

## **The human right to security in the implementation of the concept of the "right to health protection"**

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### ***Abstract***

*Legal support of human security in the field of health care includes the guarantee, protection and protection of rights and freedoms in the field of health care, which is the main function, as well as the goal and duty of the state. This paper describes certain aspects of the legal regulation of the implementation of the "human right to security in the health sector" and the problems of its enforcement. The research methodology is based on a system of methods of the philosophical, general scientific and special scientific level. The main goal of this scientific article is to define the concept, principles, types and directions of implementation of the "human right to safety" in the concept of "the right to health protection". The general principles of the implementation of the "human right to security in the health sector" are disclosed. It is emphasized that the legal mechanism for the implementation of the "human right to security in the healthcare sector" is the activity of legal entities, lawmaking and law enforcement agencies, and the existing legal norms governing their activities in the healthcare sector. The investigated human right to safety should be understood as a complex of rights related to the protection of the patient's legitimate interests in the healthcare sector from unlawful encroachments and threats.. The author's understanding of the definition of "patients' right to safety". It is argued that human security in the field of health care belongs to the basic needs of a person - the implementation of this need is determined by the level of development of a country, its economic and cultural components, the level and quality of life of a person living in this country, an effective health care system. It is concluded that the main goal of legal ensuring human security in the healthcare sector is to create the minimum necessary (safe) conditions for the implementation of these rights and obligations when receiving medical services.*

**Keywords:** *human right to security, health sector, legal regulation, concept of the "right to health protection".*

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## 1. Introduction

Health care is the main element of the social sphere and is of particular interest for ensuring human security as a determining factor in the quality of life of the population, the quality of receiving medical services. In accordance with the "Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand," the parties should develop cooperation in the field of health care in order to increase the level of its safety and protect human health as a prerequisite for sustainable development and economic growth. Strengthening the health care system of Ukraine and its potential, in particular (1) through reforms, further development of primary health care and staff training; (2) prevention and control of communicable diseases such as HIV/AIDS and tuberculosis, increased preparedness for the risk of outbreaks of highly pathogenic diseases and implementation of the International Health Regulations, and also (3) prevention and control of noncommunicable diseases through the exchange of information and best practices, aimed at carrying out activities to promote healthy lifestyles, identifying the main determinants of health and health problems<sup>6</sup>.

Among the tasks of the implementation of the Concept for managing the quality of medical care in Ukraine in the field of health care until 2020, the protection of the patient's interests in receiving high-quality medical care is defined. In addition, the main ways of solving the problem in the field of improving the quality of medical services have been identified, including the creation of an effective system for standardizing medical services<sup>7</sup>. However, the current state of the health care system reflects the current security policy in Ukraine and a number of its implementation problems: the presence of the occupied territories, the problems of financing the implementation of medical reform, the ineffectiveness of its individual areas, the presence and spread of the Covid-19 pandemic, the slow vaccination of the population to prevent Covid-19 and etc. In addition, Ukraine is in a state of epidemics of measles, tuberculosis, AIDS, and there is also a real threat of epidemics of diphtheria and poliomyelitis and other dangerous diseases. Ukraine is among the world leaders in the spread of tuberculosis, however, the epidemics of tuberculosis and AIDS are successfully controlled in the EU countries and in the world. An important element in this direction is the safety of patients with their access to quality medical services. Based on the above study of individual legal problems of the implementation of the "human right to security in the health care sector", it remains especially relevant for the individual and society, as well as for the improvement of legislation, which covers the legal mechanism of public administration as a whole.

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<sup>6</sup> *Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand*: International document dated June 27, 2014, No. 984\_011. Official Gazette of Ukraine from September 26, 2014. 2014. No. 75. Art. 2125.

<sup>7</sup> *About the consolidated concept of management of medical assistance at the health protection of health in Ukraine for the period until 2020*. Order of the Ministry of Health of Ukraine 08/01/2011 No. 454. Available at: <https://zakon.rada.gov.ua/rada/show/v0454282-11#Text> [Accessed 01 June 2021].

