
Contingent Approaches in the Legal Protection of Human Rights to Health Care in Some Post-Soviet Countries

Chystokletov Leontii Grugorovich¹, Oleksandra Grugoryivna Khytra², Kostovska Kateryna Mykolayivna³, Shvets Yuriy Yuriyovich⁴, Maryana Stepanyivna Tsvok⁵

¹doctor of law, professor of department of administrative and informational law educational and scientific institute of law and psychology of Lviv Polytechnic National University,

²doctor of law, docent, assistant of the department of administrative law and administrative procedure of Lviv State University of Internal Affairs

³candidate of law, docent, assistant of the department of administrative law and administrative procedure of Lviv State University of Internal Affairs

⁴associated professor, Institute of control of science RAS Financial University under the Government of Russian Federation

⁵candidate of law, assistant of the department of administrative and informational law educational and scientific institute of law and psychology of Lviv Polytechnic National University

Abstract: The study bases on the use of both general theoretical and branch scientific provisions, and is supposed to reveal the content of the legal provision of the human right to protection of health in some of the post-Soviet countries. On the basis of international and domestic practice, attention is dragged to the problems of the formation and development of the health sector with the provision of high-quality and effective medical services to the population in the post-Soviet republics, from the collapse of the Soviet Union to the beginning of modern conceptual directions for improving health care, without violating the basic human and civil rights. It is argued that, despite the differences between some guarantees of the human right to health, enshrined in the constitutions of the post-Soviet republics, their strategic guidelines remain the willingness to provide a person with the highest level of medical care for his physical and mental condition.

Keywords: human rights, health care, legal support, provision of services, post-Soviet republics.

I. INTRODUCTION

The right to health as one of the most important human rights is reflected in a wide range of international and regional human rights standards that directly secure the right to health. Such standards include, inter alia, the American Declaration of Human Rights and Obligations (Article 11), the Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social and Cultural Rights (Article 10), the African Charter on Human and Peoples' Rights (Article 16), the Universal Declaration of Human Rights (Article 25), the European Social Charter (Article 11), the Convention on the Elimination of All Forms of Discrimination against Women (Article 11.1, Article 12), the Convention on the Rights of the Child (Article 24) and some other documents, which serve as the basis for the development of relevant national legislation. At the same time, both the guarantees of the right to health secured in the constitution and the national mechanisms for its application in the normative legal acts of state authorities may differ, but the strategic guidelines of a particular country's readiness to provide the right to everyone to the highest attainable standard of physical and mental health are fundamental determinants of health. The current situation with the growing biological risk in the world makes us remember that health care is not only our right but also our duty. In particular, the introduction of restrictions on movement, the use of social infrastructure, the restriction of the right to education, health care, etc. let us look at this problem from the perspective of the

relationship between the possibility of restricting the right due to a biological or other threat, which is often overlooked by citizens and the state.

II. THE PURPOSE AND OBJECTIVES OF THE STUDY

The purpose and objectives of the study are to determine the criteria for comparing the mechanisms of the realization of the human right to health in some countries of the post-Soviet space. To achieve these goals, the following tasks were solved:

- to study and analyze the normative and literary data and formulations of the problem of legal support of the human right to health protection;
- to substantiate the administrative and legal basis for ensuring the human right to health protection in Ukraine.;
- to outline the features of the legal provision of the human right to health protection in the Republic of Belarus;
- to define the main provisions of the legal provision of the human right to health protection in the Republic of Georgia;
- to examine some features of the constitutional provision of the human right to health protection in the Republic of Kazakhstan.

III. RESEARCH AND ANALYSIS OF NORMATIVE AND LITERARY DATA AND FORMULATION OF THE PROBLEM OF LEGAL SUPPORT OF HUMAN RIGHTS TO HEALTH PROTECTION

One of the most important functions of the state in ensuring the rights of a person and a citizen is to protect their life and health. This focus is particularly acute during the spread of dangerous diseases, in particular, as we are now seeing in the context of the COVID-19 pandemic; hence, when it comes to comparing the mechanisms for applying the basic provisions of the human right to health in the post-Soviet space, it is mandatory, firstly, to define the right criteria by which such a comparison will be done.

