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ECONOMIC GUARANTEES OF PATIENT'S RIGHTS IN UKRAINE

The article deals with the theoretical and legal issues of economic guarantees of patient's rights. The content of the modern healthcare model implies that the state guarantees a budget system for financing healthcare and the right to free medical care. For theoretical and legal certainty, it should be sublimated that the right to free healthcare includes the following factors: it applies only to state and municipal institutions; only the minimum level of medical care is free. The economic and social guarantees of patient's rights are directly proportional to the economic development of the state. Therefore, considering that the state cannot fully bear the burden of providing medical care to the population, the possibility of redistribution of this financial support is established. The necessity of Ukraine's transition to the European model of compulsory health insurance is pointed out.

Keywords: economic guarantees, patient's rights, state support, right to free healthcare.

Formulation of the problem. The patient's legal status in a state should have a certain state of social ideal, where the actual and legal position of the person must coincide. According to V. Ya. Tatiy, "the practical value of the rights and freedoms of person and citizen lies in their reality, that is, in the possibility of exercising powers which derive from the content of one or another law"¹. This can only be achieved if the normative definition of the rights of the patient is followed by the real comprehensive mechanism of their implementation in the specific conditions of the healthcare system development. Without such an element, the legal status is devoid of viability.

Economic and social guarantees are significant, since the financing of the healthcare sector is one of the most important and economically costly sectors in the state. Therefore, it is necessary to focus on the socio-economic guarantees of the patient.

State of research. At the present stage of the legal science development, interest in the sphere of medical law and relations in the healthcare sector has significantly intensified. Most of the problems are considered from the point of view of the analysis of certain rights of the patient and their state guarantee, in particular, the novelties of I. Venediktov, D. Gergel, S. Stetsenko, I. Senyuta, V. Tretyakova and others are noted. However, consideration of the problem of the patient's status at the present stage of transformation of the legal reality also requires improvement of the institution of guaranteeing the rights of patients. The purpose of the article is the theoretical and legal analysis of economic guarantees of the patient's rights as an element of ensuring their proper legal status.

Statement of the main provisions. The concept of "socio-economic guarantees" in modern terms has arisen in Germany under the influence of the model of social market economy of V.Oiken and the holistic concept of the social market economy of A.Muller-Armak, A.Rustov, V.Repke and L. Erhard. Without economic guarantees of rights and freedoms, it is impossible to ensure the dignity of the human person. Moreover, without these guarantees, many other rights, in particular political, personal, etc., lose their meaning to a large extent. And as V. Kostitsky emphasizes: "What sense, for example, in the right to inviolability of the housing or secrets of telephone conversations if the person has neither his\her own home, nor phone?"². By analogy, we can ask: what sense in the state-legal definition of the patient's legal status, if the state cannot provide it?

Today, social guarantees, as an integral determinant of a democratic and legal social state, are an objectively necessary element of the social welfare system. They are the material embodiment of the state's

¹ Тацій, В.Я. (2008) Людина і правова держава: проблеми взаємовідносин і взаємодії. *Вісник Академії правових наук України*, 2 (53), 7.

² Костицький, В. (1996). Соціально-економічні права людини. *Право України*, 6, 17.

obligations to support human livelihoods at a level that takes into account the possibilities of the economy and is minimum acceptable from the point of view of society¹.

The development of civilization and the genesis of human rights leads to the attempt of the states to pursue policies that would make it possible to say that the state is social. However, the state cannot be considered so, primarily when the level of healthcare does not meet the basic needs of the individual and population. Healthcare financing should be considered as a separate element of the patient's rights system.

It is important that the healthcare sector was also in line with international social standards. Among the latter, in our opinion, the following should be highlighted:

- the right to social security, the rights that are necessary for the protection of personal dignity and for the free development of person, including economic, social (Art. 22 Universal Declaration of Human Rights);

- the right to adequate standard of living, including food, clothing, housing, medical care and necessary social services, which is essential for maintaining the health and well-being of person and his/her family. This includes the right to security in the event of unemployment (Art. 25 of the Universal Declaration of Human Rights, art. 11 of the International Covenant on Economic, Social and Cultural Rights);

- the right of every person to the highest attainable standard of physical and mental health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights).

Economic guarantees of patients' rights in general are the financial provision of health care, which scientists define as "a method of financial mechanism that determines the sources and forms of financing of economic entities, whose activities are aimed at the reproduction, preservation and strengthening of citizens' health"².