## 2. Material and methods

In this study, a system of methods of the philosophical, general scientific and special-scientific level was used. The purpose of this work is to study individual legal problems of the implementation of the "human right to security in the health sector". To achieve the goal of this study, the following tasks were set: (1) to formulate the copyright legal structure "the human right to security in the health care sector", to reveal their types and individual elements of the legal mechanism for its implementation; (2) to define the relationship between such categories as "health" and "safety", "the human right to human security in health care" and "the right to health care" and "the right to patient safety"; (3) study the peculiarities of the implementation of the "right to patient safety" and the peculiarities of their legal regulation.

The basis of this work is formed by philosophical methods: dialectical (the main principles of which are objectivity, comprehensiveness, concreteness and completeness of knowledge, bifurcation of a single and knowledge of its contradictory sides, etc.), logical (the main methods of which are analysis and synthesis, induction and deduction, analogy, ascent from the concrete to the abstract and from the abstract to the concrete), etc. Among the general scientific methods of cognition in the study of the "human right to security in health care", the methods of system analysis (structural, functional, factorial), target, typological ones were used to reveal the types of human rights to safety in the implementation of the concept of "right to health protection"; formal legal - when defining the concepts of "person", "security", "human security", "right to health protection", "human right to security in health care", comparative legal - to identify similar and distinctive features regarding understanding by scientists the peculiarities of the implementation of the "human right to safety in health care" and "patients' right to safety".

## 3. Literature review

Some researchers drew attention to the legal issues of human security in the health care system. So, A. V. Levenets, & O. V. Lotysh (2019) considered the issues of international legal regulation of the right to safe medical care as one of the most important human rights<sup>8</sup>. Voronina, I. S. (2016) drew attention to pharmaceutical security as a component of the economic security of the state<sup>9</sup>. M. Feinberg, L. Niada-Avshalom & B. Toebe (2015) studied human rights in the field of national

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<sup>8</sup> Levenets, A & Lotysh, O. International standards of safety medical aid right. Odesa national university herald. Jurisprudence. 2019. 24. 15-22. DOI: [https://doi.org/10.18524/2304-1587.2019.2\(35\).185890](https://doi.org/10.18524/2304-1587.2019.2(35).185890)

<sup>9</sup> Voronina, I.S. *Pharmaceutical safety as a component of economic security of the state in the conditions of innovative model of social and economic development*. Law and Innovative Society, 2016. (2), 24-28.

security and public health<sup>10</sup>. Gostin, L. O., et. al. (2018) highlighted human rights in global health<sup>11</sup>. Pūras, D., et. al. (2020) studied some aspects of the implementation of human rights to improve public health in connection with the COVID-19 pandemic. The authors noted that human rights monitoring in the wake of the COVID-19 pandemic mainly focuses on restricting individual freedoms to protect public health<sup>12</sup>. Periago M. R. (2012) studied the issues of human security in the field of public health<sup>13</sup> and etc.

However, in the legal literature, some problems of legal regulation regarding the implementation of the “human right to security in the health care sector” have not been studied. The main problems include: (1) the lack of a single concept of it among researchers, this term is not reflected in the legislation, (2) its signs have not been established, and the essence and composition of its elements have not been disclosed, (3) the legal mechanism for its implementation has not been disclosed. Scientists have not conducted research on the implementation of this right depending on the types of forms and conditions of medical services, as well as on the levels of medical care. In addition, in the sphere of realizing the patient's right to safety, in Ukraine there is no transparent process of the functioning of the health care system at all its levels, an independent procedure for monitoring the quality of the provision of medical services has not been formed and ensured. Also, in the area under study, there is no legal procedure for prompt and effective response to possible conflict situations regarding the quality of medical services, which indicates the relevance and necessity of this study, its legal and organizational components as well as other components.

#### **4. "The human right to security in health care": concept, types and their legal mechanism for implementation**

According to the Constitution, Ukraine is a sovereign and democratic, social, legal state (Article 1), and a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value (Part 1, Article 3)<sup>14</sup>, in fact, the Constitution of Ukraine recognizes a person's right to it. Human rights, as defined in the Declaration on Human Rights as an Essential Component of Human Security (San Jose, Costa Rica, 2 December 2001), is an

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<sup>10</sup> Feinberg, M., Niada-Avshalom L. & Toebe B.) *National security and public health: exceptions to human rights?*, The International Journal of Human Rights, 2015. 19:4, 383-387, DOI: 10.1080/13642987.2015.1044812

<sup>11</sup> Gostin, L. O., Meier, B. M., Thomas, R., Magar, V., & Ghebreyesus, T. *70 years of human rights in global health: drawing on a contentious past to secure a hopeful future*. The Lancet, 2018. 392(10165), 2731-2735.

