in recent years by such scientists as O.O. Terzi [1], G.V. Mulyar [2], O.P. Rumyantseva [3], R.V. Kolodchyna [4]. However, despite the thoroughness and diversity of these and other scientific studies, the complexity of the outlined issue requires new scientific research on the existing issues of legal regulation of relations in the healthcare sector of Ukraine and borrowing the positive experience of the leading countries of the world in the healthcare sector. Therefore, in order to borrow positive experience, there is a need for detailed coverage of the problems of legal regulation of healthcare in Ukraine.

The purpose of the study is to identify the features of legal regulation of healthcare in foreign countries, in order to borrow positive experience for Ukraine.

2. Research methodology

The methodological basis of the research became general scientific and special legal methods of cognition. The method of philosophical dialectics is worth mentioning among the scientific methods, which is revealed by using the methods of analysis and synthesis, the descent from the simple to the complex, from the abstract to the concrete, as well as the methods of modeling, abstraction, idealization and formalization. The special and legal methods used in the research combine systemic, theoretical and legal, formal and dogmatic,

comparative and legal methods of cognition, as well as the method of state and legal modeling.

3. Results

In order to borrow foreign experience in legal support for the implementation of the right to health care in Ukraine, we will conduct a study of international regulatory legal acts that address the right to health care. Among the significant number of regulatory acts, it is worth paying attention to The Universal Declaration of Human Rights was adopted and proclaimed by Resolution 217 A (III) of the UN General Assembly of 10.12.1948, which defines international legal standards of human rights in the field of health care. The Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950, which defines everyone's right to life, which is protected by law, is of great importance in the legal support for the implementation of the right to health care. The International Covenant on Civil and Political Rights of the UN of 16.12.1966, in part one of Article 6, determines that the right to life is an inalienable right of every person.

The International Covenant on Economic and Cultural Rights, adopted on 16.12.1966 by the UN General Assembly, draws attention to special measures of protection and assistance to all children and adolescents without any discrimination on grounds of family origin or any other grounds. Among the European regulatory legal acts in the field of health care, it is worth highlighting the European Convention on Social and Medical Assistance of

11.12.1953 and the European Code of Social Security of 16.04.1964, which defines the standards of medical care. It is also worth paying attention to the European Social Charter of 03.05.1996, which defines the right of everyone to benefit from any measures that allow him to achieve the best possible state of health. However, it should be noted that by the Law of Ukraine "On the Ratification of the European Social Charter (Revised)" of September 14, 2006 [5], Ukraine did not undertake to fully implement all the provisions of the European Social Charter. Thus, our state does not undertake to consider the implementation of Art. 13 «Right to social and medical assistance» of the European Social Charter, which provides for ensuring that any person in need who is unable to obtain sufficient means through his own efforts or from other sources, in particular through social security benefits, is provided with appropriate assistance and, in the event of illness, with the care required by his state of health, and to provide that everyone may receive from appropriate public or private services such advice and personal assistance as may be necessary to prevent, overcome or alleviate personal or family distress.

As G. Mulyar notes, each state, having ratified at least one international legal act on human rights and on the recognition of the right to health care, has undertaken to protect this right in domestic legislation, creating sustainable national health care systems and strengthening national potential. Realizing the right to health care in each country directly depends on the national health care policy and legal support [6, p. 305].

Focusing on the legal support for the implementation of the right to health care, we cannot ignore the foreign experience of public administration in the field of health care. According to the dominant method of financing health care systems, the following are distinguished:

1) health care systems, the financing of which is based mainly on general taxation. Used in the Scandinavian countries, Ireland, Great Britain and the countries of Southern Europe (Greece, Spain, Italy, Portugal). In these countries, the role of the public sector as the main source of financing is generally recognized, which allows ensuring universal access to health services and equitable geographical distribution of resources. The buyers are represented by public health authorities;

2) health systems whose main source of financing is social insurance. In these systems (for example, in Austria, Belgium, Germany, Luxembourg, France, Switzerland), the state regulates and strictly controls the health systems to prohibit costs (for example, by setting maximum levels of insurance contributions) and ensure a greater degree of equality and solidarity. The role of the buyer of health services is performed by insurance companies;

3) health systems based on social insurance, whose main source of financing is a tax levied on wages (most countries of Central and Eastern Europe) [7].

