

RIGHT TO HEALTH CARE: THE PRACTICE OF THE ECtHR AND THE CASE OF UKRAINE

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Abstract: The relevance of the research topic is due to the importance of human rights observance in a democratic society. Moreover, for a long time the relevant law was not given due attention neither in legislation nor in legal science. The right to health is comprehensive and includes other human rights that derive from it. The existing case law of the European Court of Human Rights (ECtHR) confirms the importance of the human right to health. In its judgments, the Court emphasizes the importance of this right and reaffirms the need for States to monitor its observance. The aim of the study – analysis of international legal norms and standards, as well as the practice of the ECtHR in the context of the human right to health. The leading research method used in the article is the formal-legal method, the application of which provided an effective analysis of the legal framework of international law, national legislation of Ukraine, and the case law of the ECtHR, which, in turn, allowed to determine the importance of human rights to health and places of relevant law in the practice of the ECtHR. The article analyzes the theoretical and legal approaches to understanding the right to health care and on this basis identifies the place of relevant law in the human rights system and its main determinants. The case law of the European Court of Human Rights is analyzed and the main articles of the European Convention on Human Rights (ECHR), which the applicants applied for in violation of the right to health care, are identified. The analysis of the case law of the ECtHR provided an opportunity to identify existing shortcomings in the legislation of the member states and of Ukraine. Based on this, it is possible to understand and distinguish ways to solve problems and methods for eliminating such violations in the future. The practical significance of the article lies in the analysis of the case law of the European Court of Human Rights, the separation of rights related to the right to life protection, as well as the application of ECtHR decisions to improve existing domestic legislation.

Keywords: Human rights, right to health care, the European Court of Human Rights, protection of human rights, right to health.

Summary: 1. INTRODUCTION. 2. THE CONCEPT OF HUMAN RIGHTS IN HEALTH CARE. 3. PROTECTION OF HUMAN RIGHTS IN HEALTH CARE IN THE SYSTEM OF INTERNATIONAL LAW. 4. THE RIGHT TO HEALTH IN LEGAL ACTS OF THE COUNCIL OF EUROPE. 5. THE PRACTICE OF THE ECtHR IN HEALTH CARE AND ITS SIGNIFICANCE. 6. RECEIVED EXPERIENCE AND DEVELOPMENT PROSPECTS. 7. CONCLUSION AND RECOMMENDATIONS.

1. INTRODUCTION

For a long time, human rights to health care were not in the spotlight, but secondary to the general spectrum of human rights. Moreover, the mechanisms for

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exercising such rights were not properly enshrined in national legislation. This situation can be explained by two main factors. First, the legislator did not have a significant interest in the development of the industry. Second, there was a lack of funding for its proper implementation. Furthermore, the very complexity of the medical field, directly related to health care, has influenced the formation of the place of relevant rights among human rights. However, over time, the situation has begun to change as the provisions governing the implementation of health rights and other components of their provision are increasingly implemented by countries into their constitutions and national legislation as fundamental and guaranteed rights.

Significant changes in the protection of human rights in the field of health care have taken place due to the pandemic of coronavirus infection COVID-19 (SARS-CoV-2, 2019-nCoV). The large number of human victims affected by the disease has drawn the attention of the international community not only to the problem of the infection itself, but also to the need to respect human rights in health care and the need to reform the health care system. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has provided human rights-oriented measures to combat the spread of COVID-19 coronavirus infection. In particular, he noted that health policy should take into account not only the medical aspects of the pandemic, but also the human rights and gender implications of health measures. He also stated that emergency powers should be used legally, in the interests of public health, and not as a basis for suppressing dissent or silencing the activities of human rights defenders or journalists. The OHCHR also noted that restrictive measures, such as social distancing and self-isolation, should take into account the needs of people who rely on other people for food, clothing, etc. Many people, including people with disabilities, rely on the family and social services in these aspects (Protecting human rights in a COVID-19 pandemic, 2020).

It is also worth noting that in 2020, as a result of the coronavirus pandemic, most Council of Europe member states exercised the right to derogate from the provisions of the European Convention on Human Rights. Among them: Albania, Armenia, Estonia, San Marino, Romania and others. According to Art. 15 of the ECHR, such a derogation is allowed from certain obligations to protect human rights, including such rights as the right to respect for private life, freedom of thought, religion and conscience. At the same time, the derogation does not give states the right to spontaneously violate human rights.

