

Features of securing and guaranteeing the right to health care in the constitutions of the states of the world

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ABSTRACT

The article examines the features of securing and guaranteeing the right to health protection in the constitutions of the states of the world. The basis for the proclamation of the right to health by states at the constitutional level was the provisions of the basic international documents on human rights the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention for the Protection of Human Rights and Fundamental Freedoms (abbreviated – the European Convention on Human Rights) 1950 Those countries that ratified these documents, pledged to bring their legislation to the international standards enshrined in them. Therefore, the right to life, the right to health care are proclaimed in the constitutions of states as inalienable and inviolable. In many countries, the constitutional norm reflects not only the fact of the proclamation of the right, but contains provisions on its content, the means of guaranteeing the state the implementation of this right. These guarantees are state financing of health care sectors, different models of health insurance, reforming the medical system in matters of health care management, changes in the organizational and legal forms of health care institutions, the introduction of advanced principles, for example, “money follows the patient”, etc. The conclusion is made about the obligatory proclamation of the right to health care in the constitutions of all states of the world, the disclosure by the constitutional norms of the content and means of guaranteeing this right by the state.



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1. INTRODUCTION

Human rights, in particular, their essence have always been and will be the most urgent and most important problem of the socio-economic and cultural development of mankind. The issues of regulation, realization of

human rights are constantly in the focus of attention of legal, political, philosophical, public, etc. scientific thought. Among the numerous human rights enshrined and guaranteed by international documents, national legislation at the highest level is recognized even by those countries whose constitutions have not been enshrined, they single out the human right to health protection as a right that guarantees his physical existence and is a condition for ensuring the exercise of all other rights a person [1, p. 105].

However, only the constitutional proclamation of the right to health care is not enough, since other mechanisms of ensuring are necessary for its implementation and protection. First of all, the effectiveness of any law is determined by the real results achieved as a result of the application of the rules. For this, the state takes organizational and legal measures. The opinion is quite convincing that ensuring and protecting human rights are no longer within the exclusive competence of the state, therefore, the role of its internal competence should be taken into account, since it is in the state that conditions are created that do not allow a gap between both systems of law (state and international) [2, p. 57]. Consequently, the urgency of the problems of regulating the right to health care is due to its awareness as one of the fundamental human rights in a democratic society. The creation by the state of conditions for the realization of the human right to health is the key to progressive development in various fields and strengthening of national security.

The methodological basis of the research was the developments of scientists and specialists on the issues of consolidating and ensuring the right to health protection at the international and national levels, in particular, [1], [3- 6] and others. Also, our research was based on informative material on human rights and obligations in the works of [7- 10] and others.

2. Purpose of the study

Determine the specifics of securing and guaranteeing the right to health protection in the constitutions of the states of the world, substantiate the most optimal formulations for the effective implementation of this right.

3. Results

The list of human rights, now recorded in international legal documents, has become the evolutionary result of a long historical formation of certain standards and standards, most of which have already become a kind of norm for the national legislation of many countries and, in general, for a modern democratic society. First of all, the right to health protection at the international level is enshrined in the Universal Declaration of Human Rights, adopted by the UN General Assembly in December 1948. The Declaration is the direct experience of the Second World War (1939-1945) and represents the first global expression of inalienable rights that should have all people. The international human rights bill consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and two optional protocols thereto. In 1966, the General Assembly adopted two detailed treaties that completed the International Human Rights Bill. In 1976, after the treaties were ratified by a sufficient number of individual nations, the bill received the status of an international legal act [11]. Ukraine (as part of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic was a separate member of the United Nations) ratified these acts in 1973. More than a hundred other countries of the world did the same and, thus, they pledged to bring their national legislation in accordance with those prescribed in documents requirements. Art. 25 of the Universal Declaration of Human Rights states that “Everyone has the right to a standard of living, including food, clothing, housing, medical care and necessary social services, which is necessary to maintain the health and well-being of himself and his family, and the right to in the case of unemployment, illness, disability, widowhood, old age or other case of loss of livelihood due to circumstances independent of him” [12]. And in part 1 of Art. 12 of the International Covenant on Economic, Social and Cultural Rights states that “The States parties to this Covenant recognize the right of

everyone to the highest attainable standard of physical and mental health” [13].

