

## A. MATAT

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### THE HUMAN RIGHT TO MEDICAL CARE GUARANTEED BY THE CONSTITUTION OF UKRAINE

European prospects of Ukraine development have become the basis for the implementation of successful reforms which may affect a more effective guarantee of human rights in future. Moreover, the prospects are hindered by some objective circumstances, the solution of which largely depends on reconsidering some of the outdated approaches. This statement applies to most legal relations in Ukraine, but in the submitted theses we will focus on some problems of implementation of the constitutional right to medical care.

So, in the third part of Article 49 of the Constitution of Ukraine, it is said that “State and communal health protection institutions provide medical care free of charge”. This rule of direct action raises some doubts about the real putting its them into practice.

Revision of constitutional human rights demonstrates that we are dealing with a widespread problem in the Ukrainian Constitution: the existence of socialist, and therefore unrealistic norms. Under market conditions, such rules are doomed to declarative ness rather than to practical implementation. For example, the Constitution of Ukraine fixes sufficiently a great deal of endless promises in the form of social human rights, but most of them cannot be provided by the state.

“Positive” social rights of the second generation or as they are called in the West, rights of recipients (compared to the rights of action) entered the Ukraine Constitution in 1996 and the mentioned fact does not demonstrate any conspiracy or treachery, constitutionalist Vsevolod Rechytskyi states in his publication. In his opinion, socialism which Ukraine has prolonged for the historical framework of the soviet power risks not only negatively affecting Eastern European discourse in the field of human rights and freedoms but also leads to more dramatic consequences for the country<sup>1</sup>.

We should back to the general problem outlined by the subject of the report. The noted constitutional norm (part three of Article 49 of the Constitution) was the subject of official interpretation by the Constitutional Court of Ukraine in particular in the Decision No. 10-rp/2002 (a case about free medical aid) dated 29 May 2002.

In the decision, the Constitutional Court of Ukraine came to the conclusion that in state and communal health care institutions the medical care is provided to all citizens regardless of its level and without the previous, current or next calculation for the provision of such assistance. At the same time, the Court drew attention to the fact that the procedure for the provision of medical services that go beyond medical care on a paid basis in public and communal health care institutions and a list of such services should be determined by law<sup>2</sup>.

From the official interpretation of the researching constitutional norm on free medical care the same paternalism today is the utopian approach and the problem should be resolved in the course of implementing reforms, in particular, the amendments to the Ukraine Constitution.

To confirm the practical side of the problem, turn to relevant sociological research. By the way, according to the all-Ukrainian sociological survey conducted between 28 October and 14 November 2017, among the most important problems that require immediate decision, 22.9 % of respondents chose the option “High cost and low quality of medical services”. Thus, the mentioned problem took the sixth place after such problems as military conflict, price increase, low wages and pensions, unemployment, and high utility rates<sup>3</sup>.

In addition, according to the data of the Center for Political Studies and Analytics EIDOS, in December 2016 the Umbrella Research Agency conducted a sociological survey namely four focus group discussions in Vinnitsa, Mykolaiv, Chernihiv and Rivne to determine the level of providing hospital patients with medicine, purchased for budget funds. As a result, only isolated cases of free provision of all medicine were found<sup>4</sup>.

Among the studied cities, free medicines were mostly provided to patients in hospitals in Mykolaiv – 10–15 % of the total volume of necessary medications. In Rivne, this indicator was 1–5 %, in Vinnitsa and Chernihiv it was 1 %. The given statistics do not correspond to the amount of funding of medical institutions in the cities where the research have been conducted. Thus, the hospitals of Vinnitsa, whose patients took part in the researching signed contracts for 142.1 million USD, Rivne – 109.7 million UAH, Mykolaiv – 29.5 million UAH, Chernihiv – 18.4 million UAH in 2016. That is, the level of provision of medicine supply is not higher in hospitals that are better financed. In all cities of researching the current forms of additional financing of medical institutions are voluntary charitable contributions and “household lists”. The practice of charitable contributions is common in all hospitals discussed in the study: the amount of 50-300 UAH was announced to the patient and money was taken without a check<sup>5</sup>.

In scientific studies on constitutional law which are devoted to the problems outlined in the theses of the report the fact that there may be a discriminatory feature in the provision of free medical care. In particular, according to Valentyna Vitkova, providing free medical care only of state and municipal health care institutions demonstrates the problem of non-compliance with the principle of equality of both individuals and providers of medical services. According to the researcher, the problem has a complex intersectoral nature, and therefore requires the involvement of specialists on economic and financial law<sup>6</sup>.

In our opinion, a solution to this global problem can occur provided a cool headed but not a populist understanding of the real possibilities of the State Budget of Ukraine and revision of constitutional norms in accordance with European standards of guaranteeing and ensuring. Both the first and the last ones concern the social human rights which are guaranteed by the Constitution of Ukraine.

