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Tetiana Blashchuk
Vilnius University, Faculty of Law
tetiana.blashchuk@oa.edu.ua
Iluta Arbidane
Rezekne Academy of Technologies
iluta.arbidane@rta.lv

Chapter 1

Personal Non-Property Rights to Life, Health and Medical Care in Ukraine New Challenges during Martial Law

ABSTRACT

In the 21st century, people expect their countries' health authorities to ensure that their right to universal access to quality health care is exercised, including in the event of health emergencies (e.g. pandemic), and the opportunity to live safely in a healthy society. within the realities of war, access to quality medical care is even more difficult. The war in Ukraine, which has been going on since 2014, has led to healthcare-related problems in the temporarily occupied territories, and with the onset of a full-scale Russian invasion of Ukraine, these problems have only intensified and become global. The full-scale invasion of Ukraine by the Russian Federation has led to mass migration of refugees both within Ukraine and to other countries. In the temporarily occupied territories, the population's access to medical care is limited. It is reported that some health care facilities are being closed because there are no medical staff left due to their evacuation, the number of events dangerous to life and health has increased significantly, and there is a threat of epidemics. The main purpose of the presented study is to analyze international and national standards of human rights in the field of health care in Ukraine and identify problems of their implementation and protection in martial law.

The research is based on the analysis of international and national legal acts, statistical indicators, court decisions and materials, and the comparison of positions of scientists on the published results. It is also planned to conduct a brief sociological survey among

residents of the western regions of Ukraine and internally displaced persons who moved to the western regions of Ukraine on 24 February 2022.

Keywords: inalienable human rights, patients, health care in Ukraine, right to life, right to health, medical care, war, martial law

Introduction

Issues of personal non-property rights of an individual are extremely relevant due to the active development of social relations. Personal non-property rights constitute an absolute value and form the basis of spirituality, which enables the full realization of the principles of civil society.

Personal non-property rights are an important component of the total scope of rights of every person. The well-being of each of us depends on what the scope of personal non-property rights will be and how they will be enshrined in legislation.

These non-property rights, such as the right to life, health and medical care, are of particular importance for the entire civil society, both in Ukraine and in other countries. The question arises about what everyone expects from the authorities in the field of health care of their countries. People want these authorities to guarantee their right to universal access to quality health care without fear of financial hardship. They also seek to have effective protection in the event of health emergencies and the opportunity to live safely in a healthy society, where health care actions and relevant public policies contribute to improving life in a welfare economy. People are increasingly demanding that health care authorities in their countries meet the above-mentioned aspirations. Only under the condition of the existence and application of proper mechanisms of legal regulation of the health care sphere, a person can exist, feel safe and develop.

The war in Ukraine, which has been ongoing since 2014, became one of the reasons for the disruption of health care problems in the temporarily occupied territories, and with the beginning of the full-scale invasion of the Russian Federation on almost the entire territory of Ukraine, these problems only intensified and took on a global scale.

From now on, the research on personal non-property rights to life, health and medical care, as well as on new challenges that arose in this area during the martial law in Ukraine, is relevant.

The conducted study demonstrates that traditionally (during the last decades) "the declaration of priority of personal non-property relations in the system of the subject of civil law, which is aimed at the development of the constitutional prin-

ciples of 'anthropocentrism' and is reflected in the subsequent text of civil legislation" is dominant (Ruslan Stefanchuk, 2008). However, the new challenges facing humanity (the COVID-19 pandemic, the military actions of the Russian Federation on the territory of Ukraine) call into question the time-tested ideas of people--centrism (therefore, human rights are decisive and everything else must be subsequent to them), instead, we put forward in the first place the need to balance the rights of an individual and the need of the society as a whole to live in a safe environment. Perhaps the approach is justified when universal human values, to which life and health belong, are a factor which an individual, states and collectives must "obey" when observing their rights. In the presence of this approach, it is quite legal to limit the rights of everyone in the interest of the society (these approaches can be called value-oriented).

I. Methodological Principles of Regulation of Personal Non-Property Human Rights in the Sphere of Health Care in Ukraine

The allocation of personal non-property rights as part of the subject of private (civil) law has a certain genesis and is the result of progress from ideas about property, natural rights, the development of the concept of human rights and humanity in general to the need to single out a separate group of non-property rights and their inclusion in the subject of civil law.

There is no exact information about when the protection and the actual definition of personal non-property human rights first appeared in legal literature. However, most scientists are inclined to believe that the first mentions can be traced back to Ancient Rome.

Svyatoslav Slipchenko (2018) notes: "The development of teachings on personal non-property rights in European countries can be conventionally divided into three stages" (p. 240). The researcher believes that the period from the French Revolution to the Second World War should be included in the first stage, when at first in France, and later in some other countries of the continental legal system, personal non-property rights were established for a person. The basis of this approach was John Locke's doctrine of natural rights (Locke, translated by Sodomora 2020, p. 7). At that time, a general principle of personal protection was formed in Europe and a search for a mechanism for legal regulation of personal non-property relations was instigated.

The second stage, according to S. Slipchenko, started after the Second World War. It is characterized by a general humanistic vector of the development of

personal non-property rights. It was during this period that the general idea of their non-property character and inalienability was rooted. International standards for the protection of human rights were approved and national legislations of European countries were formed.

The third stage, according to the scientist, began in the 1980s. It is connected with a change in ideas about civil turnover, about the relationship between intangible goods and their carrier, about the mobility of boundaries between property and personal non-property interests.

There is no single approach in court decisions. Property rights often arise in relation to non-property goods, therefore, courts recognize them as property and apply the relevant legislation. This applies both to the decisions of the national courts of European countries and the European Court of Human Rights. In particular, the decision of the European Court of Human Rights in the case of Van Marle v. Netherlands recognized that the right to a business reputation can be property (Van Marle and others v. Netherlands, 1986). The German Federal Supreme Court in the Marlene Dietrich case also recognized the rights to use the name and image of a natural person as property (Marlene Dietrich, Bundesgerichtshof, 1999).

This study deals only with objects (non-property goods) that are capable of satisfying only personal non-property interest (life, health, personal integrity, etc.), so they have no economic importance and, depending on this, only personal non-property rights arise.

The concept of personal non-property rights of an individual gained its greatest development in the second half of the 20th century. It was covered at the constitutional level and in many international legal documents.

Regarding the development of personal non-property rights in Ukraine, until 2004, the Civil Code of the Ukrainian USSR (1963) continued to operate in Ukraine, which protected only those individuals whose non-property rights were related to a property interest, at a time when non-property relations, which were not related to property, were not protected, and were not settled. Only with the adoption of the Civil Code of Ukraine (2003), which contains Book Two "Personal Non-Property Rights of an Individual," the legal regulation of personal non-property rights became systematic. Including Articles 281-290 of the Civil Code of Ukraine (2003), rights in the field of health care were systematically regulated.

It was the adoption of the new Civil Code of Ukraine in 2003 that ensured the most comprehensive branch development of constitutional provisions. At the same time, civil legislation not only incorporated most of the mentioned human rights into its content, transferring them to the category of personal non-property, which gave them the character of private law, but also ensured their effective implementation and comprehensive protection by the compensatory and restorative method

based on legal equality of the parties. None of the civil codes of the post-Soviet countries contains as large a volume of norms relating to personal non-property rights as the Civil Code of Ukraine (2003). Having singled out the personal non-property rights of natural persons in the structure of the Civil Code, Ukraine became one of the first countries that gained independence after the collapse of the union state and implemented the specified provisions.

In the Civil Code of Ukraine (2003), all personal non-property rights, depending on the purpose, are divided into personal non-property rights that ensure the natural existence of an individual and personal non-property rights that ensure the social existence of an individual.

The first group includes: the right to life, the right to healthcare, the right to an environment safe for living and health, the right to freedom, the right to personal integrity, the right to the integrity of personal and family life. In Ukraine, these rights are guaranteed by the Constitution of Ukraine (1996, p. 27, p. 32). Personal non-property rights acquire wider development in branch legislation, in particular in civil law.

The second group includes the rights of an individual to a name, respect for dignity and honor, inviolability of business reputation, personal life and its secrecy, the right to privacy of correspondence, telephone conversations, telegraphic and other correspondence, the right to inviolability of the home, the right to freedom of residence and movement, the right to freedom of literary, artistic, scientific and technical creativity. In Ukraine, these rights are guaranteed by the Constitution of Ukraine (1996, p. 28, p. 31). The Civil Code of Ukraine (2003) additionally enshrines the right to a name (Article 294), inviolability of a business reputation (Article 299), individuality (Article 300), freedom of association (Article 314), etc.

It is also possible to take the order of emergence of personal non-property rights as a basis for their classification: those that belong to natural persons from birth and those that belong to them by law.

The list of personal non-property rights belonging to a person is not exhaustive, in particular in the field of health care. According to the Constitution of Ukraine, a natural person has the right to life, healthcare, the right to an environment safe for living and health, the right to freedom and personal integrity, the right to the integrity of personal and family life, the right to respect for dignity and honor, the right to secrecy of correspondence, telephone conversations, telegraphic and other correspondence, the right to inviolability of the home, the right to freedom of residence and movement, the right to freedom of literary, artistic, scientific and technical creativity.

The systematic interpretation of the content of Article 270 of the Civil Code of Ukraine (2003) makes it possible to divide all personal non-property rights of an

individual in the field of health care, depending on their place in the sources of law, into the following groups:

– personal non-property rights of natural persons that are constitutional (in particular, the right to life, the right to health care, the right to an environment safe for living and health, the right to freedom, the right to the integrity of family life, the right to medical care);
– personal non-property rights of natural persons, which are regulated by the Civil Code of Ukraine (in particular, the right to information and the confidentiality of information on one's health, the right to blood and organ donation, the rights of a natural person undergoing treatment in a health care facility);
– personal non-property rights of natural persons regulated by other acts of legislation (for example, the right to consent, to safety during medical intervention, the right to an individual approach during treatment);
– personal non-property rights of natural persons, which are not regulated by the legislation of Ukraine, are protected in accordance with the rule on the non-exhaustive nature of such rights (in particular, the prohibition of discrimination and protection during scientific research).

Now, almost twenty years after the adoption of the Civil Code of Ukraine (2003)—the content of which is no longer sufficient to regulate personal non-property rights even in the field of health care in their modern understanding and perception of realities—it does not define the concept of a personal non-property right; instead, it indicates its features.

> Personal non-property rights belong to every natural person by birth or by law. Personal non-property rights of an individual have no economic meaning. Personal non-property rights are closely related to an individual. An individual cannot waive personal non-property rights, nor can they be deprived of these rights. A natural person owns personal non-property rights for life (Civil Code of Ukraine, 2003, Article 269).

Also, the issue of personal non-property rights belonging to the sphere of civil law is debatable. Lilia Fedyuk (2006) notes: "The views of scientists on the problem of legal regulation of personal non-property relations by civil law are not unambiguous during the entire period of research on this issue" (p. 10).

The majority of scientists define personal non-property law as private non-property goods, in particular, those "deprived of property content, inextricably linked to the subject of civil law, recognized by society, and therefore protected by civil legislation" (Kharitonov, 2003, p. 171). As Ruslan Stefanchuk (2016) notes: "The rights of an individual as a human being have superseded his/her rights as an owner, as a subject

of obligations" (p. 46). Moreover, these "goods have a single non-economic nature, a value for their bearer, have the functional property of non-commodity, belong to the individual as such and are inseparable from him/her" (Dzera, Kuznetsova and Maidanyk, 2017, p. 588). According to Natalia Kuznetsova (2015): "Respect for each person as an individual should become the norm of everyday life in Ukraine, and a person should be the only absolute value, relative to which all other values are determined" (p. 10).

One of the most important characteristics of personal non-property rights is their absoluteness. Thus, Mykola Stefanchuk (2002) notes that "personal non-property rights which ensure the natural existence of a physical person, have priority over others" (p. 88). He came to the conclusion that these rights do not have objectively established legal limits, which indicates their absoluteness (p. 89). Since the right of one authorized person is opposed by an unlimited circle of persons who are obliged not to violate it, then these rights are absolute (monopoly), which does not indicate the absence of limits to their implementation, because the capabilities of one person end where they intersect with the rights of another person, or rather prevent their legal implementation.

Personal non-property rights to goods that may be in civil circulation (for example, the right to information) also have the feature of exclusivity (Slipchenko, 2013, p. 14). Next, the author justifies that non-property rights to objects that are negotiable are also alienated.

Scientists indicate that personal non-property rights are universal, since they "belong to every natural person, regardless of the scope of his/her legal capacity, and every legal entity, including every natural person, is equal in the opportunity to realize and protect these rights" (Yurkevych and Dutko, 2021, p. 30).

Ruslan Stefanchuk (2008) points out: "The main features of the personal non-property rights of natural persons are their personal nature, non-property, specific object and focus on satisfying physical (biological), spiritual, moral, cultural, social or other non-material needs (interest)" (p. 536).

This study will deal with those non-property rights that ensure the natural existence of a natural person (right to life, right to health care). Since they are provided with means of protection, which is characteristic of private law and is aimed at protecting the private non-property interest of their participants, they are civil.

In September 2015, the United Nations Summit on Sustainable Development, held in New York, adopted the General Assembly Resolution "Transforming our World: the 2030 Agenda for Sustainable Development" (2015) as the final document, which defined 17 Sustainable Development Goals. The goal of most of them is to improve human living conditions, and one of them (03) represents: "Ensure healthy lives and promote well-being for all at all ages" (UN Resolution "Transforming our

world: the 2030 Agenda for Sustainable Development," 2015, p. 15). The General Assembly notes that in order to improve physical and mental health and well-being, as well as to increase the average life expectancy for all, we must provide the population with medical care (UN Resolution, 2015, p. 8).

This task is set before humanity as a whole, and states and institutions of civil society must ensure its fulfillment together. The state must create conditions for the free development of an individual, namely, safe conditions for living, studying, and working, as well as stimulating the production of food and drinking water, the creation and proper functioning of the health care system. In turn, civil society should help the state and motivate everyone to a healthy lifestyle. Likewise, the state and civil society are responsible to future generations for the preservation of a healthy gene pool. Therefore, every person should know and understand their rights and duties, as well as the obligations of the state in the field of health care.

Over time, human rights have undergone changes not only in the catalog of rights, but also in their content. If at the beginning of the 20th century humanity only began to ask questions about the need for international recognition and maintenance of human rights in the field of health care, at the beginning of the 21st century we are already talking about the emergence of a virtual environment and the possibility of a person's existence in it. More and more scientists are raising the issue of the need to preserve man as a biological being. The division of human rights into generations demonstrates their evolution and determines their characteristics. Also, according to the results of an earlier study, different generations of human rights in the field of health care are interdependent and influence each other (Blashchuk, 2021).

The constitutional rights of a person and a citizen include: the right to health care (Constitution of Ukraine, 1996, p. 49), the right to an environment safe for living and health, to compensation for damages caused by the violation of this right (Constitution of Ukraine, 1996, p. 50). The Civil Code of Ukraine (2003) and civil science include the right to life, the right to health care, and the right to an environment safe for living and health among the personal non-property rights of an individual (Articles 270 and 293 of the Civil Code of Ukraine).

Therefore, the Constitution of Ukraine and the Civil Code of Ukraine consider these rights as separate personal non-property rights of an individual.

In addition, special legislation in the field of health care, namely the Fundamentals of the Legislation of Ukraine on Health Care (1992) indicates in Article 6 that the right to health care includes, among other things, natural environment safe for living and health, as well as healthy conditions of work, education, living and recreation. Therefore, the specified law considers the right to a safe environment as part of

the right to health care. It remains to be determined what is included in the content of the right to a safe environment.

Global trends contributed to the formation of citizens' rights to an environment safe for living and health in Ukraine. It was at the international level that the idea of declaring the human right to live in a favorable environment first arose.

In the scope of a person's rights to a safe environment, this problem was raised for the first time in the 1970s. In particular, the Declaration of the Stockholm Conference of the United Nations Organization on Environmental Protection (1972) was adopted, which proclaimed: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." (Principle 1). This document became instrumental in the process of forming the rights to a safe environment.

The protection of human life and health from the adverse environmental effects has long been the subject of consideration within the framework of the general protection of the ecological interests of society. This approach did not provide a proper attitude to the protection of the citizen's subjective right to an environment safe for living and health.

With the development of civil science, it became obvious that the right to an environment safe for living and health belongs to the institution of personal non-property rights. Today there is no doubt that the regulation and protection of the right to an environment safe for living and health as a personal non-property right should be ensured by civil law.

Thus, the right to health care is a private non-property right of an individual and includes the right to a safe environment and information about the condition of the environment; the right to consumer products (food and household items) that are safe for an individual and information about their quality; the right to adequate and safe conditions of work, living, education, etc., as well as the right to protection and compensation in case of violation of the above-mentioned rights.

The relationship between the right to health protection and the right to an environment safe for living and health can be defined as follows: the right to health protection includes the right to an environment safe for living and health, which in turn includes the right to product safety.

II. Characteristics of Individual Types of Personal Non-Property Human Rights in the Field of Health Care in Ukraine

1.1. The Concept of Life, Health, the Right to Life and the Right to Health

Life and health are non-property benefits that are protected by law through: the right to life and healthcare, which includes the right to medical care.

Scientists propose to consider the right to life as a combination of these elements: the right to preserve life; the right to personal integrity; the right to demand from the state the implementation of measures aimed at supporting life; the right to manage one's own life; the right to health care and medical assistance (Stetsenko, 2008, p. 290).