According to the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms (abbreviated as the European Convention on Human Rights) was adopted in order to ensure that the signatory countries (members of the Council of Europe) and ensure on their territory human rights and fundamental freedoms. The convention was opened for signature on November 4, 1950 and entered into force on September 3, 1953. Among the signatories are 12 member states of the Council of Europe, including post-war Germany. Also signed the convention in 1950, besides Germany, Belgium, Denmark, France, Ireland, Iceland, Italy, Luxembourg, Netherlands, Norway, Turkey and Great Britain. To date, the document has been ratified by a total of 47 countries, including Switzerland, Ukraine and Russia. For example, Ukraine ratified the Convention on July 17, 1997, Russia on March 30, 1998, Poland on January 19, 1993, France on May 3, 1974. Article 2 of the Convention refers to the right to life, which indicates the recognition of the importance of this right in comparison with other human rights [14]. At the same time, the positive obligations of the state to realize the right to life mean the obligation of the state to create appropriate conditions for the realization of this right. The ineffective operation of the health care system is viewed as a violation of the state's positive obligations in this area. In world practice, there are various examples of monitoring the effectiveness of the health care system. For example, the UK has an Ombudsman for Human Rights and Health; in Italy there is a Tribunal for the Protection of Patients' Rights, whose representatives are located in all regions of the country; in the United States, where, in addition to ethics commissions, which include doctors, lawyers, representatives of insurance companies, the rights of patients are defended by many public organizations [15].

Members of the Council of Europe, who have ratified the Convention, have thus undertaken to bring their legislation in line with the international standards enshrined in the Convention. Therefore, the right to life, the right to health care are proclaimed in the constitutions of states as inalienable and inviolable.

An analysis of the texts of the Basic Laws of different countries of the world shows that they usually enshrine these rights in different articles, taking into account the classification of rights: the right to life belongs to the group of physical (personal) rights, and the right to health protection - to socio-economic ones. The text of these articles is not limited to the declaration of the respective rights. Usually its content is disclosed, and, most importantly, the forms and measures of guaranteeing these rights are regulated. For example, in the Constitution of Ukraine dated June 28, 1996: “Article 27. Everyone has an inalienable right to life. No one can be arbitrarily deprived of his life. The duty of the state is to protect human life. Everyone has the right to protect his life and health, the life and health of other people from unlawful encroachments ... Article 49. Everyone has the right to health protection, medical assistance and medical insurance. Health protection is ensured by state funding of the relevant socio-economic, medical and sanitary and health-improving and prophylactic programs. The state creates conditions for effective and affordable medical care for all citizens. In state and municipal health care institutions, medical care is provided free of charge; the existing network of such institutions cannot be reduced. The state promotes the development of medical institutions of all forms of ownership. The state takes care of the development of physical culture and sports, ensures sanitary and epidemic well-being”. Also, according to Article 3, health along with life, honor, dignity, inviolability and safety of a person is recognized in Ukraine as the highest social value [16].

The right of citizens to health protection is legislatively enshrined in other normative legal acts of Ukraine. Article 283 of the Civil Code guarantees that an individual has the right to health protection, which is ensured by the systematic activities of state and other organizations provided for by the Constitution of Ukraine and the law. Article 284 of the Civil Code establishes the right of an individual to provide him with medical

assistance. Certain provisions related to the right to health care are also enshrined in Articles 282, 285-287 of the said Code [17].

The preamble of the Fundamentals of Legislation of Ukraine on Health Protection defines that every person has a natural, inalienable and unshakable right to health protection. Society and the state are responsible to modern and future generations for the level of health and preservation of the gene pool of the people of Ukraine, ensure the priority of health protection in the activities of the state, improvement of working conditions, education, life and recreation of the population, solving environmental problems, improving medical care and introducing a healthy lifestyle”, and Article 7 stipulates that “the State, in accordance with the Constitution of Ukraine, guarantees all citizens the realization of their rights in the field of health care by: a) creating an extensive network of health care institutions; b) organizing and conducting a system of state and public events for the protection and promotion of health; c) financing the provision of a guaranteed volume of medical and rehabilitation services and medicines to all citizens and other persons determined by law in the manner prescribed by law; d) implementation of state and public control and supervision in the field of health care; e) organizing a state system for collecting, processing and analyzing social, environmental, special medical and rehabilitation statistical information; f) establishment of responsibility for violation of the rights and legitimate interests of citizens in the field of healthcare”. Additional guarantees are provided for by Articles 12, 14, 22, 24 of the said law [18].

That is, the Constitution of Ukraine and other regulatory legal acts provide for the state's provision of the right to health protection through financing of socio-economic, medical and sanitary and health-improving and prophylactic programs. Thus, all citizens of Ukraine are guaranteed equal opportunities to receive free medical care in state and municipal health care institutions, regardless of their position or material wealth. The Constitution of the Russian Federation of 12.12.1993 also proclaims the right to life, to health protection, discloses the content and principles of guaranteeing the latter: “Article 20. Everyone has the right to life ... Article 41. Everyone has the right to health care and medical help. Medical assistance in state and municipal health care institutions is provided to citizens free of charge at the expense of the corresponding budget, insurance premiums and other receipts. In the Russian Federation, federal programs for the protection and promotion of public health are financed, measures are being taken to develop state, municipal, private health systems, activities that promote human health, the development of physical culture and sports, environmental and sanitary-epidemiological well-being are encouraged. Concealment by officials of facts and circumstances that pose a threat to the life and health of people entails responsibility in accordance with federal law” [19]. And, for example, the German Constitution, which was developed in 1948-1949 only for West Germany, and in 1990 became the Basic Law for the whole of Germany, proclaimed only the right to life: “Article 2 ... Everyone has the right to life and physical integrity. Personal freedom is inviolable. Interference with these rights is permissible only on the basis of the law” [20].

