



## Principles of administrative and legal support of human health care rights in Eastern Europe COUNTRIES

**Chystokletov Leontii Grugorovich**, doctor of Law, professor, professor of the department of administrative-legal disciplines of Educational-scientific institute of law and psychology, NU "Lvivska politechnika",

**Khytra Oleksandra Leontiivna**, doctor of Law, associate professor, of the department of administrative law and administrative process of Lviv state university of internal affairs,

**Pokaichuk Vitalii Yaroslavovich** candidate of law, associate professor, head of the department of tactical special training of Dnipropetrovsk state university of internal affairs,

**Shyshko Valerii Valeriiovych**, candidate of law, associate professor, associate professor of the department of theory and history of Lviv state university of internal affairs,

**Bochkovi Oleksii Vasilovich** candidate of law, senior researcher, head of the educational and scientific laboratory to study the problems of preventive activities Dnipropetrovsk state university of internal affairs

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**Abstract:** This study bases on the use of both branch scientific and general theoretical provisions. It is aimed at revealing the content of the legal provision of the human right to health protection in some of the post-Soviet countries.

On the basis of international and domestic practice, attention is drawn 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, starting with the collapse of the Soviet Union and up to the beginning of modern conceptual directions for improving health care, without violating the basic human and civil rights.

It is proved that, despite the differences between the guarantees of human rights to health enshrined in the constitutions of the post-Soviet republics, their strategic guidelines remain the readiness to provide a person with the highest level of medical care, based on his physical and mental condition.

**Keywords:** human rights, provision of services, healthcare, post-Soviet republics, legal support.

### 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 enshrine the right to health of a citizen. These standards include 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 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 Convention on the Rights of the Child (Article 24), the African Charter on Human and Peoples' Rights (Article 16) and some other documents, which serve as the basis for the development of relevant national legislation.

At the same moment, both the guarantees of the right to health enshrined in the constitution and the national mechanisms for its implementation in the normative legal acts of state authorities may differ, but the guidelines of the readiness of a particular country to ensure the right of everyone to the highest attainable standard of physical and mental health are fundamental determinants of health.

The current situation with the growth of biological risk in the world makes us remember that health care is not only our right but also our duty. In particular, restrictions of the right to education, restrictions on movement, the use of social infrastructure, healthcare, etc. let's look at this problem from the relationship between the ability to restrict rights for a biological or other threat that is often overlooked by citizens and the state.

### II. GOALS AND OBJECTIVES OF THE STUDY

The purpose and objective of the study are to determine the criteria for comparing the implementation of the human right to health in some countries of the post-Soviet space.

To achieve these goals, the following tasks were solved:

- study and analysis of normative and literary data and formulations of the problem of legal support of the human right to health protection;
- determine the main provisions of the legal provision of the human right to health protection in the Republic of Georgia;
- to substantiate the administrative and legal basis for ensuring the human right to health protection in Ukraine;
- describe the features of the legal provision of the human right to health protection in the Republic of Belarus;
- to study 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 the protection of his life and health. This trend is particularly acute during the period of the spread of dangerous diseases, in particular, as we are now experiencing in the context of the COVID-19 pandemic; therefore, when it is compared with the mechanisms for implementing the basic provisions of the human right to health in the post-Soviet space, it is obviously, firstly, to determine the criteria by which such a comparison will be made.

In view of the above, the Committee on Economic, Social and Cultural Rights (CESCR) highlights the right to health, which includes a vast range of socio-economic factors that create the conditions for people to lead a healthy lifestyle. It also recommends that the State party optimize 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. As well as recommends that more 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 the indicators enshrined in national legislation guaranteeing physical and mental health.

Regarding this, it should be taken into account 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 an authoritative prescription for 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 the 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 accessibility, availability, quality and acceptability [5, p.10-11].

As noted in this connection by J. Mann, " Health and entitlement are powerful modern approaches to defining and improving human well-being. Attention to the suppression of health and human rights can be of practical benefit to those involved in health or human rights work. This can help refocus thinking on major global health issues and can help expand human rights thinking and practice" [6]

At the same time, the opposite can also be stated: ensuring the general well-being of a person, as we can see from the criteria proposed by the CESCR, 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.