The right to life is recognized by most international human rights instruments. For example, Article 3 of the Universal Declaration of Human Rights (1948), Article 6 of the International Covenant on Civil and Political Rights (1973), Article 6 of the Convention on the Rights of the Child (1989), etc.

In Ukraine, the right to life is provided by the Constitution of Ukraine (1996): "Every person has an inseparable right to life. No one can be arbitrarily deprived of life. The duty of the state is to protect human life. Everyone has the right to protect his/her life and health, and the life and health of other people from illegal actions" (Article 27).

In the legal sphere, life is interpreted as a certain benefit, i.e., as something that satisfies people's needs. Life is one's personal intangible good.

It depends on the state of health, i.e., it should be characterized by a certain state of physical, mental, social and spiritual well-being. Therefore, recognizing the right to life for every person, we cannot ignore the right to health.

The study of the right to health should begin with the interpretation of the terms "health," "right to health," and the position of health in the catalog of human rights.

Health is a concept used in various sciences, in particular in law. The Constitution of Ukraine (1996), Article 3 places the concept of "human health" alongside "human life" among the most important social values (p. 3).

Non-property good, which is part of the object of civil legal relations for the provision of medical services, means "health." Human health has always been regarded as one of the most important life values, the greatest personal good.

The degree of ensuring the life and health of a person in a particular state is an indicator of the development of its civil society. A person's life and health are interrelated because a person is a biological being that is born, lives and dies. Roman Maidanyk, researching the human right to life, notes: "Human life means the physical, psychological and social functioning of a person as a complex biosocial organism" (Maidanyk, 2016, p. 9).

According to the definition in the Charter (Constitution) of the World Health Organization (1946): "Health is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity" (Preamble). Article 3 of the Fundamentals of the Legislation of Ukraine on Health Care (1992) defines health as "a state of complete physical, psychological and social well-being, and not just the absence of diseases and physical defects" (p. 3).

As can be seen, the domestic legislator gives a similar definition to the concept of "health," replacing the term "mental" with the term "psychological" well-being. The discussion regarding the relationship between these categories goes beyond the scope of this study, however, while arguing about their relationship, researchers agree that these are different concepts (Lefterov, 2013, p. 47; Savchuk et al., 2018).

Scientists studying health as a medical category agree that health is a state of the human body and identify six main types of essential elements for defining health:

1) health as a norm of functioning of the body at all levels of its organization;
2) health as a dynamic balance (harmony) of the body's vital functions;
3) health as full performance of basic social functions, participation in society and active work;
4) the organism's ability to adapt to changing environmental conditions;
5) absence of pathological changes and normal well-being;
6) complete physical, spiritual, mental and social well-being (Boychuk, 2017, p. 6).

Well-being, as we can see, has certain components:

– physical (contains information about how the body functions, all its organs and systems, the level of their reserve capabilities, characterized by the presence or absence of physical defects, diseases, including genetic ones);
– psychoemotional (mental) component of health (characterizes the state of the mental sphere, the presence or absence of neuropsychological abnormalities, the ability to understand and express one's emotions, the attitude towards oneself and others);
– intellectual (cognitive) component of health (contains data on how a person learns information, uses it, the effectiveness of searching and accumulating the necessary information, which ensures the development of the personality and its adaptation in the surrounding world);
– social component (presupposes the individual's awareness of himself as a person, the performance of relevant functions in society, reflects the way of communication and relationships with different groups of people);
– personal (spiritual) (denotes how a person perceives himself as a person).

The state of human health is variable and has different indicators depending on the factors that appear starting from conception and ending with the death of

a person. Depending on the health of the parents and their living environment, a newborn baby already has a certain level of health, and it will change in the future. In addition to objective factors affecting health, human well-being is also influenced by social factors, including access to resources and technology. No less important is a person's internal attitude towards himself, his health and those around him. A person's ability to resist various factors, adapt to them and recover characterizes his level of health. The higher the level of health, the lower the risk of disease, the better a person responds to the challenges of his living environment. One can improve his health with constant training (not only physical training).

Therefore, human health is a certain state of a person, which is characterized by well-being in all spheres of human activity and has a certain quality (level).

A person in health care relations acquires a special status, the status of a patient. The concept of "patient" in science is debatable.

The legal definition of a patient is enshrined in Article 3 of the Fundamentals of the Legislation of Ukraine on Health Care (1992), which states that a patient is a natural person who has sought medical care and/or is provided with this care (p. 3).

This definition is incomplete because it does not take into account the human condition. It is appropriate to pay attention to the "Law On Health Care Institutions" of the Republic of Lithuania (1996), which defines a patient as a person who "uses the services of health care institutions, regardless of whether he/she is sick or healthy" (p. 2).

This opinion is shared by Anatoliy Zelinskyi (2006), who points out that defining a patient only as a person who has sought medical help is an incomplete description, "it must be supplemented, since the realization of the right to health can be carried out by participating in a medical experiment as a research subject" (p. 143).

Anna Koval (2011) focuses on the fact that a patient is a person who, on a voluntary basis or without voluntary consent, "entered into a relationship with a medical institution, a health care professional, a doctor in private practice and (or) another employee of medical institutions, institutions of any form of property" (p. 20).

The patient, as a participant in the legal relationship, acquires a certain legal status, receives a number of rights and assumes certain responsibilities. The authors of the practical guide "Human Rights in the Field of Health Care" (2012) indicate that the rights of patients include a set of rights, duties and obligations, according to which people try to get and receive services in the field of health care (p. 512).

The legal status of patients should include not only the right to treatment, but also those related to the preservation and maintenance of health, health informational rights, etc. This is another indication that a person is entering into legal relations related to his/her health.

The Charter of the United Nations World Organization (1946) indicates that one of the fundamental rights of every human being, regardless of race, religion, political

opinion, economic or social status, is the opportunity to enjoy the highest attainable standard of health.

In international documents, the right to health is recognized and supported, starting with Article 25.1 of the Universal Declaration of Human Rights (1948), Article 6 and Article 24 of the Convention on the Rights of the Child (1989) and Articles 10, 11, 12, 14 of the Convention on the Elimination of All Forms of Discrimination against Women (1979). Thus, in Article 12 of the International Covenant on Economic, Social and Cultural Rights (1973), the states mentioned therein recognize the right of every person to the highest attainable level of physical and mental health (p. 12). The European Social Charter (1996) states that everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable (Part 1, paragraph 11).

The abovementioned makes it possible to single out the right to health, which belongs to every person from birth. The right to health is a fundamental human right (first-generation right), which is inseparable from the right to life and is protected together with it. This notion is confirmed by Article 27 of the Constitution of Ukraine (1996), according to which everyone has the right to protect his/her life and health, and the life and health of other people from illegal actions (Part 2 of Article 27).

Human life and health are protected non-property benefits, i.e. objects in respect of which civil rights and obligations arise. The Civil Code of Ukraine (2003, Article 281) includes life among the personal non-property rights of an individual. Also, the right to health is not singled out as a separate private non-property right, instead, a person is given the opportunity to protect both his or her life and health and the life and health of another person from unlawful attacks by any means not prohibited by law. This position of the legislator is inconsistent.

Legal literature has already raised the issue of the need to distinguish the right to health as a separate personal non-property right, the object of which is health (Buletsa, 2005; R. Stefanchuk, 2007; Lisnicha, 2007).

R. Stefanchuk (2007) notes: "The concept of 'health' also has its own special legal meaning, in which it is designated as a certain object of relevant legal relations" (p. 155). During the study of various aspects of the concept of health, the scientist notes that "individual health is a private legal category and concludes that the concept of 'health' as a personal non-property good is a complex concept that is manifested not only in the organism, that is, the human body, but also in mental processes, states that also affect the body." (Stefanchuk, 2007, p. 157). In another work, the author defines the right to health and analyzes its content (Stefanchuk, 2003).

As a basic first-generation human right, the state guarantees and protects the right to health. In the Decision of the Constitutional Court of Ukraine on the con-

stitutional submission of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of Article 216.6 of the Criminal Procedure Code of Ukraine (2018), it is stated:

> Articles 27 and 28 of the Constitution of Ukraine institutionalize not only the negative duty of the state to refrain from actions that would violate the human right to life and respect for their dignity, but also the positive duty of the state, which consists, in particular, in ensuring an adequate system of national protection of constitutional human rights through the development of appropriate normative and legal regulation; implementation of an effective system of protection of human life, health and dignity; creation of conditions for human realization of their fundamental rights and freedoms; guaranteeing the order of compensation for damages caused as a result of violation of constitutional human rights; ensuring the inevitability of accountability for violation of constitutional human rights (Clause 2.1).

The Economic and Social Council of the United Nations in its Comment on Article 12 of the International Covenant on Economic, Social and Cultural Rights (2000) notes: "The right to health, like all human rights, imposes three types or levels of obligations on the participating States parties: *respect, protect and fulfill*. In turn, the obligation to perform contains obligations to facilitate, provide and promote. The obligation to *respect* requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The duty to *protect* requires States to take measures to prevent third parties from interfering with Article 12 guarantees. Finally, the obligation to *fulfill* requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health" (General Comment 14). Ukraine has ratified the Covenant, which means that it has assumed the relevant obligations.

Likewise, Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). The interpretation of the content of the Convention as a "living organism" is carried out by the European Court of Human Rights, which quite often in its practice finds violations of the Convention in order to protect various aspects of the right to health.

The European Court of Human Rights in § 63 of the decision Vasileva v. Bulgaria notes:

> … although the right to health is not as such among the rights guaranteed under the Convention or its Protocols … the High Contracting Parties have, parallel to their positive obligations under Article 2 of the Convention, a positive obligation under its Article 8, firstly, to have in place regulations compelling both public and private hospitals to adopt appropriate measures for the protection of their patients' physical

integrity and, secondly, to provide victims of medical negligence access to proceedings in which they could, in appropriate cases, obtain compensation for damage" (Vasileva v. Bulgaria, § 63).

In the case of Tomov and Others v. Russia, the Court established a violation of Article 3 of the Convention in connection with the conditions of transportation of prisoners (critical lack of space, inappropriate sleeping patterns, long journeys, limited access to sanitary facilities, faulty heating and ventilation, etc.) (Tomov and Others v. Russia, 2019). In many cases, it also found violations of Article 13 of the Convention due to the lack of an effective judicial remedy for health rights.

For example, the right to respect for private life may be violated in the case of forced sterilization. Sterilization is a serious interference with a person's reproductive health, as it concerns one of the basic functions of the human body, something that affects various aspects of personal integrity, taking their physical, mental, emotional, spiritual well-being and family life into account. It may be lawfully carried out at the request of the person concerned, for example as a method of contraception, or for therapeutic purposes in the case of medical necessity (V.C. v. Slovakia, § 106). The court also decided that states have an obligation to provide effective legal guarantees to protect women from uncoordinated sterilization, with a special emphasis on protecting the reproductive health of women of Roma origin. In several cases, the Court has concluded that Roma women need protection from sterilization due to prejudice against this vulnerable ethnic minority (V.C. v. Slovakia, §§ 154-155; I.G. and Others v. Slovakia, §§ 143-146).

In general, the practice of the Court requires a separate study, but it can be said that the Convention and the Court are effective tools for the protection of human rights in the field of health care.

Some scientists (Hurska, 2002) also define the right to health by including this or that set of other rights. In particular, such elements are distinguished as: the right to receive qualified medical care, the right to modern medical care, the right to prosthetics and rehabilitation equipment, the right to cosmetic treatment, the right to organ donation and transplantation, the right to participate in a medical experiment, the right to environmental and sanitary-epidemiological well-being and radiation safety, the right to information about the state of health and factors affecting it, the right to compensation for damages, the right to respectful and humane treatment by medical and service personnel, the choice of a doctor and a medical institution, the right to a consultation and other medical services if necessary, the right of access to a lawyer or other legal representative, the right to the observance and practice of religion, etc.

Although this approach correlates with the legislator's approach, it has a number of problems that prevent it from being accepted as correct. First of all, according to

it, the right to health is not a separate right, but a set of rights. Otherwise, it is difficult to agree with the position that the right to health as a separate subjective civil right contains not the rights of the bearer as structural components, but separate subjective civil rights. In addition, as already mentioned above, some of the mentioned rights cannot be included in the category of those that ensure the natural existence of a natural person.

Thus, the concept of the "right to health" from the point of view of private law includes information about such a benefit of an individual as the benefit of "health." It has an intangible character. The right to health is a subjective human right, a personal non-property right, whose object is health. It consists of the freedom of natural persons to determine freely, at their own discretion, their behavior regarding their health (the opportunity to act independently in order to achieve the best state of health), as well as taking into account the absolute nature of this right, the possibility to demand of other persons not to cause harm to health or interfere with the right to protect health by authorized means.

1.2. The Right to Health Care as a Second-Generation Human Right

Article 12 of the International Covenant on Economic, Social and Cultural Rights (1973) calls on the states participating in this Covenant not only to recognize the right to the highest attainable standard of health, but also indicates the measures that the states participating in this Covenant must take for the full exercise of this right.

As the United Nations Economic and Social Council (ECOSOC) notes, commenting on article 12 of the Covenant: "The right to health is closely related to and dependent on the realization of other human rights, as contained in the International Bill of Rights, including the right to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedom of association, assembly and movement. These and other rights and freedoms address integral components of the right to health (General Comment No. 14, 2000).

At the same time, it is emphasized that the right to health should not be understood as the right to be healthy, instead, these rights include the right to a health care system that provides equal opportunities for people to enjoy the highest attainable level of health.

Thus, health care is a means of realizing the right to health, therefore the right to health care is a personal right—a second-generation right.

Life and health are considered merit goods that have both a private and public nature. From the economic perspective, merit goods are those for which the demand

from private individuals lags behind the supply desired by society, and therefore the state must stimulate them (Hrytsenko, 2017, p. 54). Therefore, a person's right to health is provided through the health care system.

Historically, this system developed as a set of measures carried out with the aim of ensuring public health (health of the population in general) and only after the concept of human rights and human priority was approved, the subjective (individual) right of a person to health care began to be established.

In different states, and sometimes even within the same state, access to the health care system is uneven, which is caused by both economic and social factors, different conditions of access to scientific achievements, etc. These differences, as a rule, are the result of the socio-economic policy of the state that affects the environment of human activity, i.e., the conditions of birth, development, education, work and housing of a person.

Aware of the need for the state to take certain steps for the realization of basic human rights, in particular health, the international community established in the relevant documents a number of rights related to the living conditions of each person, based on the ideas of equality and guaranteed access to basic social and economic benefits, which were later called the second-generation rights. They include the right to health care, medical care and health insurance.

In addition, a number of acts were adopted (in particular, with a recommendatory content) that establish or declare the rights of a person acquiring the status of a patient.

The main international acts regarding human rights in the field of health care and the provision of medical care to patients (human rights of patients) include the Declaration of Lisbon on the Rights of the Patient adopted by the World Medical Association (1981), the Convention for the Protection of Human Rights and Dignity with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1997), European Charter of Patients' Rights (2002), and Universal Declaration on Bioethics and Human Rights (2005).

The Declaration of Lisbon on the Rights of the Patient (1981) was adopted by the 34th World Medical Assembly in Lisbon, Portugal. It was revised and amended in 1995 and 2005. The introduction states that physicians must act in the best interests of the patients in accordance with their conscience, and if legislation or government action does not recognize these rights of the patients, seek to enforce or restore them by appropriate means. The declaration affirms the basic rights that, from the point of view of the medical community, every patient has.

In 1997 in Oviedo, the Council of Europe adopted the Convention for the Protection of Human Rights and Dignity with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine. This Convention was

adopted to develop fundamental acts in the field of human rights protection, with its signatories being "Conscious of the accelerating developments in biology and medicine" (Preamble). The European Convention on Human Rights and Biomedicine outlines basic principles regarding patients' rights: equal access to medical care and protection of the right to informed consent, privacy and the right to information. These principles are binding on the states that have ratified the Convention. It was later complemented by additional protocols on the prohibition of cloning (Treaty No. 168), on organ and tissue transplantation (Treaty No. 186), and on biomedical research (Treaty No. 195).

In 2002, the European network of non-governmental organizations in the field of patient rights protection jointly developed European Charter of Patients' Rights, which clearly and comprehensively presents the rights of patients: "Despite their differences, national health systems in European Union countries place the same rights of patients, consumers, users, family members, weak populations and ordinary people at risk" (European Charter of Patients' Rights, 2002, Preamble). The document not only proclaims the fourteen rights of patients, but also interprets them to ensure basic rights, the purpose of which is to guarantee the high level of protection of human health, to ensure high quality of helath care. This document became the legal basis of a movement launched in Europe to involve patients in a more active role in the creation and implementation of health care services. Although European Charter of Patients' Rights has a recommendatory nature, it has become the basis for changing national legislations, as well as a reference point for monitoring and evaluating the functioning of health care systems in Europe.

The Universal Declaration on Bioethics and Human Rights (2005) was adopted by General Conference of UNESCO on 19 October 2005. As stated in the document, "this Declaration is to be understood in a manner consistent with domestic and international law in conformity with human rights law" (adopted by the General Conference at the 33rd session, Preamble).

By comparing international standards for the protection of human rights in the field of health care with national ones, it is possible to determine the priority directions for the development of the right to medical care and to analyze which of the practices will be the best for application in Ukraine.

Article 49 of the Constitution of Ukraine (1996) guarantees everyone the right to health care, medical assistance and medical insurance.

The constitutional guarantee realizes its development in the Fundamentals of the Legislation of Ukraine on Health Care (1992), Article 6: "Every citizen of Ukraine has the right to health care," Article 8: "The state recognizes the right of every citizen of Ukraine to health care and ensures its protection," and Article 25: "The state ensures the necessary standard of living of the population, in particular, food,

clothing, housing, medical care and social services that are necessary to maintain good health."