In view of the above, the Committee on Economic, Social, and Cultural Rights (CESCR) highlights the right to health, which includes a wide range of socio-economic factors that create the conditions for people to lead a healthy lifestyle. It also recommends that the State party strengthen its efforts to improve health services, including by allocating more resources and taking measures to address the significant gap between urban and rural areas in the provision of health services. He recommends that great attention be paid to the training of medical professionals and the proper provision of medical centers with appropriate equipment and personnel [1, p. 25], and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) explicitly states that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" [2], and it is proposed to use as appropriate criteria indicators of the establishment in the national legislation of guarantees for the enjoyment of the highest attainable standard of physical and mental health. In this regard, it should be noted that the CESCR, which is the United Nations mandate to monitor compliance with the ICESCR, has issued General comment No. 14 [3] on the right to health. This commentary, although not legally binding on the Member States, "provides authoritative guidance on the implementation by the Member States of the Treaty of their treaty obligations" [4, p. 8-10]. The authors of the Health and Human Rights Resource Guide also list key elements for all aspects of the right to health, including key determinants for all countries, "the specific application of which will depend on the conditions in a given country." The relevant elements of the right to health are characterized by availability, accessibility, acceptability, and quality [5, p.10-11]. As noted in this connection by J. R. R.

Tolkien. Mann, " Health and human rights are powerful modern approaches to defining and improving human well-being. Attention to the intersection of health and human rights can be of practical benefit to those involved in health or human rights work, can help refocus thinking on major global health issues, and can contribute to the expansion of human rights thinking and practice." [6] At the same time, we can also state the opposite: ensuring the general well-being of a person, as we can see from the criteria proposed by the CESC, is the key to ensuring and realizing the right to health (health care). It should also be noted that the list of such criteria is not limited only to the ICCPR (for example, the Almaty Declaration emphasizes the need to protect the health system and identify primary health care as key measures to achieve the goal of health for all [6]), but the provisions of this Covenant for these purposes can be used as the basis for our study. Thus, based on the criteria for comparing the mechanisms of legal protection of the human right to health in the ICESCR member countries, we are interested in studying the following indicators of the consolidation in the national legislation of the post-Soviet republics of guarantees of legal protection of the highest attainable level of physical and mental health:

- access to adequate, nutritious and safe food;
- access to safe drinking water;
- access to essential medicines;
- housing;
- safe and healthy living conditions.;
- safe and healthy environmental conditions;
- safe and healthy working conditions;
- ensuring the protection of reproductive health, maternal and child health;
- measures for the prevention, treatment of epidemic diseases and the fight against epidemics;
- ensuring access to information, including in the field of health and human rights;
- ensuring the availability of health facilities, the distribution of health goods and services;
- ensuring the proper training of health workers;
- adoption and implementation of the national public health strategy and the corresponding action plan.

Under the restrictions associated with the introduction of an emergency situation, as we see with the COVID-19 pandemic, we will understand the obligation: to limit the social activity of citizens, depending on their age and place of residence; the need to purchase individual medical care at their own expense; restrictions on the use of medical infrastructure; restrictions on movement; restrictions on the use of social infrastructure; restrictions on seeking medical care. Let us consider some examples of contingent legal approaches to ensuring the human right to health in some post-Soviet countries.

IV. ADMINISTRATIVE and LEGAL PRINCIPLES of ENSURING HUMAN RIGHTS *To health in Ukraine*

In modern Ukraine, the post-Soviet command and control model of health care has been replaced by a contractual one. This innovation involves the signing of a declaration between the patient and the medical institution. Undoubtedly, this process is primarily aimed at overcoming the "paper bureaucracy" that hindered the provision of high-quality and effective medical services to the population. With the help of computerization, the entire healthcare system was put on the rails of electronic documentation, which served as the basis for the introduction of electronic medical records of patients, which allow collecting information about the state of health of patients, medical examinations, anthropometric measurements, laboratory analyses, and various graphical data. This electronic system is not only a reliable assistant in providing the necessary medical care, but also facilitates the exchange of information with other medical institutions.

