



THE CONSTITUTIONAL RIGHT TO HEALTH PROTECTION AND MEDICAL CARE: THE PROBLEM OF IMPLEMENTATION

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SUMMARY

The article deals with constitutional rights to health protection and medical care within the framework of the system of social human rights. The special features of the right to health protection and medical assistance in the national legislation of the Republic of Moldova, as well as at the level of international acts, are disclosed. The author's position on the content of the right to health care and medical care is substantiated, attention is paid to the analysis of state policy in the field of health protection of citizens. Attention is drawn to the special features of this group of constitutional human rights' protecting. Proposals on increasing the efficiency of the legal regulation of the provision and protection of the constitutional right to protect health and medical care in the Republic of Moldova are formulated.

Keywords: right to health protection, medical care, social human rights, guarantees of protection of the right to health protection.

DREPTUL CONSTITUȚIONAL LA OCROTIREA SĂNĂTĂȚII ȘI ASISTENȚĂ MEDICALĂ: PROBLEMA PUNERII ÎN APLICARE

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REZUMAT

Articolul se referă la drepturile constituționale pentru protecția sănătății și asistența medicală în cadrul sistemului drepturilor sociale ale omului. Se dezvăluie particularitățile dreptului la ocrotirea sănătății și asistența medicală în legislația națională a Republicii Moldova, precum și la nivelul actelor internaționale. Poziția autorului cu privire la conținutul dreptului la protecția sănătății și asistență medicală este fundamentată, se acordă atenție analizei politicii de stat în domeniul protecției sănătății cetățenilor. Se atrage atenția asupra particularităților de protecție a caracteristici drepturilor constituționale ale omului. Sunt formulate propuneri privind creșterea eficienței reglementării legale a furnizării și protecției dreptului constituțional de protecție a sănătății și asistența medicală în Republica Moldova.

Cuvinte-cheie: dreptul la protecție a sănătății, asistența medicală, drepturile sociale ale omului, garantarea protecției dreptului la ocrotirea sănătății.

КОНСТИТУЦИОННОЕ ПРАВО НА ОХРАНУ ЗДОРОВЬЯ И МЕДИЦИНСКУЮ ПОМОЩЬ: ПРОБЛЕМЫ РЕАЛИЗАЦИИ

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АННОТАЦИЯ

В статье рассматривается конституционное право на охрану здоровья и медицинскую помощь в рамках системы социальных прав человека. Раскрываются особенности закрепления права на охрану здоровья и медицинскую помощь в национальном законодательстве Республики Молдова, а также на уровне международных актов. Обосновывается позиция автора относительно содержания права на охрану здоровья и медицинскую помощь, уделяется внимание анализу государственной политики в сфере охраны здоровья граждан. Обращается внимание на особенности защиты данных конституционных прав человека. Формулируются предложения по повышению эффективности правового регулирования обеспечения и защиты конституционного права на охрану здоровья и медицинскую помощь в Республике Молдова.

Ключевые слова: право на охрану здоровья, медицинская помощь, социальные права человека, гарантии защиты права на охрану здоровья.

Problem statement: The right to health protection as the constitutional right of everyone is ensured through a number of measures taken at the state level on the basis of an integrated approach. As a priority direction of social policy development, health protection and solving problems in the field of public health attract at-

tention of both legal scientists and specialists in other fields of scientific knowledge. Nevertheless, the most complete disclosure of the problem of the right to health care realization is obtained mainly in the framework of field studies. The attribution of the right to health care and medical care to the number of constitutional social

rights allows us, in our opinion, to disclose its specificity in terms of security mechanisms, as well as the guarantee of protection in the process of its implementation.

The relevance of the research topic is confirmed by the lack of unity in scientists views - lawyers in place of the constitutional right to protect health and medical care



in the human rights system. The attribution of this constitutional law to an independent group of social rights predetermines the specifics of its implementation and guarantee, as well as the features of protection.

The state of the research: the protection of the constitutional right to health care and medical care has been given some attention in the scientific literature of the Republic of Moldova. In their works, scholars such as A. Smokine, I. Guchak, T. Kyrnac, B. Sosna, A. Sosna and others consulted the legal analysis of this right. However, most of the work is devoted to the consideration of this constitutional law within the framework of questions of the constitutional rights classification, as well as the legal status of the individual.

The purpose of the article is to determine the place of the constitutional right to protect health and medical assistance in the system of constitutional rights, to disclose the problems of legal regulation, both within the framework of constitutional law and other branches of law, formulating proposals for introducing amendments and additions to the current legislation of the Republic of Moldova.