Despite the fact that every citizen has the right to receive free medical care in state and community health care facilities, which includes: emergency medical care; primary medical care; secondary (specialized) medical care; tertiary (highly specialized) medical care; palliative care. However, according to Part 2 of Article 8 of the Fundamentals of the Legislation of Ukraine on Health Care (1992), free secondary, tertiary, and palliative medical care is provided only according to medical indicators and in the order established by the central executive body that shapes the state policy in the field of health care.

Article 283 of the Civil Code of Ukraine (2003) defines the right to health care as a personal non-property right of a person, which ensures the systematic activity of state and other organizations, as provided for by the Constitution of Ukraine and the country's laws. The content of this right is disclosed in Article 284 of the Civil Code of Ukraine (2003) and includes the right to provide qualified medical care, the right to choose and change a doctor, to choose treatment methods in accordance with the doctor's recommendations, as well as the right to refuse treatment.

According to the Fundamentals of the Legislation of Ukraine on Health Care (1992), every citizen of Ukraine has the right to health care, which provides for:

a) standard of living, including food, clothing, housing, medical care and social services and provision that is necessary for maintaining human health;
b) safe environment for living and health;
c) sanitary-epidemic safety of the territory and the place of residence;
d) safe and healthy conditions of work, education, living and recreation;
e) quality medical care, including the free choice of a doctor, the choice of treatment methods in accordance with the doctor's recommendations and the choice of health care institution;
f) reliable and timely information about the state of one's health and the health of the population, taking into account the existing and possible risk factors and their degree (Article 6).

The appropriate definition of health care is given in Article 3 of the Fundamentals of the Legislation of Ukraine on Health Care (1992) and constitutes a system of measures aimed at maintaining and restoring physiological and psychological functions, optimal working capacity and social activity of a person for the maximum biologically possible individual duration of their life. These measures are carried out by state authorities and local self-government bodies, their officials, health care institutions; natural persons-entrepreneurs who are registered in accordance with the procedure established by law and have a license to carry out economic activities in

the field of medical practice; pharmacists, medical specialists, rehabilitators, public associations and citizens.

Scientists give similar definitions of health care. For example, Alyona Semenova, having analyzed the terms "rights protection" and "subjective rights protection," came to the conclusion that health protection should be considered as the activities of state authorities, local self-government bodies, their officials, health care institutions, health care professionals and pharmacists, as well as citizens, aimed at implementing political, legal, socio-economic, organizational-technical, scientific, cultural, medical, curative-prophylactic, sanitary-hygienic and other measures aimed at preserving and strengthening physical and mental health of each person, maintaining their ability to work, offering a long and active life, as well as preventing the factors that negatively affect health (Semenova, 2014).

Health care should be based on principles whose implementation depends on specific socio-economic conditions in different states and regions. ECOSOC calls them elements of the right to health and emphasizes that they are exemplary (a non-exhaustive catalog) and that each state can develop them.

First of all, a health care system must be available (Availability). Although the number of health care facilities and medical services and programs may vary depending on the state's level of development, at least the basic components of health must be available: safe and high-quality drinking water, appropriate sanitary and hygienic facilities, hospitals, clinics and other health-related facilities, qualified medical personnel who receive domestically competitive salaries, and basic medications available.

In addition, the health care system must be accessible (Accessibility). First of all, it should include physical accessibility for everyone, taking into account particularly vulnerable sections of the population (ethnic minorities and indigenous people, women, children, adolescents, the elderly, the disabled and people with HIV/AIDS). Health care facilities, as well as drinking water and food, should be territorially accessible, adapted for people with reduced mobility, have a convenient work schedule, etc.

Accessibility also means non-discrimination. Health care facilities must be rendered accessible by law and, in fact, without discrimination on any prohibited grounds. Equally important is economic accessibility, which means that health care facilities, goods and services are intended for all. Payment of health care services, as well as those related to the main factors of health, should be based on the principle of equity, ensuring that these services, whether private or public, are universally accessible, including socially vulnerable groups. Article 6 (clause "i") of the Fundamentals of the Legislation of Ukraine on Health Care indicates that the right to health care provides legal protection against any illegal forms of discrimination related to health.

Finally, the principle of accessibility implies the availability of information, which means the ability to search, receive and communicate information and ideas related to health issues, provided that the confidentiality of health data is ensured.

The health care system must ensure acceptability (Acceptability). All health care institutions, goods and services that health care provide must comply with the requirements of medical ethics and other ethical (cultural) norms of society, be sensitive and attentive to human needs.

An equally important element is the quality requirement (Quality). In addition to the fact that health care facilities, goods and services must be ethically (culturally) acceptable, they must also be scientifically, medically appropriate and high-quality, which includes the requirement for qualified medical personnel, scientifically approved high-quality drugs and hospital equipment, safe drinking water and proper sanitary conditions.

In Ukraine, the managing staff of medical institutions are responsible for the quality of medical care, and at the government level, this falls into the responsibilities of state executive bodies, through licensing, accreditation, attestations of medical personnel, as well as through the activities of clinical expert commissions and medical councils. The main body in the system of central executive bodies is the Ministry of Health of Ukraine, which ensures the formation and implementation of state policy in the field of health care, protection of the population from infectious diseases, combating HIV/AIDS and other socially dangerous diseases, prevention of non-infectious diseases, etc.

For the proper implementation of the personal non-property right to health, the state guarantees the creation of an extensive network of health care institutions; organization and implementation of a system of state and public measures to protect and improve health; providing all citizens with a guaranteed level of medical and sanitary care in the scope established by the Cabinet of Ministers of Ukraine; implementation of state and public control and supervision in the field of health care; organization of the state system of collection, processing and analysis of social, environmental and special medical information for statistics; establishment of responsibility for violation of the rights and legitimate interests of citizens in the field of health care.

A certain guarantee of health care is provided by Article 5 of the Fundamentals of the Legislation of Ukraine on Health Care (1992), according to which state, public or other bodies, enterprises, institutions, organizations, officials and citizens are obliged to ensure the priority of health care in their own actions, not to harm the health of the population and individuals, within one's competences to provide assistance to the sick, persons with disabilities and victims of accidents, to assist employees of health care bodies and institutions in their activities, as well as to perform

other duties stipulated by the legislation on health care. In the event of a violation of the legal rights and interests of citizens in the field of health care, relevant state, public or other bodies, enterprises, institutions and organizations, their officials and citizens are obliged to take measures to restore the violated rights to protect legal interests and compensate for the damages caused.

It is essential that health care in Ukraine is ensured by the systematic activities of state and other organizations, as provided for by the Constitution of Ukraine and the country's laws. In particular, the basis of state health care policy is formed by the Verkhovna Rada of Ukraine by consolidating the constitutional and legislative foundations of health care, defining its purpose, main tasks, directions, principles and priorities, establishing norms and volumes of budget funding, creating a system of appropriate credit and financial, tax, customs and other regulators, approval of the list of comprehensive and targeted national health care programs.

An important role in ensuring the state health care policy is played by the President of Ukraine, who is the guarantor of citizens' rights to health care, ensures the implementation of health care legislation through the system of state executive bodies, implements the state health care policy and carries out other powers provided for by the Constitution of Ukraine.

State health care policy is based on state executive bodies. Thus, in particular, in accordance with Part 2 of Article 49 of the Constitution of Ukraine (1996), in order to provide health care, relevant socio-economic, medical-sanitary and health-preventive programs are financed by the state. These comprehensive and targeted programs at the state level are developed and implemented by the Cabinet of Ministers of Ukraine.

Ministries, departments and other central bodies of the state executive power are also given certain competences in the field of health care. The Ministry of Health is the specially authorized central body of the state executive power in the field of health care. The National Health Service of Ukraine is the central body of executive power that implements state policy in the field of state financial guarantees of medical care for the population. For example, from 1 April 2019, the National Health Service of Ukraine administers the "Affordable Medicine" drug reimbursement program and directly reimburses pharmacies for the cost of drugs issued to patients based on electronic prescriptions. The "Affordable Medicines" program reduces the financial burden on patients and increases the availability of medicines.

Within the limits of the powers provided by the law, state policy is also implemented by local authorities and local self-government bodies. For example, the city of Kyiv has approved the municipal target program "Health of Kyivans" for 2020-2022, which is already in effect (2019).

Health protection of the population is directly provided by sanitary-prophylactic, medical-preventive, physical exercise-rehabilitation, sanatorium-resort, pharmacy, scientific-medical and other health care institutions. The procedure for the establishment and operation of health care facilities is determined by the current legislation. In addition to the extensive network of health care institutions, the state supports and encourages individual entrepreneurial activity in the field of health care.

As integral components of the right to health care, the law Fundamentals of the Legislation of Ukraine on Health Care list, in Article 6:

> The standard of living, including food, clothing, housing, medical care and social care and provision, which is necessary for maintenance of human health; natural environment safe for living and health; sanitary-epidemic well-being of the territory and place of residence; safe and healthy conditions for work, study, living and recreation; qualified medical and rehabilitation assistance, availability of free choice of doctors and rehabilitators, choice of treatment and rehabilitation methods in accordance with their recommendations, choice of health care facility; reliable and timely information about the state of one's health and the health of the population, taking into account existing and possible risk factors and their degree; informing about available medical and rehabilitation services using telemedicine and telerehabilitation, as well as a number of rights regarding public participation in the field of health care and others.

Part 2 of Article 12 of the International Covenant on Economic, Social and Cultural Rights (1973) states that in order to achieve the highest standard of health, states participating in this Covenant must take certain measures. The minimum requirements are:

a) the ensuring of the reduction of stillbirths and infant mortality, and of the healthy development of the child;
b) the improvement of all aspects of environmental hygiene and occupational hygiene in industry;
c) the prevention and treatment of epidemic, endemic, occupational and other diseases and combating them;
d) the creation of conditions that would provide everyone with medical assistance and medical care in case of illness.

Therefore, both the international act and the Ukrainian legislation consider the right to medical care and the right to a safe environment as part of the right to health care.

The field of health care, in particular in terms of providing medical care, is at a stage of transformation, and medical reform requires the improvement of legislation and practical advice from international practices. Each patient during any med-

ical intervention must be guaranteed the quality and safety of the provided medical care and the prevention of unjustified risk to life and health.

It is worth noting that the domestic legal framework contains provisions regulating the rights of citizens in the field of medical assistance. At the same time, the Concept of Renewal of the Central Committee of Ukraine (2020), which was presented to the Verkhovna Rada of Ukraine by Ruslan Stefanchuk (YURLIGA, 2001), proposes to change approaches to the legal regulation of personal non-property rights, in particular by "consolidation" of personal non-property rights (§ 2.5.) In particular, the authors of the concept, considering the personal non-property rights that ensure the physiological (natural) existence of a natural person, propose to highlight those personal non-property rights that ensure the physiological (natural) existence of a natural person: the right to life; the right to health; reproductive rights; the right to freedom (freedom of natural existence); the right to personal integrity; the right to personal security; the right to personal dignity.

Therefore, the authors of the concept deleted the right to medical care from this list and added the right to health, eliminating the right to health care.

1.3. The Right to Medical Assistance as Part of the Right to Health Care

The disclosure of the concept of the "right to medical care" should begin with the definition of medical care and its features.

In Article 3 of the Fundamentals of the Legislation of Ukraine on Health Care (1992), "medical assistance" is defined as: "Activities of professionally trained health professionals aimed at prevention, diagnosis, treatment and rehabilitation in connection with diseases, injuries, poisonings and pathological conditions, as well as in connection with pregnancy and childbirth."

The Constitutional Court of Ukraine (1998), recognizing as unconstitutional the Resolution No. 1138 of the Cabinet of Ministers of Ukraine "On approval of the list of paid services provided in state health care institutions and higher medical institutions of education" dated 17 September 1996, interprets the concepts of "medical assistance" and "medical service" and concludes that the term "medical assistance" is widely used in the national legislation of Ukraine; its definition is found in the documents of the World Health Organization, medical universities and academies. There is no comprehensive legal definition of this concept in the laws of Ukraine, therefore it requires normative regulation, which goes beyond the competences of the Constitutional Court of Ukraine.

Article 3 of the Fundamentals of the Legislation of Ukraine on Health Care (1992) defines "medical assistance" as the activity of professionally trained health

care professionals aimed at prevention, diagnosis, treatment and rehabilitation in connection with diseases, injuries, poisoning and pathological conditions, as well as in connection with pregnancy and childbirth.

As Iryna Sinyuta (2010) notes, "According to the definition of the World Health Organization, medical care is the prevention, treatment and management of disease, as well as the preservation of physical and mental health of a person through the provision of appropriate services by health care professionals and other healthcare specialists" (p. 259).

The Medical Care and Sickness Benefits Convention of the International Labor Organization of 1969 (No. 130) provides for the definition of the concept of "medical assistance":

a) general medical care, including home care;
b) assistance provided by specialists within hospital facilities to patients, or assistance by specialists that can be provided outside the hospital;
c) supplying necessary medications according to the prescription issued by a doctor or other qualified specialist;
d) hospitalization, if necessary;
e) dental care;
f) medical rehabilitation, including repair and replacement of prosthetic or orthopedic devices (Article 13).

The Declaration on the Promotion of Patients' Rights in Europe (1994) in Chapter 5 "Care and Treatment" enshrines the right of a person to receive medical care in accordance with their state of health, including preventive care (in Senyuta, 2008, p. 277).

Some scientists define medical care as any measures aimed at health protection, preservation of human life and prevention of diseases, which are carried out by employees of medical and preventive institutions of any form of ownership or by health care professionals engaged in private practice (Gladun, 2014, p. 210).

The definition of the concept of medical care is also the subject of other studies. Thus, according to R. Stefanchuk, the concepts of "medical assistance" and "medical service" are close in meaning, but not identical. The similarity is due to the fact that both concepts are types of medical activity and aim to have a positive effect on the health of an individual. At the same time, the difference between them lies in whether a certain medical activity is aimed at eliminating an imminent danger to the life and health of a physical person, or at achieving different goals (2008).

The content of the right to medical assistance is contained in Article 284 of the Civil Code of Ukraine and includes the right to provide qualified medical assistance, the right to choose and change doctors, to choose treatment methods in accordance with their recommendations, as well as the right to refuse treatment. Scientists note

that the right to medical care as a personal non-property right of the patient includes: rights related to the provision of medical care, rights related to the informed consent of the patient, rights ensuring medical confidentiality (R. Stefanchuk, 2007).

In view of the above, it is easy to notice some discrepancies. For example, the Fundamentals of the Legislation of Ukraine on Health Care (1992) reveal the concept of "medical care" more broadly, detailing the cases when a person has the right to receive medical care (poisoning, pathological conditions, pregnancy and childbirth), while the definition provided by the World Health Organization health specifies that the provision of medical assistance is aimed not only at improving the physical condition of a person, but also the mental one, which is correlated with the content of the right to medical assistance and defined in the Civil Code of Ukraine.

Common to all definitions is the indication that medical care is provided by special entities. Also, the Fundamentals of the Legislation of Ukraine on Health Care (1992) indicate the possibility of providing medical care by "medical workers" while the definition of the World Health Organization allows the possibility of providing medical care by "other health care specialists." Drawing a parallel between the national definition of the professions of health care workers—"medical workers" as specified in the definition of the World Health Organization belong to the professional group of "Professionals"—including doctors of various fields and pharmacists. "Other health care professionals" are midwives, laboratory assistants, instructors, nurses, etc., who belong to the professional group "Specialists" (Handbook of qualification characteristics of workers' professions Issue 78 Health care, 2002).

Obviously, the most successful definition is: medical care is the activity of entities providing medical services to the population, aimed at prevention, diagnosis, treatment and rehabilitation of a person in order to preserve their physical and mental health through the provision of appropriate medical services.

The definition of the concept of a person's right to medical care is not established in the national legislation of Ukraine, therefore, on the basis of international legislation and doctrines, we offer the following definition of this concept. The right to medical assistance is the ability of every person to demand from the subjects providing medical services to the population to take a set of measures aimed at prevention, diagnosis, treatment and rehabilitation of the physical and mental state of their health.

The right to medical care as a personal non-property right of the patient includes: the rights related to the provision of medical care; the rights related to the patient's informed consent; the rights ensuring medical confidentiality. Therefore, the right to medical assistance has certain components that define its essence and together contribute to the protection of the highest attainable level of human health. The protection of human dignity is important during the provision of medical care, so it is a defining right in the field of health care. The Declaration of Lisbon on the

Rights of the Patient (1981) states that "The patient's dignity and right to privacy shall be respected at all times in medical care and teaching, as shall his/her culture and values" (Principle 10.a). The Universal Declaration on Bioethics and Human Rights (2005) provides in Article 3 that human dignity, human rights and fundamental freedoms must be fully respected (Article 3.1), and Article 10 states that "the fundamental equality of all human beings in dignity and rights is to be respected so that they are treated justly and equitably" (Article 10).

The Convention on Human Rights and Biomedicine (1997) outlines the right to the protection of human dignity as its goal, stating that the "Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine" (Article 1).

Ukrainian legislation enshrines the right to respect for human dignity in the Constitution of Ukraine (1996) and the Civil Code of Ukraine (2003). Thus, the Constitution of Ukraine (1996) raised the issue of medical coercion and the need for free consent: "no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment. No person shall be subjected to medical, scientific or other experiments without their free consent" (Article 28).

As a rule, the European Court of Human Rights considers violations of the right to human dignity in the context of violations of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (1950). So, in the case of Nevmerzhitsky v. Ukraine (2005), the Court "found that the lack of adequate medical treatment of Mr. Nevmerzhitsky amounted to a degrading treatment in violation of Article 3 of the Convention" (Nevmerzhitsky v. Ukraine, 2005, § 106).