<sup>12</sup> Pūras, D., de Mesquita, J., Cabal, L., Maleche, A., & Meier, B. The right to health must guide responses to COVID-19. *Lancet*. 2020. 395 (10241): 1888–1890. doi: 10.1016/S0140-6736(20)31255-1

<sup>13</sup> Periago M.R. *Human security and public health*. Rev Panam Salud Publica, 2012. 31(5). Available at: <https://scielosp.org/pdf/rpsp/2012.v31n5/351-358/en>[Accessed 01 June 2021].

<sup>14</sup> *Constitution of Ukraine*: Law of Ukraine No 254r/96 of 28 June 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

essential component of "human security". "Human security" complements state security, supports human rights and enhances the development of society<sup>15</sup>. In modern scientific approaches, the main idea of the concept of "human security" is the transfer of attention in legal relations from the state to individual individuals (humans) or communities. This concept is incorporated into the foreign policy strategies of many countries of the world and becomes relevant in the security sector of Ukraine, the UN and its agencies, in the EU countries and other international organizations in such a field as healthcare.

The categories "health" and "safety" are interrelated. Resolution WHA 55.18 of the 2002 WHO Patient Safety Assembly states that in order to improve the quality of health care, it is important to establish (1) an evidence-based system for the implementation of a safety culture in health care; (2) encourage research in the field of patient safety (study of risk factors, implementation of preventive measures, assessment of costs associated with harm to health) (3) develop healthcare standards to optimize the global patient safety system, as well as monitor the safe use of medical equipment, technologies. WHO estimates the global cost of patient treatment errors at \$ 42 billion per year. The most serious consequences are errors in the diagnosis of patients, as well as in the appointment and use of drugs<sup>16</sup>. Health security (prevention of diseases) as well as personal security of a person (freedom from physical violence and threats) were highlighted in the United Nations Development Program (UNDP, 1994)<sup>17</sup> one of the most important components regarding the safety of human life. There is an opinion of scientists that the right to health protection refers to the subjective human rights, since it belongs to each specific subject, and depends on his will, consciousness, personal desire and discretion, and also expresses not the potential, but the real capabilities of the individual. The right to health protection has both all the signs of subjective rights and has specific features that appear when considering its content, as well as in the process of implementation. Like any subjective right, the right to health care is a measure and type of possible behavior of a person (legal opportunities) in order to achieve a high mental, physical and social state<sup>18</sup>.

Human safety in health care comes first among the most significant aspects of safety. In the general understanding, "human security" is an objective state and a subjective feeling of physical, property, social (material), psychological and moral security of a person, his rights and freedoms<sup>19</sup>. It should also be noted that behind

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<sup>15</sup> Oberleitner G. *Human security and Human rights* Available at: <https://www.files.ethz.ch/isn/31301/08.pdf> [Accessed 01 June 2021].

<sup>16</sup> *Patient safety, or How to ensure health safety?* Available at: <https://www.apteka.ua/article/565744> [Accessed 01 June 2021].

<sup>17</sup> United Nations Development Program, 1994. Available at: <http://www.un.org/ru/ga/undp/docs.shtml> [Accessed 01 June 2021].

<sup>18</sup> Otstavnova E. A. *Constitutional foundations for the protection of the rights of man and citizen to health protection and medical care in modern Russia: diss. ...* Cand. juridical sciences: 12.00.02. Saratov. 2010. p. 22.

<sup>19</sup> Tikhyy V., & Panov M. The right of people to security (constitutional and legal aspects.). *Bulletin of the Constitutional Court of Ukraine*. 2000. 6. 57-61.

such a criterion as subjects, such types of security are distinguished, namely: (1) a person, (2) society, (3) states. In terms of the level of subjectivity, human security encompasses both personal and community security - general (joint, or collective)<sup>20</sup>. The human right to security was enshrined in the 1789 Declaration of the Rights of Man and Citizen, which recognized it as the principle of human existence in the environment.