As mentioned in the Statement on the Interpretation of the Right to Health during the Pandemic of the European Committee on Social Rights of 2020: “In times of pandemic, in which the lives and health of many people are seriously threatened, the right to health is guaranteed and it of particular importance, and governments must take all necessary steps to ensure that it is effectively guaranteed. In view of this, Member States have an obligation to ensure that the right to health is given the highest priority in policies, legislation and other activities in response to a pandemic.” (Statement on the right to protection of health during a pandemic, 2020). Thus, the protection of human rights in the field of health care has become important and increasingly reflected in international law at various levels. Despite positive changes in ensuring the highest attainable level of physical and mental health, everyone without exception is unable to fully exercise their right to health

care, and for most marginalized and most vulnerable populations, the highest achievable level of health remains unavailable. Many people face discrimination, violations of their fundamental rights and abuse by healthcare professionals when accessing healthcare facilities (Bern et al., 2012).

For example, in Ukraine, the relevant issue began to receive considerable attention even after the medical reform in 2016. After the Ministry of Health of Ukraine (the MOH of Ukraine) began a gradual and consistent reform of the health care system, all the problems and aggravations that have existed for a long time within the system and negatively affected the protection of human rights came to the surface. Moreover, the identified problems raised objective concerns of patients about the violation of their rights. All participants in this reform, both on the part of the authorities and on the part of the health care system and, accordingly, patients themselves, substantiate their position on the health care reform system, appealing to human rights, articles of the Constitution of Ukraine, international obligations of the state, law and standards of the Council of Europe, etc. (Rohansky, 2017).

According to Art. 3 of the Constitution it is stipulated that: "... life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value". According to Art. 27 of the Constitution, everyone has the inalienable 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 life and health, the lives and health of others from unlawful encroachment. In Art. 43 noted that everyone has the right to adequate, safe and healthy working conditions, to a salary not lower than that prescribed by law (Constitution of Ukraine, 1996).

In addition, the right to health care is enshrined in other regulations. First of all, it is necessary to emphasize the Law of Ukraine "Fundamentals of Ukrainian legislation on health care" of 1993. It states that everyone has a natural inalienable and inviolable right to health care. Society and the state are responsible to present and future generations for the level of health and preservation of the gene pool of the people of Ukraine, ensure the priority of health care in the state, improving working conditions, education, living and recreation, solving environmental problems, improving health care and the introduction of a healthy lifestyle. This Law defines the legal, organizational, economic and social principles of health care in Ukraine, regulates public relations in this area in order to ensure the harmonious development of physical and spiritual strength, high efficiency and long active life of citizens, eliminating factors that adversely affect their health, prevention and reduction of morbidity, disability and mortality, improvement of heredity (Fundamentals of Ukrainian legislation on health care, 1993).

Public administration can be called one of the key foundations of the functioning of an independent state, and therefore determining the foundations of the functioning of the public sphere in the field of medicine plays an important role for the future development of Ukraine. The right to life, health, respect, protection of honor, dignity, inviolability and security in a democratically organized society are recognized as the highest social value, and their establishment and provision are considered the main duty of the state

and one of the main priorities of public administration (Leshchenko & Radishch, 2014). Thus, the issue of health care regulation is regulated in many international legal acts, including a number of those ratified by Ukraine. The relevant issue also deservedly took its place among the acts of the Council of Europe and the case law of the European Court of Human Rights (hereinafter – the ECtHR). The importance of jurisprudence is difficult to overestimate, as it has a practical impact on the Council of Europe member states, highlights and challenges pressing societies, and sets important precedents for further consideration of similar cases, reform of public health systems, and takes action for restoration of the violated right of citizens. Based on the above, the purpose of the article is to analyze international legal norms and standards, as well as the practice of the ECtHR in the context of the human right to health.

In the course of the research the author applied a system of general scientific, philosophical and special methods, the application of which ensures the reliability of the obtained results and achievement of the formulated goal of the article. The formal-legal method is used to analyze the understanding of the right to health care and its components, as well as the legal regulation of relevant law at the international level and in acts of national legislation of Ukraine. In addition, the formal-legal method is used to analyze the case law of the European Court of Human Rights. The method of scientific knowledge is used to study the features of the right to health care. The application of the system method made it possible to summarize the information on the studied features, as well as the constituent elements of the right to health care. The method of analysis and synthesis made it possible to process theoretical information, international legal acts, case law and on their basis to identify problems that exist in the research area and ways to solve them. Strict analysis is a serious guarantee of the logic of the presentation of the article.

The comparative method was used by the author to compare and analyze international legal norms, legislation of Ukraine and analyze the compliance of domestic legal norms with international requirements and standards. In addition, the method of comparison was used to analyze the case law of the ECtHR in the context of the research topic and the law of the Council of Europe on the protection of the human right to health. The application of the historical-logical method provided an opportunity to obtain theoretical results of the study on the formation of awareness of the international community of the importance of the human right to health care and the gradual transition to its legal regulation. To formulate the conclusions of the article, the author used the method of deduction, which consists in substantiating the author's conclusion on the basis of individual judgments of the authors, separate legislation and case law.

