

PLACE OF THE HUMAN RIGHT TO HEALTH CARE IN THE HUMAN RIGHTS SYSTEM

Yuriy Yu. Shvets

Institute of Control of Science Trapeznikov RAS
Financial University under the Government of Russian Federation

Problem statement. The right to health protection occupies a special place in the system of other constitutional rights, since it integrates the characteristics of both social, economic and cultural rights. Its connection with other rights is also due to the peculiarity of the object, health and health care, which is an integral element and object of other rights at the same time. Therefore, an integrated approach to the study of the right to health protection allows us to identify the mutual influence of various types of social, economic and cultural rights, their correlation and criteria for differentiation.

At the same time, the right to health protection is an independent constitutional right, and therefore there is a need to determine its place in the system of other rights, to clarify its specific meaning and role.

Research state. The issue of systematization of constitutional rights, including the ratio of certain constitutional rights among themselves, researched by such scientists as Y. M. Bisaga, V. S. Vitkova, A. M. Volkova, V. F. Moskalenko, Ya. F. Sovetuesh, I. Ya. Senyuta, Yu. A. Sulzhenko, A. M. Tsiborovsky and others. However, it should be noted that the number of complex scientific works devoted to the problem of determining the right to health protection in the system of other constitutional rights is insufficient in the domestic science of constitutional law, which determines the relevance of the proposed topic.

The purpose of this article is to conduct a systematic scientific and legal analysis of the relationship of the right to health protection with other rights and determine its place in the system of such rights.

Basic material presentation. The right to health protection is defined in Article 49 of the Constitution of Ukraine [1] and belongs to the group of socio-economic rights. Therefore, when studying the relationship of the right to health protection with other constitutional rights, it is worth paying attention to the traditional classification of human and civil rights adopted in legal theory first of all.

Thus, it is noted in the scientific literature that since the basic rights and freedoms of person and citizen provide for the political, social, economic and cultural spheres of life, therefore such a distinction led to the division of the basic rights and freedoms of person and citizen into categories and names [2, p. 21].

In this regard, it should be noted that it is difficult to clearly distinguish the group of social, economic, and cultural rights from each other at the present stage of constitutional rights development. This situation is due to the fact that these spheres of life are closely related to each other, and the realization of, say, the social status of a person cannot be carried out in isolation from the satisfaction of their economic or cultural needs.

According to A. N. Volkova, the fact that social rights are often combined with economic and cultural rights in the theory of state and law cannot be considered a positive trend. According to the scientist, the problem of differentiation of social rights on the one hand, and economic and cultural rights on the other, is complicated by the traditionally accepted concept of their understanding in our country [3, p. 41].

The problem raised can only be considered from a scientific perspective in order to determine the scientifically justified boundaries of various groups of rights, since the differentiation of social, economic and cultural rights is not so much practical as scientific and theoretical significance. Moreover, the Constitution of Ukraine does not give priority to this or that group of rights, does not distinguish the main and derivative rights - all rights are recognized as equally important and equally guaranteed by the state.

In this regard, the systematic approach, which, according to some scientists, allows to more fully, contrastingly identify the most significant correlations, subordination and other relationships between the whole and its parts, as well as the latter among themselves, seems to be more proper. Therefore, an integrative approach to human rights, according to A. A. Otstavnov, is the only correct one. Based on this, the scientist notes that the right to health protection and medical care is in the general system of constitutional and legal regulation, which implies that the constitutional rights and freedoms of person and citizen should coexist, mutually complementing each other [4, p. 40]. Therefore, it is a systematic approach that will allow us to find out the relationship between social, economic, cultural and other rights, and in particular, to determine the place of the right to health protection in their system.

It is necessary to agree with A. N. Tsiborovsky, who notes that the health is the largest public and individual value, it has a significant influence on the processes and results of economic, social and cultural development of the country, the demographic situation and state of national security, but also an important social criterion of the degree of the society development and prosperity, the issues of health require constant attention of the state, and their solvation should be one of priority directions of the social policy [5, p. 4].

The interdependence and close connection of the right to health protection with other socio-economic and cultural rights is primarily due to the fact that the right under study has a fairly broad meaning, as well as some elements common to other rights in the structure of its object.

In particular, Article 6 of the Fundamentals of Legislation of Ukraine on Health Care provides that every citizen of Ukraine has the right to health protection which means:

(a) standard of living, including food, clothing, housing, medical care and social services and security, which is necessary for the maintenance of human health;

b) natural environment that is safe for life and health;

c) sanitary and epidemic well-being of the territory and locality where they live;

d) safe and healthy working, learning, living and recreation conditions;

e) qualified medical care, including the free choice of a doctor, the choice of treatment methods according to their recommendations, and health care institutions, etc. [6].