According to the provisions of the National Security Strategy of Ukraine approved in 2020, a person, his life and health, honor and dignity, inviolability and security are the highest social value in Ukraine<sup>21</sup>. Some researchers point out that health care is one of the fundamental elements in the structure of economic security, which, in turn, forms the system of national security. The following types of security are distinguished: (1) "pharmaceutical security"; (2) "congratulatory safety"; (3) "drug safety"; (4) "economic security of pharmaceutical companies"; (5) pharmaceutical security<sup>22</sup>. From our point of view, personal safety is of particular importance for a person, consisting, first of all, in the protection of life and health.

There are three scientific approaches to understanding the essence of the "right to security" phenomenon. The first approach - the human right to security is positioned as a completely independent subjective right, which should be designated in the constitution of the state on an equal basis with such rights as (1) the right to life, (2) the right to liberty and security of person, (3) the right to privacy. Another approach is the understanding of the right to security in a narrower sense: here it is interpreted as one of the powers arising from the broader constitutional rights and freedoms. The third approach assumes a more comprehensive understanding of the phenomenon of the "right to security", in which it is linked not with one, but with several constitutional rights and freedoms. The third approach assumes a more comprehensive understanding of the phenomenon of the "right to security", in which it is linked not with one, but with several constitutional rights and freedoms<sup>23</sup>. We support the first scientific approach. Based on the foregoing, we can assume that the "right to security in health care" is an independent subjective human right. Depending on the status of an individual, from our point of view, it is possible to distinguish: (a) the rights of a citizen in the field of health care; (b) the rights of foreigners in the field of health care; (c) the rights of stateless persons in the field of health care.

In the future, we will consider the constituent elements of the legal structure "the human right to security in the health care sector". Concerning the understanding

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<sup>20</sup> Tykhy V.P. *Human security: concept, legal support, meaning, types*. Bulletin of the National Academy of Legal Sciences of Ukraine. 2016. № 2. P. 31–46.

<sup>21</sup> *National Security Strategies of Ukraine*: Decree of the President of Ukraine dated September 14, 2020, No. 392/2020. Available at: <https://zakon.rada.gov.ua/laws/show/392/2020#Text> [Accessed 28 May 2021].

<sup>22</sup> *Economic security of the state: essence and directions of formation*: monograph/ed. Shevchenko L.S. Yaroslav Mudryi National Law University. Kharkiv: Pravo, 2009. P.145.

<sup>23</sup> Kukovsky A. A., & Petrov, A.V. *National security and health protection. Comparative legal analysis*. Bulletin of the South Ural State University. Series: Law. 2016. 16(3). 27–32. DOI: 10.14529/law160305.

of the term "security". Some researchers indicate the term "security" as the activity of people, society, state, the world community of peoples to identify, prevent, weaken, prevent a threat that can destroy them, deprive them of material and spiritual values, inflict undisturbed losses, block the paths for progressive development<sup>24</sup>. Or other researchers define the concept of "security" as a state of stability, peace and absence of threat. It is subjective in nature, acts as one of the basic needs of a person, social groups and states. Covers the satisfaction of such needs as existence, survival, integrity, identity, independence, tranquility (peace), availability and sustainable development<sup>25</sup>. Thus, the definition of "security" is the identification, prevention, weakening, prevention of a threat, that is, this state of stability, peace and absence of threat, has a subjective character and is one of the main needs of a person, society and the state.

The term "Person" is the subject and object of social relations; in law, the personality is understood as "a person who has a historically determined degree of development, enjoys the rights provided by society, and performs the duties that are due to them"<sup>26</sup>. Some researchers, indicate that the term "person" is any person who is under the territorial or personal supremacy of the state and is in a legal relationship with it. At the same time, for the recognition of a person as a person, it has no legal value - the system of her needs, interests, beliefs, ideals, views<sup>27</sup>. Thus, the legal mechanism for the implementation of the "human right to security in the healthcare sector" is the activity of legal entities, lawmaking and law enforcement agencies, and the existing legal norms governing their activities in the healthcare sector. This right is a specific reflection and logical continuation of other human rights in the field of health care, and its implementation is possible only within the framework of proper, safe conditions for receiving medical services.