One of the leading legal acts regulating relations in the field of health care is the Law of Ukraine of November 19, 1992, No. 2801-XII "Fundamentals of the legislation of Ukraine on health care", which defines the rights and obligations of citizens and medical personnel in the field of health care [8]. At the same time, there are problems in the world associated with poor quality of medical services and errors in the provision of medical care. And Ukraine is no exception in this regard. Thus, due to poor quality and errors in the United States, 44-98 thousand patients die every year, in Europe, 10,000 complaints are filed annually in arbitration courts, 52% of which are complaints about medical errors. 15 million people suffer from medical errors every year. In the EU, one in 10 cases of treatment is harmful to patients. For most countries, improving the quality of health care is one of the main objectives of improving health systems. Environmental problems, climate change, socio-political conflicts, urbanization, migration, and economic crisis are also significant obstacles to improving health and well-being [9]. As for the statistics of medical errors in Ukraine, it is almost completely closed, and only a few cases become known to the public. Domestic judicial practice in this category of cases is not made public... In this regard, the well-known pathologist, academician I. V. Davydovsky wrote that " a medical error should be attributed only to a conscientious error of a doctor, which is based on the imperfection of the current state of medical science and its research methods or is caused by the peculiarities of the disease of an individual patient, or that is due to a lack of knowledge or experience of a doctor "[10]. However, it is difficult to agree with this definition, since, in our opinion, a doctor who acted through negligence, negligence, bad faith and caused bodily injury or death of a patient should bear civil liability. As for the constitutional provisions for ensuring the human right to health protection in Ukraine, the Constitution of Ukraine, adopted in 1996 [11], contains the following legal principles that establish guarantees of the highest attainable level of physical and mental health in its various aspects:

- "The individual, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value"... The state is responsible to the individual for its activities. The establishment and maintenance of human rights and freedoms is the main duty of the State" (Article 3);
- "The content and scope of existing rights and freedoms may not be reduced by the adoption of new laws or amendments to existing laws" (Article 22);
- " There may be no privileges or restrictions based on race, skin color, political, religious or other beliefs, gender, ethnic or social origin, property status, place of residence, language or other characteristics" (Article 24);
- "Equality of rights of women and men is ensured by the adoption of ... special measures for the protection of labor and health of women". women.... * creating conditions that allow women to combine work and motherhood; taking measures of legal protection, material and moral support for motherhood and childhood." (Article 24);
- "Everyone has the inalienable right to life" (Article 27); "No person without his or her voluntary consent may be subjected to medical, scientific or other experiments" (Article 28); - "Everyone has the right to freely collect, store, use and disseminate information orally, in writing or any other way-at his or her discretion" (Article 34);
- "Everyone has the right to adequate, safe and healthy working conditions, to a salary not lower than that established by law..." (Article 43);
- "Citizens have the right to social protection, including the right to provide it in the event of full, partial or temporary disability ... "(Article 46);
- "Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing" (Article 48);
- "Everyone has the right to medical care, medical assistance, and health insurance. Health care is provided at the expense of State funding of relevant socio-economic, health-sanitary, and health-improving and preventive programs... The state takes care of the

development of physical culture and sports, ensures sanitary and epidemiological well-being" (Article 49);

- "Everyone has the right to a safe environment for life and health and to compensation for damage caused by the violation of this right.
- "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..." (Article 50).

Thus, in response to new challenges and threats in the field of healthcare, Ukraine, taking into account international recommendations, needs a comprehensive development of a new improved state program for the development of healthcare with a scientific justification of the situation in the field of healthcare and healthcare and the introduction of effective results of scientific research in the medical field.