2. THE CONCEPT OF HUMAN RIGHTS IN HEALTH CARE

Before proceeding to the analysis of the practical component of human rights in the field of health care, it is appropriate to consider the theoretical aspects of the issue. Yes, the right to life and health care are natural and inalienable rights of every citizen. They are recognized even by those countries in whose constitutions have not been enshrined (Leshchenko & Radishch, 2014). Ukrainian researcher A.V. Semenova (2014) notes that the right to health care should be attributed to inalienable and those

that belong to a person from birth. The researcher defines that the relevant law in a broad sense is a set of legal norms that regulate public relations arising in the field of health care and aimed at ensuring the health of each person, maintaining his ability to work, longevity and active life, as well as eliminating and preventing the emergence of factors that may adversely affect human health and quality of life. A.V. Semenova also emphasizes that the relevant right arises before the onset of factors that may adversely affect human well-being. With the onset of these factors, a person has the right to require competent persons and organizations to eliminate the factors and ensure health and other related benefits (Semenova, 2014).

Another Ukrainian scientist Z.S. Skaletska notes that the right to health care is a person's right to preserve and develop physiological and psychological functions, optimal performance and social activity of a person with the maximum biologically possible individual life expectancy. That is, this researcher in this definition places more emphasis on the physiological component of the relevant law than on the legal one (Skaletska, 2009). As noted by Ukrainian scientist Yu. Shvets, in the narrow sense, health care should be considered as a system of legal, socio-economic and treatment-and-prophylactic measures and means aimed at preserving human health. Thus, the human right to health includes both freedoms and rights. Constitutional freedoms include, for example, the freedom to control one's health and body, including sexual and reproductive freedom (Shvets, 2017).

In the joint work of British and American researchers M. Maruthappu, R. Ologunde, A. Gunarajasingam scientists note that the right to health care is a set of political, economic, legal, social, cultural, scientific, medical, sanitary and hygienic measures and anti-epidemiological nature, aimed at preserving and strengthening the physical and mental health of each person, maintaining his long active life, providing him with medical care in case of health loss (Maruthappu et al., 2013). As rightly noted by American researchers K. Footer, L. Rubenstein, the right to health care is one of the most important social rights of man and citizen because health is the highest good of man, without which many other benefits and values lose their value. At the same time, it is not only a personal good of the citizen, but also has a social character (Footer & Rubenstein, 2013).

Thus, based on the above, we can conclude that human rights to health are natural rights that are reflected in international and domestic legal acts, are inalienable, protected by the state and guarantee human health and medical care in occurrence of the disease. It should also be noted that the right to health care includes all the rights granted to the subjects of medical relations relating to this area. These include: the right to informed consent, the right to free choice of doctor and health care institution, the right to medical secrecy and confidentiality, the right to protection of violated rights and the right to access services in the health care system (Health and Human Rights: A Resource Guide, 2015).

3. PROTECTION OF HUMAN RIGHTS IN HEALTH CARE IN THE SYSTEM OF INTERNATIONAL LAW

Human rights in the field of health care are based on the standards of the international concept of human rights, many of which are reflected in international treaties and national

legal acts. Thus, at the universal level, the relevant right is enshrined in the documents of the UN system, in particular, in the Constitution of the World Health Organization (hereinafter – WHO) of 1946, which stated that “the highest achievable level of health is one of fundamental rights of every human being” (Constitution of the World Health Organization, 1946). In addition, many international legal instruments do not contain a direct rule on the protection of the right to health care, but in one way or another address it in their articles. For example, the Universal Declaration of Human Rights (hereinafter referred to as the UDHR) of 1948 does not explicitly mention the right to health care. However, it contains Art. 25, which regulates the human right to: “... a standard of living, including food, clothing, housing, medical care and necessary social services, which is necessary to maintain health and well-being...” (Universal declaration of human rights, 1948).

In the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, Art. 12 states that States recognize the right of everyone to the highest attainable standard of physical and mental health. For the fulfillment of that, they have the following responsibilities: to ensure the reduction of child mortality and healthy child development; improve all aspects of occupational health and the environment; prevent epidemic, endemic and occupational diseases; create conditions for the provision of medical care and medical care for all (International Covenant on Civil and Political Rights, 1966). Determining the right to health, enshrined in ICESCR became widely used (International Covenant on Economic, Social and Cultural Rights, 1966).