The UN international documents provide the following conditions for the proper implementation of human rights in the field of health care: (1) all services, goods and objects in the field of medicine must be affordable and of high quality; (2) health measures, as well as medical goods and services, must be available and provided in sufficient quantities by the state; (3) they must be accessible physically as well as financially on a basis of equality and non-discrimination; (4) the existence of rules of medical ethics and culture and their observance by health workers; (5) medical devices, assistance and other types of medical services must be scientifically grounded and reasonable, as well as be of adequate quality<sup>28</sup>. Ensuring the "human right to security in the health sector" should be based on basic principles such as (1) observance of human and civil rights and freedoms in the field of health protection and provision of related state guarantees; (2) humanistic orientation, ensuring the

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<sup>24</sup> Tsyganov V.V. *National security of Ukraine: textbook*. National Academy of Internal Affairs of Ukraine. Kyiv, 2004. 100 p.

<sup>25</sup> Zięba R. *Instytucjonalizacja Bezpieczeństwa europejskiego*. Warszawa; Scholar, 2001. P. 27.

<sup>26</sup> Zaychuk O.V. & Onishchenko N.M. *Theory of State and Law: Acad. course*, ed. Kyiv, Jurinkom Inter, 2006. p. 65.

<sup>27</sup> Ebzeev B.S. *Constitution. Democracy. Human rights* M., Cherkessk, 1992. P. 97.

<sup>28</sup> The Right to Health. Office of the United Nations High Commissioner for Human Right: Available at: <http://www.ohchr.org/Documents/Publications/Factsheet31> [Accessed 18 May 2021].

priority of universal values over class, national, group or individual interests, increased medical and social protection of the most vulnerable segments of the population; 3) equality of citizens, democracy and general availability of medical and rehabilitation assistance and other services in the field of health care; (4) focus on modern standards of health, medical and rehabilitative care, a combination of domestic traditions and achievements with world experience in the field of healthcare (Article 4 of the Law of Ukraine "Fundamentals of Ukrainian legislation on healthcare")<sup>29</sup>, and (5) standardization of health care delivery; (6) government liability insurance for doctors; (7) quality control of medical care; (8) conducting an independent medical examination.

Some researchers understand the human right to security in the narrow as well as in the broad sense. In the first version: as a system of rights (obligations) enshrined in the law, a set of legal possibilities provided for by constitutional and legal norms, associated with the implementation of his will and the protection of himself and his loved ones, vital (human life and health), legal and private interests of a person, rights and freedoms, its ideals, values from unlawful encroachments, threats of harmful influences (physical, spiritual, property, information, social, economic, political, environmental, military, etc.), dangers and threats of any kind on the part of others. In a broad sense, the "right to security" is considered in the list of human rights and freedoms, if the actual human security is in the implementation of these rights, then in the course of exercising the constitutional right to health protection, we can also talk about the right of individuals, in particular patients, to safety.<sup>30</sup> The above can be used to understand the "human right to health security". We single out in the studied area and "the right of patients to safety, we also do not exclude such rights as" the right of a doctor to safety", "the right of nurses to safety" and other subjects of medical legal relations. It should also be noted that at the legislative level in Ukraine there are no legal norms that would oblige the employer (officials of health care institutions) to guarantee the personal safety of a doctor. Kukovsky, A. & Petrov, A. (2016) believe that in order to ensure patient safety while exercising the right to health protection, it is important to improve the safety of both medical activities and sources of increased danger through (1) safe clinical practice, (2) through carrying out infection control, (3) ensuring the safety of equipment, (4) the safe use of drugs<sup>31</sup>. From our point of view, "the human right to security in the health sector" is a comprehensive human right to a certain legal order in the health sector, in which conditions, that is, guaranteed, protected and protected human rights regarding the receipt of quality medical services, are ensured. In other words, "the human right to security in the healthcare sector" is a set of rights associated with

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<sup>29</sup> *Fundamentals of Ukrainian legislation on health care*: Law of Ukraine No. 2801-XII of 19 November 1992. Information of the Verkhovna Rada of Ukraine. 1993. № 4. Art. 19.

<sup>30</sup> Bodnar O.B. *Concept and the Human Rights Maintenance on Safety and Its Parity with the Adjacent Rights*: Forum Law. 2011. 1. pp. 88-93. Available at: <https://www.nbu.gov.ua/e-journals/FP/2011-1/11bobzcp.pdf> [Accessed 03 June 2021].

<sup>31</sup> Kukovsky A. A., & Petrov, A.V. *National security and health protection. Comparative legal analysis*. Bulletin of the South Ural State University. Series: Law. 2016. 16(3). 27-32. DOI: 10.14529/law160305.



the protection of the legitimate interests of a person in the healthcare sector from unlawful encroachments and threats.