Statement of the main material: Human health is one of the main social values and preferences of modern civilized society, the greatest public and personal wealth, the foundation of the national security of the country. The Constitution of the World Health Organization (New York, July 22, 1946) [23] defines human health as a state of complete physical, mental and social well-being, and not only the absence of disease or infirmity. This definition has become widespread and has already become a standard in the concept of human health.

The right to health protection, fixed in Article 36 of the Republic

of Moldova Constitution [16], is an important element of a person's legal status, which largely determines the relationship between a person and a modern state. The right to medical care is not directly spelled out in the basic law, but part 2 of Art. 36 of the Constitution of the Republic of Moldova speaks about the minimum level of state medical provision provided on a non-reimbursable basis.

These definitions are not identical and, based on the reference norm of part 3 of the article of the Republic of Moldova Constitution concerning the definition at the level of the organic law of the national health system and the means intended for the protection of the individual's physical and mental health, the right to medical care can be regarded as guaranteed at the level of special legislation [19]. Nevertheless, taking into account the content of the right to medical care and its consolidation at the level of international acts, it seems advisable to consider the issue of making appropriate additions to Article 36 of the Republic of Moldova Constitution regarding the constitutional consolidation of this social law.

Article 25 of the Universal Declaration of Human Rights of December 10, 1948 states: "Everyone has the right to a standard of living, including food, clothing, housing, medical care and the necessary social services necessary to maintain the health and well-being of himself and his families..."[5]

In the Covenant on Economic, Social and Cultural Rights of December 19, 1966, the rules on health protection were further developed (Article 12) [18].

Some conventions of the International Labor Organization relate to the protection of health and the promotion of a healthy lifestyle and the development of everyone. Conventions such as ILO Convention No. 127 on the maximum

cargo allowed for carrying by one worker [14]; ILO Convention No. 115 on the Protection of Workers against Ionizing Radiation [13]; The ILO Convention No.148 on the protection of workers against occupational hazards caused by air pollution, noise and vibration in the workplace, is aimed at health protecting of workers and employees [15].

The consolidation of human rights at the level of international regional acts is usually called the second level of the consolidation of human rights. In the field of healthcare, such an act is, first of all, the European Social Charter, which contains two articles on the right to health protection. These are articles 11 and 13 [6, 2].

At present, the health protection system in Moldova is in the process of reforming and bringing it in line with European standards. New normative acts are being revised and adopted. Their whose task is to implement changes in this sector, provide primary health care of high quality and improve management in health care and its financing. Health presupposes economic and social security, harmonious interpersonal and social relations, by providing safe and healthy working and living conditions, adequate water, air and soil quality, adequate and rational nutrition, supplemented by a healthy lifestyle and access to quality medical services.

The Convention on the Protection of Human Rights and Dignity of Man in Connection with the Application of Biology and Medicine (the Convention on Human Rights and Biomedicine, ratified by the Republic of Moldova on 26.11.2002 [10]) is the first international legal instrument that generates an obligation to protect dignity, human rights and freedoms from any improper application of advances in biology and medicine - establishes a set of principles and



prohibitions relating to genetics, medical research, the consent of a person, in questions relating to interventions in health rights, the right to privacy and the right to information, the right to consent to organs and tissues removal.

Having ratified this Convention (Law of the Republic of Moldova No. 1256 of 19.07.2002), the Republic of Moldova undertook to "take adequate measures for equitable access to adequate medical services".

At the request of the Secretary General of the Council of Europe, the State must provide explanations for domestic legal instruments that ensure the effective application of any of the provisions of this Convention [3].

Nowadays, the analysis of the health care situation and the provision of medical care allows experts to assume by a number of signs that the reform program has raised the level of quality of medical care in the country (especially in the primary care sector), the efficiency of resource allocation in the health care system and The nature of the distribution of costs and benefits among the population has become more equitable [4, p. 34].

To fully implement the constitutional right to health care, as well as medical care, a clear understanding of the concept of this right and its content is necessary.

In legal science there is no unity of opinion on this issue. T.G. Zhdanovich and E.A. Mikheeva determine the constitutional right of citizens to health care as an inalienable right of every person and citizen to receive the required adequate protection of his health and provide him medical assistance in the forms established and guaranteed by the Constitution and current legislation. This right, in their opinion, is one of the main social rights of citizens, has a complex character and includes

the right of citizens to receive reliable and timely information on factors affecting health; the right to normal housing conditions; to a decent wage, which allows to ensure a full and balanced diet; on safe working conditions and labor protection, the right to rest and a favorable environment; the right to special protection of the citizens health, engaged in certain types of harmful occupational activities and activities associated with a source of increased danger; the right to care of the state for the protection of the family members health; the right to special health care for pregnant women and mothers, minors, disabled people, elderly citizens, citizens affected by emergencies and in ecologically disadvantaged areas; the right to medical and social insurance; to receive timely qualified medical care, for rehabilitation, which is necessary for the full restoration of health; the right to judicial and other forms of protection of their rights [12, p. 5].