Hence basing 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 safe drinking water;
- access to adequate, complete, and safe nutrition;
- housing;
- access to essential medicines;
- safe and healthy environment;
- safe and healthy living conditions;
- ensuring the protection of reproductive health, maternal and child health;

- safe and healthy working conditions;
  - ensuring access to information, including in the field of health and human rights;
  - measures for the prevention, treatment, and control of epidemic diseases;
  - ensuring proper training of health workers;
  - in the availability of medical facilities, the distribution of goods and services in the field of healthcare;
  - adoption and implementation of the national public health strategy and the corresponding action plan.
- Under the constraints associated with the introduction of emergency related to pandemic COVID-19, you must understand the charge: you need to purchase for your expense of individual medical care; limitations of social activity of citizens based on age and place of residence; restrictions of movement; limitations on the use of the medical infrastructure; restrictions on seeking medical care; restrictions on the use of social infrastructure.

Let us consider some examples of comparative 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 CARE IN UKRAINE

In modern Ukraine, the post-Soviet command-and-control model of healthcare has been replaced by a contract model. It 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 quality and effective provision of medical services to the population. Thanks to the computerization of the entire health care system there has been created online documentation that served as the basis for the introduction of electronic patient records that collect information about the health status of patients, anthropometric measures, medical examinations, laboratory tests, 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 related to the poor quality of medical services and errors in the provision of medical care. And Ukraine is no exception in this regard. Thus, due to the poor quality of medical services and medical 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. It is because of them that 15 million people suffer 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, socio-political conflicts, climate change, migration, economic crisis, and urbanization are also significant obstacles to improving the health and well-being of citizens [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. Davidovsky wrote that "medical error should include only the diligent error of the doctor based on the imperfection of the modern state of medical science and its research methods, or due to a disease of the individual patient, or that which is caused by lack of knowledge or experience of a physician"[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:

- "A person, 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 primary responsibility 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);
- "The equality of rights of women and men is ensured through the adoption of ... special measures for the protection of labor and health of women". women... by creation of conditions that allow women to combine work and motherhood; adoption of 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 may be subjected to medical, scientific or other experiments without his or her voluntary consent" (Article 28);
- "Everyone has the right to freely collect, store, use and disseminate information orally, in writing or in any other way - at his own 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 health care, medical care, 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 sphere of health care of Ukraine, taking into account international recommendations, comprehensive development of new and improved state program of healthcare development with the scientific justification of the situation in the field of health and health and the implementation of effective research results in the medical field.

#### V. PECULIARITIES OF LEGAL SUPPORT OF HUMAN RIGHTS TO HEALTH CARE IN THE REPUBLIC OF BELARUS

In Belarus, in the absence of an effective ombudsman institution, the protection of human rights is fully the responsibility 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 18 June 1993 "On healthcare" [12], is free "services can only be provided to foreigners or if someone imposes on them some kind of survey that does not apply to the treatment of a particular patient and his illness is not considered necessary from the standpoint of the doctor". 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:

- "...no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, or to medical or other experiments, without their consent" (article 25);
- "...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 State's international obligations" (Article 21);
- "Workers have the right to rest." (Article 43);
- "...marriage, family, motherhood, fatherhood, and childhood are protected by the 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 provided with 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);
- "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 health protection, including free treatment in public health institutions. The State shall create conditions for the provision of medical care accessible to all citizens" (article 45);
- "Citizens of the Republic of Belarus have the right to housing" (Article 48);

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

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

Georgia's healthcare system, which has evolved since independence from the formal economic security of the industry, has provided numerous examples of doctors receiving gifts and cash from their patients, often resulting in criminal charges. Modern Georgia, after many health care 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 noted by M. Taner, K. Bendukidze, F. Reder, and A. Urushadze "The sad truth is that countries that experiment with the complete nationalization of the medical industry and keep it in state ownership often have a catastrophically low level of medical care and treatment, high corruption of the industry and the irrational distribution 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 living wage and decent housing, protecting the well-being 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 life is protected. The death penalty is prohibited" (article 10, paragraph 1);

