

Duty to take care of own health: problems of law content and ensuring legal liability

Mykhailo A. Anishchenko^{1*}, Leonid S. Hamburh², Dmytriy P. Myrnyi³, Yurii V. Filei⁴, Oleksandr D. Tsarov⁵

PhD in Law, Associate Professor of the Department of Social Medicine, Public Health, Medical and Pharmaceutical law of Zaporizhzhia State Medical University, Zaporizhzhia, Ukraine¹

PhD in Law, Associate Professor, Associate Professor of the Department of Social Medicine, Public Health, Medical and Pharmaceutical law of Zaporizhzhia State Medical University, Zaporizhzhia, Ukraine²

Candidate of Medical Sciences, Assistant of the Department of Therapy, Clinical Pharmacology and Endocrinology, Zaporizhzhia Medical Academy of Postgraduate Education, Zaporizhzhia, Ukraine³

Candidate of Legal Sciences, Associate Professor, Dean of the Faculty of Law of the Institute of Management and Law, National University "Zaporizhzhia Polytechnic", Ukraine⁴

PhD in Pedagogy, Associate Professor of Special Police Tactics Department of the Dnipropetrovsk State University of Internal Affairs, Dnipro, Ukraine⁵

Corresponding author: 1*

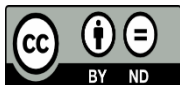


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ABSTRACT

The article examines the legal duty of its citizens to take care of their health established by the laws of Ukraine. The article reveals and substantiates the constitutional-law nature and significance of this duty, its belonging to the sphere of public law in connection with the realization of the general interest in maintaining an adequate level of public health with the simultaneous derivative provision of an individual interest in health protection. The problems of the content of this duty and its provision by society and the state with the help of moral and legal responsibility are investigated: the structure of a legal duty is analyzed, consisting of obligations corresponding to the eligibles of the appropriate subjective right; clarifies the role and significance of moral responsibility (moral duty) and its relationship with legal responsibility.



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1. INTRODUCTION

In accordance with Article 3 of the Law of Ukraine “Fundamentals of Ukrainian legislation on Health Care” (hereinafter – “Fundamentals”), the definition of the legal concept “health” is defined as “a state of complete physical, mental and social well-being, and not just the absence of diseases and physical disabilities” [1]. It follows from this that the basis of a good state of health is the normal biological activity of the human organism, without structural and functional mental, physical, anatomical flaws, disorders and deviations, which determines its non-susceptibility to painful anomalies or the real possibilities of their successful overcoming. Such a basis is a necessary condition for the full-fledged complex filling of the content of the concept of human health by achieving the socio-psychological satisfaction of the individual

as a subject of social relations and the bearer of their entire cultural totality in connection with ensuring complete physical, mental and social well-being. The meaning of the concept of vital activity in this article of the Fundamentals, when applied to its legislative formulation of an expansive interpretation, lies in the ability of the human organism to participate in the pursuit of individual and social life in ways and within the limits usual for a person. In Article 5 of the Fundamentals, citizens are named among other participants in public health activities – state, public or other authorities, enterprises, establishments, organizations, officials – who are obliged to ensure the priority of health protection in their own activities. Among the responsibilities of citizens of Ukraine in the field of health care listed in Article 10 Fundamentals, in item a) the first requirement is to take care of own health [1]. A similar requirement for citizens is contained in Part 1 of Article 5 of the Law of Ukraine “On ensuring the sanitary and epidemic well-being of the population” [2]. The cited medical and legal prescriptions of Ukrainian legislation indicate that the constitutional provision of Article 49 of the Constitution of Ukraine on the right of everyone to health protection, medical care and medical insurance, ensured by state funding of relevant socio-economic, medical and sanitary and health-improving programs, as well as creating conditions for effective and affordable medical care for all citizens, providing them with free medical care in state and communal health care institutions, care for the development of physical culture and sports, ensuring the sanitary and epidemic well-being of the population [3], is interconnected with the duty of the same citizens to take care of their health provided for by laws.

Therefore, the purpose of the article is to clarify the meaning and content of the legal duty to take care of own health as a public domain in conjunction with the corresponding right of society and the state to implement public interests in maintaining an adequate level of public health, as well as the specifics of state enforcement of this duty through legal responsibility, envisaged by the sanctions of sectoral casual protective norms, concretizing the provisions of abstract norms and based on moral responsibility (moral debt).