E. A. Malik notes that "the financing of healthcare is a process of formation and use of financial resources that are used to ensure the functioning of the system of measures aimed at the preservation and development of physiological and psychological functions, the optimal working capacity and the social activity of the person with the maximum biologically possible life expectancy"³.

It is significant that in modern society the human right to healthcare and medical care is not a personal or individual matter, but, on the contrary, this right is the most important value for the state and is therefore guaranteed by the state.

States cannot refuse to finance this sphere; the primary financial burden is still on the state budget. The increase in financial expenditures of the state in the sphere of healthcare causes an improvement in the life of the population, increases their life expectancy, health level, working capacity of the population. This can be illustrated by foreign economic indicators. According to WHO experts, the increase in the share of the gross national product per capita for 1000 USD increases the average life expectancy by 0.5 years, and an increase in the income of 1000 USD per citizen increases life expectancy by 1 year.

The content of the modern healthcare model implies that the state guarantees a budget system for financing healthcare and the right to free medical care.

State budget financing system of healthcare. The state promotes the production of medical equipment, tools, equipment, laboratory reagents, medicines, prosthetics and hygiene products and other products necessary for health care, as well as the development of trade of these products. To this end, implementation of state targeted programs on priority development of the medical, biological and pharmaceutical industries, entrepreneurship and international cooperation in the field of material and technical provision of healthcare are encouraged, a system of appropriate tax, price, customs and other privileges and regulators is created. The state ensures compliance with the requirements of the law on restriction of advertising of medicines and may restrict the export of goods necessary for healthcare and raw materials for their manufacture, if it may harm the interests of the health of the Ukraine population⁴.

¹ Горин, В. (2013). Соціальні гарантії в системі соціальної безпеки держави: теоретико-методологічний аспект. *Світ фінанси*, 2, 69-80.

² Буздуган, Я.М. (2009). *Правові та організаційні основи фінансового забезпечення охорони здоров'я в Україні*. Автореферат дисертації на здобуття наукового ступеню кандидата юридичних наук. Київ, 7.

³ Малік, Є.О. (2007). *Система фінансування охорони здоров'я: конкурентні та соціальні критерії розвитку*. Автореферат дисертації на здобуття наукового ступеню кандидата екон. наук. Київ, 7.

⁴ Романова, А.А. (2013). Фінансування галузі охорони здоров'я як окремий елемент системи забезпечення права людини на здоров'я. *Публічне право*, 113-118.

However, it is the economic and social guarantees that show us that the legal status of the patient and its provision directly proportional depends on the economic development of the state. Therefore, given the fact that the state cannot fully bear the burden of providing medical care to the population, the possibility of redistribution of this financial support is established. The Constitutional Court spoke on economic guarantees and their absolute character. In the decision of December 26, 2011 No. 20-rp/2011, "the social and economic rights stipulated by the laws are absolute. The mechanism of realization of these rights can be changed by the state. In particular, due to the impossibility of financial support through proportional redistribution of funds, in order to maintain a balance of interests of the whole society. In addition, such measures may be necessary to prevent or eliminate real threats to Ukraine's economic security ..."¹.

State guarantee of the right to free medical care. This right includes a set of opportunities and powers enshrined in the law that provides every citizen with the opportunity to receive, in case of applying to the state medical establishment, free of charge qualified treatment and medical and social services, the choice of the healthcare institution in the exercise of this right, as well as the opportunity to demand protection in case of violation.

For theoretical and legal certainty, it should be sublimated that the right to free healthcare includes the following factors:

- it applies only to state and municipal institutions;
- only the minimum level of healthcare is free.

The volume of these services provided by the programs of state guarantees of medical care of the population (program of medical guarantees) – a program that defines the list and volume of medical services and medicines, the full payment of which the state guarantees to patients at the expense of the State budget of Ukraine according to the tariff, for prevention, diagnosis, treatment and rehabilitation in connection with diseases, injuries, poisoning and pathological conditions, as well as in connection with pregnancy and childbirth².

The complexity of public and private financing of healthcare is important in the context of the real effectiveness of economic guarantees. The main problem of healthcare is the ever-increasing gap between the growth of costs and the ability of the state to finance healthcare at a high level.

A modern problem of global scale is a significant increase in the cost of medical care, especially in the light of the development of biomedicine and biotechnology. This has necessitated the search for alternative strategies for more effective and equitable healthcare financing. These reforms include attraction of new sources of financing, stimulation of non-state projects of healthcare financing, introduction of resource-saving technologies, state monitoring of rational use of the budget.