Committee on Economic, Social and Cultural Rights is the body authorized to monitor compliance on the ICESCR, which, in turn, issued a Comment on the right to health No. 14 of 2000. The Comment provides authoritative guidance on the fulfillment by the member states of the treaty of their contractual obligations. Despite the fact that Comment No. 14 is of a recommendatory nature, the document expresses the main directions and painful issues of the relevant field of rights (Yaroshenko et al., 2020). The Comment states that the right to health is a short form for the right to the highest attainable standard of physical and mental health. The right to health is not just the right to be healthy or the right to health, it contains a more complex and deeper understanding. The Committee points out that “the right to health is understood as the right to use a number of institutions, goods, services and conditions necessary for the attainment of the highest attainable standard of health” (General comment No. 14, 2000).

According to Art. 24 of the Convention on the Rights of the Child of 1989, States Parties recognize the right of child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties seek to ensure that no child is deprived of his or her right to access such health care services (Convention on the Rights of the Child, 1989). In addition, similar rules are also contained in Art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (International Convention on the Elimination of All Forms of Racial Discrimination, 1965); Art. 11.1 and Art. 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 (1979) (Convention on the Elimination of All Forms of Discrimination against Women, 1979); Art. 25 of the

Convention on the Rights of Persons with Disabilities of 2006 (Convention on the Rights of Persons with Disabilities, 2006).

Other regional international legal instruments also reflect the right to health care. For example, in accordance with Art. 16 of the African Charter on Human and Peoples' Rights, adopted in 1981, everyone has the right to the highest attainable standard of physical and mental health. States Parties shall take the necessary measures to protect the health of their peoples and to provide them with medical care in the event of illness (African Charter on Human and Peoples' Rights, 1981). According to Art. 11 of the American Declaration on the Rights and Duties of Man of 1948, everyone has the right to maintain their health through sanitary and social measures relating to food, clothing, housing and medical care, as permitted by state and public resources (American Declaration on the Rights and Duties of Man, 1948). In summary, it can be stated that international law has multifacetedly enshrined the right to health care, regulating it in various legal acts. This can be explained by the importance of the right to life for everyone (Tomashevski & Yaroshenko, 2020). The right to health is closely linked and dependent on the enjoyment of other human rights, including the right to food, housing, work, education, human dignity, life, non-discrimination, equality, torture, privacy, access to information and freedom of associations, meetings and movements. These and other rights and freedoms are related to the components of the right to health care.

4. THE RIGHT TO HEALTH IN LEGAL ACTS OF THE COUNCIL OF EUROPE

At the regional level, the right to health is also reflected in the Council of Europe. The ECHR deserves special attention, although it does not directly enshrine the right to health care, however, it regulates in its articles a number of rights that are somehow related to the right to life, in particular: Art. 2 "Right to life", Art. 3 "Prohibition of torture", Art. 4 "Prohibition of slavery and forced labor", Art. 5 "Right to liberty and security", Art. 6 "Right to a fair trial", Art. 8 "The right to respect for private and family life", Art. 9 "Freedom of thought, conscience and religion", Art. 10 "Freedom of expression", Art. 11 "Freedom of assembly and association", Art. 12 "Right to marry", Art. 13 "The right to an effective remedy" (The European Convention on Human Rights, 1950).

According to Art. 11 of the European Social Charter the right to health care is enshrined. Member States have undertaken to take appropriate measures, inter alia, to prevent epidemic diseases, to eliminate the causes of ill health and to provide counseling and education services that promote health and personal responsibility in health matters (European Social Charter (Revised), 1996). In this context, it is also worth noting the provisions of Art. 13 of the European Social Charter, which regulates the exercise of the right to social and medical assistance and the responsibilities imposed on States, for example to ensure that any person... shall be provided with appropriate assistance and, in the event of illness, the care required by his or her state of health (European Social Charter (Revised), 1996). The implementation of the Charter obliges states to resort not only to legal but also to practical actions to ensure the availability of resources and operational procedures necessary for the full implementation of the rights specified in the Charter (Kazak, 2020).

There are also a number of other documents that enshrine the right to health care. Here are some of them: Convention for the Protection of Human Rights and Dignity in the Application of Biology and Medicine: Convention on Human Rights and Biomedicine of 1997. The essence of the Convention is that human interests are above the interests of science or society. The Convention sets out a number of principles and prohibitions regarding genetic and medical research, consent, the right to privacy and information, transplantation, and so on. The Convention affirms the principle that a person must give the necessary consent to a medical intervention in an understandable form and in advance, except in an emergency (Hyliaka et al., 2020). Such consent may be freely waived at any time. Medical intervention against persons who are unable to give their consent, such as children and persons with mental disorders, can be carried out only in cases where it can give a real and direct positive effect (Convention for the Protection of Human..., 1997).