The methodological basis of the article is the dialectical method, which made it possible to identify the ratio of the legal duty to take care of own health with personal rights to health protection and the rights of society and the state to consider individual health as a public domain, in their meaningful unity and opposites. The hermeneutic method was used to interpret the definitions of legal concepts that make up the terminology of the article. With the help of the systemic-structural method, the interdependent structural elements of the legal obligation to take care of own health and the legal right to health protection in public and private legal senses are considered. A comparative legal method was used to compare and identify target, semantic and content differences between the legal duty to take care of own health and the legal right to health protection. The instrumental-legal method was used to clarify the instructions contained in the legislation and departmental regulations for the execution of various legal duties to take care of own health. The international legal and comparative methods provided a study of the world international legal and national constitutional legal practice of establishing and guaranteeing a legal obligation to take responsibility for own health. The system-functional method was used to systematize sectoral protective norms, the sanctions of which provide for measures of legal responsibility for non-fulfillment / improper fulfillment of legal duties to protect own health.

The information and empirical base of the study was formed by the duties and responsibilities of subjects of legal relations for health protection provided for by the prescriptions of regulatory legal acts and departmental regulatory documents in connection with the organization and passage of compulsory medical examinations, preventive and curative vaccination, stay under medical supervision, compliance with medical and quarantine restrictions. Such prescriptions are contained in the Law of Ukraine “Fundamentals of Ukrainian legislation on health care” No. 2801-XII (p. B) of Article 10; Article 30, 31); Resolution of the

Cabinet of Ministers of Ukraine dated November 6, 1997 No. 1238 “On mandatory preventive medicament treatment and the procedure for its conduct”, which approved the List of professions and activities for which primary and periodic preventive drug testing is mandatory, the Procedure for conducting mandatory preventive drug testing of citizens , a sample certificate of passing a preventive drug examination; Law of Ukraine “On ensuring the sanitary and epidemic well-being of the population” No. 4004-XII (part 3 of article 5); Law of Ukraine “On protection of the population from infectious diseases” dated April 6, 2000 No. 1645-III (part 2 of article 10); Order of the Ministry of Health of Ukraine dated September 16, 2011 No. 595 “On the procedure for conducting preventive vaccinations in Ukraine and quality control and circulation of medical immunobiological preparations” as amended by order of the Ministry of Health of Ukraine dated August 11, 2014 No. 551 “On improving the conduct of preventive vaccinations in Ukraine” , which approved the instructive by-laws normative and legal acts – “Regulations on the organization and conduct of preventive vaccinations” and “Calendar of preventive vaccinations in Ukraine”; The Labor Code of Ukraine (Article 46; Part 3, Article 159); The Code of Ukraine on Administrative Offenses (Articles 42, 441, 443, 45); Criminal Code of Ukraine dated April 5, 2001 No. 2341-III (Articles 130, 133).

Empirical information about the attitude of Ukrainian citizens to the responsibility to take care of their health was obtained on the example of statistical information on their readiness for vaccination “Attitude towards vaccination against COVID-19” presented by the United Nations Children’s Fund (UNICEF) in Ukraine based on the results of a sociological survey conducted in March 2021 by the research agency Info Sapiens with the support of the United States Agency for International Development (USAID).

2. Results

The legal sources regulating the legal obligation of citizens of Ukraine to take care of their health and ensure the priority of health protection in their own activities are the Constitution of Ukraine (Articles 3, 49) [3], the Code of Labor Laws of Ukraine [4], the Code of Ukraine on Administrative offenses [5], the Criminal Code of Ukraine [6]; laws of Ukraine “Fundamentals of Ukrainian legislation on health care” [1], “On ensuring sanitary and epidemic well-being of the population” [2], “On protecting the population from infectious diseases” [7] Resolution of the Cabinet of Ministers of Ukraine dated November 6, 1997 No. 1238 “On mandatory preventive drug examination and the procedure for its conduct” [8], Order of the Ministry of Health of Ukraine dated September 16, 2011 No. 595 “On the procedure for conducting preventive vaccinations in Ukraine and quality control and circulation of medical immunobiological preparations” as amended by the order of the Ministry of Health of Ukraine dated August 11, 2014 No. 551 “On the improvement of preventive vaccinations in Ukraine”[9] and others. Such a duty corresponds to the provision of Part 2 of Article 11 of the European Social Charter, originally adopted as a Council of Europe convention in 1961 and entered into force in 1965, and then revised on May 3, 1996 in Strasbourg, which enshrines basic social human rights. This article of the Charter contains the international legal norm on the right to health protection. To ensure the effective exercise of this right, the states – parties to this convention, including Ukraine, have undertaken to “take, directly or in cooperation with public or private organizations, appropriate measures aimed, in particular, at the provision of consulting and educational services. aimed at improving health and encouraging personal responsibility for their health” [10].