By the way, the author of his own project of the Constitution of Ukraine Vsevolod Rechytskyi proposed a balanced view on the constitutional right to medical care in the text of the Constitution. In particular, according to the constitutionalist, the consolidation of the investigating law at the constitutional level must be as follows: "...The state guarantees to everyone the provision of the minimum amount of free medical services and free medical care in urgent cases on the basis of the law. Anyone who needs an examination or treatment, but without being able to pay the cost, has the right to credit concessional health care the state or local government bodies..."<sup>7</sup>. Such a statement of the right to medical care looks more realistic because it does not burden human rights with "overwhelming" guarantees, which Ukraine cannot afford at the present stage of democratic development.

Consequently, the problem of the constitutional right to medical care, especially in terms of guaranteeing it free of charge in state and communal health care institutions must be solved starting with the reasons that have caused its occurrence. Therefore, it is necessary to at least resolve the outdated approach regarding the constitutional right to medical care that may be proposed in the process of preparing amendments to the Constitution of Ukraine in the part of human rights.

<sup>1</sup> Rechytskyi V.V. Konstytutsiine ABV [Constitutional ABC]. Kharkiv: TOV «Vydavnytstvo „Prava liudyny“», 2016. S. 107–108.

<sup>2</sup> Rishennia Konstytutsiinoho Sudu Ukrainy (sprava pro bezoplatnu medychnu dopomohu) [Official interpretation by the Constitutional Court of Ukraine in (a case about free medical aid)] vid 29 travnia 2002 roku № 10-rp/2002. URL: <http://zakon.rada.gov.ua/laws/show/v010p710-02>

<sup>3</sup> Pres-reliz za rezultatamy sotsiologichnoho doslidzhennia [Press release on the results of the sociological survey] // Kyivskiy mizhnarodnyi instytut sotsiologii. URL: <https://www.kiis.com.ua/?lang=ukr&cat=reports&id=724>

<sup>4</sup> Medytsyna po-ukrainsky: koly patsient platyt dvichi [Medicine in Ukraine: when the patient pays twice] // NGO «Tsentr politychnykh studii ta analityky "EIDOS"». URL: <https://eidoss.org.ua/novyny/medytsyna-po-ukrajinsky-koly-patsient-platyt-dvichi/>

<sup>5</sup> Medytsyna po-ukrainsky: koly patsient platyt dvichi [Medicine in Ukraine: when the patient pays twice] // NGO «Tsentr politychnykh studii ta analityky "EIDOS"». URL: <https://eidoss.org.ua/novyny/medytsyna-po-ukrajinsky-koly-patsient-platyt-dvichi/>

<sup>6</sup> Vitkova V.S. Konstytutsiine pravo na medychnu dopomohu ta yoho yurydychne zabezpechennia v Ukraini [Constitutional right on medical assistance and its legal provision in Ukraine]: avtoref. dys. ... kand. yuryd. nauk: 12.00.02. Uzhhorod, 2017. S. 9.

<sup>7</sup> Rechytskyi V.V. Neformalnyi konstytutsionalizm [Informal constitutionalism]. Kharkiv: TOV «Vydavnytstvo „Prava liudyny“», 2018. S. 149.

### Резюме

#### **Matam A.B. Право людини на медичну допомогу, гарантоване Конституцією України.**

У статті проаналізовано деякі актуальні проблеми реалізації конституційного права на медичну допомогу в Україні. Розглянуто наукові дослідження, присвячені проблемам прав людини. Проаналізовано практику реалізації частини третьої статті 49 Конституції України, а також досліджено відповідне рішення Конституційного Суду України. Окремо розглянуто соціологічні дослідження, які підтверджують необхідність вирішення проблеми гарантування права на медичну допомогу в Україні.

**Ключові слова:** права людини, право на медичну допомогу, Конституція України.

### Резюме

#### **Matam A.B. Право человека на медицинскую помощь, гарантированное Конституцией Украины.**

В статье проанализированы некоторые актуальные проблемы реализации конституционного права на медицинскую помощь в Украине. Рассмотрены научные исследования, посвященные проблемам прав человека. Проанализирована практика реализации части третьей статьи 49 Конституции Украины, а также исследовано соответствующее решение Конституционного Суда Украины. Отдельно рассмотрены социологические исследования, которые подтверждают необходимость решения проблемы гарантирования права на медицинскую помощь в Украине.

**Ключевые слова:** права человека, право на медицинскую помощь, Конституция Украины.

### Summary

#### **Matat A. The Human Right to Medical Care guaranteed by the Constitution of Ukraine.**

This paper analyzes an actual problem of the implementation of the constitutional right to medical care in Ukraine. The author researches some scientific papers about it. The practice of realization of the third part of Article 49 of the Constitution of Ukraine and the decision of the Constitutional Court of Ukraine are analyzed. The author considers the sociological surveys which confirming the need to resolve this problem in Ukraine.

**Key words:** human rights, the right to medical care, the Constitution of Ukraine.