In the future, categories such as "patient" and "patient's right to safety" should be disclosed. From the positions of medical law, the term "patient" is defined as a person who applied for the provision of preventive, diagnostic, curative or rehabilitation and restorative assistance to a health care institution of any form of ownership or a medical worker of individual practice, regardless of health status, or voluntarily agreed to conduct a biomedical experiment.<sup>32</sup> The concept of "patient" is contained in Art. 3 of the Law of Ukraine "Fundamentals of Legislation of Ukraine on Health Protection", according to which a patient is an individual who has applied for medical assistance and/or to whom such assistance is provided<sup>33</sup>. The International Pharmaceutical Federation - Defines patient safety as freedom from accidental harm in the course of medical care (including preventable harm)<sup>34</sup>. A unified formulation of the concept of "patient's right to safety" is currently absent in the legal literature. For example, Shishatskaya N. F. (2013) understands the essence of this right as "... a right protected from harm, due to the unprofessional work of medical personnel or a medical institution [-, c. 85]<sup>35</sup>. Thus, patient safety is most often defined as the maximum possible compliance of clinical outcomes with the expectations of the doctor and the patient with the minimum risk of negative consequences of treatment and diagnosis. From our point of view, the concept of "patients' right to safety" is a system of rights (obligations) enshrined in the law, the state of protection and guaranteed rights, freedoms and legitimate interests of a person who applied for diagnostic, therapeutic or rehabilitation and restorative assistance or any other medical service against risks, threats, dangers and harmful effects.

##### **5. "Patient's right to safety" as a component of the "human right to safety in healthcare": legal aspects of implementation**

WHO notes that the main reason for the negative consequences and problems of ensuring patient safety is the lack of concepts in their organization. Patient safety concerns all branches of medical care and all its participants and requires an integrated approach regarding their legal support. Everyone has an inalienable right to health care. Its core is the right to health care and medical services, and health insurance. This right to health protection is ensured by state funding of the relevant socio-economic, medical and sanitary and health-improving and prophylactic programs. Each person realizes this right by contacting a medical

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<sup>32</sup> Stetsenko S.G., Stetsenko V. Yu., & Senyuta I. Ya. *Medical law of Ukraine: a textbook for university students*. Kyiv: Legal Unity, 2008. P.45.

<sup>33</sup> *Fundamentals of Ukrainian legislation on health care*: Law of Ukraine No. 2801-XII of 19 November, 1992. Information of the Verkhovna Rada of Ukraine.1993. № 4. Art. 19.

<sup>34</sup> *Patient safety, or How to ensure health safety?* Available at: <https://www.apteka.ua/article/565744> [Accessed 01 June 2021].

<sup>35</sup> Shishatska N.F. *Patients' rights in international documents*. Bulletin of social hygiene and health care organization of Ukraine. 2013. 4 (58). 84-86.

institution, and thus the person acquires the status of a patient.

From the standpoint of some researchers, two groups of patient rights to safety in medical legislation should be distinguished: (1) the right to passive safety, which is guaranteed to everyone, and (2) the right to active safety, safety in the process of treatment, which is guaranteed precisely to the patient. In the first group, passive safety is reduced to the formation in the state of a situation where every citizen, regardless of whether he has acquired the status of a patient or not, is provided with conditions for receiving medical care in such a way that the risks of harm to him are minimized. The right to active safety does not arise in an abstract citizen, but in a specific patient, that is, a person who has entered into a relationship with a medical institution or a medical worker, gives her medical assistance or to whom she turned for such help. This right boils down to ensuring the patient in the process of treatment and diagnosis from harm that can be avoided<sup>36</sup>.

International documents also regulate the patients' right to safety. Thus, the provisions of the European Charter of Patients' Rights proclaim the right to comply with quality standards, namely: everyone has the right to the availability of quality medical care based on specifications and in strict accordance with standards (Article 8). Article 9 states: "everyone has the right to be free from harm caused by the inadequate functioning of the health care system, negligence and mistakes of health workers, as well as the right to access health services and treatment procedures that meet high safety standards"<sup>37</sup>. Article 2 of the Convention on Human Rights and Biomedicine (EST No. 164), establishing the superiority of human life over the interests of society or science; and Article 3 of this document indicates equal access to health care of appropriate quality<sup>38</sup>. Speaking about the legislative consolidation of patient safety issues in the EU countries, it is worth recalling recommendations No. R (97) 5 on the protection of medical data, R (97) 17 on the creation and implementation of systems to improve the quality of health care (QIS) and R (2000) 5 on the development structures that enable citizens and patients to participate in health decision-making, as well as Resolution ResAP (2001) 2 on the role of pharmacists in the development and implementation of the concept of health security, clearly proposes to work together with representatives of other sectors of the health system.