The interrelation of the legal rights and obligations of citizens of Ukraine for health protection is objectively determined by the dialectical unity of possible and necessary behavior, in which the necessary requirements for the subject to ensure the legitimate interests of the authorized party are aimed at materializing the real possibilities of the latter. Thus, the eligibility of action, claims and pretension that form the structure of subjective law correspond to the appropriate legal duty, including the obligations not to interfere with the exercise of the right and to promote it by voluntarily conscientious fulfillment of the necessary requirements

of an active or passive nature, or compulsory implementation of them in connection with a legal order of the competent law enforcement or the judicial authority of the state. According to the reasonable opinion of E.I. Ivanov “legal duty can be defined as the type and measure of the required behavior of the obliged person, corresponding to the subjective right of the entitled person and ensuring its implementation.” The type of behavior indicates what and which kind of proper behavior contains a legal duty, and the measure indicates the boundaries (limits) of the implementation of this behavior. In this case, the interest of the eligible person forms a prerequisite and outlines the goal of establishing the duty of another person but is not included in its very content [11, p. 108-109]. But the establishment of a duty is impossible without the corresponding right and outside the legal relationship, since in the absence of an authorized subject with his right, the meaning of the duty is lost, and legal responsibility for its failure to perform or improper performance is impossible, which contradicts the principle of legality. Therefore, legal duty is possible only in a paired unity with subjective law and can be realized only in a legal relationship [11, p. 111]. This statement also applies to passive duties, which are realized in absolute legal relations.

A similar, but more philosophically generalized idea of V.V. Lazarev was introduced by B.V. Malyshev, quoting that the legal category of freedom as a source of the legitimate choice of legal possibilities is in a dialectical pairing with the category of necessity, personifying legal obligations. Therefore, in the exercise of individual freedom, there is not only the realization of a legal possibility, but also a legal necessity. The freedom of man itself creates the limits and conditions of his being, which constitute this necessity, constituting freedom. Freedom cannot take place and be realized without necessity [12, p. 26]. On the whole, the above statement is true, but one cannot agree with the fact that “human freedom itself creates the limits and conditions of his being”, because such limits are determined by law and established by the legislator to ensure the freedom of all people.

Features of legal duties are in their focus on the security, protection and development of the foundations of social life, necessary for a person as a biosocial being and society as a whole for the realization of individual, group and general interests, as well as ensuring social progress; general character, extending to all citizens, regardless of their legal status; based on social moral and ethical norms with legal consolidation and expression in legislation with the acquisition of general obligation. Responsibilities are due to the actual social being of a person and guarantee the stability of the functioning of the social organism, creating an important part of the social and legal mechanism of balance between personal (individual) and collective forms of organization of society. The most important characteristics of the legal duty of O.D. Ovchinnikov and A.M. Shahanyan is called unconditional categoricity (the imperious imperative is to follow the prescribed behavior), the provision of measures of state coercion, formal certainty. In these essential characteristics, a legal duty is a formally defined prescription that expresses personal, public and state interests and is a measure of proper behavior, expressed in a categorical form, suggesting only one behavior option for obliged subjects, provided with the possibility of applying measures of mental, physical or organizational impact on their consciousness and behavior by the authorized state authorities and officials [13, p. 47]. In the performance and observance of legal duty, general social and special legal functions are implemented. In unity with subjective rights, they establish the limits of permissible behavior, determining the measure of individual freedom and acting as its guarantee, ensuring law and order as a condition for the stability of social relations; streamline and regulate the creation and distribution of material and spiritual benefits, proceeding from the measure of justice determined by the social system, expressing it in law at the level of the highest justice; prevent abuse of rights and serve as criteria for lawful / illegal behavior. This functional diversity determines the importance of legal duty in the specified unity with subjective rights as an integral part of the legal regulation mechanism.