So, as the analysis of the above norm shows, the legislation clearly defines that some of the rights guaranteed by the Constitution of Ukraine are included in the content of the right to health protection. Therefore, we can make a preliminary conclusion that the right to health protection is broader than some other constitutional rights, in particular, such as the right to an adequate standard of living, to a safe environment for life, etc. At the same time, the right to health protection must be considered an integral part of the right to life.

In the scientific literature, various points of view are expressed regarding the definition of the right to health protection in the system of other constitutional rights.

In turn, I. Ya. Senyuta believes that the human right to health protection as a subjective legal phenomenon, on the one hand, performs a guarantee function in relation to other subjective legal rights (for example, the right to life, the right to personal integrity), and on the other hand, it has other subjective legal rights (for example, the right to information, the right to social protection) as its guarantees, and in addition, health care itself is the basis for limiting other subjective legal rights of a person [7, p . 189].

Other scholars point out that some social and political rights designed to protect a person are closely related to health care - the right to life, the prohibition of torture. On the other hand, a number of economic and social rights include health issues, the right to housing and the right to education being among them. Most of all, the content and rights to health protection involve a number of rights included in the content of the right to life, the right to personal integrity, the right to education and information, and the right to work [8, p. 46].

Thus, in its content, the right to health protection is correlated with some other constitutional rights (to safe working conditions, a safe environment, etc.) As a goal and means of achieving it, that is, to preserve the health of the population, other rights must be ensured.

At the same time, it is necessary to consider the essential relationship of the right to health protection with some other constitutional rights connected by common elements in the structure of the object in more detail. In particular, the right to health protection has a special link to the following rights.

1. The right to life. Thus, in accordance with Article 27 of the Constitution of Ukraine, every person has an inalienable right to life.

An outstanding researcher of constitutional law Yu. M. Bisaga notes that the right to life is one of the most expensive rights, the inherent value of each person. It allows a person to own all rights and freedoms. In addition, life is a right that cannot be renewed, so the protection of the right to life belongs to the most important priorities [9, p .33].

Agreeing with the scientist, it should also be noted that the content of article 3 of the Constitution it follows that the life and health, honour and dignity, inviolability and security of the person are set on one level and are recognized as the highest social value in Ukraine. In this regard, the right to life and the right to health protection belong to the same group of rights, although their content also includes other powers.

Some scholars see the relationship between the right to life and the right to health protection in the following: the right to health protection is one of the guarantees of the right to life because the right to life is fundamental in the system of human rights, and a person`s health is one of the main criteria of a full life, a condition of the "life quality". The issues related to the health care system, the euthanasia, the activities of hospices as an alternative solution to the problems of terminally ill people are one of the defining issues both in the study of the right to life and in the study of the right to health protection. And, most importantly, they create a "common territory" of research, which gives reason to discuss the ratio of the mentioned higher rights [7, p. 189].

Consequently, the right to life includes, among other things, the right to health protection, since the implementation of the first right is impossible without creating conditions for maintaining health at the proper level. At the same time, both the right to health protection and the right to life have some differences, along with the general elements of the object (health, full life, etc.). In particular, such powers as the free choice of a doctor, the choice of treatment methods, and health insurance are subject to the right to health protection, but they are difficult to attribute to the content of the right to life. Thus, as a result, we can conclude that the studied constitutional rights have common and distinctive elements in the structure of their objects, and at the same time the right to life is broader, since it partially absorbs some of the powers included in the content of the right to health protection - receiving qualified medical care, including free one in state and municipal health care institutions, epidemiological well-being, etc.

2. The right to respect for dignity which, in accordance with Article 28 of the Constitution of Ukraine, is interpreted as follows: no one may be subjected to torture, cruel, inhuman or degrading treatment or punishment. It is also established that no person can be subjected to medical, scientific or other experiments without his / her voluntary consent.

In turn, protection from torture and inhuman treatment is one of the guarantees of protecting a person`s health, implemented by not causing harm to the mental and physical health of a person in any conditions, regardless of the status, location of the person, etc. Thus, the protection from cruel and inhuman treatment guaranteed by the Constitution of Ukraine is one of the types of health care provision (prevention of physical or mental harm to health).

3. The right to work and rest. The right to work is defined in Article 43 of the Constitution of Ukraine, which states that everyone has the right to work, which includes the opportunity to earn a living by work that they freely choose or as freely agree to. In addition, this norm prohibits the use of forced labor, as well as the work of women and minors in jobs that are dangerous to their health.

The relationship between this right and the right to health protection is expressed as follows: first, maintaining health at the proper level implies the availability of financial and actual opportunities for this, which is to some extent facilitated by state-guaranteed paid employment; second, health protection is also ensured by the creation of safe and healthy working conditions; Third, the state takes special care of protecting the health of certain categories of citizens, in particular, women and children, and, among other things, prohibits the use of labor in jobs with difficult and harmful working conditions.