V. FEATURES OF LEGAL SUPPORT OF HUMAN RIGHTS TO HEALTH PROTECTION IN THE REPUBLIC OF BELARUS

In Belarus, in the absence of an effective institution of the Ombudsman, the protection of human rights is fully under the jurisdiction of the judiciary, law enforcement agencies, and the Belarusian Helsinki Committee (BHC), whose task is to promote human rights initiatives and improve the legal knowledge of citizens, including protection in the field of health. Unlike Ukraine, Georgia, and Kazakhstan, medical care in Belarus, in accordance with the Law of the Republic of Belarus of June 18, 1993 "On Health Care" [12], is provided free of charge "paid services can only be provided to foreigners or if someone imposes any examination that does not relate to the treatment of a particular patient, his illness and is not considered necessary from the point of view of the attending physician". In Belarus, there are approved treatment protocols, but if a patient needs services or medications that go beyond the protocol, they receive them additionally. The main attention in this direction is paid to the development of high-tech medical care. [13]. The Constitution of the Republic of Belarus, which entered into force in 1994 [14], provides for the following guarantees of human health protection

- "ensuring the rights and freedoms of citizens of the Republic of Belarus is the highest goal of the state. Everyone has the right to a decent standard of living, including adequate food, clothing, housing, and the continuous improvement of the necessary conditions. The State guarantees the rights and freedoms of citizens of the Republic of Belarus, enshrined in the Constitution, laws and provided for by the international obligations of the State" (Article 21);
- "... No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment, or medical or other experiments, without their consent" (Article 25);
- "...marriage, family, motherhood, fatherhood, and childhood are protected by the State. State...No child should be subjected to ill-treatment or humiliation or used for work that may harm his or her physical, mental, or moral development. ... Women are given equal opportunities with men in education and vocational training, in work and promotion (at work) ..., as well as in creating conditions for the protection of their work and health "(Article 32);
- "Workers have the right to rest." (Article 43);
- "Citizens of the Republic of Belarus are guaranteed the right to health protection, including free treatment in public health institutions. The State shall create conditions of medical care accessible to all citizens" (Article 45);
- "Everyone has the right to a favorable environment and to compensation for losses or damage caused by the violation of this right" (Article 46);

- "Citizens of the Republic of Belarus are guaranteed the right to social security in old age, in the event of illness, disability, disability, loss of a breadwinner and in other cases provided for by law" (Article 47);
- "Citizens of the Republic of Belarus have the right to housing" (Article 48).

VI. BASIC PRINCIPLES OF LEGAL PROTECTION OF HUMAN RIGHTS TO HEALTH CARE IN THE REPUBLIC OF GEORGIA

The health care system of Georgia, which began to develop from the moment of independence from the formal economic security of the industry, gave numerous examples of doctors receiving gifts and money from their patients, which often led to criminal liability. Modern Georgia, after many health care's reforms, successfully continues it with the introduction of modern conceptual directions for improving the health care system. The peculiarity of this system is that in recent years, Georgia, like most other developed post-Soviet republics, noting the importance of providing and financing medical services by private systems, has completely abandoned the so-called "free" medicine. As K. Bendukidze, F. Reder, M. Taner, and A. Urushadze noted: "The sad truth is that countries that experiment with full nationalization of the medical industry and keeping it in state ownership often have catastrophically low levels of medical care and treatment, high corruption of the industry, and an irrational allocation of already scarce resources."... In response to such conditions, many countries have launched programs to strengthen the private sector, introducing freedom of choice and promote competition in the industry. As a result, we see an impressive improvement in the availability and quality of medical services to the population "[15, p. 9]. The Constitution of Georgia, adopted in 1995 [16], establishes the following guarantees for the protection of human health:

- "The state takes care of the health and social protection of a person, providing him with a subsistence minimum and decent housing, protecting the welfare of his family. The State provides assistance to citizens in finding employment. The conditions for ensuring the subsistence minimum are determined by law "(Article 5, paragraph 4);
- "Human torture, inhuman or degrading treatment, or the use of inhuman or degrading punishment shall not be permitted" (Article 9, paragraph 2);
- "Human life shall be protected. The death penalty is prohibited" (Article 10, paragraph 1);
- "The physical integrity of the individual is protected" (Article 10, paragraph 2);
- "Discrimination on the basis of race, color, sex, origin, ethnicity, language, religion, political or other views is prohibited" (Article 11, paragraph 1);
- "The State shall create special conditions for the realization of the rights and interests of persons with disabilities" (Article 11, paragraph 4);
- "All persons legally residing in Georgia have the right to move freely within the territory of the country, freely choose their place of residence and freely leave Georgia. The restriction of these rights is permitted only in accordance with the law, in order to ensure the necessary State or public security, health protection or the administration of justice in a democratic society "(Article 14);
- "No one shall have access to the information contained in official documents concerning the health, finances or other personal affairs of a person, without the consent of the person himself, except in cases provided for by law..." (Article 18, paragraph 3);
- "Everyone has the right to freely choose a job. The right to safe working conditions and other labor rights are protected by organic law" (Article 26, paragraph 1);
- "The right of citizens to affordable and high-quality medical services is guaranteed by law" (Article 28, paragraph 1);

- "The state controls all health care institutions and the quality of medical services, regulates the pharmaceutical production and circulation of medicines" (Article 28, paragraph 2);
- "... Everyone has the right to live in a harmless environment, to enjoy the natural environment and public space. Everyone has the right to receive timely and complete information about the state of the environment "(Article 29, paragraph 1);
- "...the rights of the mother and child are protected by law" (Article 30, paragraph 1). Thus, the experience of healthcare reforms in Georgia shows their undeniable effectiveness and, taking into account the mistakes made, makes it possible to implement it in Ukraine and other post-Soviet republics.

VII. SOME FEATURES OF THE CONSTITUTIONAL PROVISION OF HUMAN RIGHTS TO HEALTH PROTECTION IN THE REPUBLIC OF KAZAKHSTAN

The Republic of Kazakhstan, like other republics of the post-Soviet space, has also passed its thorny path of health care development. The "legacy" left to Kazakhstan after the collapse of the Soviet Union has long been a reminder of its presence, and at the same time, the most affected medicine was not ready to provide civilized medical care. Already with the adoption of the State Program for the Development of Health Care of the Republic of Kazakhstan "Densaulik" for 2016-2020, the State Health Service was created, which became an educational platform for teaching the population hygiene and anti-epidemic skills throughout life and an advisory and organizational center for the study and management of small and medium-sized businesses in accordance with the requirements of sanitary legislation [17]. However, despite the fact that almost 90% of medical services in Kazakhstan are provided by state authorities, the pharmaceutical industry and dentistry are privately owned. The basic law regulating the general provisions of human rights to health protection is the Constitution of the Republic of Kazakhstan, adopted in 1995 [18], which establishes guarantees related to ensuring the highest attainable level of physical and mental health:

- "... everyone is equal before the law and the courts. No one may be discriminated against in any way..." (Article 14);
- "...everyone has the right to life" (Article 15);
- " ... everyone has the right to work conditions that meet the requirements of safety and hygiene, to remuneration for work without any discrimination, as well as to social protection against unemployment ... Everyone has the right to rest" (Article 24);
- "Marriage and family, motherhood, paternity and childhood are protected by the state" (Article 27);
- "A citizen of the Republic of Kazakhstan is guaranteed a minimum wage and pension, social security for age, in case of illness, disability, loss of a breadwinner and other legal grounds" (Article 28);
- "Citizens of the Republic of Kazakhstan have the right to health protection. Citizens of the Republic have the right to receive free and guaranteed medical care as prescribed by law" (Article 29);
- "The State strives to protect the environment that is favorable for human life and health. The concealment by officials of facts and circumstances that threaten the life and health of people entails liability in accordance with the law" (Article 31).