The point of view of V. Vitruk deserves special attention, who proposed to understand by a legal duty a socially conditioned and guaranteed necessary opportunity in the behavior of an individual, determined by the norms of objective law, to satisfy both his own and public, corporate and other needs and interests on the basis of their unity and combinations, using the corresponding benefits and values. Understanding debt through a real opportunity is explained by the need to create conditions necessary and sufficient for its implementation [14, p. 248–249, 253–254]. Here it is appropriate to cite the fair opinion of the authors of the article “Ensuring the right to health of convicts and staff in conditions of imprisonment in Ukraine” M.A. Anishchenko, S.F. Denisova, T. Denisova, V. Palchenkova and O. Ryabchinskaya, that “equal access for all to the provision of qualified medical care, the absence of discrimination in medical care for citizens on any grounds ... is both a fundamental principle and a problem of bioethics in medicine” [15, p. 608]. For the fulfillment of the legal obligation of citizens to take care of their own health, such conditions are provided for by constitutional guarantees of the right to health protection, extensively expressed in laws with the mechanisms for their implementation provided for in bylaws. At the same time, M.A. Anishchenko, one of the fundamental principles in bioethics and the main imperative of medical law is the principle of patient autonomy, enshrined in Ukrainian legislation primarily at the constitutional level in Article 3, 28, 32, 49 of the Constitution of Ukraine. In accordance with Article 6 Fundamentals, every citizen of Ukraine has the right to qualified medical care, including the free choice of a doctor, the choice of treatment methods according to his recommendations and healthcare institutions; reliable and timely information about the state of their health and the health of the population, including the existing and possible risk factors and their degree [16, p. 226].

However, at the same time, the semantic meanings of health protection in the understanding of subjective legal law and subjective legal duty do not become identical, since they are opposite in content, focus, goals, consequences, and results of implementation. If the purposefulness of the eligibility that form the content of the right to health protection is to satisfy the individual need for a healthy state of the individual, then the content of the duty to take care of own health is aimed at the maximum possible increase in the level of public health and the realization of public interest (with the simultaneous implementation of the private interests of specific persons present here). The subjective nature of the right to health care presupposes freedom of choice in its use, and the legal duty to take care of own health establishes the requirements for necessary behavior, secured by legal responsibility, implicitly provided for in general and specified in the sanctions of some casual protective norms of various branches of law. We must agree with the conclusion of T.A. Solodovnichenko that the consideration of subjective legal rights and duties in a merged state leads to the absorption of duties by rights or vice versa, creating the illusion of a merged action generated by “an inaccurate analysis of the interrelationships between them, as well as legal and technical flaws when they are consolidated in regulatory documents” [17, p. 112-113].

The legal duty of citizens of Ukraine to take care of own health is not formally constitutional, since it is enshrined in other laws, but it is one of those special vital social values that acquire constitutional significance. In addition, the Law of Ukraine “Fundamentals of Ukrainian Legislation on Health Care” is the basic legislative act that establishes the fundamental principles of legal regulation and regulation of legal relations in the field of health protection, therefore it is often called the “medical constitution of Ukraine”. The rationale for the special social value of a personal legal obligation to protect own health is that, according to Article 3 of the Constitution of Ukraine, a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value [3]. Such a constitutional assessment of health follows from the fact that the state of public health depends on the state of individual health, which determines the all-round development and improvement of the individual as one of the strategic directions of social development. Therefore, individual health is a common property and its

protection by each citizen turns into one of his most important moral and ethical duties, which has been enshrined in the law and has become a subject of public law regulation with the derivative provision of the private interests of individuals.

Consideration of an individual's health as a public domain is confirmed by the examples of abuse of somatic rights cited by V.I. Kruss: suicide, euthanasia, involuntary abortion, prostitution, drug use, etc., despite the ideas of some people about the right to dispose of their own lives, health, body in their own way. Discretion have historically been condemned by society and are often expressly prohibited by law. It seems to be the correct assessment given by the author from the standpoint of constitutional legal thinking of the listed somatic possibilities as unprincipled and immoral use, expressed by abuse of law [18, p. 47]. The inadmissibility of legal assistance to immoral practices of abuse of somatic rights is also pointed out by [19, p. 7].

Since human health is the highest inalienable good, without which many other benefits and values lose their significance, its preservation and strengthening play a fundamental role both in the life of every person and in the life of society and the state [20, p. 41-42].