Council of Europe Recommendation NR (88) 7 “On school health education and the role and training of teachers” of 1988. This Recommendation paid great attention to the education of the new generation in the direction of awareness of the importance of health, knowledge of their rights in the field of health care and the inclusion of relevant issues in the school education program (School Health Education and the Role..., 1988). Another Recommendation of the Committee of Ministers of the Council of Europe CM/Rec (2010) 6 on good governance in health systems of 2010, states that the legal framework for health care should be based on three fundamental values of the Council of Europe: human rights and human dignity; the rule of law; democracy. The right to health care should be based on the principles of universality, equality and solidarity (Recommendation CM/Rec (2010)6..., 2010).

5. THE PRACTICE OF THE ECtHR IN HEALTH CARE AND ITS SIGNIFICANCE

The ECHR does not explicitly enshrine the right to protection of life among the list of fundamental human rights, as noted earlier. However, the ECtHR still hears cases in this direction if the violation took place under another article of the ECHR, but the violation concerns, inter alia, the right to health care. For a more detailed understanding, consider the case law. First of all, we note the illustrative case of *K.H. and Others v. Slovakia* of 2009. According to its circumstances, the applicants, eight Gypsy women, had received medical treatment in the obstetrics and gynecology departments of two hospitals in Eastern Slovakia during pregnancy and childbirth. Despite repeated attempts, none of the applicants became pregnant after their last hospital stay, where they underwent a caesarean section. The applicants suspected that the cause of their infertility could be sterilization without their knowledge and consent during a caesarean section (Tatsiy et al., 2017).

In 2004 the applicants issued powers of attorney to the NGO's lawyers, who then tried to check the applicants' medical records and make photocopies of them. Faced with difficulties in gaining access to the documents, the applicants began proceedings in the local courts. As a result, most of the applicants were allowed to inspect their cards.

However, their requests for photocopies were ultimately rejected on the basis of the national legislation in force at the time, which provided that the medical records were the property of the hospital and that restrictions on access were justified in order to prevent misuse of the information contained therein. Following the adoption of new legislation in 2005, all applicants, except the second, whose medical record had meanwhile been lost, were eventually granted full access to the necessary medical records and permission to take photocopies (Yaroshenko et al., 2018).

The applicants applied to the ECtHR in the context of a violation of Art. 6 “Right to a fair trial” and Art. 8 “The right to respect for private and family life”. The court ruled in both cases, noting that access to information concerning a person’s state of health and reproductive status is important for a person’s private and family life under Art. 8. The Court finds that the refusal to grant access to such information must be substantiated by good cause. In the present case, the Court did not accept the State’s argument that the prevention of photocopying of records was necessary to protect information from misuse. The Court therefore found that the State had violated the applicants’ right to respect for their private and family life under Art. 8 of the Convention. The court also found a violation of the applicants’ right of access to a court under Art. 6 (K.H. and Others v. Slovakia, 2009).

Case of Akopyan v. Ukraine of 2014 concerned the applicant, who had been hospitalized at the Kharkiv Regional Psychiatric Hospital in 1994. According to her medical history, she had shown signs of a mental disorder. Between 1995 and 1997, she repeatedly applied for discharge from the hospital and complained of being held in a psychiatric hospital, but to no avail. In 1997, she escaped from the hospital and, after researching her medical history, found that she had not received any treatment. At the applicant's request, she underwent a medical examination, which confirmed that she was perfectly healthy. The applicant lodged a complaint with the ECtHR alleging a violation of her right to liberty and security of person under Art. 5 ECHR. The court upheld the violation of the relevant article and ruled that a person subject to compulsory medical treatment should have the right to apply to the competent authorities for consideration of the termination of such involuntary treatment (Akopyan v. Ukraine, 2014).

In the case of Helhal v. France of 2015, the applicant has been in prison with health problems. In 2010, he petitioned a judge to postpone his sentence on medical grounds. He also complained that the premises of the prison where he was serving his sentence were not adapted for his disability, so that the applicant could only move in a wheelchair. Moreover, the applicant could not take a shower on his own, but did so with the help of another prisoner assigned to him for that purpose, and that the physiotherapy he had received was insufficient. In 2011 the judge to whom the applicant had lodged rejected his application and, on the basis of two identical medical opinions, found that the applicant’s state of health met the conditions of his imprisonment. However, the court found that the prison had not been adapted to the applicant’s needs and that there were other institutions which were better equipped to maintain him. All other complaints lodged by the applicant against this decision were rejected.