In the provisions of Resolution 55.18 (2002) of the WHO Assembly "Quality of care: patient safety", it recognizes the need to promote patient safety as a fundamental principle of the entire health care system. This principle of patient safety applies equally to the following: (1) primary (first aid, etc.), (2) secondary (inpatient care, etc.) and tertiary (highly specialized medical care) health care, and also representatives of all medical (pharmaceutical) professions and all types of

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<sup>36</sup> Zyma O.T. *The right of the patient for safety in medical legislation*. Legal short stories: scientific legal journal. 2018. (6), 85-90. Available at: [http://nbuv.gov.ua/UJRN/prno\\_2018\\_6\\_15](http://nbuv.gov.ua/UJRN/prno_2018_6_15). [Accessed 01 June 2021].

<sup>37</sup> *European Charter of Patients' Rights*. (2002). Available at: [https://ec.europa.eu/health/ph\\_overview/co\\_operation/mobility/docs/health\\_services\\_co108\\_en.pdf](https://ec.europa.eu/health/ph_overview/co_operation/mobility/docs/health_services_co108_en.pdf) [Accessed 05 June 2021].

<sup>38</sup> The Convention on Human Rights and Biomedicine (EST No. 164). Available at: <https://rm.coe.int/168007cf98> [Accessed 05 June 2021].

activities (support of a healthy lifestyle, prevention, diagnosis, treatment of diseases, rehabilitation, etc.). According to the Recommendations Rec (2006) 7 and the Committee of Ministers of the Council of Europe to member states on the management of patient safety and the prevention of side effects in health care, it is emphasized that patient safety should be perceived as an important component of the quality of health care. Thus, the documents of WHO and the Committee of Ministers of the Council of Europe indicate: (1) the right to adherence to quality standards of medical care, (2) equal access to health care of an appropriate quality, (3) the right to protect health data, (4) patient safety as the basic principle of the entire health care system, (5) patient safety is an important component of the quality of medical care, (6) on the development of the "concept of human health safety".

In the legislative acts of Ukraine "the patient's right to safety" is not directly defined. You can proceed from such provisions of regulatory legal acts. So, the Constitution of Ukraine proclaims that everyone has the right to health protection, medical care and medical insurance (Article 49 (part 1), also in Article 3 of the Constitution it is stated that a person, his life and health, honor and dignity, inviolability and safety is recognized in Ukraine as the highest social value; and the right to safe and healthy working conditions (Article 43); the Constitution of Ukraine enshrines the state's obligation to ensure human rights<sup>39</sup>. The Law of Ukraine "Fundamentals of Legislation on Health Protection" states that medical intervention (the use of diagnostic, prevention or treatment methods associated with exposure to the human body) is allowed only if it cannot harm the patient's health. According to Art. 44 of this Law in medical practice, methods of prevention, diagnostics, treatment and medicines permitted for use by the executive authority that ensure the formation of state policy in the field of health care are applied in medical practice (Art. 42). In Art. 6 of the Law of Ukraine "Fundamentals of Ukrainian legislation on health care" provides for the right to qualified health care, including the free choice of a doctor, the choice of treatment methods according to his recommendations and health care institutions<sup>40</sup>.

The Civil Code of Ukraine guarantees each person the right to provide him with high-quality and safe medical care (Art. 284)<sup>41</sup>. The Law of Ukraine "On Protection of Consumer Rights" (part 1 of article 4, part 1 of article 6). This Law guarantees the right of consumers to the safety of products (goods, work or services) (Article 4), and also states that the requirements for products regarding their safety for life, health of consumers are established by regulatory legal acts, including technical regulations ( Art. 6)<sup>42</sup>. In addition to the above, the patient's right to safety is provided for in the Criminal Code of Ukraine (Articles 139, 140), the Laws of Ukraine "On the Protection of the Population from Infectious Diseases" (Part 3 of

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<sup>39</sup> Constitution of Ukraine: Law of Ukraine No 254к/96 of 28 June 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

<sup>40</sup> *Fundamentals of Ukrainian legislation on health care*: Law of Ukraine No. 2801-XII of 19 November 1992. Information of the Verkhovna Rada of Ukraine. 1993. № 4. Art. 19.