The actual constitutional and legal significance of the obligation to take care of own health is confirmed by the fair opinion of V.I. Kruss on the predetermination of modern law to constitutional perception (legal thinking) in connection with its indivisible trans-sectoral foundation on inalienable rights, freedoms and obligations of a person as unique binary phenomena of the possible and due, containing formal and substantive characteristics of law in objective and subjective senses. The homogeneity of modern law is manifested in the unity of the forms of its implementation and the duties of the state, along with ensuring the proper use of fundamental rights and freedoms, to induce and compel (if necessary) to perform basic duties [18, p. 34–51].

From the fragments of the specified prescriptions of Article 5 of the Fundamentals "... citizens are obliged to ensure the priority of health protection in their own activities" and par. 10 of the Fundamentals "Citizens of Ukraine are obliged to take care of own health" [1], as well as Part 1 of Article 5 of the Law of Ukraine "On ensuring the sanitary and epidemic well-being of the population" "Citizens are obliged to take care of own health" [2] it follows that this requirement is expressed in the form of a legal obligation. But the essential feature of a legal duty is its security in cases of non-performance or improper performance by the possibility of state coercion through the legal relationship of legal responsibility. The texts of the given legislative prescriptions do not include sanctions indicating the type and measures of legal liability for violation of hypotheses, since the legal norms expressed in them are regulatory, and not protective. Therefore, it is required to find out the type and content of the responsibility of citizens of Ukraine for the fulfillment of the legal duties imposed on them by law to ensure the priority of health protection in their own activities and care for own health.

One cannot agree with the statement of O.F. Skakun that "responsibility for failure to fulfill certain duties is not provided, which does not guarantee their practical implementation" [21, p. 72]. First, it is necessary to remember the moral and ethical basis of legal norms and the corresponding social responsibility.

Here it is appropriate to cite the reasoning of T.P. Popovich on the types of social debt, depending on the characteristics of the emergence of specific social obligations and the characteristics of the subject, which sets them, defining guarantees of implementation: moral, religious, corporate, professional, legal and others. At the same time, it is inappropriate to distinguish between these phenomena, since they all embody certain

socially necessary behavior, are interrelated, and logically continue each other. The moral characterization of a person evaluates his ability to live in society. The specificity of moral duty is an individual awareness of his social essence and voluntary fulfillment, as well as an understanding of the consequences of non-fulfillment in the form of misunderstanding and condemnation by public opinion. But moral duty can be modified into other types, implying the onset of certain responsibility for violation of the stipulated requirements, including measures of state coercion in the manner prescribed by the types of legal responsibility [22, p. 72-73]. The closeness of moral duty and legal duty is pointed out by T.A. Solodovnichenko, based on the thoughts of S.S. Alekseev, who noted that along with legal duty there is the concept of justice duty, one of the meanings of which is obligation based on the principles of reason, which characterizes people's attitude to justice. In this sense, justice duty is closer to moral phenomena than to legal [17, p. 68–69].

The legislation of Ukraine contains several prescriptions based on moral and legal duty, specifying the legal duty of citizens to take care of own health.

According to paragraph b) of Article 10 Fundamentals, citizens of Ukraine “are obliged to undergo preventive medical examinations and vaccinate in cases provided for by law.”

Based on Article 30 Fundamentals, persons who are carriers of pathogens of infectious diseases that are dangerous to the population are suspending from work and other activities that may contribute to the spread of infectious diseases and are subject to medical supervision and treatment at the expense of the state with payment, if necessary, of social insurance assistance. For certain especially dangerous infectious diseases, compulsory medical examinations, preventive vaccinations, medical and quarantine measures may be carried out in the manner prescribed by the laws of Ukraine. In accordance with Article 31 Fundamentals for the protection of public health organizes preventive medical examinations of minors, pregnant women, employees of enterprises, institutions and organizations with harmful and dangerous working conditions, military personnel and persons whose professional or other activities are related to serving the population or increasing danger to others. The owners and managers of enterprises, institutions and organizations are responsible for the timeliness of their employees undergoing mandatory medical examinations and for harmful consequences for public health caused by the admission to work of persons who have not passed the mandatory medical examination [1]. The list of categories of the population that must undergo compulsory medical examinations, the frequency, sources of funding and the procedure for these examinations are determined by the Cabinet of Ministers of Ukraine [1].