At the state level, many post-Soviet countries, as a consequence of the command and administrative system, declare the right to free medical care (article 49 of the Constitution of Ukraine; article 41 of the Constitution of the Russian Federation; article 45 of the Constitution of the Republic of Belarus; article 36 of the Constitution of Moldova; article 52 of the Constitution of Turkmenistan). However, in the twenty-first century, it is likely that no state will be able to secure these rights for purely economic reasons.

Taking into account the need for an integrated approach to the health of citizens, the state stimulates cross-sectoral interaction. Article 18 of the law of Ukraine "Fundamentals of Ukraine legislation on health protection" establishes that the financing of healthcare is carried out at the expense of the state budget of Ukraine and local budgets, health insurance funds, charitable funds and any other sources not prohibited by law. That is, medical insurance can be considered an effective guarantee of ensuring the legal status of patients, which should be understood as a separate type of social insurance, which guarantees by the state equal opportunities for Ukrainian citizens in obtaining medical care and provision of medicines.

We distinguish two forms of such insurance – voluntary and compulsory.

According to Art.6 of the Ukraine law "On insurance" voluntary health insurance is provided. The essence of this type of insurance is that the insurance organizations conclude agreements with the healthcare institutions on cooperation in providing medical care and treatment of insured persons under

¹ Рішення щодо відповідності Конституції України (конституційності) пункту 4 розд. VII «Прикінцеві положення» Закону України «Про Державний бюджет України на 2011 рік» 2011 (Конституційний суд України). *Національний правовий Інтернет-портал України* <<http://www.ccu.gov.ua/ru/doccatalog/list?currDir=142486>>.

² Закон про державні фінансові гарантії медичного обслуговування населення 2017 (Верховна рада України) *Відомості Верховної Ради*, 5, 31.

the terms of voluntary health insurance contracts. Also Art.7 of the Ukraine law "On Insurance" provides compulsory medical insurance for certain categories of persons.

However, as many academics and practitioners point out, it is now expedient to have more perfect legal regulation, namely the transition to compulsory health insurance. We agree with S. Stetsenko and I. Senyuta, who indicate that the adoption of the Law "On compulsory state health insurance" will allow: a) to improve financing of the industry; b) to carry out a clear control over the expenses for the treatment of the patient; c) to introduce effective civil-legal contractual relations between healthcare institutions, employers, state and person¹.

Most of the world's leading states have chosen a compulsory health insurance model. The impoverishment of the population, the growth of unemployment, military actions, the increase in the number of people with disabilities, the socio-economic and political crisis in our country – this is the basis that makes no alternative for our country to introduce such a model.

It is also possible to reduce the financial burden of the state and, accordingly, to effectively provide particularly vulnerable groups by stimulating the development of the private health sector. For example, in Germany, the share of the private medical sector in the last 10 years has increased by 5 times and is more than 20% of the total number of medical institutions in the country. As a result, the level of development of the healthcare system remains high on the background of public spending reducing.

Also, it is important to emphasize that the majority of economically developed countries have moved to the reform of all health systems, not only healthcare system. This is due to the fact that the funds should not be inserted into the system of medical care, but mainly in the system of disease prevention. These interventions are effective only if prevention is provided and the overall level of public health is adequate.

Ukraine needs an optimal model of health care, which most of all will meet modern medical trends, taking into account mental and geographical-demographic factors. The concept of the National program "Health 2020: Ukrainian dimension" is defined by optimizing the system of health care delivery to the population, which indicates that it is planned to make the transition from public financing of health institutions to the financing of measures to provide medical care to the population based on its needs². Therefore, the direction of the state movement has been chosen for a long time, but the reform of the entire system is quite slow, often haphazard and chaotic.

Conclusion. In modern society the human right to healthcare and medical care is not a personal or individual matter, but, on the contrary, this right is the most important value for the state and is therefore guaranteed by the state. The content of the modern healthcare model implies that the state guarantees a budget system for financing healthcare and the right to free medical care. For theoretical and legal certainty, it should be sublimated that the right to free healthcare includes the following factors: it applies only to state and municipal institutions; only the minimum level of medical care is free. The economic and social guarantees of patient's rights are directly proportional to the economic development of the state. Therefore, considering that the state cannot fully bear the burden of providing medical care to the population, the possibility of redistribution of this financial support is established. Most of the world's leading states have chosen a compulsory health insurance model. The impoverishment of the population, the growth of unemployment, military actions, the increase in the number of people with disabilities, the socio-economic and political crisis in our country – this is the basis that makes no alternative for our country to introduce such a model.

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