The applicant applied to the ECtHR on the ground of violation of Art. 3 of the ECHR “Prohibition of Torture”. The Court emphasized that the member states of the Council of Europe have a duty to care for people with disabilities because of their vulnerability, in particular in situations of coping with detention. The ECtHR also highlighted the inadequate quality of care provided to people with disabilities. Moreover, as regards the conditions of detention and access to the toilets, and especially to the showers, the applicant could not have entered these premises without assistance, as they were not in the cell and were not wheelchair accessible (Kazak, 2020). On that basis, the ECtHR found that although the applicant's prolonged detention was not in itself incompatible with Art. 3 of the Convention, the domestic authorities did not provide him with the necessary medical care to protect him from conduct contrary to this provision. Thus, the court found a violation of Art. 3 of the Convention (Helhal v. France, 2015). Despite the fact that the present case concerns the prohibition of torture, it is directly related to the right of a person to health care, and therefore indicates that the ECtHR pays great attention to the relevant right in its decisions, even if such rights are violated in the context of other articles of the ECHR.

Next, we should pay attention to the case of *Mihu v. Romania* of 2016. The case concerned the failure to provide adequate medical care to the applicant's son, which resulted in his death, as well as a violation of the right to a fair investigation. In 2005 the applicant's son was taken to the emergency department with a diagnosis of cirrhosis of the liver and gastrointestinal bleeding. He received the necessary medication, but due to the high capacity of the intensive care unit, where he was to undergo treatment, he was unable to get a place there. Despite the treatment, the patient's condition gradually deteriorated and the next day the doctors pronounced him dead. The cause of death was declared cardiorespiratory failure. The applicant lodged a complaint with the local police about the case of manslaughter, as he had testified that he had asked the doctors to transfer the patient to a more equipped ward, but had been refused. However, the applicant encountered delays in the investigation and procrastination. The applicant complained of a violation of Art. 2 of the ECHR “Right to Life”.

The ECtHR noted that the ECHR imposes an obligation on states to monitor compliance with Art. 2 of the Convention and by all available means to ensure that the proper administrative and legislative provision for the observance of patients' rights is observed, and in the event that such a violation occurs, that proper investigation and punishment are carried out. The court noted that the events that led to the applicant's death should be considered in terms of the adequacy and effectiveness of the investigation. Thus, the ECtHR found a violation of Art. 2 of the ECHR. That is, despite the fact that the applicant complained of a violation of Art. 2 of the ECHR, which regulates the right to life, the relevant case can be attributed to the category of those that regulate and protect the human right to health, because life and health are inextricably linked categories. Moreover, in the relevant case, the violation of the right to life occurred as a consequence of a previous violation of the right to health care (*Mihu v. Romania*, 2016). Thus, the realization of the right to life is not possible without the realization of the right to health care. After all, the normal biological and social functioning of man is impossible without health (Hendel, 2016).

The next case that deserves attention is the case of *Lunev v. Ukraine* of 2013. In the circumstances of the case, the applicant was held in pre-trial detention on suspicion of drug trafficking. During his stay in the pre-trial detention center, he was diagnosed with a number of diseases, including the HIV, chronic bronchitis, encephalopathy, neuropathy and residual changes after tuberculosis. During the investigation the applicant was treated several times in the medical unit of the SIZO and the hospital. The applicant lodged a complaint with the ECtHR alleging a violation of Art. 3 of the ECHR “Prohibition of Torture” arguing that the conditions of his detention were incompatible with his state of health and that he had been ill-treated during his detention in SIZO.

The court considered the case and concluded that the prolonged stay of a person infected with the HIV and other diseases without proper medical care is inhumane and degrading. The ECtHR also found during the proceedings that, despite being diagnosed with the disease, the applicant had not received adequate treatment for more than a year until his condition became critical. That is, the court found a violation of Art. 3 of the ECHR (*Lunev v. Ukraine*, 2013). It should be noted that this case is interesting in that the ECtHR equated the lack of proper medical care to torture, recognizing that such treatment is degrading.

6. RECEIVED EXPERIENCE AND DEVELOPMENT PROSPECTS

Domestic researcher Y.Y. Shoemaker combined important aspects of a person's right to health care on the basis of constitutional principles. It analyzes the substantive and essential relationship of the right to health care with other constitutional human rights, as well as explains the content of the relevant law in accordance with national legal acts. He emphasizes that the human right to health includes both freedoms and rights. Constitutional freedoms include, for example, the freedom to control one's health and body, including sexual and reproductive freedom (Shvets, 2017). Ukrainian researcher O.M. Lisnycha analyzed the practice of the ECtHR in the context of the right to health care through the prism of other human rights, in particular: the right to life (Article 2 of the ECHR), the prohibition of torture (Article 3 of the ECHR), the right to liberty and security (Article 5 of the ECHR), the right to a fair trial (Article 6 of the ECHR); the right to respect for private and family life (Article 8 of the ECHR). Thus, the right to health care can be violated in completely different contexts and may interact with other rights (Lisnycha, 2018).