For example, the Resolution of the Cabinet of Ministers of Ukraine dated November 6, 1997 No. 1238 “On compulsory preventive drug treatment and the procedure for its conduct” approved the List of professions and activities for which primary and periodic preventive drug testing is mandatory, the Procedure for conducting compulsory preventive drug testing of citizens, a sample certificate of passing a preventive drug examination [8]. In accordance with Part 3 of Article 5 of the Law of Ukraine “On ensuring the sanitary and epidemic well-being of the population”, citizens “are obliged to undergo compulsory medical examinations and to be vaccinated in cases stipulated by law” [2]. One of the basic principles of the prevention of infectious diseases, in accordance with part 2 of Article 10 of the Law of Ukraine “On Protection of the Population from Infectious Diseases” dated April 6, 2000 No. 1645-III, is “compliance by enterprises, institutions, organizations, regardless of ownership and citizens of sanitary and hygienic and sanitary and anti-epidemic rules and regulations in the implementation of any activities” [7]. Order of the Ministry of Health of Ukraine dated September 16, 2011 No. 595 “On the procedure for conducting preventive vaccinations in Ukraine and quality control and circulation of medical immunobiological preparations” as

amended by order of the Ministry of Health of Ukraine dated August 11, 2014 No. 551 “On improving the conduct of preventive vaccinations in Ukraine” instructive by-law normative legal acts were approved – “Regulation on the organization and conduct of preventive vaccinations” (Regulation) and “Calendar of preventive vaccinations in Ukraine” (Calendar). Clause 8 of the Regulation provides for a mandatory medical examination before vaccination. The calendar establishes a list of mandatory preventive vaccinations to prevent diseases of diphtheria, whooping cough, measles, poliomyelitis, tetanus, tuberculosis, and the optimal timing of their implementation.

Other mandatory vaccinations are established in accordance with the Calendar for population groups: by age; vaccinations of children in violation of this calendar; vaccinations of HIV-infected; for health; vaccination of children after allo / auto-HSCT (allogeneic / autogenous hematopoietic stem cell transplantation); vaccinations in endemic and enzootic areas and for epidemic indications. Employees of certain professions, industries and organizations, whose activities may lead to the infection of these employees and (or) the spread of infectious diseases by them, are subject to mandatory preventive vaccinations against other relevant infectious diseases. In the event of refusal or evasion of mandatory preventive vaccinations in the manner prescribed by law, these workers are suspended from performing these types of work. The list of professions, industries, organizations whose employees are subject to mandatory preventive vaccinations against other relevant infectious diseases is established by the Ministry of Health of Ukraine. In the event of a threat of the emergence of a particularly dangerous infectious disease or the mass spread of a dangerous infectious disease in the relevant territories and objects, compulsory preventive vaccinations against this infectious disease may be carried out for epidemic indications.

The decision to carry out compulsory preventive vaccinations for epidemic indications in the relevant territories and facilities is taken by the chief state sanitary doctor of Ukraine, the chief state sanitary doctor of the Autonomous Republic of Crimea, chief state sanitary doctors of regions, cities of Kiev and Sevastopol, chief state sanitary doctors of central executive bodies implementing state policy in the spheres of defense and military construction, protection of public order, execution of criminal penalties, protection of the state border, the Security Service of Ukraine. Preventive vaccinations are carried out after a medical examination of a person in the absence of appropriate medical contraindications [9].

The prescription of Part 3 of Article 159 of the Labor Code of Ukraine, as part of the obligations of employees to comply with the requirements of regulatory enactments on labor protection, it is established that they are obliged to undergo preliminary and periodic medical examinations in the prescribed manner. For refusal or evasion of employees from compulsory medical examinations of Article 46 of the Labor Code of Ukraine. their suspension from work is envisaged in the order of disciplinary responsibility [4]. State security of the legal obligation of citizens to take care of their health is also manifested in administrative responsibility. In particular, Article 42 of the Code of Ukraine on Administrative Offenses provides for penalties for violation of sanitary standards; Article 441 – for evading a person suffering from drug addiction from a medical examination for the presence of drug intoxication; Article 443 – for violation of the rules on quarantine of people, sanitary and hygienic, sanitary and anti-epidemic rules and norms provided for by the Law of Ukraine “On Protection of the Population from Infectious Diseases”, other legislative acts, as well as decisions of local authorities on the fight against infectious diseases; Article 45 – for evading examination and preventive treatment of persons with venereal disease [5].

