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Issues related to the realization of non-property human rights in the field of health protection

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Abstract

The World Health Organization notes the main issue that needs to be addressed – patient safety as prevention, avoidance, minimization of adverse effects of treatment. Normatively established obligation of the provider of the medical service (i.e., on its own initiative, which does not require prior consent or coordination with the patient) to provide information to the consumer. In the article, on the basis of an analysis of existing national legislation, judicial cases and theoretical, legal sources, explores issues relating to the realization and safeguarding of personal non-property rights that ensure the natural existence of an individual (art. 282-286 of the Civil Code of Ukraine) and legal mechanisms for protecting consumers' rights to information in the field of health care. The case law and the practice of the Constitutional Court of Ukraine in resolving cases on recognition and protection of the right to information about the state of health of a person are studied. The proposals to address the shortcomings of legal regulation in the study area are distinguished. The purpose of the article is an analysis of legislation and case law on the exercise of personal non-property

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rights in the field of health care. The issues of compliance with the regulatory requirements for the confidentiality of medical information in sick leaves, which still remain unresolved, are considered, especially considering the formation of a web-based service to ensure information interaction of the electronic health care system with the Electronic Register of sick leaves. Medical information, that is, a certificate of the state of health of a person, his or her medical history, the purpose of the proposed research and treatment, the prognosis of the possible development of the disease, including the existence of a risk to life and health, according to its legal regime refers to confidential, that is, information with restricted access. The introduction of effective legal mechanisms should help to improve the level of protection of rights, freedoms and interests of citizens. The issue of obtaining information on the state of health of a person by its heirs is a promising one and one that requires amendments to the legislation

Keywords: Personal intangible rights, restrictions on the exercise of personal non-property rights, information, health information

Introduction

In terms of the content, and to the extent that it objectively enables a conscious decision to be made, regardless of the medical specificity of the information that characterizes the obligations to be undertaken, and sets out their limits, such information must demonstrate that the violation of these limits is wrongful for the information which, in an accessible form, discloses the danger that the medical effect, its attendant or further consequences are concealed [1].

The purpose of the article *is* an analysis of legislation and case law on the exercise of personal non-property rights in the field of health care. A large number of representatives of the civil sciences have been involved in the realization of personal non-property rights that ensure the social existence of a natural person. Some aspects of the legal regulation of the exercise of personal non-property rights have been studied in the works of O. Kokhanovska, R. Stefanchuk, R. Shyshka, O. Shtefan, O. Yavorska and others.

Results and Discussion

The corresponding position is justified by Article 285 of the Civil Code of Ukraine [2], item 4 of Article 4 of the Law of Ukraine "On Protection of Consumer Rights" [3] – Consumers, when concluding, amending, executing and terminating contracts, are entitled to necessary, accessible, reliable and timely information in the state language about the products, their quantity, quality, assortment, its executor, as well as Article 39 of the Fundamental Principles of Healthcare Legislation of Ukraine [4]. The other "party" with regard to provision of information by the executor of the agreement on provision of medical services is the category – medical secrecy provided for by Article 40 Fundamental Principles [4]; the issue of its

disclosure through the implementation of the procedure for filling in the inoperability sheet and the implementation of the right patient (their representative) or heir to such information. The Inoperability Leaf is an element of primary medical documentation and contains, inter alia, information (diagnosis – cipher of diagnosis according to the International Statistical Classification of Diseases and Related Health Problems of the 10th revision) that constitutes medical secrecy. The relevant provisions are contained in the Instructions on how to fill in the inoperability sheet (item 3.2.) [5]; the procedure of organization of maintenance of the electronic register of inoperability sheets and provision of information from it (part 8, item 10; part 6, item 13) [6].

The Ministry of Economy, Trade and Agriculture approved two national classifiers of the Ministry of Health of Ukraine, which will be used by medical workers of all health care institutions for encoding of diagnoses and medical interventions in the electronic health care system [7]. It will be used in the formation and implementation of the system of financing health care institutions in Ukraine, which provide specialized outpatient and hospital medical care.

The issue of compliance with the regulatory requirements of confidentiality with regard to such information is still unresolved, the more so considering the formation of a web-oriented service to ensure information interaction of the electronic health care system with the Electronic Register of Inoperability Leafs [8].

The exercise of the right of the patient (their representative) or heir to information that constitutes medical secrecy and information about the state of health, including the right to review relevant medical documents that relate to the state of health, is a problematic issue in the contract on the provision of medical services. If talking about the implementation and enforcement of personal non-property rights, which ensure the natural existence of an individual (Articles 282-286 of the Civil Code of Ukraine [2]), the legal mechanisms of legislation on consumer protection, legislation on information – provide an opportunity for the appropriate implementation.

However, obtaining information from medical records to determine the cause of death of a person by its heirs is a complex process. For example, the decision in case No. 201/2923/19 of the Oktyabrskiy District Court of Dnipro satisfied the claim against the Communal enterprise “Dnipropetrovsk I.I. Mechnikov Regional Clinical Hospital” about demanding the appropriate medical documentation from the patient’s chart [9]. The health care institution refused to provide full information, disassociating part of it, and justified it as a medical secret and one that concerned the patient (daughter of the plaintiff) personally.

The law grants the right in the event of an individual’s death to members of her family or other individuals who are authorized by them, to be present during the study of the causes of her death and to familiarize themselves with the findings regarding the causes of her death, as well as the right to appeal these findings to the court [2; 4]. However, only persons who belong to the first line of heirs are discussed [2], and if the inheritance

is called on representatives of other queues, then respectively they are deprived of the right to obtain relevant information. They will not be able to "use" the right to terminate the contract for the provision of medical services and return the money paid for the goods [3], respectively, because it is possible to prove "poor quality medical services" only on the basis of the conclusion of an expert who needs medical documentation.