Ukrainian researcher N.V. Hendel paid considerable attention to the study of the practice of the ECtHR in the context of the right to health care. In her work “Protection of the right to health in the European Court of Human Rights. The case law of the ECtHR” she revealed various aspects of the relationship between the law under study and other human rights enshrined in the ECHR. Based on the analysis of the provisions of the ECHR articles and the case law of the ECtHR, she substantiated the conclusion that the right to health is comprehensive and includes: the right to information and confidentiality of health information; the right to medical and social assistance; the right to consent to treatment and medical intervention; the right to a favorable ecological environment that affects health, etc. Thus, the relationship of the right to health to socio-economic rights is subjective (Hendel, 2016).

In the conclusions substantiated by the domestic scientist T.M. Kurilo stressed the need to refer to European norms and recommendations in the creation of national legal acts in the field of health, and noted the importance of the approach of the Council of Europe and the ECtHR in protecting the human right to health (Kurilo, 2012). Foreign researchers K. Footer and L. Rubenstein (2013) conducted a detailed analysis of the place of the right to health care in the human rights system. They analyzed the role of relevant law in the context of humanitarian law and noted that attacks on health workers and patients in situations of armed conflict, civil unrest and state repression pose enormous problems for the provision of medical care when it is most needed. Such violations, in their opinion, are a direct violation not only of humanitarian law, but also of the human right to health care as one of the fundamental and inalienable rights. They emphasize the need for detailed regulation of theoretical understanding and legal regulation of relevant law.

Some aspects of the right to health care have been studied by the following Ukrainian and foreign scholars: I. Bern, 2012; A. Gunarajasingam, 2013; T. Ezer, 2012; J. Cohen, 2012; V.V. Leshchenko, 2014; M. Maruthappu, 2016; J. Overal, 2012; R. Ologunde, 2013; Ya. Radishch, 2014; L. Rubenstein, 2013; A. Semenova, 2014; I. Senyuta, 2012; Z.S. Skaletska, 2009; K. Footer and others. Despite the available number of scientific papers on the relevant issue, it still remains insufficiently researched and debatable in legal science. In particular, insufficient attention is paid to the compliance of domestic legal norms with international legal requirements and standards. In addition, the author emphasizes the case law of the European Court of Human Rights, which shows the urgent problems of protection of the right to health and the role of relevant law for the normal provision of all other spheres of human life.

7. CONCLUSION AND RECOMMENDATIONS

Understanding health as a human right imposes a legal obligation on states to ensure access to timely, appropriate and affordable health care of appropriate quality, as well as relevant determinants of health, such as safe drinking water, sanitation, food, housing, health-related information and health education and gender equality. A human rights-based approach to health requires that health policies and programs prioritize the needs of those at the end of the road to greater justice.

The right to health care should be exercised in the absence of discrimination on the grounds of race, age, ethnicity or any other status. In accordance with the principles of non-discrimination and equality, States should take measures to correct any discriminatory laws, practices and policies. Another feature of the approaches based on respect for human rights is constructive participation. This means that national stakeholders, including non-governmental bodies such as non-governmental organizations, are constructively involved in shaping programs at all stages - evaluation, analysis, planning, implementation, monitoring and analytical reporting. Health care and human rights are powerful modern approaches to defining and ensuring human well-being. Attention to the interaction between health care and human rights can provide practical benefits for those working in the field of health care or human rights, can help refocus thinking on

key global health care issues, and can enhance human thinking and practice relating to human rights.

In the context of the Art. 2 of the ECHR (Right to Life), the following cases can be distinguished: *Mihu v. Romania* (2016) on the provision of inadequate medical care; *Kats and Others v. Ukraine* (2009) on failure to provide adequate medical care, leading to death; *Mehmet Şentürk and Bekir Şentürk v. Turkey* (2013) on the refusal of an urgent operation for a pregnant woman due to lack of funds for such an operation; *Nina Kutsenko v. Ukraine* (2017) on failure to provide adequate medical care and further improper investigation of this violation; *Byrzykowski v. Poland* (2007) on improper investigation of the causes of death and serious harm to the child's health after a cesarean section; *Hiller v. Austria* (2017) on non-compliance with the obligation to protect the right to life; *Centre for Legal Resources on behalf of Valentin Campeanu v. Romania* (2017) inability to provide medical care to an HIV-infected mentally ill person; *Lopes de Sousa Fernandes v. Portugal* (2017) on negligence that led to death; *Šilih v. Slovenia* (2009) on deaths due to medical negligence; *Marchuk v. Ukraine* (2016) on ineffectiveness of the investigation of the fact of death due to medical negligence; *Panaitescu v. Romania* (2017) on the denial of free medical care; *Colak and Tsakiridis v. Germany* (2009) on the denial of compensation for deteriorated health; *Lambert and others v. France* (2015) on the cessation of artificial feeding; *Charles Gard and Others v. the United Kingdom* (2017) on the cessation of life-sustaining therapy; *Calvelli and Ciglio v. Italy* (2002) on negligent homicide and others.