The right of citizens to health insurance is enshrined in the constitutions of Bulgaria and Croatia. In the constitutions of Albania, Lithuania and Latvia, the state protects human health and guarantees everyone's right to basic health care or medical care. The right to the highest possible level of physical and mental health is enshrined in the Hungarian Constitution. The Swiss Constitution also provides that the Confederation guarantees health care. The right of citizens to health protection is also proclaimed in the constitutions of Poland, Slovenia, Slovakia, Romania, Estonia, Serbia, Montenegro. In almost all of these countries, the constitutionally guaranteed right to free health care is provided for on the basis of social insurance, in Slovakia on the basis of health insurance, and in Serbia on the basis of participation in compulsory insurance schemes. In such European countries as Austria, Germany, Liechtenstein, the right of citizens to health care is not constitutionally enshrined, but some articles of these constitutions provide for the implementation by the state

of legislative and executive actions concerning the health care system and its institutions [3, p. 85].

In the Constitution of Japan, adopted on May 3, 1947, Article 11 stipulates that “The people enjoy all fundamental human rights without hindrance. These fundamental human rights, guaranteed to the people by this Constitution, are granted to the present and future generations as inviolable and eternal rights”, and Article 25 – “Everyone has the right to maintain a minimum level of healthy and cultural life. In all areas of life, the state must make efforts to raise and further develop social welfare, social security, and public health”. That is, in the Basic Law of the country, even before the adoption of the above-mentioned international documents on human rights, fundamental rights are enshrined and guaranteed, including the right to health protection. In the preamble to the Constitution, this is explained by the desire “to ensure for themselves and their descendants the fruits of peaceful cooperation with all nations and the blessing of freedom for our entire country” [21]. Today, in most countries of the world, whose constitutions guarantee the protection of the health of citizens, there is no only budgetary or only insurance model of financing the healthcare industry. The government or its organizations are obligated to participate in the financing of health services, and, as a rule, contributions to social insurance are supplemented by budgetary allocations. For example, in the German Constitution, which does not include the right to health care, at the same time, the economic provision of hospitals, as well as the fight against epidemic diseases, is referred to the competence of federal legislation [20]. Those states, which in their constitutions proclaim the right of citizens to free medical care, clearly define the sources of covering the costs of the provision and establish that the amount of assistance is regulated by special legislation. This indicates that society and the state are responsible to their citizens for the state of health, preservation of the gene pool and ensure the priority of health protection in the activities of the state, improvement of working conditions, education, life and recreation of the population, solution of environmental problems, improvement. medical care and ensuring a healthy lifestyle.

In modern medicine, not only is the search for new means and methods of examination, treatment and rehabilitation of patients being carried out, but the system of medical care itself is being reorganized. Today, the situation in many countries is as follows: the state cannot fully provide free treatment to the population, which, in turn, is obliged to independently pay funds for health care. However, in our opinion, there is no way out of the situation – a reduction in free medical care, shifting funding to local budgets, etc. A number of countries have accumulated experience in insurance medicine, the main trend of which is the following: the rich pay for the poor, and as a result, both of them receive medical care in full and according to the law. Also, from the best world experience, one should consider such measures as the introduction of compulsory national health insurance, reforming the medical system on the principle of “money follows the patient”, when a person chooses an institution or a doctor himself, and the state must pay for the services provided, etc.

4. CONCLUSION

Guided by international documents on human rights (General Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; European Convention on Human Rights), states in their Basic Laws either directly enshrined the right to health, or, securing the right to life, some articles provided for the implementation by the state of legislative and executive actions concerning the health care system and its institutions. Of course, each state at the constitutional level must consolidate the right to health care, disclose its content and provide for measures of guarantee, since proper regulation and guarantee of the right to health care is a necessary condition for the development of an individual, a guarantee of the effective implementation of fundamental constitutional rights, including the right to life, the right to work, the right to engage in entrepreneurial activity, and also plays an important role in ensuring the demographic potential of the modern state.

In general, in order to ensure the full realization of citizens' rights to health protection in accordance with European standards, representatives of the legislative branch, when developing future legislation, should be guided by such generally recognized principles as the rule of law among other regulatory legal acts, the dynamism, complexity and timeliness of the legislative process. It is necessary to increase funding for the health care sectors, properly organize a network of medical institutions, and rationally use human and material resources. Only when the legislative process regarding the financing of the health care sector sets as its goal the solution of the interests of a person related to the need to improve and strengthen his health as the ultimate goal of the social and economic development of the state, citizens will be able to fully realize the constitutional right to health protection.

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