Criminal liability for failure to fulfill the duty to take care of own health is provided for in Article 130 of the Criminal Code of Ukraine “Infection with human immunodeficiency virus or other incurable infectious disease” and Article 133 of the Criminal Code of Ukraine. “Infection with a venereal disease” [6].

The obligation to take care of own health is also present in the world constitutional and legal practice. Article 44 of the 1997 Constitution of the Eastern Republic of Uruguay establishes that “the state adopts laws on all issues related to public health and hygiene, striving for the physical, moral and social improvement of all residents of the country. All residents are obliged to take care of their health, as well as resort to medical assistance in case of illness”. At the same time, the obligation to seek medical help in case of illness is ensured by the mechanism of constitutional guarantees in the form of state provision of “free means of prevention and assistance only to the poor or those who do not have sufficient resources” [23]. Since the duty under consideration is provided for “all inhabitants”, then it and the mechanism of its guarantee should apply not only to the citizens of Uruguay, but also to all other persons residing in its jurisdictional territory.

In accordance with Article 27 of the Federal Law of 21.11.2011 N 323-FZ (as amended on 30.04.2021) “On the Fundamentals of Health Protection of Citizens in the Russian Federation”, “citizens are obliged to take care of maintaining own health; in cases stipulated by the legislation of the Russian Federation, they are obliged to undergo medical examinations, and citizens suffering from diseases that pose a danger to others, in cases provided for by the legislation of the Russian Federation, are obliged to undergo medical examination and treatment, as well as to prevent these diseases; citizens undergoing treatment are obliged to comply with the treatment regimen, including those determined for the period of their temporary disability, and the rules of patient behavior in medical organizations ” [24]. In the Soviet constitutional legislation of the former USSR in part 3 of Article 4 of the Fundamentals of Legislation of the USSR and the Union Republics of December 19, 1969 N 4589-VII (as amended on May 22, 1990) contained the following provision: “Citizens of the USSR must take good care of own health and the health of other members of society” [25].

According to S.N. Shishkov and S.V. Polubinskaya legal duty to take care of the preservation of their health, contained in Part 1 of Article 27 of the Federal Law “On the Fundamentals of Health Protection of Citizens in the Russian Federation” is a declarative norm-principle, since it is not provided with an implementation mechanism and legal liability for non-performance / improper performance. Such ambiguity leads to an unequal position of patients, giving a universal opportunity for subjects providing medical care to justify defects in its provision and avoid legal liability. In addition, the inconsistency of this norm lies in the absence of uniform scientific and medical criteria for determining the content of a healthy lifestyle; objective factors of negative impact on the organisms of workers engaged in work with difficult and harmful working conditions, as well as athletes, military personnel, etc .; negative impact on human health of a polluted environment, low-quality and counterfeit food, clothing, housing, etc. Therefore, the law must consider the listed conditions and situations.

However, the authors admit that in Part 2 and Part 3 of Article 27 of the said Law “already quite specific duties are listed, leaving no doubt as to what actions a citizen must perform in order to fulfill these duties” [26, p. 81–89]. This confirms the previously expressed opinion of the authors of this article that an abstract norm implicitly expresses a general definition of the responsibility to take care of own health and is concretized in casual norms.

The Labor Code of the Russian Federation provides for the possibility of removing an employee from performing his job duties. In paragraph 8 of part 1 of article 76 of the Labor Code of the Russian Federation, “it is clarified that dismissal is possible not only in cases provided for by the Labor Code of the Russian Federation and federal laws, but also in other regulatory legal acts of the Russian Federation” [27]. In accordance with Part 2 of Article 5 of the Federal Law of the Russian Federation No. 157-FZ “On

Immunoprophylaxis of Infectious Diseases”, “the absence of preventive vaccinations entails: a ban for citizens to travel to countries in which, in accordance with international medical and sanitary rules or international treaties of the Russian Federation, specific preventive vaccinations are required; temporary refusal to admit citizens to educational organizations and health institutions in the event of mass infectious diseases or the threat of epidemics; refusal to hire citizens for work or suspension of citizens from work, the performance of which is associated with a high risk of contracting infectious diseases. The list of works, the performance of which is associated with a high risk of contracting infectious diseases and requires mandatory prophylactic vaccinations, is established by the federal executive authority authorized by the Government of the Russian Federation” [28].