In accordance with the Art. 3 of the ECHR (Prohibition of Torture) the ECtHR considered the following cases *A.N. v. Ukraine* (2015) on improper provision of medical care during detention; *Popov v. Russia* (2006) on lack of medical care; *Elberte v. Latvia* (2015) on the removal of tissues of the deceased without the consent of the wife; *M.S. v. Croatia* (2015) on the applicant's placement in a psychiatric hospital; *Koval v. Ukraine* (2007) on failure to provide an adequate treatment; *Yakovenko v. Ukraine* (2008) on ill-treatment and improper behaviour, etc.

In the context of Art. 5 of the ECHR (Right to liberty and security) the following cases were considered: *Barilo v. Ukraine* (2013) on illegal detention of person with medical contraindications; *M. v. Ukraine* (2012) on illegal placement in a psychiatric institution; *Rakevich v. Russia* (2004) on illegal emergency placement in a psychiatric institution, etc.

According to Art. 6 of the ECHR (Right to a Fair Trial) the following cases can be mentioned: *Benderskiy v. Ukraine* (2008) on inadequate medical care; *Jalloh v. Germany* (2006) on the forced use of emetics, etc.

Regarding the Art. 8 (Right to respect for private and family life) *Zaichenko v. Ukraine* (2015) on placement in a psychiatric hospital; *Panteleyenکو v. Ukraine* (2007) on the disclosure of confidential information about a person's mental state; *Szuluk v. the United Kingdom* (2009) on the control of a prisoner's correspondence with a doctor; *I v. Finland* (2008) on the inability to provide adequate medical care to an HIV-positive person; *M.S. v. Sweden* (1997) on the transfer of personal data of the patient; *Avilkina and Others v. Russia* (2013) on the transfer of medical documents of the employee; *Sidorova v.*

Russia (2019) on the unauthorized collection of medical information about the applicant; K. H. and Others v. Slovakia (2009) on preventing a patient from making a copy of his medical file; Nedescu v. Romania (2018) on the seizure of frozen embryos; Parillo v. Italy (2015) on the ban on embryo donation; Costa and Pavan v. Italy (2013) on the ban on embryo screening; Znamenskaya v. Russia (2005) on the prohibition of registration of undisputed paternity; Dubetska and others v. Ukraine (2011) on excessive pollution of housing by two companies, etc.

In the context of the Art. 10 of the ECHR (Right to Freedom of Expression) the following cases can be emphasized: Editions Plons v. France (2004) on the distribution of books with information about the deceased; Bergens Tidende and Others v. Norway (2009) on defamation of a cosmetologist, etc.

According to the Art. 11 of the ECHR (Freedom of Assembly and Association) the following cases were considered: Le Compte, Van Leuven and De Meyer v. Belgium (1981) on the prohibition of a doctor to practice medicine; Jehovah's Witnesses of Moscow and Others v. Russia (2010) on the tendency to refuse medical care, etc.

It should be noted that all the conclusions and decisions rendered in these cases can serve as a good case law for their further application in other ECtHR cases, in the adjudication of national courts of the Member States, as well as for the improvement of existing legislation in the Council of Europe Member States and, in particular, in Ukrainian legislation in the context of health care.

In today's environment of development and improvement of the health care system, doctors and patients must work together to make joint decisions on diagnosis and treatment. Financial issues are inextricably linked to the quality of health care, which in turn can lead to inequality and discrimination. There is a need to better understand the social determinants of health care that run between traditional medicine and the broader concept of the health system, including the interdependence of the right to health and the realization of all human rights. The human rights approach to health care uses the human rights system to analyze these elements, including health care.

The right to health has a close relationship with other human rights. Therefore, its observance guarantees observance of other rights and vice versa. The case law of the European Court of Human Rights shows that the violation of the right to health care has negative consequences in completely different spheres of human life. Therefore, in order to effectively ensure the right to health care, states must be guided by the practice of the ECtHR and implement it in their legislation. Similarly, they must adhere to international standards in this area and ratify those international legal acts that have not yet become part of national legislation.

We consider it expedient to update the domestic legislation in the field of health care, in particular by amending the Law of Ukraine "Fundamentals of Ukrainian legislation on health care" of 1993, including by taking into account the case law of the ECtHR in considered cases to eliminate future violations of the rights of Ukrainian citizens.

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