M.I. Litovkina asserts that, based on the normative fixing of the right to health protection within the healthcare system at the level of the basic law, one can speak of the recognition by the state of the constitutionality of the right to health protection only under certain conditions, namely, within the framework of the formed healthcare system, which, in turn, is due to the multidimensional nature of the content of the right to health protection [21, p.12].

In the content of the right to health protection, priority is given to the possibility of receiving free medical care [22, p. 25], or a combination of therapeutic and preventive measures provided to healthy and sick people for the purpose of preserving and restoring their health by persons who have a medical (higher or secondary) education, [8, p. 24] or approach his understanding more widely,

including also the right to protect the inviolability of life and health; the right to ensure the possibility of a long active life; the right to the highest attainable standard of physical and mental health [20, p. 264].

If the above-mentioned positions can be taken into account, considering the specifics of the implementation of the constitutional law in question, then with the position of N.V. Kosolapova, who claims that the right to health also includes "the right to rehabilitation; the right to environmental, sanitary and epidemiological welfare and radiation safety; the right to receive medical, pharmaceutical, prosthetic and orthopedic assistance in foreign medical organizations; the right of mother and children to health care "[17, p. 21] it is difficult to agree.

In our opinion, the right to environmental well-being, in our view, should be considered in conjunction with the declared provisions of Article 37 of the Republic of Moldova Constitution the right to a favorable environment, as the right of everyone to an environment that is environmentally safe for life and health.

Of course, there are grounds for considering these constitutional rights together when it comes to harmful and dangerous natural factors that influence health and, as a consequence, are grounds for obtaining additional measures of social support.

In view of the foregoing, we can speak about the characteristic features of the right to health in the system of constitutional social rights, among which the integrated nature of the right to health protection; the guarantee of the provision of medical care (as an element of the right to health protection, the guarantee of protection of the right to health care.

The position of E.V. Kapralova and E.S. Sergeeva is controversial.



They consider the right of citizens to medical care as an integral element of the right to health care, taking into account inherent relative independence and an important place in the system of human and citizen rights [11, p. 295].

The right to medical care includes the possibility of receiving free medical care, as well as paid medical care and is, in our opinion, one of the elements of the right to health protection.

In the commentary to Article 36 of the Constitution of the Republic of Moldova, the authors, revealing the content of the right to health protection, give explanations of the Constitutional Court of the Republic of Moldova, given in Decision of the Constitutional Court of the Republic of Moldova No. 28 / 14.12.2004 on the control of the constitutionality of certain provisions of the Law on Health Protection No. 481 -XIII of 28 March 1995 and the Law on Mandatory Health Insurance No. 1585-XIII of 27 February 1998 [9], where the right to health is disclosed in the aggregate of rights and powers, in particular the right to choose or to change and the right to receive assistance of appropriate quality, the responsibility for ensuring the right of citizens to health care, ultimately, as the court points out, lies with the state [1, p. 155].

Today in the Republic of Moldova, the main goal of health care reform is to build an effective health care system that ensures the realization of the fundamental human and citizen's rights to life, to health care, and to medical care.

In connection with this direction of reform, one can call a reasonable ratio of the state's financial costs and the maximum coverage of the population with medical assistance.

Specialists propose to restore the balance between the state guarantees of medical assistance to the population and their finan-

cial provision by reviewing the contents of these guarantees in the following areas: withdraw certain types of medical assistance from the guaranteed package; remove certain types of diseases from the package, under which medical care is guaranteed; reduce the number of recipients of the guaranteed package; to provide for legal payments of patients for the services provided to them [24, p. 34].

But in a number of countries they decided to radically revise the guarantees inherited from the Soviet system. In Armenia, Georgia, Moldova, the first three ways of revision of guarantees were applied. In Kyrgyzstan - all four. In Armenia, Georgia, Moldova, a reduction in the number of medical care guarantees to the population was legislatively done [24, p. 28].

This was a forced measure - the scale of the economic crisis and, accordingly, the size of the reduction in budget revenues in the first years of the transition period in these countries were made governments unable to finance the maintenance of health facilities at a level allowing at least decency to preserve declarative guarantees of free medical care .