Exercising the rights of a person who is a patient should be done without discrimination. The Universal Declaration on Bioethics and Human Rights (2005) states that "No individual or group should be discriminated against or stigmatized on any grounds, in violation of human dignity, human rights and fundamental freedoms (Article 11). Likewise, in the Declaration of Lisbon on the Rights of the Patient (1981), everyone has the right to appropriate health care without discrimination (Principle 1). At the same time, the Convention on Human Rights and Biomedicine (1997) and the European Charter of Patients' Rights (2002) specify which restrictions are considered discriminatory. In the Convention, any form of discrimination against a person based on his or her genetic heredity is prohibited (Convention on Human Rights and Biomedicine, 1997, Article 11), in the Charter, medical services must be available to all without any discrimination regarding financial situation, place of residence, type of illness or time of access to services (European Charter of Patients' Rights, 2002, Article 2).

National legislation establishes that every citizen of Ukraine has the right to health care, which is provided by means of legal protection against any illegal forms of discrimination related to health status (Fundamentals of the Legislation of Ukraine on Health Care, 1992, Article 6.I).

However, this norm needs clarification. In order to bring national legislation to international standards, it is necessary to expand the content of such a norm, indicating that receiving medical assistance is carried out regardless of other discriminatory features: financial situation, place of residence, the period in which a person applied for assistance, etc.

The priority of the patient's rights in the Universal Declaration on Bioethics and Human Rights (2005) and the Convention on Human Rights and Biomedicine (1997) was formulated identically—the interests and well-being of a person should take precedence over the interests of science or the society (Universal Declaration on Bioethics and Human Rights, 2005, Article 3; Convention on Human Rights and Biomedicine, 1997, Article 2). The Declaration of Lisbon on the Rights of the Patient (1981) provides that the treatment of any patient takes place only in the interests of their health (Preamble).

After analyzing the current domestic legislation, I could not find a clear confirmation of this right. However, the draft Law of Ukraine on the Protection of Patients' Rights (2007) stipulates that medical professionals are obliged to act in the interests of the patient at any time, taking into account the principle of the precedence of the interests and well-being of an individual over the interests of the society or science (Article 28).

Since human rights are the most valuable benefit, it is necessary to supplement the current medical legislation of Ukraine with a provision that obliges medical professionals to act to improve the human condition and save lives, without discrimination and possible abuse. At the same time, the interests of society cannot prevail over the interests of the individual in the activities of medical professionals.

Violation of this right is discussed, in particular, in the case of Glass v. the United Kingdom (2004), where a mother whose son was given morphine by doctors who deemed it necessary to alleviate the suffering of a terminally ill patient complained that "the decisions to administer diamorphine to the first applicant against the second applicant's wishes and to place a DNR notice in his notes without the second applicant's knowledge interfered with the first applicant's right to physical and moral integrity" (§ 61).

No less important is the availability of medical services. The Universal Declaration on Bioethics and Human Rights (2005) in Article 14 enshrines the principle of social responsibility in the field of health care. Progress in science and technology should contribute to "access to quality health care and essential medicines, espe-

cially for the health of women and children, because health is essential to life itself and must be considered to be a social and human good" (Article 14.a).

The Convention on Human Rights and Biomedicine (1997) obliges its parties, taking into account medical needs and available resources, to take "appropriate measures with a view to providing, within their jurisdiction, equitable access to health care of appropriate quality" (Article 3).

The European Charter of Patients' Rights (2002) states in Article 8 that the right to compliance with quality standards is expressed in the fact that every person has the right to access high-quality medical services under conditions of compliance with quality standards of treatment.

The analysis of the domestic legislation shows that the right to accessibility is provided for by the Constitution of Ukraine (1996): "Everyone has the right to health care, medical care and medical insurance" (Part 1 of Article 49) and "The state creates conditions for effective medical care accessible for all citizens" (Part 3 of Article 49).

Therefore, it is worth noting that the national legislation describes the right to accessibility rather broadly, but does not specify the scope in which it should be extended, and therefore it is necessary to establish the principle of accessibility for necessary medicines and services for all segments of the population.

Regarding the quality of health care provision, the Declaration of Lisbon on the Rights of the Patient (1981) provides for the right to high-quality health care: "quality assurance must always be part of health care." Doctors must take responsibility, act as guardians of the quality of medical care (Article 1.d).

The European Charter of Patients' Rights (2002) states that "Each individual has the right of access to high quality health services on the basis of the specification and observance of precise standards" and further indicates that the right to quality health care requires the health care institutions and professional to provide an appropriate level of services, comfort and human relations (Part 2 (8)).

The other above-mentioned documents do not contain this provision, but mention the need for efficiency of the provision of medical services, which can be considered as the equivalent of quality services.

In Ukraine, in accordance with the Fundamentals of the Legislation of Ukraine on Health Care (1992), the quality of medical care is ensured by a system of standards and control. The procedure for monitoring the quality of medical care was approved by the Order of the Ministry of Health of Ukraine on the Procedure for Monitoring the Quality of Medical Care (2012). It defines the concept of high-quality medical care and the fact that the Procedure was developed for the purpose of implementing and organizing work on the quality management of medical care, its focus on ensuring that patients receive medical care of appropriate quality (Item 1).

Therefore, it can be stated that in Ukraine, the principle of the quality of medical care is clearly declared, since the quality of medical care is controlled by the management of the relevant medical institutions and, at the government level, by state bodies of executive power, through licensing, accreditation, attestations of medical personnel, etc.

The right to freedom of choice (individual autonomy, self-determination), according to the Declaration of Lisbon on the Rights of the Patient (1981, Principle 3) and the European Charter of Patients' Rights (2002, Part 2 (5)), implies that the patient has the right to make independent decisions about himself/herself. The doctor must inform the patient about the consequences of his/her decision, and each person has the right to freely choose different treatments, procedures and doctors based on adequate information. The patient has the right to choose the method of diagnosis and treatment, to choose which doctor or hospital to contact.

The national legislation of Ukraine enshrines the right to freedom of choice in the Fundamentals of the Legislation of Ukraine on Health Care (1992, Article 38), where every patient who has reached the age of fourteen and applied for medical assistance has the right to freely choose a doctor if the latter can offer his/her services and a choice of treatments according to his/her recommendations. Every patient has the right, where justified by his/her condition, to choose any health care institution that offers appropriate treatment.

The Civil Code of Ukraine (2003) ensures the right of an individual to receive medical care on the basis of free choice. Therefore, "a natural person who has reached the age of 14 and applied for medical assistance has the right to choose a doctor and choose treatment methods in accordance with his/her recommendations" (Article 284).

The mechanism for realizing the right of a person (patient) to freely choose or change a doctor who will provide primary medical care (family doctor, district therapist or pediatrician) is defined in the Procedure for choosing a doctor who will provide this care and the declaration form on the choice of a doctor who will provide primary medical care, approved by the order of the Ministry of Health of Ukraine of 2018. The Procedure for choosing a doctor provides that the patient (or his legal representative) has the right to choose a doctor who provides primary medical care, regardless of the registered place of residence of such a patient (Part 2 Clause 1). Also, the latter has the right to change the doctor (Part 2 Clause 5).

This right is important for the patients, as it gives them the opportunity to be treated by a specialist chosen and trusted by the patient or in an institution that offers modern and effective equipment, diagnostic methods and the most qualified medical personnel.

In the case of Tysiąc v. Poland (2007), the applicant complained about the restriction of the rights to medical abortion and significant harm to the mother's health after the birth of the child. Doctors' refusal to perform an abortion put the applicant's health at risk, which meant a violation of her privacy rights. Taking into account the particular circumstances of the case and the nature of the decisions taken, it is necessary to establish whether the applicant was involved in the decision-making process considered to the extent that would ensure the necessary protection of her interests.

"The right to self-determination, as defined by the Lisbon Declaration on the Rights of Patients (1981, Principle 3), cannot be realized without proper information." Information is a component of the right to informed consent and the right to information, as one cannot make a conscious choice without being properly informed about all aspects of the healthcare process.

The right to information is closely related to the right to informed consent, therefore Principle 7 of the Lisbon Declaration on the Rights of Patients (1981) and Article 10 of the Convention on Human Rights and Biomedicine (1997) enshrine the patient's right to receive information about his/her state of health, get acquainted with medical records, in particular with medical facts concerning her/his condition, to choose whom to inform. However, the European Charter of Patients' Rights (2002) in Article 3 also provides for the right to information about health services and their use, in particular scientific research and available technological innovations. Article 7 includes the obligation of doctors to devote enough time to their patients, even to allocate time dedicated to providing information.

In the national legislation of Ukraine, the patient's right to receive information about his/her state of health is regulated by Article 285 of the Civil Code of Ukraine (2003) and Article 39 of the Fundamentals of the Legislation of Ukraine on Health Care (1992). A patient who has reached the age of majority has the right to receive reliable and complete information about his/her state of health, in particular, to familiarize himself/herself with relevant medical documents related to his health.

It is worth emphasizing that the legislator enshrines the right to receive information from the moment of reaching the age of majority, and the right to give consent to treatment and choose a doctor from the age of 14. The following question arises: how should a minor exercise the right to medical assistance without the possibility of obtaining the necessary information about his/her health? There should be a corresponding change in the legislation on this issue, since inadequate awareness of a minor patient will prevent him/her from making a conscious choice and properly exercising the right to freedom of choice (individual autonomy).

The issue of obtaining necessary information by the patient was highlighted in Roche v. United Kingdom (2005). The applicant, a military serviceman, complained

about inadequate access to information regarding the tests in which he participated at a military institution. The military institution conducted research on the effects of chemical weapons on the British armed forces, including tests using gas on humans and animals. The Court found that the lack of an effective and accessible procedure for access to medical records in the British Army constituted a breach of the right to information from the perspective of the right to privacy.

> Court considers that the State has not fulfilled the positive obligation to provide an effective and accessible procedure enabling the applicant to have access to all relevant and appropriate information that would allow him to assess any risk to which he had been exposed during his participation in the tests…. In conclusion, there has been a violation of Article 8 of the Convention (ECHR, §§ 167, 169).

Consent for any medical intervention is a condition for the legality of these measures, therefore, both international and national acts of Ukraine give importance to the patient's informed consent. Informed consent is a voluntary and informed decision that protects the patient's right to participate in the process of providing medical care, assigning certain duties of health care professionals. The right to informed consent is an integral part of the set of rights to medical care.

In the Universal Declaration on Bioethics and Human Rights (2005), Article 6.1, it is declared that any medical intervention with a preventive, diagnostic or therapeutic purpose should be carried out only with the prior, free and informed consent of the person concerned, based on adequate information. This agreement may be expressed and revoked by the applicable person at any time and for any reason without adverse consequences or damages.

The Declaration of Lisbon on the Rights of the Patient (1981) states in Principle 3 that a mentally healthy adult patient has the right not to consent to any diagnostic procedure or therapy. At the same time, the declaration emphasizes that in order to provide such consent/disagreement, the patient has the right to the information necessary to make his/her decisions, and must also clearly understand the purpose of any test or treatment, what the results mean, and what the consequences of refusal are.

Among the fourteen right of patients, the European Charter of Patients' Rights (2002) defines the fourth one, as the "Right to Consent" and declares the duty of medical professionals and specialists to provide the patient with all information about the treatment, including the associated risks and discomforts, side effects and alternatives. Such information must be provided in advance (at least 24 hours in advance).

Regarding the national legislation of Ukraine, the Constitution of Ukraine (1996) guarantees that no person can be subjected to medical, scientific or other experi-

ments without his/her free consent (Part 3 of Article 28), and also guarantees that every person has the right to personal integrity (Part 1 of Article 29).

Parts 3, 4, 5 of Article 284 of the Civil Code of Ukraine stipulate that the provision of medical assistance to an individual who has reached the age of 14 is carried out with his consent. An adult with legal capacity, who is aware of the importance of his actions and can control them, has the right to refuse treatment. In urgent cases, in the presence of a real threat to the life of an individual, medical assistance is provided without the consent of the individual or his parents (adoptive parents), guardian, custodian.

The Fundamentals of the Legislation of Ukraine on Health Care (1992) also indicate that the patient's informed consent, in accordance with Article 39 of this law, is necessary for the use of methods of diagnosis, prevention and treatment.

Thus, the issue of the patient's free and informed consent or refusal of treatment is properly enshrined in the normative legal acts of Ukraine and they fully correspond to international practices, which is a positive point.

In this context, it is worth paying attention to one of the decisions of the European Court of Human Rights, namely the decision in the case of Arskaya v. Ukraine (2014), where the European Court of Human Rights notes:

> The freedom to accept or refuse specific medical treatment is vital to the principles of self-determination and personal autonomy (see Jehovah's Witnesses of Moscow v. Russia, no. 302/02, § 136, 10 June 2010). In the sphere of medical treatment, the refusal to accept a particular treatment might, inevitably, lead to a fatal outcome, yet the imposition of medical treatment without the consent of a mentally competent adult patient would interfere with a person's physical integrity in a manner capable of engaging the rights protected under Article 8 § 1 of the Convention (see Pretty v. the United Kingdom, no. 2346/02, § 63, ECHR 2002-III). However, Article 2 of the Convention enshrines the principle of sanctity of life, which is especially evident in the case of a doctor, who exercises his or her skills to save lives and should act in the best interests of his or her patients. The Court has therefore held that this Article obliges the national authorities to prevent an individual from taking his or her own life if the decision has not been taken freely and with full understanding of what is involved (see Haas v. Switzerland, no. 31322/07, § 54, ECHR 2011). It follows that one of the central issues in determining the validity of a refusal to undergo medical treatment by a patient is the issue of his or her decision-making capacity *(§ 69).*

It is clearly demonstrated here that legal relations in the field of medical care arise on the basis of the patient's consent (free expression of will), which must always be taken into account.

Regarding persons who are unable to give informed consent, the Universal Declaration of Bioethics and Human Rights (2005) states in Article 7 that they should be afforded special protection. Therefore, permission to conduct research and medical practice should be obtained taking into account the interests of a certain person and in accordance with domestic legislation. However, it is necessary to involve the patient as much as possible in the consent/refusal decision-making process.

The Declaration of Lisbon on the Rights of the Patient (1981) also indicates the peculiar nature of the decision-making process in the case of the unconscious patient (Principle 4), which eliminates his/her ability to give informed consent. In the event that the patient is unconscious, or due to other circumstances cannot inform about the choice, it is necessary to obtain informed consent from the legal representative, and in his/her absence, take into account the patient's previous statements or convictions. In the case of an incapacitated or minor patient (Principle 5), the consent of his/her legal representative must be obtained. However, the patient should participate as much as possible in the decision-making process.

The Convention on Human Rights and Biomedicine (1997) contains a special provision on protection that defines the possibility of protection of persons who cannot give consent (Article 6). Intervention with regard to these persons may be carried out on the condition that it will have a direct benefit for this person, and with the permission of his/her representative or authority, or a person or institution defined by law. In view of this, it will be decisive that the opinion of the person will be taken into account, the importance of which increases in proportion to the age and degree of maturity of this person, or their capacity to participate in the decision-making process.

Article 7 of the Convention on Human Rights and Biomedicine (1997), defining the issue of protection of persons with mental disorders, indicates that a person with a serious mental disorder can receive treatment without his/her permission only if without such treatment his/her health could be seriously damaged, subject to compliance with statutory protection requirements, including supervision, control and appeals procedures. The Convention, as an exception, allows medically necessary intervention in the presence of an emergency situation without consent, but it must be carried out for the benefit of the health of the person concerned.

Similarly, the European Charter of Patients' Rights (2002) states that the patient should be involved as much as possible in the decision-making process concerning his/her health. (Section 2(4), Right to Consent).

As for Ukrainian legislation, Article 43 of the Fundamentals of the Legislation of Ukraine on Health Care (1992) indicates that consent to medical intervention for a patient under the age of 14 (minor patient), as well as a patient recognized as incapacitated in accordance with the procedure established by law, is given by his/

her legal representative. The consent of the patient or his/her legal representative for medical intervention is not required only if there are signs of a direct threat to the patient's life, provided that it is impossible to obtain consent for such intervention from the patient or his/her legal representatives for objective reasons.

It is also worth paying special attention to the observance of the right to informed consent among persons with disabilities and persons suffering from mental illness—these are two categories of persons whose rights are often violated. Thus, in the case of H.L. v. the United Kingdom (2004), The European Court of Human Rights found that the applicant diagnosed with autism admitted to hospital as an "informal patient" between 22 July and 29 October 1997 was deprived of his liberty within the meaning of Article 5. The Court held that the hospital did not follow a formal patient registration procedure, as a result of which the hospital's medical staff "assumed full control of the liberty and treatment of a vulnerable individual solely on the basis of their own clinical assessments." The Court noted that the "absence of procedural safeguards failed to protect against arbitrary deprivations of liberty" and therefore the Court found a violation of Clause 1 of Article 5 of the Convention.

A separate element of the right to consent is the right to refuse (non-consent). A patient who has acquired full civil capacity and is aware of the importance of his/her actions and can control them, has the right to refuse treatment. If the refusal is submitted by the legal representative of the patient and it may have serious consequences for the patient, the doctor must notify the guardianship and custody authorities.

It is worth noting that the national legislator does not provide for unconscious patients, which also eliminates their ability to give consent or refusal to receive medical assistance. However, this consent can be given by the legal representatives of the patient, or in some cases medical assistance is provided without the consent. Therefore, it is impossible to clearly define when this consent is mandatory, which leads to legal uncertainty. In this part, the national legislation of Ukraine needs improvement.