In accordance with Article 45 of the Constitution of Ukraine, every employee has the right to rest. This right is ensured by the provision of weekly rest days, as well as paid annual leave, the establishment of a reduced working day for certain professions and industries, and a reduced duration of work at night.

Thus, the right to rest in a certain way determines the provision of health protection, since it creates conditions for the prevention of morbidity. Besides, separate state guarantees simultaneously

ensure the implementation of the studied types of rights (for example, the provision of paid annual leave, health resort treatment, etc.).

4. The right to social protection, including the right to security in the event of complete, partial or temporary loss of working capacity, unemployment due to circumstances beyond the person's control, as well as in old age and in other cases provided for by law.

Thus, in conditions of full or partial disability, the right to health protection acquires active nature, that is, it is implemented by receiving state-guaranteed medical care, including free medical care in state and municipal health care institutions, health resort treatment and other measures necessary to restore health, reimbursement by the state of their cost at the expense of the social insurance fund, etc.

5. The right to an adequate standard of living for oneself and one's family is defined in Article 48 of the Constitution of Ukraine, which includes adequate food, clothing, and housing.

The relationship between this right and the right to health protection is mainly economic in nature and is expressed in the fact that by creating conditions for an adequate standard of living for its citizens and other persons, the state thereby takes care of maintaining an adequate level of public health (through normal nutrition, proper housing and hygienic conditions, etc.). Thus, the realization of the right to health protection is closely related to the realization of the right to an adequate standard of living.

6. The right to a safe environment for life and health and to compensation for damage caused by violation of this right. According to the Constitution of Ukraine, everyone is guaranteed the right of free access to information about the state of the environment, the quality of food and household items, as well as the right to disseminate it. Such information cannot be classified by anyone.

One of the responsibilities of the state is to ensure environmental well-being in the state, which directly affects the state of public health. The prohibition of classifying information about the state of the environment, about the quality of food products in this case is due to the fact that such information can be a vital factor necessary for the adoption of appropriate preventive, curative and other measures aimed at protecting (restoring) health. That is, this right is essentially a kind of guarantee to ensure the implementation of the right to health protection.

Thus, on the basis of the conducted research, it can be concluded that social, economic, cultural and other constitutional rights are closely related to each other, are mutually dependent and overlap in content. Therefore, in modern conditions, it is necessary to conduct their comprehensive study, which primarily involves the use of a systematic method. At the same time, the right to health protection must be recognized as an independent constitutional right, since it includes the powers, which in the system create a single unique object of this right, which allows us to speak about its essential feature. The latter is expressed in the fact that the right to health protection combines elements of social, economic and cultural rights, which means that its implementation requires appropriate types of guarantees.

In this regard, we can say that the importance of the right to health protection in the system of other constitutional rights lies in the fact that its implementation creates guarantees for the exercise of other rights (in particular, the right to life, the right to work). At the same time, its implementation requires the creation of certain prerequisites, which can include such rights as the right to an adequate standard of living, environmental well-being, and the like.

Bibliography

1. 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](http://zakon3.rada.gov.ua/laws/show/254%D0%BA%2F96-%D0%B2%D1%80)

2. Sulzhenko Ya. A. Constitutional Genesis of the protection of economic rights and freedoms of person and citizen in Ukraine and the world / Yu. Sulzhenko // Legal science. - 2011. - No. 4-5. - p. 16-23

3. Volkova A. N. Social human rights: concept, essence, features / A. N. Volkova // Journal of the Kiev University of Law. - 2011. - No. 1. - pp. 39-43

4. Otstavnova E. A. Constitutional bases of securing the right of the person and the citizen to health protection and medical care in modern Russia: diss. ... cand. legal sciences: 12.00.02 / Otstavnova Elena Aleksandrovna. - Saratov. 2010. - 246 p.

5. Tsiborovsky A. M. Ways of systematization of the legislation of Ukraine in the sphere of health care / A. N. Tsiborovsky, S. V. Istomin, V. M. Soroka. - M., 2011. - 72 p.

6. Fundamentals of Ukrainian legislation on healthcare: Law of Ukraine No. 2801-XII of 19.11.1992. [Electronic resource]. - Access mode: <http://zakon3.rada.gov.ua/laws/show/2801-12>

7. Senyuta I. Ya. Human right to health protection and its legislative support in Ukraine: dis. ... cand. the faculty of law. sciences': 12.00.01 / Senyuta Irina Yaroslavovna. - Lviv, 2006. - 215 p.

8. Otstavnova E. A. Constitutional bases of securing the right of the person and the citizen to health protection and medical care in modern Russia: diss. ... cand. legal sciences: 12.00.02 / Otstavnova Elena Aleksandrovna. - Saratov. 2010. - 246 p.

9. Human rights / Bisaga Yu. M., Palinchak M. M., Belov D. M., Dankanich M. M.-Uzhgorod, 2003. - 189.