- "Torture of a person, inhuman or degrading treatment, or the use of inhuman or degrading punishment shall not be permitted" (article 9, 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 physical integrity of the individual is protected" (article 10, paragraph 2);

- "All persons legally residing in Georgia have the right to move freely within 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 in a democratic society, the protection of health or the administration of justice "(article 14);

- "The State shall create special conditions for the realization of the rights and interests of persons with disabilities" (article 11, paragraph 4);

- "The right of citizens to affordable and high-quality medical care is guaranteed by law" (article 28, paragraph 1);

- "No one shall have access to information contained in official documents relating to 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 their job. The right to safe working conditions and other labor rights are protected by the organic law" (article 26, paragraph 1);

- "...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 on the state of the environment "(article 29, paragraph 1);

- "The state controls all health care facilities and the quality of medical services, regulates the pharmaceutical production and circulation of medicines" (article 28, paragraph 2);

- "... 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 medicine that was most affected 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 the following guarantees related to ensuring the highest attainable standard of physical and mental health:

- "... everyone has the right to life" (Article 15);
- "...all are equal before the law and the courts. No one may be discriminated against in any way..." (article 14);
- "Marriage and family, motherhood, fatherhood and childhood are under state protection" (article 27);
- "... everyone has the right to working conditions meeting the requirements of safety and hygiene, to remuneration for labor without any discrimination and to social protection against unemployment... Everyone has the right to leisure" (article 24);
- "Citizens of the Republic of Kazakhstan have the right to medical care. Citizens of the Republic have the right to receive free and guaranteed medical care, as established by law" (Article 29);
- "A citizen of the Republic of Kazakhstan is guaranteed a minimum wage and a pension, social security according to age, in case of illness, disability, loss of a breadwinner and on other legal grounds" (Article 28);
- "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 responsibility in accordance with the law" (Article 31).

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

<b>Indicator</b>	<b>Ukraine</b>	<b>Kazakhstan</b>	<b>Georgia</b>	<b>Belarus</b>
adoption and implementation of a nationwide public health strategy and action plan	-	-	-	-
access to adequate, complete and safe nutrition	Article 48	-	-	Article 21
access to safe drinking water	-	-	-	-
access to essential medicines	Article 49	Article 29	Article 28	Article.45 June, 15, 2020 No 344
expansion or narrowing of the list of medicines provided by the state free of charge				
ensuring proper training of health workers	-	-	-	-
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 24 March 16, 2020 – till now.	Article 26 March 21, 2020	Article 43 Article 45 March 29, 2020 July 15, 2020
safe and healthy environmental conditions	Article 50	Article 31	Article 29	Article 46
reproductive health, maternal and child health	Article 24 Article 51	Article 27	Article 30	Article 32
providing access to information, including in the field of health and human rights	Article 34 Article 50 Article 57	Article 18 Article 20	Article 18	Article.34
measures for the prevention, treatment of epidemic diseases and control of epidemics	Article 49	-	-	-

Indicators of securing guarantees for ensuring the highest attainable level of physical and mental health as "access to safe drinking water" (while the indicator "access to adequate, full and safe nutrition" is mainly reflected in securing guarantees of a "decent standard of living", which theoretically allows us to include in

the content of this concept also "access to safe drinking water"), "safe and healthy living conditions" (the content of this indicator can also be partially covered by the concept of "decent standard of living").", and partly the concept of "safe environmental conditions"), as well as "ensuring the proper training of health 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 Declaration in the test of the national legal acts of the former Soviet republics social orientation of the state and the priority value of the rights and freedoms of man, which enshrines the guarantee of the right to life, social security in old age, raising children and in other cases prescribed by law, disability, sickness, loss of the breadwinner, a decent standard of living, and the guarantee of the inadmissibility of narrowing the scope of appropriate safeguards, rights, and freedoms of the person as a whole, It can be seen as an 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, part 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 housing, food, safe and healthy working conditions and a human-friendly environment, access to drinking water, and adequate sanitation. 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 the corresponding guarantees.

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