In the case of M.A.K. and R.K. v. the United Kingdom (European Court of Human Rights, 2010), the applicants complained about a medical examination of a nine-year-old girl without her parents' consent. Taking into account the fact that the national legislation and the practice of its application clearly required obtaining the consent of parents or persons who performed parental duties for the implementation of any medical intervention, the European Court of Human Rights did not find any justification for the decision to perform a blood test and take pictures of a nine-year-old girl, against the clearly expressed will of both her parents, while she was alone in the hospital, and confirmed that there was a violation of Art. 8 of the Convention (§ 75).

A similar conclusion regarding the need for parental consent for medical intervention was made by the European Court of Human Rights in the case of Glass v. United Kingdom (2004), indicating that "the regulatory framework … prioritises the requirement of parental consent and, save in emergency situations, requires doctors to seek the intervention of the courts in the event of parental objection" (§ 75).

The applicant complained about forced (without consent) hospitalization and treatment in a psychiatric institution in the case of "Akopyan v. Ukraine" (2014), because her long-term detention in a psychiatric hospital was arbitrary and during the entire period of that stay no effective review of her mental health was carried out. Her detention in the psychiatric hospital was accompanied by forced treatment, which caused her severe suffering and damage to her private and family life, due to the duration of the national proceedings and the lack of an opportunity to effectively challenge her forced treatment. The European Court of Human Rights came to the conclusion that the unjustified deprivation of the applicant's liberty at the time became possible due to the lack of fair and proper means that could provide adequate legal protection against arbitrariness (§ 75).

The right to privacy and confidentiality is extremely important, since data about a person's health are "sensitive data" and the possibility of their distribution must be clearly established by law.

Most of the analyzed international acts proclaim respect for the privacy of personal life. The Universal Declaration on Bioethics and Human Rights (2005) states that the privacy of individuals and the confidentiality of their personal information must be respected. Therefore, this information should not be used or disclosed except for the purpose for which it was collected and consented to (Article 9). Likewise, everyone's right to respect for private life based on information about his/her health is guaranteed in the Convention on Human Rights and Biomedicine (1997) (Article 10).

The Declaration of Lisbon on the Rights of the Patient (1981) in Principle 8 states that information relating to a patient's health, medical conditions, diagnosis, prognosis or treatment and other private information must be kept confidential even after death. Descendants may access the information provided that it informs the descendants of the risks to their health.

The European Charter of Patients' Rights (2002) in Article 6 specifies in detail what "medical" information is considered as confidential: personal data, in particular information about his/her state of health and potential diagnostic or therapeutic procedures, data obtained during his/her diagnosis, tests, specialist visits and medical/surgical interventions.

In national legislation, such information falls under the definition of "medical secrecy" and is protected. The list of protected information is defined in the

following legal acts: Fundamentals of the Legislation of Ukraine on Health Care (1992), the Law of Ukraine on Protection of the Population from Infectious Diseases (2000), the Law of Ukraine on Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV (1991), the Law of Ukraine on the Application of Transplantation of Anatomical Materials to Humans (2018), and the Law of Ukraine on Psychiatric Care (2000). In general, this is information about diseases, medical examinations and their results, about the intimate and family aspects of a person's life, etc. that became known to health care professionals and other persons in connection with the performance of their professional or official duties.

In the case of M.S. v. Sweden (1997), The European Court of Human Rights concluded that the applicant's medical records had been sent from the clinic where she was being examined to the social services without her permission and knowledge. The court ruled that the disclosure of medical information does not violate Article 8 and confirmed that the applicant did not "unequivocally" waive her right to respect for private life regarding medical records in the clinic when filing a claim for compensation. However, the disclosure had a legal basis and was foreseeable because there was a legitimate purpose (to protect the economic well-being of the country) and it was necessary in a democratic society and proportionate. Also, the protection of personal information, and even more so of medical information, is important for satisfying the human rights to respect for his/her private and family life. Respect for confidential health information is an important principle not only for protecting patients' personal lives, but also for maintaining their trust in health services in general.

> The Court reiterates that the protection of personal data, particularly medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general *(§ 41).*

The patient's rights disclosed in this part of the study are the components of the right to medical care, which collectively contribute to the protection of the highest level of human health.

1.4. The Right to a Safe Environment as a Component of the Right to Health Care

It was said earlier that the right to health care also includes the right to a safe environment. The Economic and Social Council of the United Nations, commenting on Article 12 of the International Covenant on Economic, Social and Cultural Rights (1973), states:

> The improvement of all aspects of environmental and industrial hygiene" (art. 12.2 (b)) comprises, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment. Article 12.2 (b) also embraces adequate housing and safe and hygienic working conditions, an adequate supply of food and proper nutrition, and discourages the abuse of alcohol, and the use of tobacco, drugs and other harmful substances (General Comment 14, 2000).

These factors belong to the content of the right to a safe environment. A person's right to an environment safe for living and health demonstrates the legal possibility to live in an environment that does not harm his/her health and life and is safe. The content of this right as a subjective civil right includes, firstly, the right to live (stay) in a favorable environment, safe for human living and health; secondly, the right to demand from other persons the elimination of any dangers (obstacles) during the exercise of this right in accordance with the procedure established by law; thirdly, the right to defense includes the possibility of applying for protection to relevant state bodies and persons, as well as the possibility of self-defense.

Article 50 of the Constitution of Ukraine (1996) indicates that everyone has the right to an environment safe for living and health and to compensation for damage caused by the violation of this right. The content of this personal non-property right is disclosed in Article 239 of the Civil Code of Ukraine (2003) and includes: the right to safe environment and information about the state of the natural environment; the right to consumer products (food and household items) that are safe for an individual and information about their quality; the right to proper, safe conditions of work, residence, education, etc.; the right to protection and compensation in case of violation of such rights.

Thus, international acts and the basic law emphasize that the realization of the right to life depends on a favorable environment. Man, as a biological and social

being, cannot exist in life-threatening conditions. Also, the human right to a safe environment includes the right to consumer products that are safe for humans.

According to Articles 3, 14 and 15 of the Law of Ukraine on Protection of Consumer Rights (1991), the consumer has the right to be guaranteed that the products, under normal conditions of use, storage and transportation, are safe for his/her life, health and the environment, and shall not cause damage to his/her property. The consumer also has the right to information on the content of substances harmful to health, the list of which is determined by law, and warnings on the use of certain products, if they are required by regulatory acts.

Article 1 of the same law defines product safety as the absence of any risk to the life, health, property of the consumer and the environment under normal conditions of use, storage, transportation, manufacturing and disposal of products.

The Law of Ukraine on the General Safety of Non-Food Products (2010) contains a general requirement that manufacturers are obliged to introduce only safe products on the market (Article 4) and that any product that, under normal or reasonably foreseeable conditions, is safe for use, in particular within its service life, and if the requirements for installation and maintenance have been met, does not pose any or only minimal risk connected with the use of such a product. Such risks are considered acceptable and do not pose a threat to the public interest, depending on the following factors: product characteristics, including its composition, packaging, installation and maintenance requirements; the product's impact on other products; warnings on the product label, instructions for use and destruction and other information in this regard; warnings regarding the consumption or use of products by certain categories of the population (children, pregnant women, the elderly, etc.).

According to Clause 7 of Part 1 of Article 1 of the Law of Ukraine on Basic Principles and Requirements for the Safety and Quality of Food Products (1997), a safe food product is one that does not have a harmful effect on human health and is suitable for consumption.

Special laws in the field of consumer rights protection indicate that products that are safe for humans and the environment are products that do not pose a danger to either humans or the natural environment. Also, the natural environment will be safe if all product manufacturers comply with the requirements of the law and place only safe products on the market.

In 2019, in order to improve the state of the natural environment, Ukraine approved the Basic Principles of the State Environmental Policy of Ukraine for the Period until 2030 (2019), where, among other strategic goals and objectives of the national environmental policy, the following was defined: reducing environmental risks in order to minimize their impact on ecosystems, socio-economic development and population health. The legislator demonstrates an understanding of the

interdependence of a state of the environment that is safe for human health and the improvement of the ecological situation with the increase in the general requirements for the safety of goods produced in Ukraine.

Therefore, the right to health care is a second-generation human right, which includes the right to demand from the state a high-quality health care system, the right to medical care and a safe living environment, as well as the right to protection and compensation in the case of violation of such rights.

Also, the essence and meaning of the right to health and the right to health care are different, and the right to health care is a broader category that includes the right to medical care.

1.5. The Most Recent Human Rights in the Field of Health Care

The development of humanity is unceasing and we see how the fundamental right to health is realized through a second-generation right, the right to health care, which in turn correlates with the collective right to safety. In addition, the progress of science and technology presented new challenges to man, in particular in the field of health care, so the emergence of new rights, also called the fourth-generation rights, became inevitable.

Sandra Boldizhar (2020) includes in this category the right to euthanasia, artificial insemination, cloning, the use of virtual reality, same-sex marriage, etc., and proposes to distinguish three stages in the development and formation of the fourth generation of human rights in the field of health care, namely: stage formation of the rights system of the fourth generation of human rights in the field of health care in Ukraine; the stage of constitutional recognition and further consolidation of the fourth generation of human rights in the field of health care in Ukraine; the latest stage of the evolution of the fourth generation of human rights in the field of health care in Ukraine (p. 111).

Tereziya Popovych and Andriy Shavarin understand the fourth generation of human rights as a set of rights that were formed at the turn of the 20th-21st centuries and arose as a result of scientific and technical progress, discoveries in medicine, biology, genetics, space, etc., which are not yet fully recognized by the international community and need proper normative regulation (p. 266).

The Sustainable Development Goals (3.7) call for universal access to sexual and reproductive health services by 2030, including family planning services, information and education, and the integration of reproductive health into national strategies and programs.

The Economic and Social Council of the United Nations, commenting on Article 12 of the International Covenant on Economic, Social and Cultural Rights (2000), states that

> the right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health… The Committee interprets the right to health, as defined in Article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.

Reproductive and sexual rights, the right to participate in medical research and information about it, transplantation rights, the right to a dignified death, and informational rights in the field of health care should be included in the most recent rights (fourth generation of human rights of) in the field of health care.

Further development of human individuality enables researchers to single out somatic rights as a separate group of human rights (Shebanits, 2015; Zavalniuk, 2011; Turyanskyi, 2020), which include reproductive rights, sexual rights, the right to change sex, and the rights of a person regarding his/her organs and tissues.

Yuriy Turyanskyi (2020) notes that the subject of the legal claim of somatic rights is the corporeality of man, which refers to the personal characteristics of an individual and can cover not only the existing essence, but also hypothetical changes caused by modernization, improvement, and modification of one's corporeality. This group of rights includes the following opportunities:

1) to determine the features of the functioning and external expression of the whole body as a human organism;
2) to perform such actions in relation to a certain organ (organs) or tissues;
3) to dispose of those biological components that are already separated from the body, such as parts of tissues, DNA, blood, reproductive material, etc.

The author also singles out sexual rights that are

> fundamental to the manifestation of a person's individuality and directly relate to his physicality: the right to sexual health as a state of physical, emotional, mental

> and social well-being in relation to a person's sexuality; the right to sexual life, which provides for the possibility of individual choice of sexual life, its presence or absence; the right to protection from sexual exploitation, violence and depravity; the right to protection against mutilation of genital organs, which is carried out for non-medical reasons; the right to non-discrimination based on sexual orientation; access to information and education related to sexuality and sexual health (Turyanskyi, 2020, p. 6).

Access to sex reassignment surgery and other treatments for transsexuals is an important issue. Although the European Court of Human Rights has not recognized a general right of access to such a procedure, it has found that the fact that such procedures for these treatments are not being covered by an insurance company may violate Article 8 (Schlumpf v. Switzerland; Van Kuck v. Germany).

Similarly, the Court has found a violation where the absence of a law regulating sex reassignment surgery prevents medical facilities from providing access to such procedures (L. v. Lithuania, § 57). In many countries, the issue of gender identity is raised at the level of legislative acts (Spain, Argentina) or the Constitutional Court (Germany). On the other hand, in Ukraine, the problem of access to gender change operations raises more questions than answers. On the one hand, it is allowed and recognized by the state to change the sex of a person, however, only in relation to persons who have undergone surgical intervention. Gender change also concerns reproductive function and may concern the interests of other persons, such as the spouses.

The issue of birth and death is most pressing one in bioethics and law. Therefore, the need to protect human rights in the process of applying reproductive technologies was the result of the selection of a group of rights that are collectively called reproductive rights (Dutko and Zabolotna, 2016; Kyrychenko and Starikova, 2015) and are included in the fourth generation of human rights.

It is worth adding a person's right to freely make decisions about his/her reproductive health, birth or refusal to give birth to a child, as well as the opportunity to receive help and access to innovative technologies in this area to the reproductive rights.

In the case of R. and S. v. Poland, the European Court of Human Rights reiterated that the concept of private life within the meaning of Article 8 extends to both the decision to become parents and the decision not to be parents. In the case of R.R. v. Poland, the Court recalled that "private life" is a broad concept that includes, inter alia, the right to personal autonomy and personal development. The Court held that the concept of personal autonomy is an important principle underlying its guarantees. The concept of private life refers to such subjects as gender identification, sexual orientation and sex life, as well as physical and psychological integrity of

a person. The court decided that the concept of private life applies to decisions both to have and not to have a child, as well as to become parents (§ 180).

Nataliya Plahotniuk and Maryna Grigorenko (2018) point out that "human rights of a patient during organ and tissue transplantation belong to those human rights in the field of biomedicine that make them specialized and arise only in the field of application of biomedical technologies on humans" and, since "human rights are the only means of protecting human dignity" (p. 174), the allocation of specialized human rights in the new sphere of relations—biomedicine—will allow for proper protection of a person during medical intervention in the integrity of human biology.

The Convention on Human Rights and Biomedicine (1997) in Article 19 establishes a general rule that the removal of organs and tissues from a living donor for the purpose of transplantation may be carried out only for the purpose of treating the patient and in the absence of a necessary organ or tissue recovered from a deceased person or another alternative method of treatment of comparative efficiency. In addition, Article 21 defines the main principle of transplantation, according to which the human body and its parts as such should not be a source of financial gain. Ukraine has not ratified the Convention on Human Rights and Biomedicine (1997), which generally does not contribute to the effective implementation of international standards in the field of transplantation.

Article 11 of the European Social Charter (1996) calls on countries that have ratified it to ensure the operation of advisory and educational services that would contribute to the improvement of health and increase personal responsibility in health matters, as well as to prevent epidemic and other diseases, as well as accidents.

Educational work in the field of health care is extremely important for children and adolescents, since their health is often affected by the environment. Among the newest problems in the field of adolescent health in recent decades, issues of a healthy lifestyle, proper nutrition (prevention of bulimia nervosa and obesity), as well as smoking, alcoholism and drug addiction have been raised. The work of civil society institutions, particularly youth clubs and organizations, is important in order to educate young people about healthy lifestyle. It is also important to educate young people in a responsible attitude to the health of future mothers and to their reproductive health in general, including by conducting regular examinations, appropriate medical and genetic counseling, as well as popularizing a healthy lifestyle in the mass media.

The right to information and the opportunity to share ideas and views has become especially important in the digital age and the Internet. Information about factors that can affect health, as well as about available health services and programs, must be not only accessible, but also reliable.

Regarding the realization of the right to health of the elderly, the Economic and Social Council of the United Nations, in its General Comment No. 14 to the International Covenant on Economic, Social and Cultural Rights (2000), emphasizes the importance of a comprehensive approach that combines elements of preventive, curative and rehabilitation health treatment. These measures should be based on periodic check-ups for both sexes; physical and psychological rehabilitation measures aimed at supporting the functionality and autonomy of the elderly; as well as attention and care for chronically and terminally ill people, sparing them unbearable pain, and allowing them to die with dignity.

The question of a person's right to a dignified death (euthanasia) is debatable in the field of law and bioethics. In Ukraine, in accordance with Part 4 of Article 281 of the Civil Code of Ukraine, it is prohibited to give consent to a request of an individual to end his/her life. However, as of 2021, euthanasia in some form is officially permitted in only a few countries: Belgium, Luxembourg, the Netherlands, Portugal, Switzerland, Germany, Canada, Colombia, parts of Australia, some US states, and soon in Spain.

According to the definition of Y. Turyanskyi (2020), a person's right to a dignified death is in "the possibility of implementing a passive type of euthanasia, which is characterized by the disconnection of a terminally ill person from the devices that artificially support his/her vital activity, according to the independent and conscious will of the person, and is based on a humane attitude towards the person and respect for his/her autonomous will" (p. 28).

In the case of Pretty v. The United Kingdom (2002), The European Court of Human Rights for the first time concluded that the right to choose the manner of one's death is an element of private life under Article 8 (§ 67). Later, in its case law, the European Court of Human Rights indicated that the right of an individual to decide how and when his/her life should end, provided that he/she is able to freely express his wishes in this regard and to act in consequence, is one of the aspects of the right to respect for private life under Article 8 of the Convention (Haas v. Switzerland, 2011, § 51).

No less important in recent times is the right of to participate in the decision-making process concerning health.

Recommendation No. R (2000) 5 of the Committee of Ministers of the Council of Europe to the participating states on the development of forms of participation of citizens and patients in the decision-making process affecting medical care (2000), "recognizing the fundamental right of citizens in a free and democratic society to determine the goals and targets of the health care sector" (Preamble), recommends that member state governments ensure that citizen participation extends to all aspects of health care systems at national, regional and local levels and that it should

be followed by all operators of health care systems, including professionals, insurers and the authorities. In paragraph 1(1) of the Appendix, the Committee of Ministers notes that the right of citizens and patients to participate in the decision-making process concerning health care, if they wish to do so, should be considered as a fundamental and integral part of any democratic society (Guidelines).