<sup>41</sup> The Civil Code of Ukraine: Law of Ukraine dated January 16, 2003, No. 435-IV. Available at: <https://zakon.rada.gov.ua/laws/show/435-15#Text> [Accessed 05 June 2021].

<sup>42</sup> On consumer protection: Law of Ukraine of May 12, 1991, № 1023-XII. Information of the Verkhovna Rada of Ukraine. 1991. № 30. Art. 379.

Article 13), "On Psychiatric Care" (Article 7) and some by-laws. For example, such a document as the Ethical Code of a Doctor of Ukraine indicates that a doctor, in the event of an error or unforeseen complications as a result of his actions, is obliged to inform the patient, senior colleague or the head of the department, and in their absence, the administration of the institution in which he works, and immediately direct their actions to correct negative consequences, without waiting for instructions. If necessary, you should involve other specialists, honestly informing them about the nature of the error or complications that have arisen. ...The doctor has no right to leave patients in cases of general danger "(p. 3.12)<sup>43</sup>. Thus, the patient's right to safety is regulated at two levels: legislative and subordinate regulations.

The guarantees of the human right to security in the health sector, in accordance with Art. 7 of the Law of Ukraine "Fundamentals of Legislation on Health Protection" are: (1) creation of an extensive network of healthcare institutions; (2) organization and implementation of a system of state and public events for the protection and promotion of health; (3) providing all citizens with a guaranteed level of health care; (4) implementation of state and public control and supervision in the field of health care; (5) organization of the state system for the collection, processing and analysis of social, environmental and special medical statistical information<sup>44</sup> and other factors. So, human security in the field of health care belongs to the basic needs of a person - the implementation of this need is determined by the level of development of the country, its economic and cultural components, the level and quality of life of a person living in this country, an effective health care system.

## 6. Conclusion

The right to security in the healthcare sector "is a set of legal possibilities of a person enshrined in legal norms and is associated with the implementation of his will to receive medical services and protection from encroachments by the subjects of medical legal relations. This right at the national level remains the responsibility of the state, including the creation of an appropriate legal framework for their implementation. The main goal of ensuring human safety in the healthcare sector is to create the minimum necessary (safe) conditions for the implementation of this right and obligations when receiving medical services.

The human right to health security follows the list of fundamental human rights. The peculiarities of this right in the field of health care is that the guarantee of its implementation is the possibility of its subjects, who have such a right, to demand certain behavior from other persons in the health care sector, who are obliged to assist him in realizing this right to a person. Depending on the status of an individual, the following types of human right to security are distinguished: (1) the rights of a citizen in the field of health care; (2) the rights of foreigners in the field

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<sup>43</sup> Ethical code of a doctor of Ukraine (27.09.2009). Available at: <https://zakon.rada.gov.ua/rada/show/n0001748-09#Text> [Accessed 05 Jun. 2021].

<sup>44</sup> *Fundamentals of Ukrainian legislation on health care*: Law of Ukraine No. 2801-XII of 19 November 1992. Information of the Verkhovna Rada of Ukraine. 1993. № 4. Art. 19.

of health care; (3) the rights of stateless persons in the field of health care. For such a criterion as the subjects of medical legal relations, it is necessary to distinguish not only the "right of patients to safety" but also "the doctor's right to safety", "the right of nurses to safety" and other types of subjects of medical legal relations.

Patients' right to safety "is a system of rights (obligations) enshrined in the law, the state of protection and guaranteed rights, freedoms and legitimate interests of a person who applied for diagnostic, treatment or rehabilitation and rehabilitation assistance or any other medical service against risks, threats, hazards and harmful effects. The patient's right to safety in Ukraine is partially realized in practice. Improving patient safety in Ukraine should be carried out in accordance with WHO recommendations in three complementary areas: (1) prevention of adverse events; (2) their identification; (3) mitigating their effect when they do occur.

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