In particular, in Finland, health care is provided through both a public health care system and a health insurance system. Both are universal and financed mainly by taxes. The national system is planned and generally managed by the Ministry of Social Affairs and Health. The health care system in France is largely regulated by the government. The central government is responsible for public health in general, provides social protection, regulates relations between health financing bodies, supervises the public hospital system and organizes the training of health professionals. The ministries of social affairs and health are the main bodies responsible for health policy at the national level. The organization and financing of the health care system in Germany is based on the traditional principles of social solidarity, decentralization and self-regulation. The role of the central government is limited to developing the legislative framework within which health services are provided, while the main executive functions belong to the administrations of the individual states. The Federal Ministry of Health is the main institution at the federal level, to which the scientific expertise bodies are subordinate [8].

Unlike the above-mentioned countries, the healthcare system in Switzerland is one of the best in Europe and the most expensive in the world. Unlike other European countries, the Swiss healthcare system is not based on taxation and employer contributions. Persons residing in Switzerland are required to pay insurance contributions. Payment of the contribution gives the payer access to basic health insurance and accident insurance in order to receive medical services. Switzerland also has the opportunity to supplement the basic policy with additional private health insurance. The basic Swiss health policy finances up to 80–90% of healthcare costs [9].

Every year, experts from the Numbeo service compile a Health Care Index for Country rating. Thus, a comparative assessment of 95 countries of the world for 2022 was carried out based on the quality and cost of medical services, the equipment of hospitals, and the professional level of medical personnel. The top ten countries in the world include:

1. Taiwan – the best healthcare system in the world. Taiwan leads the ranking of countries in terms of healthcare according to Numbeo. The island's private and public clinics are not inferior to European ones in terms of equipment.

2. South Korea – the best plastic surgery. South Korea is recognized as one of the best countries in the field of plastic surgery, treatment of the cardiovascular system and oncological diseases. The high level of medicine in the country is also indicated by the average life expectancy of Koreans – 80 years.

3. Japan – the leader in life expectancy. Japan closes the top three countries with the best medicine. Largely due to the achievements of medicine, the average life expectancy of the country is 84 years.

4. France – free medicine for residents. There are 1,500 public and private medical institutions in the country. To receive medical care, you need to be attached to

a general practitioner. The doctor examines the patient, writes out prescriptions, and if necessary, refers to specialists of a narrow profile.

5. Denmark – high-quality free medicine. Healthcare costs are one of the highest in the EU and account for 10.6% of GDP. The country's residents live an average of 81 years. Most clinics and hospitals in the country are public, and treatment in them is free.

6. Spain – the largest number of public medical institutions. The main advantage of the Spanish healthcare system is accessibility. Clinics with the latest equipment can be found not only in large cities, but also in the provinces. Most hospitals in Spain are public.

7. Australia – uniform tariffs for medical services. Not only citizens of the country, but also foreigners with a residence permit can be treated free of charge in public hospitals in Australia. The costs are covered by the state health insurance Medicare. All state medical institutions operate on uniform tariffs.

8. Thailand is the center of medical tourism in Asia. In Thailand, it is not customary to call doctors to your home. Patients come to the hospital on their own, and after the examination they can be hospitalized.

9. Norway is affordable medicine. Citizens of the country and foreigners who live and work here for more than a year can receive free medical care.

10. Austria is the leader in the number of medical personnel. It has the highest hospital density in the European Union: 514 doctors work for every 100 thousand people. For example, in Belgium there are 297 doctors per 100 thousand patients, and in Cyprus – 338 [10].

The experience of these and other countries indicates that our state, despite the existing state of war, needs to borrow the experience of the best countries in the world, which covers a variety of components aimed at ensuring the implementation of the right to health care of citizens.