Further, specific recommendations are given to the governments of the participating states. In particular, it is necessary to develop policies and strategies that promote patients' rights and citizen participation in health care decision-making, as well as ensure their spreading, monitoring and updating. In addition, patient participation must be an integral part of health care systems and a mandatory component of ongoing health care reforms. Decision-making should be more democratic, ensuring:

– clear distribution of responsibilities for decision-making in the field of health care;
– appropriate influence of all interest groups, including public associations dealing with health issues, and not only some stakeholders (professionals, insurers, etc.);
– public access to political debates on these issues;
– where possible, participation of citizens at the stages of problem identification and policy development; participation should not be limited to solving problems and simply choosing solutions that have already been developed.

In addition, it is recommended to use public hearings wherever possible.

In Ukraine, the right to participate is realized through the obligation of state bodies and health care institutions to promote the realization of the right of citizens to participate in the management of health care (Article 24 of the Fundamentals of the Legislation of Ukraine on Health Care (1992)), as well as through the possibility of public representatives' involvement in the work of supervisory boards in state and community health care institutions that provide secondary and tertiary medical care, with which contracts for medical care services for the population have been concluded as main managers of the budgetary funds.

Supervisory councils consider issues, in particular, regarding the observance of the rights and ensuring the safety of patients, compliance with the requirements of the legislation during the provision of medical services to the population by a health care institution, and the financial and economic activities of a health care institution.

According to Article 24(4) of the Fundamentals of the Legislation of Ukraine on Health Care (1992), the supervisory board of a healthcare institution, in addition to representatives of the owner of the healthcare institution (authorized body) and relevant executive and/or local self-government bodies, includes (with their consent) deputies of local councils, representatives of the public and public associations

whose activities are aimed at protecting rights in the field of healthcare, organizations of professional self-government in the field of healthcare.

Another form of public participation in health decision-making is the participation of philanthropists, representatives of the community and public associations, charitable and religious organizations, as well as volunteers in the work of boards of trustees in health care institutions.

In addition, organizations that carry out professional self-governance in the field of health care, and other public associations whose activities are aimed at protecting rights in the field of health care, foreign non-governmental organizations can participate in determining the content and ways of implementing state objectives and local programs in the field of health care, implementing relevant measures, solving personnel-related, scientific and other issues of state policy.

The issue of protecting human health during epidemics and pandemics is becoming increasingly relevant today, when humanity is fighting the COVID-19 pandemic caused by the SARS-CoV-2 coronavirus. Ukraine, like other states of the world, implements measures to contain the spread of the disease that not always comply with constitutional norms or guarantee the observance of human rights (Blashchuk, Balatska & Orlovska, 2021).

Individual human rights in the field of health care were historically preceded by measures to ensure public health. For example, restriction of the right of movement as a means of preventing the spread of infections was successfully used at the beginning of the 20th century.

Analyzing the periods of outbreaks of epidemics and pandemics at the end of the 19th and the beginning of the 20th century, we can conclude that it was during those times that the first discoveries were made that formed the basis for further mechanisms in the fight against pandemics, in particular, isolation, clearing the environment from the virus, developing individual means of protection and fight against the source of diseases. The Spanish flu pandemic is marked by the specificity of quarantine measures, in particular, it was forbidden to visit public places (courts, schools, churches, theaters, cinemas), and also some entrepreneurs in the field of trade personally prohibited people from visiting their establishments (Bentivoglio & Pacini, 1995), thus creating the first contactless food deliveries for city dwellers.

Article 9 of the Fundamentals of the Legislation of Ukraine on Health Care (1992) defines the restriction of the rights of citizens related to their health and allows the restriction of the rights of other citizens in connection with the establishment of quarantine exclusively on the grounds provided for by law. The Law of Ukraine on Amendments to the Law of Ukraine "On the Protection of the Population from Infectious Diseases" aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19) (2020), in addition to quarantine, introduced two

new measures of restricting movement: observation, the placing of a patient at risk of spreading infectious disease in an observation unit for the purpose of examining the patient and carrying out medical supervision, and self-isolation, the stay of a person in respect of whom there are good reasons to suspect infection or the risk of spreading an infectious disease in a place (premises) designated by them in order to comply with anti-epidemic measures at person's own will. In practice, self-isolation turned out to be the most effective means of limiting patients' contacts, as it allowed to ensure the most individual approach.

The COVID-19 pandemic has led to the adoption by most countries of the world of a number of restrictive measures aimed at minimizing contacts between people, a legal assessment of which still needs to be made, but the conclusion that the catalog of human rights in the field of health care needs to be further reviewed is becoming more obvious. Public interests are put first—maintaining the population's good health.

According Article 8.2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the right to respect for private life may be limited if it is exercised "in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." (Article 8.2).

It is possible to achieve the Sustainable Development Goals, in particular to "Ensure healthy lives and promote well-being for all at all ages" at the national level, in particular thanks to a properly established and developed public health system functioning thanks to the efforts of public actors (state authorities, local self-government bodies) and the non-public sector entities (international organizations, individuals and legal entities) that carry out a number of measures aimed at strengthening the health of the population, preventing diseases and increasing life expectancy.

The Law of Ukraine on the Public Health System (2022) defines the legal, organizational, economic and social principles for the functioning of the public health system in Ukraine. The main purpose of this act is to improve the legislation on the sanitary and epidemic welfare of the population and on the protection of the population from infectious diseases, which is outdated and "does not correspond to the current level of scientific development, new relations between business entities, state authorities and local self-government."

In the discussed law, public health is defined as a field of knowledge and organized activity of subjects of the public health system to promote health, prevent diseases, improve quality of life and increase life expectancy. In addition, the Law of Ukraine on the Public Health System (2022) grants to everyone (any person) certain rights in the field of public health (Article 15), which include: the right to safe food

products, drinking water, conditions of work, education, upbringing, living, leisure, recreation and the natural environment (the right to safety); the right to participate in the development, discussion and public examination of draft programs and plans for the development of the public health system and ensuring the sanitary and epidemiological well-being of the population, making proposals on these issues to the relevant bodies (the right to participate); the right to compensation for damages caused to his/her health as a result of violation of the requirements of sanitary legislation by natural or legal persons, members of executive authorities, local self-government bodies (the right to protection); the right to reliable and timely information about one's health, as well as about existing and potential health risk factors and their degree (the right to information). Separately, patients suffering from infectious diseases and carriers of bacteria have the right to be examined and treated at the expense of the state within the framework of medical guarantee programs.

However, the preliminary conclusion that the right to health is inseparable from the right to security requires that the public health system should include measures to protect the health of everyone, not just the population as a whole. It also requires determining the ratio of human rights (individual) and collective rights to ensure public health.

III. The Peculiarities of Realization of Personal Non-Property Rights in the Field of Health Care of Certain Croups of Patients

3.1. The Peculiarities of the Implementation of Personal Non-Property Rights in the Field of Health Care for Children

Exercising the right to medical assistance has certain peculiarities regarding minor patients (children), since the child, due to his/her physical and mental immaturity, needs special protection and care. The state has undertaken to protect childhood, in particular in the field of health care. The Law of Ukraine on Childhood Protection (2001) defines that childhood protection is a system of state and public measures aimed at ensuring a fulfilled life, comprehensive education and development of the child and protection of his/her rights (Article 1).

One of the most acute social problems in Ukraine is the health of children. Koblyanska and Sklyarenko (2016) emphasize that the unsatisfactory state of health in childhood leads to health disorders throughout a person's life, which results in social and financial problems, and negatively affects the level of socio-economic development of the country (p. 68).

Statistics indicate a 20-percent increase in diseases among Ukrainian children in recent years. The most common are diseases of the endocrine system, blood and blood-forming organs, and the nervous system. In Ukraine, the number of children with genetic disorders and congenital malformations is increasing. Genetic diseases and gross abnormalities of fetal development cause up to 60 percent of spontaneous miscarriages in the first trimester of pregnancy. Hereditary pathology remains with a person for life (Department of Education and Science of the Kyiv Regional State Administration, 2022).

The issue of the exercise of the right to medical assistance by minor patients has been studied by many scientists (Buletsa, 2012; Myronova, 2014; Senyuta, 2018). Peculiarities of the civil law protection of informed consent to medical intervention were studied by Alla Dvornichenko (Shevchenko) (2017). A separate paragraph in her dissertation was devoted to the study of informed consent to intervention in the child. In addition, Maryana Shchyrba (2017) pointed out problems in the legal regulation of a child's informed consent to medical intervention. However, the issue of exercising the right to medical care by minor patients requires further research.

According to the current legislation of Ukraine, a patient is an individual who has applied for medical care and/or to whom this care is provided, however, each patient, as a participant in legal relations in the medical field, has his/her own legal status, i.e., he/she is endowed with a number of rights, has certain obligations and may be prosecuted for health violations. The Declaration on the Rights of the Child (1959) states that the child shall enjoy special protection and shall have the opportunity for normal, healthy development in conditions of freedom and dignity. Therefore, the exercise of the right to medical assistance by minor patients has its own characteristics, which are determined by the age-related needs of the child's body, psychological characteristics and the scope of legal capacity.

Most international documents have evolved to define the age of childhood as under 18 years, rather than under 15. The Convention on the Rights of the Child (1989) defines a child as any human being up to the age of 18, unless, under the law applicable to that person, he or she reaches majority earlier (Article 1). The Convention links the status of a child to the occurrence of one of two facts: reaching the age of 18 or coming of age.

In Ukraine, according to the Family Code of Ukraine (2002), a person has the legal status of a child until reaching the age of majority. A child between the ages of 14 and 18 is considered a juvenile, and before reaching the age of 14 is considered a minor (Article 6). Unfortunately, the legislator does not define the concept of majority, but the systematic interpretation of Article 6 of the Family Code of Ukraine (2002) and Article 34 of the Civil Code of Ukraine (2003) allows to define majority as reaching the age of eighteen by a natural person. At the same time,

coming of age does not always coincide with the acquisition of full legal capacity by a natural person.

Ukrainian legislation links the status of a child with the coming of age (turning eighteen). However, the right to receive medical assistance and the specifics of its implementation depend not only on the age of majority, but also on the extent of an individual's legal capacity.

According to Article 34 of the Civil Code of Ukraine (2003), a natural person who has reached eighteen years of age (legal age) has full civil legal capacity. In the case of a registration of marriage by an individual who has not reached the age of majority, he/she acquires full civil legal capacity from the moment of the registration of the marriage. Full civil legal capacity can be granted to an individual who has reached the age of sixteen and works under an employment contract, as well as to a minor registered by the child's mother or father. Full civil legal capacity can be granted to an individual who has reached the age of sixteen and who wishes to engage in entrepreneurial activity (Article 35 of the Civil Code of Ukraine). In this case, a natural person acquires full civil legal capacity from the moment of his/her official registration as an entrepreneur. Full civil legal capacity is preserved regardless of the termination of the marriage by a minor, or its recognition as invalid for reasons not related to the illegal behavior of a minor, an employment contract, or entrepreneurial activity.

Article 281 of the Civil Code of Ukraine (2003) stipulates that medical, scientific and other experiments can be conducted only with respect to an adult natural person with legal capacity, with his/her free consent. Sterilization can take place only at the request of an adult natural person. An adult woman or man has the right, based on medical indications, to undergo assisted reproductive treatments.

The issue of providing medical care to juvenile patients (14-18 years old) requires careful attention, since the legality of providing this care directly depends on the presence or absence of informed consent of juvenile patients or their legal representatives.

The main provisions regarding the rights of a patient who is a child, in particular, regarding the provision of informed consent for medical intervention, are contained in Article 284 and Article 285 of the Civil Code of Ukraine (2003) and Article 38 and Article 39 of the Fundamentals of the Legislation of Ukraine on Health Care (1992). However, according to the provisions of these articles, minors do not have the right to take legal actions related to their medical care. In particular, they do not have the right to choose a doctor or methods of treatment, or to refuse medical care. Children over the age of 14 have the right to apply for medical assistance, to choose a doctor and the methods of treatment recommended by them, and to give their consent for the provision of medical assistance. Thus, according to the national legislation

of Ukraine, all minors (children) are not among the individuals who have the right to medical information about their health. According to paragraph 2 of Article 285 of the Civil Code of Ukraine (2003) and paragraph 2 of Article 39 of the Fundamentals of the Legislation of Ukraine on Health Care (1992), the right to receive information about the state of health of a child of any age is only available to adults who have legal custody over the child, meaning the parents, adoptive parents, legal guardians.

An adult with legal capacity, who is aware of the significance of his/her actions and can control them, has the right to refuse treatment. In urgent cases, in the presence of a real threat to the life of an individual, medical assistance is provided without the consent of the individual or his/her parents (adoptive parents), guardian, custodian (Article 284 of the Civil Code of Ukraine).

According to 43 Fundamentals of the Legislation of Ukraine on Health Care (1992), "Informed consent of the patient in accordance with the Fundamentals is necessary for the use of diagnosis, prevention and treatment. Regarding patients under the age of 14 (minor patients), as well as patients recognized as incompetent in accordance with the procedure established by law, medical intervention will be carried out with the consent of their legal representatives. The patients who have acquired full civil legal capacity and are aware of the importance of their actions and can control them, have the right to refuse treatment" (Article 39).

Thus, in contrast to the Civil Code of Ukraine, the Fundamentals of the Legislation of Ukraine on Health Care do not link the right to refuse treatment to the age of majority. Persons who are capable of action, but have not reached the age of majority (emancipated) have the right to refuse treatment in accordance with the norms of the Fundamentals of the Legislation of Ukraine on Health Care, but do not have this right according to the norms of the Civil Code of Ukraine. This legislative conflict needs to be resolved.

According to the legislation of Ukraine, no minors have the right to medical information about their health. However, Article 285 of the Civil Code of Ukraine stipulates that an adult natural person has the right to reliable and complete information about their health, in particular, to review relevant medical documents related to their health. Parents, adoptive parents or legal guardians have the right to information about the health of their child or ward. The foundations of the legislation on health care of Ukraine provide that the patients who have reached the age of majority have the right to receive reliable and complete information about their health, in particular, to familiarize themselves with relevant medical documents related to their health.

Only legal representatives of a child have the right to receive information about the health of the child at any age. The grounds of authority, rights and obligations of persons who are legal representatives of orphans and children deprived of parental

care are defined in the Family Code of Ukraine. In particular, these representatives in legal relations with the medical institution and medical personnel are:

a) formal educators;
b) adoptive parents;
c) parents-educators of a family-style orphanage.

These persons have the right to make decisions about the medical care of the child in their care, because they are responsible for the consequences of their refusal to treat the child. Under these circumstances, a minor must express his/her opinion about the possibility of being provided with medical assistance, without having the opportunity to obtain sufficient information about his/her health to make a decision.

The analysis of the legislation on the patient's informed consent demonstrates that the legal structure of the child's voluntary informed consent in the legal relationship of providing him/her with medical assistance in the legislation of Ukraine consists of the following provisions: informed voluntary consent for medical assistance to a child under the age of 14 should be provided only by the child's legal representatives; upon reaching the age of 14, a minor receives, among others, the right to informed consent for medical intervention. The corresponding written consent must be signed by the child; a person who has reached the age of 18 acquires all civil rights and obligations, including in the field of obtaining medical assistance. The same applies to minors who acquired civil legal capacity earlier, on the grounds provided for in Articles 34 and 35 of the Civil Code of Ukraine.

As we can see, the legal regulation of the provision of informed consent for medical intervention by a minor over the age of 14 in the civil legislation of Ukraine contains a number of contradictions. On the one hand, the legislator gave these persons the right to consent to medical intervention, on the other hand, deprived them of the right to information about their health and the right to refuse medical intervention.

Scientists generally support the idea of lowering the age of giving informed consent to medical intervention (Shchyrba, 2017, p. 214), but it is difficult to agree with the proposal of A. Dvornichenko (2017), who suggested that the age of a child to provide informed consent to medical intervention should be set at the age of 16 (p. 8), as this would contradict the general norm of civil legislation, according to which a person is not of legal age from the age of 14, and a person is a minor before the age of 14.

It is necessary to eliminate the conflict of legislation and legally determine that: medical intervention must be carried out with the consent of a person who has reached the age of 14; a person who has reached the age of 14 has the right to information about his/her health; an adult natural person with legal capacity has the right to refuse medical intervention. In addition, it is worth giving a person who has reached the age of 14 the right to independently conclude a contract for the provision of medical services, however, this issue still requires a separate study.

Also, the legal regulations concerning abortion by minors, testing for HIV infection, vaccinations and the provision of psychiatric care are worthy of attention.

Despite the fact that adolescence is a period of experimentation, most teenagers grow up in good health during this period, however, they face many problems every day and it is worth finding ways to solve them. According to the World Health Organization, almost 25 percent of 15-year-olds have had sex, but more than 30 percent of teenagers in some countries do not use condoms or any other form of contraception, leading to the spreading of sexually transmitted diseases and unwanted pregnancies (WHO, 2020).

In Ukraine, the possibility of termination of pregnancy for minors and people under age is regulated by the norms of the Civil Code of Ukraine, the Fundamentals of the Legislation of Ukraine on Health Care, and the orders of the Ministry of Health.

According to Part 6 of Article 281 of the Civil Code of Ukraine (2003), artificial termination of pregnancy, if it does not exceed 12 weeks, may be performed at the woman's request. At the same time, part 3 of Article 284 of the Civil Code of Ukraine specifies that the provision of medical assistance to an individual who has reached 14 years of age is carried out with his/her consent.