A law on the guaranteed minimum of medical care was adopted in the Republic of Moldova, but the list of types of medical services contained in it was too broad in comparison with the possibilities of its financial provision by the state. In reality, these guarantees were not met. In 2003, the country introduced a system of social health insurance [9]. The law was abolished and the program of compulsory medical insurance was adopted instead, providing for the provision of emergency outpatient and inpatient medical care to the insured, as well as hospitalization and treatment in hospitals in non-urgent cases on the basis of the waiting list.

In today's environment, the is-

sue of understanding the right to health protection in connection with the definition of a healthy lifestyle is relevant. Positive in this case is the experience of accepting at the state level programs to prevent a healthy lifestyle and encouraging activities to promote healthy lifestyles among various groups of the population. For example, the Recommendations adopted in 2016 for healthy nutrition and physical activity in educational institutions in the Republic of Moldova [3] serve as a basis for the formation of pupils and students' interest in maintaining a healthy lifestyle and maintaining health.

States have different approaches to securing the right to health in legislation, including at the level of constitutions. However, considering this constitutional law in the second generation of human rights groups, we believe it possible to talk about some similar provisions of the legislation of foreign states regarding the normative fixing of this right at the level of the fundamental law. The French Constitution guarantees the protection of health, and specifies along with all citizens such as children, mothers and elderly workers [10]. The constitutional states the right to protect the health in such states as Greece, Portugal, Belgium, Spain, Netherlands. For example, part 3 of Article 21 of the Constitution of Greece proclaims that the state cares about the health of citizens and takes special measures aimed at protecting youth, old age, disability, and also to help those in need [10].

The right to health is regulated in sufficient detail by the basic law of Portugal. Along with the right to health, Article 64 of the Constitution of Portugal establishes obligations to protect and promote the health of citizens (Part 1, Article 64) [10].

It can be said that in the nation-



al health care system of the Republic of Moldova, which ensures the implementation of the constitutional right to health protection, the common features and features inherent in other states have been reflected. This is, first of all, a combination of guaranteed and provided by the state and its medical services, as well as the possibility of contacting non-governmental organizations for receiving medical services. An important guarantee of the implementation of this constitutional right is the existence of international legal means and mechanisms for protecting the violated rights of citizens to protect their health.

Conclusions: The analysis shows that the effectiveness of the implementation of the constitutional right to health depends on the state's social policy aimed at preserving the individual, his physical and moral health. The problem of the effectiveness of legislative regulation of the realization of the right to health care remains acute.

In this regard, it requires more detailed regulation of the rights of citizens to receive free and qualified medical care and the concretization of the mechanism for implementing this right. At the same time, any normative act in the field of health care can't properly fulfill its social task apart from others. In connection with which it is necessary to improve the norms and provisions of the main branches of law affecting the healthcare industry for the purpose of their internal consistency and effectiveness of law enforcement, and to fix the right to medical care at the level of the Constitution of the Republic of Moldova in Article 36.

The further development of the legal social state doctrine and the law-based and law-enforcement practice based on it should proceed from the interpretation of social rights not only as certain general

guidelines for the legislator and law enforcement, but precisely as fundamental rights equal in importance to civil and political human and citizen rights guaranteed by the state based on the principle of fairness and generally accepted international standards.

At the legislative level, the following problematic issues need to be addressed: the problem of inequality in access to health care, which entails serious consequences for the health status of vulnerable groups and serious social strains; the problem of minimal protection of the population against the risks of catastrophic costs in diseases.

The state's obligations in the field of guaranteeing the right to health care are implemented on certain principles and in different ways.

The principle of free minimum level of medical support is constitutionally fixed, however, taking into account the development of legislation in the field of medical insurance, individualization in determining the needs for medical care and treatment, the perspective participation of the state and citizen in financing medical care and treatment costs is promising. Moreover, part 3 of Article 36 of the Constitution of the Republic of Moldova [16] provides for legislative regulation at the level of the organic law of the procedure for allocating funds for measures to protect the physical and mental health of citizens.

The compulsory health insurance program [9], implemented in the Republic of Moldova, which provides for financial protection of the population in the field of health protection by creating trust funds on the basis of solidarity principles (Article 1 of the law) allows to solve these problems consistently, thus ensuring constitutional right to health protection.

An important element of the system of measures to ensure

health protection is a system of control and supervisory measures, both domestic and in the framework of international agreements and treaties aimed at identifying and minimizing factors that adversely affect human health.

Thus, according to the European Committee of Social Rights, set out in the report for 2017 on the observance by the participating States of the European Social Charter [7], the main problems in the field of health care in Moldova are pointed out.

An important determinant condition for ensuring the realization of the right to health care and medical care is a legal, social state. The priority direction of the social state must be the development of public health, the national health structure, on the basis of the recognition of the state's primary value in protecting the health of citizens.

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