Medical information, that is, a certificate of the state of health of a person, their medical history, the purpose of the proposed research and treatment, the prognosis of the possible development of the disease, including the existence of a risk to life and health, according to its legal regime refers to confidential, that is, information with restricted access. A doctor is obliged, at the request of the patient, his family members or legal representatives, to provide such information in a complete and accessible form. In special cases, as provided for in article 39, paragraph 3, of the Fundamental Principles [3], when full information may be harmful to the patient's health, the doctor may restrict it. In this case, they inform the patient's family or legal representative, taking into account the patient's personal interests. The same is true when the patient is unconscious. In cases of refusal or willful with holding of medical information from the patient, members of their family or legal representative, they may appeal directly to the court against the doctor's acts or omissions, or to a medical institution or health authority of one's choice.

The rules on the use of information relating to medical confidentiality – information about a patient, as opposed to medical information – information for a patient are established by article 40 of the Fundamental Principles and article 46, paragraph 3, of the Law of Ukraine "On information" [10].

Thus, only the individual to whom confidential information belongs, in accordance with the constitutional and legislative regulation of the human right to collect, store, use and disseminate confidential information, has the right freely, at their discretion, determine the procedure for consulting other persons, the State and local self-government bodies, as well as the right to keep it secret. The Constitutional Court of Ukraine, in deciding on the question of the confidentiality of information about a person who holds a position connected with the exercise of the functions of the State or bodies of local self-government and the members of their family, proceeds from such considerations, that the information about a physical person is confidential in each specific case. A person's tenure of office in the exercise of the functions of the State or local self-government provides not only guarantees for the protection of that person's rights, but also additional legal burdens. The public nature of both the authorities themselves and their officials requires the release of certain information in order to form public opinion on the credibility of authority and the maintenance of its authority in society (paragraph one of sub-clause 3.3 of clause 3 of the motivating part) Judgment of the Constitutional Court of Ukraine in the case on the constitutional petition of Zhashkiv District Council of Cherkasy Region regarding the official interpretation of the provisions of parts one, two of Article 32, parts two and three of Article 34 of the

Constitution of Ukraine of January 20, 2012 No. 2-rp/2012 No. 2-rp/2012) [10].

The judgment of the European Court of Justice in "M.S. v.s. Sweden" of 27 August 1997 [11] states that the confidentiality of health information is a fundamental principle of the legal system of the States Parties to the Convention. National legislation should ensure non-disclosure of health information if it does not comply with Art. 8 of the mentioned Convention. The protection of personal data, and in particular medical data, is fundamental to the exercise of the right to respect for private and family life [11].

In the judgment of the European Court of Human Rights in the case of Z. v.s. Finland [12], the court emphasized that the protection of personal data in this medical case is fundamental to the exercise of one's right to respect for private and family life. Accordingly, the state is obliged to determine effective guarantees to prevent the disclosure of such information. The court takes into account the fundamental importance of the protection of personal data, and not only medical, for the exercise of the right to respect for private and family life, as guaranteed by Art. 8 of the Convention. Respect for confidential physical data is an essential principle in the legal systems of all States parties to the Convention. It is essential not only to respect the privacy of patients, but also their trust in the medical profession and health care in general. Without such protection, those in need of medical care may refrain from providing personal or intimate information necessary for the necessary treatment and even from seeking such care, endangering their health in the event of communicable diseases and public health. Therefore, domestic legislation should provide adequate safeguards to prevent the dissemination or disclosure of such human health data that is incompatible with the guarantees of Art. 8 of the Convention [12].

In the case No. 266/784/19 which was considered by the Primorsky District Court of Mariupol [13], Donetsk region, the plaintiff appealed to the Primorsky District Court of Mariupol, in which he asked to declare illegal the actions of employees of the hospital of the Municipal Institution "Mariupol City Hospital No. 9 Medical and Sanitary Unit of the Department of the Navy" to disseminate confidential information about his request for medical care and distribution his medical records to an outsider, and asked to recover from the defendant in favor of the plaintiff caused non-pecuniary damage. The court granted the plaintiff's claim for non-pecuniary damage for disclosing information about his health [13].

Conclusion

Obviously, the introduction of effective legal mechanisms should help to improve the level of protection of rights, freedoms and interests of citizens. The issue of obtaining information on the state of health of a person by its heirs is a promising one and one that requires amendments to the legislation.

Thus, the human right of access to information guaranteed by article 34 of the Constitution of Ukraine is not absolute and may be subject to restrictions. Such restrictions should be exceptions provided by law, pursue one or more legitimate objectives and be necessary in a democratic society. If the right of access to information is restricted, the

legislator is obliged to introduce a legal regulation that will make it possible to achieve the legitimate objective optimally, with minimal interference in the realization of the said right and without violating the substantive content of the right.

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Питання реалізації особистих немайнових прав людини в сфері охорони здоров'я

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Анотація

У статті на основі аналізу чинного національного законодавства, судових справ та теоретичних та правових джерел стаття досліджує питання реалізації та забезпечення особистих немайнових прав, що забезпечують природне існування фізичної особи (ст. 282-286 ЦК України), та правові механізми щодо захисту прав споживачів на інформацію у сфері охорони здоров'я. Досліджено судову практику та практику Конституційного Суду України щодо вирішення справ про визнання та захист права на інформацію про стан здоров'я особи. Обґрунтовано пропозиції щодо усунення недоліків правового регулювання у досліджуваній галузі

Ключові слова: особисті немайнові права, обмеження здійснення особистих немайнових прав, інформація, інформація про стан здоров'я