In accordance with the Procedure for Providing Comprehensive Medical Care to a Pregnant Woman Curing an Unwanted Pregnancy (2013), operations (procedures) for the artificial termination of an unwanted pregnancy in a woman under the age of 14 or in an incapacitated person are carried out at the request of her legal representatives. Artificial termination of pregnancy in a woman who has reached the age of 14 is carried out with her consent in accordance with Article 284 of the Civil Code of Ukraine (Clause 1.8).

As for the legal regulation of testing for HIV infection, the Law of Ukraine on Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV (1991) stipulates that "testing of persons aged 14 and more is carried out voluntarily, in the presence of the person's conscious informed consent, obtained after providing him/her with a preliminary consultation on the specifics of the test, its results and possible consequences, in compliance with the provisions regarding the confidentiality of personal data, in particular, on the health of the person" (Article 6).

Testing of children under the age of 14 and persons recognized as not having legal capacity is carried out at the request of their parents or legal representatives and in the presence of informed consent. Parents and legal representatives of the mentioned persons have the right to be present during such testing and informed about the results, and they are obliged to ensure the preservation of confidentiality of data on the HIV status of the persons whose interests they represent.

The testing of children under the age of 14, who are deprived of parental care and are under the care of foster-care or educational institutions with full state funding, is carried out if they are aware of the consequences and benefits of such an examination at the request of their legal representatives and on the condition that such persons have given their informed consent only for the purpose of prescribing treatment, medical care and support for children in connection with HIV infection. The legal representatives of such minors have the right to be informed of the results of the said testing and are obliged to ensure the confidentiality of data on the HIV status of the persons whose interests they represent.

In accordance with the requirements of the Law of Ukraine on Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV (1991), post-test counseling of a person who has been diagnosed with HIV (Article 7), provided by qualified staff, is a mandatory condition of this testing. In particular, health care professionals are obliged to inform this person (from the age of 14) about: the preventive measures necessary to maintain the health of an HIV-infected person and prevent the further spread of HIV; guarantees of compliance with the rights and freedoms of people living with HIV on the territory of Ukraine; criminal liability for knowingly putting another person at risk of HIV infection.

In the case of detection of HIV in children under the age of 14 and persons recognized as having no legal capacity, in accordance with the procedure established by law, the authorized health care professional shall notify the parents or other legal representatives of the said persons. Parents or other legal representatives of such HIV-infected persons should then be provided with appropriate counseling aimed at ensuring that they make well-informed decisions regarding the treatment, care and support of their children or wards, and that their legal rights and interests are adequately protected.

A person who has been diagnosed with HIV as a result of testing and parents or authorized representatives of children under the age of 14 who have been diagnosed with HIV as a result of testing are required to provide an authorized employee of the institution that conducted the test with a written confirmation in any form with their own signature to receive the information on preventive measures necessary to maintain the health of an HIV-infected person, prevent the further spread of HIV, on guarantees of compliance with the rights and freedoms of people living with HIV, as well as on criminal liability for knowingly putting another person at risk of contracting HIV or for knowingly infecting that person with HIV.

Thus, in the mentioned legal acts, the legal regulation of the special procedure for testing for HIV infection and termination of unwanted pregnancy in Ukraine includes the requirement of an informed consent of a minor over 14 years of age who

is the subject of the relevant legal relationship or the consent of the minor's legal representatives.

The provision of psychiatric care to minors is defined in detail by the Law of Ukraine on Psychiatric Care (2020), which stipulates that methods of diagnosis and treatment and medicinal products that pose an increased risk to the health of a person who has been provided psychiatric care, are used as prescribed and under the control of a team of psychiatrists: with the informed written consent of a person who has reached the age of 14; with the written consent of his/her parents or other legal representative for a person under the age of 14 (an underage person); in relation to a person recognized as incapacitated in accordance with the procedure established by law, with the written consent of his/her legal representative if the said person is unable to give informed written consent due to his/her state of health (Article 7).

In general, a psychiatric examination is conducted in order to find out: the presence or absence of a mental disorder in a person, the need to provide the patient with psychiatric help, as well as to establish the appropriate type of such help and the procedure for its provision. This examination is conducted by a psychiatrist for a person who has reached the age of 14, at his/her request or with his/her informed written consent, and for a person under the age of 14 (an underage person) at the request or with the written consent of his/her parents or other legal representative.

In the case of a person recognized as incapacitated in accordance with the procedure established by law, if due to the health condition he/she is unable to express a request or give informed written consent, such an examination is carried out at the request or with the written consent of his/her legal representative. In the case of one of the parent's lack of agreement or in the absence of the parents, the psychiatric examination of a person under the age of 14 (an underage person) is carried out with the decision (consent) of the entity providing legal guardianship and care. Such a decision must by made no later than within 24 hours after the application of another legal representative of the specified person submitted to the said entity and may be challenged in accordance with law. The legal representative of a person recognized as incapacitated in accordance with the procedure established by law shall notify the entity providing legal guardianship and care at the ward's place of residence about his/her consent to psychiatric examination of the ward no later than within one day of giving such consent.

The legislator assigns the function of monitoring the provision of psychiatric care to the entity providing legal guardianship and care at the ward's place of residence. In practice, this creates difficulties, since the long-term decentralization reform makes it difficult to determine the jurisdiction of an entity over a territory. However, local self-government bodies' control is not a generally accepted practice, and judicial control is more effective.

During the pandemic of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus, the issue of prevention of infectious diseases, in particular vaccination, is especially relevant.

WHO (2020) states that children still die from preventable causes, including pneumonia and diarrhea, as well as from diseases that were previously under control, such as diphtheria and tuberculosis. In Ukraine, an ambiguous situation has developed: there is a large number of vaccination refusals, and at the same time, an increase in the number of infectious disease cases is recorded.

According to the Law of Ukraine on the Protection of the Population from Infectious Diseases (2020), preventive vaccinations are given after a medical examination of a person, in the absence of medical contraindications. Adult citizens with legal capacity are given preventive vaccinations with their consent after being provided with objective information about vaccinations, the consequences of refusing them and possible post-vaccination complications (Article 12).

Persons who have not reached the age of fifteen or who are recognized as incapacitated in accordance with the procedure established by law, are given preventive vaccinations with the consent of their objectively informed parents or other legal representatives. Persons between 15 and 18 years of age or those recognized by the court as having limited legal capacity are given preventive vaccinations with their consent after being provided objective information and with the consent of objectively informed parents or other legal representatives of these persons. If a person and/or his/her legal representatives refuse mandatory preventive vaccinations, the doctor has the right to obtain a corresponding written confirmation from them, and in the case of their refusal to give such confirmation, to certify it in writing in the presence of witnesses.

The Law of Ukraine on the Protection of the Population from Infectious Diseases (2020) needs to be clarified in the scope of determining the age at which an underage patient has the right to independently express consent for the provision of medical assistance. It is necessary to amend the specified law by lowering the age for providing informed consent for vaccination to 14 years. Previously, it was accepted that the general norms allow independent consent to medical intervention starting from the age of 14.

No less relevant today is the issue of the right to education of unvaccinated children. In Ukraine, by virtue of the provisions of Article 15 of the Law of Ukraine on the Protection of the Population from Infectious Diseases (2020), a child cannot be admitted to an educational institution without an appropriate medical examination and an opinion of a medical and advisory commission (in the event that the child does not have mandatory vaccinations) about the possibility of attending a preschool educational institution. A significant number of parents refuse vaccination. Accord-

ing to the data of the Center of Public Health of Ukraine, the level of vaccination coverage for children under 1 year in 2021 is at the level of 80-90 percent (Center of Public Health of Ukraine, 2022). At the same time, the reasons for refusing vaccination are often fictitious.

An important task of the state is to ensure a proper balance between the realization of the child's right to preschool education and the interests of other children. The Supreme Court's Civil Court of Cassation, in the case No. 682/1692/17 on the claim about the obligation to avoid obstacles in the acquisition of preschool education, noted:

> In the case under review, the individual right (interest) to refuse vaccination by the child's mother while preserving the scope of the child's rights to education, in particular in preschool educational institutions, is opposed to the general right (interest) of society, other parents and their children who have done vaccination according to the procedure established by the state, in particular before sending children to an educational institution. As a result of establishing such a balance, the goal was achieved: the common good in the form of the right to safety and health care, which is guaranteed by Articles 3, 27 and 49 of the Constitution of Ukraine. The demand for mandatory vaccination of the population against particularly dangerous diseases is justified in view of the need to protect public health, as well as the health of interested persons. That is, in this matter, the principle of the importance of public interests prevails over personal interests, but only in the case when such intervention has objective grounds, that is, it was justified (Civil Court of Cassation of the Supreme Court, 2019).

Later, the Civil Court of Cassation of the Supreme Court confirmed that the refusal to admit a child to a preschool without vaccinations meets the requirements of the law (Decision dated 8 February 2021 in the case No. 630/554/19). The court also noted that the child's right to education was not violated. Regarding children who cannot attend an educational institution, there are established alternative methods of obtaining and continuing education, including in an educational institution.

The European Court of Human Rights has repeatedly considered the issue of compulsory (forced) vaccination, in particular of children. According to its precedent practice, the physical integrity of a person is covered by the concept of "private life," which is protected by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), regarding forced medical intervention (forced vaccination):

> In the Court's opinion the interference with the applicant's physical integrity could be said to be justified by the public health considerations and necessity to control the spreading of infectious diseases in the region. Furthermore, according to the domes-

> tic court's findings, the medical staff had checked his suitability for vaccination prior to carrying out the vaccination, which suggest that necessary precautions had been taken to ensure that the medical intervention would not be to the applicant's detriment to the extent that would upset the balance of interests between the applicant's personal integrity and the public interest of protection health of the population (Solomakhin v. Ukraine, 2012).

Thus, according to the European Court of Human Rights, mandatory vaccination is an interference in private life, but it is justified and does not constitute a violation of Article 8, follows a legitimate purpose and is necessary in a democratic society.

The COVID-19 pandemic brought back relevance to the issue of mandatory vaccination, but in 2021, the European Court of Human Rights ruled on several applications for mandatory vaccination according to the vaccination schedule (against nine diseases). The case concerns the standard and regular vaccination of children against various diseases that are well known to medical science, and the mandatory nature of the relevant vaccinations in the Czech Republic (Vavřička and others v. the Czech Republic, 2021). Since the case is one of the most recent to be considered regarding mandatory vaccination, more attention will be paid to it.

The peculiarity of this case is that the Court heard the arguments of third parties, namely the governments of France, Germany, Poland, Slovakia, as well as the Association of Patients Injured by Vaccines, the European Center for Law and Justice (ECLJ) and others. Third parties were involved because the case "concerns respect for the physical and moral welfare of the human being, as guaranteed by the principles that such welfare must prevail over the sole interest of society or science and that an intervention in the health field may be carried out only with the free and informed consent of those concerned, as established in Articles 2 and 5 of the Oviedo Convention" (§ 235). The court heard the opinions of various stakeholders.

It was recognized that the applicant children (in five applications) bore the direct consequences of non-compliance with the vaccination obligation in that they were not admitted to preschool. As regards the applicant Mr Vavřička, although it was about the vaccination of his children, he was personally obliged under national law to vaccinate his children; the consequences of non-compliance with this requirement, namely the imposition of a fine, he bore as a person directly responsible for their well-being. Therefore, each of the applicants suffered an interference with their right to respect for private life. The ECHR concluded that the challenged intervention had a proper basis in national law, as it was based on a combination of primary and secondary legislation, which had already been recognized by the relevant courts as meeting the requirements of Czech constitutional law.

The court recalled the well-established position that "in all decisions concerning children, their best interests are of paramount importance." This means that "there is an obligation on States to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development." (Vavřička and others v. the Czech Republic, 2021, §§ 287, 288). The policy of voluntary vaccination was not sufficient to ensure and maintain immunity.

The court concluded that the contested measures could be considered as "necessary in a democratic society." Therefore, there was no violation of Article 8 of the Convention.

The COVID-19 pandemic forced many states, in particular Ukraine, to strengthen measures to prevent the spread of the disease. The Law of Ukraine on Ensuring the Sanitary and Epidemiological Welfare of the Population (1994) was amended and imposed upon enterprises, institutions and organizations the obligation to remove from workplaces, schools, and preschools, at the request of relevant staff of the state sanitary and epidemiological service, the carriers of COVID, patients with infectious diseases dangerous to other people, or persons who were in contact with patients (accompanied by payment of social insurance benefits in accordance with the established procedure), as well as persons who evade mandatory medical examination or vaccination against infections, the list of which is established by the central body of the executive power that ensures the formation of state policy in the field of health care (Clause 5 of Part 1 of Article 7).

The minimum restriction of human rights in the form of mandatory vaccination, provided there are no contraindications, is acceptable, as it aims to protect the public interest and the rights of other citizens to life.

Article 38.4 of the Convention on the Rights of the Child (1989) provides that "in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict."

Ukraine, after ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (2000), confirmed its readiness to confront such conflicts' harmful and large-scale impact on children, condemned infringements on such rights in the context of hostilities and attacks on locations where children are usually present (in particular schools and hospitals) and protected by international law. Ukraine recognized the need to strengthen the protection of children from being involved in armed conflicts.

Children, remaining a particularly vulnerable category of the population, despite the efforts of most countries of the world, remain the main victims of systemic discrimination, which is especially intensified in crisis situations, in particular during armed conflicts.

3.2. The Peculiarities of the Realization of Personal Non-Property Rights in the Field of Health Care by Persons in Need of Special Assistance (vulnerable social groups)

People in difficult life circumstances need special attention, in particular, when exercising their personal non-property rights in the field of health care. The group of persons in need of special assistance includes families with children (as already mentioned above), as well as people with disabilities, persons in need of psychiatric assistance, those suffering from orphan diseases, as well as those in need of palliative care, and the elderly. Ukraine also has a group of internally displaced persons and migrants, as well as military personnel.

In this part of the study, we will consider those problems that occur in vulnerable social groups in the field of health care, as special medical and social-medical services are needed for high-risk groups, given their behavior, risks associated with it, accompanying infections, etc.

The Law of Ukraine on Social Services (2019) defines vulnerable population as groups of individuals/families that have the highest risk of falling into difficult life circumstances due to the influence of adverse external and/or internal factors. Social and medical services are provided to these segments of the population by both state and public organizations, as well as religious communities. The main types of services provided by these organizations to their target audience are psychological, medical, economic, legal and social services.

In the modern democratic world, which is built on humanistic ideas and values of society and which has reached a high level of spiritual and cultural development, "disability" is considered as a social and medical phenomenon. According to its biomedical definition, "disability" is a disease or defect directly related to a medical condition. This medical condition affects only the person in question, and instead of being discriminated against because of this condition, he/she needs the support of the society.

The Convention on the Rights of Persons with Disabilities (2006), which Ukraine ratified in 2010, requires that member states "take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation" (Article 25).

People with disabilities face many barriers to health care in their daily lives, such as cost, accessibility, stigma and discrimination, and lack or scarcity of resources and services.

We previously considered that in General Comment 14 (2000) the components of the right to health are defined as non-discrimination, physical and economic accessibility and access to information. They are extremely important for people with disabilities.

Non-discrimination means equal access to medical care. Non-discrimination is a fundamental principle of the Convention on the Rights of Persons with Disabilities (2006) and a necessary condition for ensuring equal access to medical care for persons with disabilities. "'Discrimination on the basis of disability' means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation" (Convention on the Rights of Persons with Disabilities, 2006, Article 2).

Also, the Convention on the Rights of Persons with Disabilities (2006) defines accessibility as the ability to "live independently and participate fully in all aspects of life" and states that " States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas" (Article 9). These measures include identifying and removing barriers to accessibility. Buildings, roads, transport, other internal and external facilities, including schools, residential buildings, medical facilities and workplaces, as well as information, should be accessible to persons with disabilities.

Physical accessibility is an important component in ensuring access to health care for people with disabilities. Physical barriers to this access include environmental and infrastructural barriers, as well as geographic barriers such as access to rural health centers.

General Comment 14 (2000) described and defined the right to health in an accessible environment in the context of physical accessibility and defines it as follows:

> Health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities (paragraph 12 (b)).

It should be noted that the experience of European countries in creating an accessible environment for people with disabilities is much greater than in Ukraine, however, our society has also begun to feel the need for inclusion and actively works

on the development of methods and ways of adapting the environment to the needs of its members with disabilities. On the path of integration into the European and world community, Ukraine ratified a number of international legal acts, which had a certain influence on the formation of national state policy and practice regarding the provision of equal opportunities for all citizens, the implementation of the principles of accessibility in various spheres of life of persons with disabilities. International legal acts ratified by Ukraine are directly applicable and binding.

Persons with disabilities are provided with social, household and medical services, technical and other means of rehabilitation (mobility aids, prosthetic devices, hearing aids, mobile phones for written communication, etc.,), medical devices, free of charge or on preferential terms based on an individual rehabilitation program (individual devices, prosthetic eyes, teeth, and jaws, glasses, hearing aids and voice prostheses, urinary drainage bags, etc.), as well as vehicles for disabled people and electric wheelchairs—upon an appropriate medical opinion (Law of Ukraine on the Fundamentals of Social Security of the Disabled in Ukraine, 1991, part one of Article 38).