The attitude of Ukrainian citizens to the legal obligation to take care of own health and ensure the priority of its protection in their own activities is revealed by the example of the results of the sociological survey “Attitudes towards vaccination against COVID-19”, conducted in March 2021 by the research agency “Info Sapiens” with the support of the US Agency on International Development (USAID) and presented by the United Nations Children’s Fund (UNICEF) in Ukraine. The study was conducted on March 20-25, 2021 by the method of telephone interviews (calls to mobile phones lasting up to 15 minutes). 2027 people over 18 years old were interviewed in all regions of Ukraine, apart from the Autonomous Republic of Crimea and non-government-controlled territories of Donetsk and Luhansk regions. The sample is representative of the adult population of Ukraine and corresponds to the data of the State Statistics Service as of 01.01.2020 by gender, age, size of the settlement and macroregion. The study showed that Ukrainians know about the disease not only from the news: for many, COVID-19 is already a personal experience. So, 66% of respondents faced COVID-19 in their environment, and 22% indicated that they themselves were sick. 43% of the respondents told about the grave consequences of the disease for them or people from their inner circle. More than two thirds (71%) of those surveyed consider the pandemic a threat to themselves and their families. It is noteworthy that among people over 60 years old, this figure is higher and amounts to 81%.

Most Ukrainians consider vaccination to be an effective way to protect themselves from COVID-19. If there was an opportunity to get vaccinated against COVID-19 free of charge, 63% of those surveyed would like to do this, but 31% would only want a certain vaccine. The older generation showed great readiness: 71% of people over 60 agree to be vaccinated against COVID-19 free of charge. The main reasons for getting vaccinated against COVID-19 Ukrainians consider: “In order not to get sick with coronavirus, not to have complications from the disease” – 83%; “In order not to infect others” – 66%. It is significant that 67% of older people would advise their relatives to be vaccinated against COVID-19 free of charge. This means that people from 60 years old can become active initiators of vaccination, that is, convince relatives, friends, acquaintances to be vaccinated.

The survey has shown that family doctors have a high authority: 64% of Ukrainians in general and 72% of people over 60 listens to the advice of a family doctor when deciding on vaccinations. Therefore, it is imperative that family doctors communicate with their patients about vaccinations, guided solely by the principles of evidence-based medicine. The research data testifies to the confidence of Ukrainians in routine vaccination. 78% of Ukrainians in general and 84% of people over 60 agree with the statement “it is important that a child is vaccinated and had vaccinations”.

About 70% of respondents consider vaccination to be effective in preventing dangerous diseases and 63% – safe. This means that most people in Ukraine understand the need for vaccinations to protect themselves and their children from such dangerous diseases as, for example, tuberculosis, tetanus, measles, diphtheria, whooping cough [29].

3. CONCLUSION

The meaning of the legal duty lies in the socially determined and guaranteed necessary ability of the individual, determined by the norms of objective law, to satisfy public, corporate and other needs and interests along with individual legitimate interests on the basis of their unity and combination, using appropriate benefits and values for this. Understanding a duty through a real opportunity is explained by the need for conditions necessary and sufficient for its performance. For the fulfillment of the legal obligation of citizens to take care of their own health, such conditions are constitutional guarantees of the right to health protection, extensively expressed in laws with the mechanisms for their implementation provided for in bylaws. The meanings of health protection in the understanding of subjective legal law and subjective legal duty are not identical, since they are opposite in content, focus, goals, consequences, and results of implementation. If the purposefulness of the eligibility that form the content of the right to health care is to satisfy the individual need for a healthy state of the individual, then the content of the duty to take care of own health is aimed at the maximum possible increase in the level of public health and the realization of public interest (with the simultaneous realization of the private interests of specific persons present here). The subjective nature of the right to health care presupposes freedom of choice in its use, and the legal duty to take care of own health sets the requirements for the necessary behavior, secured by legal responsibility, implicitly provided for in general and specified in the sanctions of some casual protective norms of various branches. The main feature of a personal legal obligation to protect own health is that, according to Article 3 of the Constitution of Ukraine, a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. The state of public health depends on the aggregate state of health of individuals, which determines the all-round development and improvement of the individual as one of the strategic directions of social development. Therefore, individual health is a common property and its protection by each citizen turns into one of his most important moral and ethical duties, which has been enshrined in the law and has become a subject of public law regulation with the derivative provision of the private interests of individuals.

Such motivation is consistent with international legal principles and norms on human rights and duties for health protection and is present in the world constitutional and legal practice.

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