The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine of 04.04.1997 is of great importance for the protection of the health of citizens. In accordance with the provisions of the Convention, the parties, taking into account medical needs and available resources, take appropriate measures to ensure equal access to medical care of appropriate quality within their jurisdiction. Any intervention in the field of health, including scientific research, must be carried out in accordance with relevant professional duties and standards.

This Convention not only extends human rights, its judicial protection of biomedical rights without any restrictions, except for those established by law and necessary in a democratic society in the interests of public safety, for the prevention of crime, for the protection of public health or for the protection of the rights and freedoms of others. However, Ukraine, having signed the Convention in 2002, has not yet ratified it, since it cannot meet its requirements, since at the national level a legislative framework has not yet been developed that would define key concepts related to biomedicine, the

issues of the legal status of embryos, the use of stem cells, therapeutic cloning, biomedical and genetic research on humans, etc. have not yet been regulated [11, p. 206].

Every person's right to life, respect for their dignity, the right to the integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and forced labor, the right to liberty and security, etc., are defined by the Charter of Fundamental Rights of the European Union, the draft of which was prepared in 2000, which gained full legal force only with the entry into force of the Treaty of Lisbon on December 1, 2009. Today, the EU Charter itself is the source of human rights protection standards for all EU bodies and institutions. It is worth noting that in the first year of the EU Charter's validity alone, the EU Court of Justice referred to its provisions more than 30 times, and in November 2010, for the first time in its decision, it annulled the provisions of a number of EU regulations (one of the forms of secondary sources of EU law) due to their contradiction with the EU Charter [12].

An example of legal support for the implementation of the right to health protection, compliance with principles and standards in medical research involving humans as research subjects is the Declaration of Helsinki of the World Medical Association adopted by the General Assembly of the WMA in Helsinki on 01.06. 1964. According to the provisions of the World Medical Association, doctors must take into account the ethical, legal and regulatory norms and standards for conducting research on humans that operate in their countries, as well as relevant international norms and standards. No national or international ethical, legal or regulatory requirements can limit or ignore the provisions on the protection of research subjects, obliges the doctor to take on the following obligations: «The health of my patient will be my primary concern», and the International Code of Medical Ethics declares that «In providing medical care, the doctor must act solely in the interests of the patient» [13].

4. Conclusions.

Thus, the conducted study of foreign experience in ensuring the implementation of the right to health care demonstrates the need to identify the main ways to improve the implementation of the right to health care in Ukraine, which include: the quality and cost of medical services; the equipment of hospitals with highly effective medical equipment; the effective and professional level of medical personnel; improving the regulatory framework governing relations in the field of health care.

Having ratified the European Social Charter, Ukraine did not undertake to fulfill Article 13 «The Right to Social and Medical Assistance». Having signed the Convention on Human Rights and Biomedicine in 2002, Ukraine did not ratify it, since it cannot ensure the implementation of its requirements at the national level, and therefore this indicates the need for legislative consolidation of certain provisions of international legal acts in the field of health care of Ukraine signed and ratified by the Verkhovna Rada

of Ukraine.

The world's leading countries in the field of healthcare demonstrate: the presence of an effective healthcare system, a high level of private and public sector activity of medical clinics (the experience of Taiwan, Switzerland); a high level of medicine, the best plastic surgery, treatment of cardiovascular system and oncological diseases (the experience of South Korea); a high level of medicine, which affects the average life expectancy – 84 years (the experience of Japan); a wide network of public and private medical institutions, free

medicine for residents (the experience of France); high-quality free medicine in public clinics and hospitals, which are the majority in the country (the experience of Denmark); accessibility to the public healthcare system (the experience of Spain); state health insurance, free treatment in public hospitals for residents and foreigners with a residence permit (the experience of Australia); affordable medicine – free medical care for residents and foreigners who live and work for more than a year (the experience of Norway); a high number of medical personnel and medical hospitals (the experience of Austria).

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