In the case of Price v. United Kingdom (2001), the European Court of Human Rights concluded that the imprisonment of a severely disabled person in conditions where she was feeling cold and there was a high probability of injury caused by the hardness of the bed and the inability to access it, as well as the inability to use the toilet or wash herself, is a degrading treatment. Therefore, there was a violation of Article 3 of the Convention. The court also emphasized:

> The applicant's disabilities are not hidden or easily overlooked. It requires no special qualification, only a minimum of ordinary human empathy, to appreciate her situation and to understand that to avoid unnecessary hardship—that is, hardship not implicit in the imprisonment of an able-bodied person—she has to be treated differently from other people because their situation is significantly different (Price v. the United Kingdom, 2001).

Due to the impact of various social and economic factors, the quality of providing medical care to the population, particularly rural, differs significantly from the quality of providing medical care to residents of urban settlements.

According to the Law of Ukraine on Improving the Accessibility and Quality of Medical Care in Rural Areas (2017), it is the state that is responsible for ensuring the implementation of measures to improve the accessibility and quality of medical care in rural areas, in particular, bringing quality medical care closer to the population by improving the network of institutions of health care, in particular centers of primary medical (and sanitary) care and the material and technical base of such institutions, etc. Therefore, in Ukrainian legislation, the state is obliged to ensure equal access to medical care for all residents. (Clause 1 of the first part of Article 4).

Also, the issue of providing the opportunity to receive free medical services for this category of social groups is extremely relevant. The issue of providing free medical services to vulnerable groups of the population is regulated by various national acts of Ukraine, among which we can single out the resolutions of the Cabinet of Ministers of Ukraine: On Regulation of Free and Subsidized Dispensing of Medicinal Products on Medical Prescriptions in Outpatient Treatment of Certain Population Groups and Certain Categories of Diseases (1998) No. 1303, On the Approval of the Program for the Provision of State-Guaranteed Free Medical Care to Citizens (2002) No. 955, and others. At the same time, ensuring the implementation of the above-mentioned normative acts directly depends on the estimates of the state and, to a greater extent, local budgets.

In particular, in the case of outpatient treatment of persons with disabilities, including children with disabilities, medicines prescribed by doctors are dispensed free of charge.

For the marginalized, in particular, drug addicts, the timely provision of medical assistance is extremely important (in terms of removing or preventing the withdrawal syndrome, which is associated with extremely strong physical and psychological suffering, which in turn can be considered tantamount to torture). Disclosure of medical information about the status of patients with drug addiction or HIV/AIDS in Ukraine is also an urgent problem. There is an illegal practice of forcing doctors to disclose medical and confidential information about patients with drug addiction undergoing treatment to law enforcement agencies. As a result of serious pressures on health care institutions, medical institutions and individual doctors, law enforcement officers succeed in receiving such data, despite the fact that such actions are a gross violation of the norms of the current legislation of Ukraine in terms of the protection of personal data.

The consequences can be quite tragic to representatives of vulnerable groups: imprisonment, health deterioration and even death, as a result of not providing timely medical assistance.

Regarding the direct legal status of the subjects of medical legal relations during the provision of psychiatric care, there are hardly any definitions of the status of these subjects, with certain exceptions in the international legislation, in the national legislation of Ukraine, and in the literature.

Regarding international legislation, the UN Resolution 46/119 The Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1992) defines a patient under these circumstances as a person receiving psychiatric care, as well as every person admitted to a psychiatric institution. All persons have the right to the best available psychiatric care as part of the health and social care system, and all persons suffering or perceived to be suffering from a mental illness should

be treated humanely and with respect for the inherent dignity of the human person. These principles must be applied without any discrimination based on disability, race, color, sex, language, religion, political or other views, national, ethnic or social origin, legal or social status, age, property or wealth.

The main legislative act in the field of determining the legal status of subjects of medical legal relations during the provision of psychiatric care is the Law of Ukraine on Psychiatric Care (2000). It defines the organizational and legal principles of providing people with psychiatric care, based on the priorities of rights and freedoms, establishes the obligations of the specified entities, regulates rights and obligations, etc. The law defines psychiatric care as a complex of special measures aimed at examining the state of mental health of the relevant patients on legal grounds, at the prevention and diagnosis of mental disorders, at treatment, care, supervision, and rehabilitation of the patients in question. Psychiatric care is provided on the basis of the principles of legality, humanity, respect for human and citizen rights, voluntariness, accessibility and, in accordance with the modern level of scientific knowledge, the necessity and sufficiency of treatment measures, medical, psychological and social rehabilitation, provision of educational and social services.

In every state there are people who suffer from such diseases which have a severe, chronic, progressive course, threaten human life and require vital and, as a rule, expensive treatment. For such patients, additional state guarantees (social, medical, financial, etc.) should be offered that should provide them with vitally necessary medical services and goods, in particular, pharmaceuticals, medical devices and special medical nutrition products, without which the lives and health of such patients would be in danger. Patients suffering from rare (orphan) diseases belong to a particularly vulnerable category of people, as their treatment is lifelong, vital and expensive.

In accordance with the Recommendation of the Council of the EU of 8 June 2009 on actions in the field of rare (orphan) diseases No. 2009/C 151/02, a rare disease is defined as a disease that poses a threat to human life or is characterized by a severe, progressive chronic course, the prevalence of which among the population is no more than 5 per 10,000 persons.

In 2021, the Order of the Cabinet of Ministers of Ukraine No. 1235-p on the approval of the plan of measures for the implementation of the Concept of the development of the system of providing medical care to patients suffering from rare (orphan) diseases for the years 2021-2026 (2021) entered into force. It provides for access of patients suffering from rare (orphan) diseases to methods of early detection of such diseases.

People suffering from rare (orphan) diseases are provided with medicines and appropriate food products for special dietary consumption. In order to plan and cal-

culate the volumes of pharmaceuticals, medical food products and medical devices necessary to support these population groups and to increase the level of availability of pharmaceuticals, methodological recommendations (2019) were approved for planning and calculating the demand for pharmaceuticals, special food products and medical devices that are financed from the national and local budgets.

Scientists emphasize that in the legal status of persons who receive palliative care in Ukraine, it is important to implement an integrated approach to the "transition" of patients from one type of care to another after a comprehensive interdisciplinary assessment of their condition, the presence of complications that impair the quality of life, disorders of vital functions, psycho-emotional, cognitive and cultural characteristics, etc. (Kurnytska, 2018).

There is also an opinion that in Ukraine we can talk about the formation of a new type of legal culture regarding persons who need palliative care (Belov and Gromovchuk, 2020). The general deterioration of the economic situation in Ukraine in recent years, inflation, political and social instability caused by the aggression of the Russian Federation, and other factors lead to the fact that the various benefits, pensions, and other benefits for persons receiving palliative care in Ukraine turned out to be rather insufficient.

The concept of palliative care is posted on the website of the World Health Organization, it was proposed by experts and evoked at the meeting of the Parliamentary Assembly of the Council of Europe during the discussion of innovative approaches to palliative care and the adoption of the corresponding resolution. Palliative care is interpreted as a comprehensive approach, whose purpose is to ensure the maximum quality of life of a patient with an incurable (fatal) disease and his/her family members, by preventing and alleviating suffering due to early detection and accurate diagnosis (assessment) of emerging problems, and the implementation of adequate treatments (for pain and life-threatening illnesses), as well as providing psychosocial and moral support (WHO. Palliative care, 2022).

The main principles on the basis of which medical care is provided to the terminally ill are the following: availability (palliative care should be provided to all terminal patients in such a way that they have equal opportunities), high quality (providing palliative care in accordance with national and international quality standards for the provision of such care), continuity (assistance to the terminally ill must be provided throughout the patient's illness and, if necessary, in various health care facilities, whose choice is determined by his/her condition), as well as ethical and humane attitude (entities who provide palliative care must follow moral and ethical rules).

The full-scale invasion of Ukraine by the Russian Federation caused mass mobilization, therefore, the number of persons with the status of military personnel

increased several times. The exercising of the rights of such persons in the field of health care is addressed in detail by a number of normative acts.

The Law of Ukraine on Social and Legal Protection of Military Personnel and Their Family Members (1991) provides guarantees for the exercise of the service members' right to health care. According to Viktor Zahovskyi and Volodymyr Livinskyi, in order to solve this problem, it would be expedient to determine the issue of medical support for the servicemen.

On October 31, 2018, the Cabinet of Ministers of Ukraine approved the Military Medical Doctrine to resolve the issue of regulating the medical care for servicemen. The doctrine lays the foundation for building a modern system of health care for the military, because all legislative acts regulating the medical support of the Armed Forces of Ukraine must be adopted on its basis. It also defines the tasks, principles, organizational structure and financing of the military health care system, as well as the responsibility of state authorities for regulating the implementation of the right of military personnel to medical assistance.

This normative legal act defines the concept of the Unified Medical Space, which consists in the unification of all state resources in the field of medical care under unified management and financing. In particular, the cooperation of the military medical services and the civilian health care system with the aim of providing medical support to the military personnel was emphasized.

According to the Law of Ukraine on the Status of War Veterans and Guarantees of Their Social Protection, 1993, combatants (Articles 5, 6) have the right to receive free of charge pharmaceuticals, medicinal products, immunobiological preparations and medical devices according to doctors' prescriptions; free basic dental prosthetic devices (with the exception of those made of precious metals); free health resort services in a state-run facility or compensation for the cost of private health resort services (Article 12).

Military personnel have the right to free professional medical care in military health care facilities. In the case of unavailability of military medical health care institutions, relevant wards or special medical equipment, as well as in urgent cases, medical assistance is provided by state or community health care institutions at the expense of the Ministry of Defense of Ukraine, or other institutions established in accordance with the laws of Ukraine, military formations and law enforcement agencies.

In the face of the full-scale invasion of Ukraine by the Russian Federation, it has been necessary to remodel the system of providing medical assistance to military personnel. Pursuant to the Decree of the President of Ukraine No. 64/2022 on the imposition of martial law in Ukraine dated 24 February 2022 and taking into account the operational situation of the presence of the wounded in the country as

of 25 February 2022, the Ministry of Health of Ukraine issued an order regarding the provision of medical assistance during martial law to military personnel participating in the operation of the United Forces dated 25 February 2022 No. 379. According to it, medical assistance is provided to all victims and wounded 24 hours a day without exception, hospitalization of the victims and wounded is carried out in the nearest health care facilities that are able to provide help, according to the type of injuries.

The government changed the systemic approach, namely, the treatment of the wounded is carried out not by specially defined entities, but by the entire system of health care institutions. Therefore, typical hospitalization measures in specialized health care institutions will return after the stabilization of the situation and a separate order of the Ministry of Health.

In connection with the need for treatment of the wounded abroad and psychological rehabilitation, the Law of Ukraine on Social and Legal Protection of Military Personnel and Their Family Members (1991) was amended in order to normalize the relevant processes. Thus, in April 2022, the Law of Ukraine on Amendments to Article 11 of the Law of Ukraine On Social and Legal Protection of Military Personnel and Their Family Members was adopted regarding the improvement of the procedure for providing medical assistance to servicemen under martial law (2022).

> During the period of martial law, military personnel who directly participate in the implementation of measures necessary to ensure the defense of Ukraine, protect the safety of the population and the interests of the state in connection with the military aggression of the Russian Federation against Ukraine, being directly in the areas of implementation of the specified measures, may be sent, in accordance with the recommendation of the military medical commission, to medical institutions located outside of Ukraine for further medical care or medical and psychological rehabilitation. The specified military personnel and their accompanying medical personnel are not subject to restrictions on Ukrainian citizens' travel outside Ukraine (Chapter 1).

The Cabinet of Ministers of Ukraine shall establish the procedure for providing military personnel with medical aid or medical and psychological rehabilitation in medical institutions outside of Ukraine and for payments for such medical aid services. The cost of travel and relevant medical assistance or medical and psychological rehabilitation will be covered by the state budget, except for the cases of providing the aforementioned assistance at the expense of the receiving party.

Another law dated 24 March 2022 amended, in particular, Article 11 of the Law of Ukraine on Social and Legal Protection of Military Personnel and Their Family Members (1991), introducing the right to free psychological assistance to servicemen. Psychological assistance is organized by the psychological services of military

units (subunits), and if necessary, it is provided in military medical health care institutions in accordance with the procedures approved by the central bodies of the executive power that have military formations and law enforcement agencies established in accordance with the laws of Ukraine under their command.

The analysis of the current state of medical services provided to the ATO/JFO ex-combatants in Ukraine (2022), carried out by the LLC "Ukrainian Center for Health Care" showed that the ATO/JFO ex-combatants are active consumers of medical services: after returning from military service, they often need access to mental health services, rehabilitation and other types of medical care. Failure to take into account the needs of the ATO/JFO ex-combatants in terms of medical care during the development of policies creates significant obstacles in the process of reintegration of the ex-servicemen into the civilian environment and affects the quality of their lives and the lives of their families. The authors of the study indicated that: "The right of the ATO/JFO ex-combatants to receive high-quality reintegration services (medical, medical, psychological and social) is violated, and the existing programs and benefits do not solve the main problems of this vulnerable group" (p. 1). The researchers also emphasized the lack of a clear definition of the concept of "ex-combatant" at the national level, as well as a simple and clear mechanism for the criteria for entering the system and determining the scope of services.

The martial law in Ukraine, the increase in the number of participants in the hostilities create an urgent need to develop a comprehensive program of medical care, rehabilitation and transition to civilian life at the state level. However, until the end of the active phase of the hostilities, the health care system is under stress, so it needs support rather than reform.

IV. The State of Ensuring Human Rights in the Field of Health Care in Ukraine Under the Martial Law

"The Russian Federation violates the rights of the residents of Ukraine to life and medical care guaranteed by the Geneva Conventions. Such actions pose a direct threat to the life and health of the civilian population, contradict the provisions of Article 14 of the Additional Protocol to the Geneva Conventions of 8 June 1977" emphasizes the Ombudsman Lyudmila Denisova (2 May 2022).

The unprovoked full-scale invasion by the Russian Federation in February 2022 aggravated the problems in the field of health care that had been occurring in Ukraine since 2014 in the temporarily occupied territories. The full-scale invasion by the Russian Federation on the territory of Ukraine triggered mass migration of

people, both within the borders of Ukraine and outside of the country. The number of those who have acquired the status of internally displaced persons has increased, and problems in the medical field have worsened.

In Resolution 75/192 Situation of human rights in the Autonomous Republic of Crimea and the City of Sevastopol, Ukraine (2020), the UN General Assembly expressed serious concern about the inadequate conditions in penitentiary institutions, given the overcrowding and lack of follow-up medical care, which exposes persons held in detention to the risk of spreading diseases, in particular, COVID-19 (Preamble).

The population's access to medical care is limited in the temporarily occupied territories. The Human Rights Commissioner of the Verkhovna Rada of Ukraine (2022) lists the cases where the invaders expelled patients from hospitals, appropriated medical equipment, instead, they were forced to provide medical services to the Russian military.

Also, Viktor Lyashko, the Minister of Health of Ukraine, stated during a briefing on 6 July: "Russia has never opened a humanitarian corridor for the delivery of medicines to the occupied territories" (2022).

Health care facilities, doctors, and ambulances are also the targets of attacks, which is a direct violation of the norms and customs concerning war established by international humanitarian law. Hospitals are looted or closed for various reasons during conflict; there is a severe shortage of medical equipment and medicines; cases of attacks on health care professionals and patients, as well as of cruel treatment of them, especially the wounded, were recorded.

Doctors and nurses providing care to the sick have taken shelter from shelling attacks in basements for many days. Even the advanced means of remote medical care, successfully implemented at the beginning of the pandemic, have not always worked, because a connection with a doctor can be easily lost.

The population of those territories that were quickly captured, found themselves without access to medical services. One of the common ways of communication between the patient and the doctor became the Telegram bots, which have provided free online consultations of a pediatrician, otolaryngologist, orthopedic traumatologist, neurologist, dermatologist, psychologist, cardiologist, gastroenterologist, etc.

It is indicative that regional military-civilian administrations (in peacetime regional state administrations) quickly mobilized doctors, and also informed the population about actions that can be taken when in the need of medical assistance.

Here are some recommendations in case of such a situation, where medical assistance would be necessary:

1. Learn the address and route to the nearest healthcare facility. Remember that you can leave the house or shelter only if it safe for you.

2. Have a first-aid kit nearby with everything you need and a supply of medicines that you take regularly. Do not go long distances without a first-aid kit.
3. Know how to provide first aid. Please remember, here we explain how to help a person in an emergency situation and keep him/her alive before the arrival of medics.
4. Read the life-saving instructions.
5. Follow the messages and recommendations regarding the provision of medical assistance to the civilian population from the military-civilian administration of your region in official channels. Check with your local authorities for alternative telephone numbers in the case the '103' number cannot be reached.

Keep calm, don't panic, check the news and be ready for any situation! (Cherkaska OMCA, 2022)

Despite all efforts, the number of people with psychosomatic diseases, which often occur or worsen due to stress, chronic fatigue and emotional overload, is increasing.

According to the system that was formed as a result of the medical care reform, the primary health care provider for the population today is the family doctor, who makes an electronic referral for a medical examination, and, if necessary, refers to secondary or tertiary medical care. Accordingly, in order to receive medical assistance, a person must be registered with a health care institution (a family doctor). Also, in the case of persons who, due to various reasons, are in a difficult situation or homeless and, accordingly, not registered with a health care institution, medical assistance is provided without the necessity to sign a suitable declaration.

Problems that may arise include: the presence of obstacles in making an electronic appointment with a doctor, lack of appointment slots for the nearest time in the doctor's schedule, long queues at the office/clinic, architectural obstacles in health care facilities and inaccessible transportation. They all limit access to primary medical care, in particular, the availability of family doctor services.

These problems can be addressed by increasing digitalization in health care and education, and by educating both medical staff and patients about the basics of working with digital tools to improve quality of life.

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