We have systematized the above information from the point of view of indicators of the consolidation of guarantees of ensuring the maximum attainable level of physical and mental health in the national constitutions of the post-Soviet republics:

| Indicator | Ukraine | Belarus | Georgia | Kazakhstan |
|--|--|---|---|--|
| absence of discrimination in access to health care facilities, distribution of goods and services in the field of health care limitation of prices for medical items | Article 24 Article 49 March, 06, 2019 No.184 cancelled | Article 22 Article.23 Article 45 April,30, 2020 No 184 | Article 9 Article 11 Article 28 - | Article.14 Article.29 March, 10 2020 |
| access to adequate, complete and safe nutrition | Article 48 | Article 21 | - | - |
| access to safe drinking water | - | - | - | - |
| access to essential medicines expansion or narrowing of the list of medicines provided by the state free of charge | Article 49 | Article.45 June, 15, 2020 No 344 | Article 28 | Article 29 |
| housing | Article 47 Article 48 | Article 21 Article.48 | - | Article.25 |
| safe and healthy living conditions | - | - | - | - |
| safe and healthy working conditions implementation of self-isolation | Article 43 Article.45 April 13, .2020- April 22, 2020 | Article 43 Article 45 March 29, 2020 July 15, 2020 | Article 26 March 21, 2020 | Article 24 March 16, 2020 – untill now. |
| safe and healthy environmental conditions | Article 50 | Article 46 | Article 29 | Article 31 |
| reproductive health, maternal and child health | Article 24 Article 51 | Article 32 | Article 30 | Article 27 |
| providing access to information, including in the field of health and human rights | Article 34 Article 50 Article 57 | Article.34 | Article 18 | Article 18 Article 20 |
| ensuring proper training of health workers | - | - | - | - |
| adoption and implementation of a nationwide public health strategy and action plan | - | - | - | - |
| measures for the prevention, treatment of epidemic diseases and control of epidemics | Article 49 | - | - | - |

As we can see, the considered norms of the Constitutions of the post-Soviet Republics do not directly reflect such indicators of securing guarantees for ensuring the maximum attainable level of physical and mental health as "access to safe drinking water" (while the indicator "access to sufficient, full and safe food" is mainly reflected in securing guarantees of a "decent standard of living", which theoretically allows including "access to safe drinking water" in the content of this concept, "safe and healthy living conditions" (the content of this indicator can also be partly covered by the concept of "decent standard of living", and partly by the concept of "safe environmental conditions"), as well as "ensuring adequate training of medical workers" (this indicator, in our opinion, is not covered by the concept of "guaranteed volume of medical care" or "free medical care"). Indicators such as" adoption and implementation of the national public

health strategy and action plan "and" measures for the prevention, treatment and control of epidemic diseases " were also not fully reflected.

VIII. CONCLUSIONS

It should be noted that the proclamation in the studied national legal acts of the post-Soviet republics of the social orientation of the state and the priority of the value of human rights and freedoms, which enshrine the guarantees of the right to life, a decent standard of living, social security for age, illness, disability, loss of a breadwinner, for the upbringing of children, for the upbringing of children and in other cases established by law, as well as guarantees of the inadmissibility of narrowing the scope of relevant guarantees, human rights, and freedoms in general, can be considered as the implementation of the principle of maximum efforts by the State to use all available resources to meet the minimum basic obligations to ensure the highest attainable standard of physical and mental health in accordance with Article 2, paragraph 1, of the ICESCR. The provisions of Article 21 of the Constitution of the Republic of Belarus, according to which "everyone has the right to a decent standard of living, including adequate food, clothing, housing, as well as the continuous improvement of the necessary living conditions, should be considered particularly indicative and progressive in this regard." The right to health includes a wide range of socio-economic factors that enable people to lead healthy lives, as well as key components of good health, such as nutrition and nutrition, housing, access to drinking water and adequate sanitation, safe and healthy working conditions, and a human-friendly environment. At the same time, the so-called determinants of health are indicators of the proper establishment at the regulatory level of guarantees of the right of everyone to the highest attainable standard of physical and mental health. The results of the study of a number of normative legal acts of the post-Soviet states (Belarus, Kazakhstan, the Russian Federation, Ukraine) indicate that their provisions take into account the need to consolidate the main determinants of health in one form or another. However, the national constitutions of the post-Soviet republics do not fully reflect such indicators as "the adoption and implementation of a national public health strategy and an appropriate action plan "and" measures for the prevention, treatment and control of epidemic diseases", since the consolidation of the content of the main norms of national constitutions on the right to health does not indicate appropriate guarantees.

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