

Protection of the Right to Information on One's Health by Authorized State Bodies

Ihor Zozulia¹, Oleksandr Zozulia², Svitlana Melnychuk³, Lyudmyla Luts⁴, Tetiana Kronivets^{5*}, Catherine Karmazina⁶

¹Department of Law Enforcement and Police, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine

²Department of Comparative Constitutional and Municipal Law, Scientific Research Institute of State Building and Local Government, Kharkiv, Ukraine

³Department of Public and Private Law Disciplines, Precarpathian Faculty (Ivano-Frankivsk) of National Academy of Internal Affairs Ukraine, Ivano-Frankivsk, Ukraine

⁴Department of Theory and Philosophy of Law, Ivan Franko Lviv National University, Lviv, Ukraine

^{5*}Department of Law and Public Administration, Vinnytsia State Pedagogical University by Mykhailo Kotsyubynsky, Vinnytsia, Ukraine

⁶Department of Constitutional Law and Justice, Odessa National I.I. Mechnikov University, Odessa, Ukraine

Corresponding Author: Tetiana Kronivets

E-mail: zaiatsnataliya@gmail.com

ABSTRACT

The article analyzes the theoretical aspects of protection of directly subjective civil rights and identifies them in civil relations regarding the information on one's health, resulting in a more complete description of the features of the right in question in the regulatory system of protection of subjective individual rights. The order of protection which is carried out by the authorized state bodies of the violated or disputed subjective civil rights – the right to information on one's health – has been defined. The general (judicial) and special (administrative) procedure of protection of the violated right has been considered within the jurisdictional form of protection of the right to information on one's health and their comparison has been made. One of the ways to protect the privacy of human life in the information sphere is to protect the right to information about the state of their health.

Keywords: The right to information, state of health, protection of subjective civil rights, jurisdictional form of protection, administrative protection procedure, constitutional rights, right to free legal aid

Correspondence:

Tetiana Kronivets

Department of Law and Public Administration, Vinnytsia State Pedagogical University by Mykhailo Kotsyubynsky, Vinnytsia, Ukraine

Email: zaiatsnataliya@gmail.com

INTRODUCTION

The right to information on one's health, like any subjective right, has real value only if it can be protected in case of violation. Legal protection is important both in the study of the right to information on one's health and directly for its implementation. Emphasizing this, V.P. Grybanov notes that the subjective right, which is granted to a person, but not secured from its violation by the necessary means of protection, is only a "declarative right". Therefore, the study of certain features of the protection of such a right is extremely important.

MAIN TEXT

At present, there is some debate due to the fact that in the science of civil law there is no single definition of the protection of subjective civil rights, which would satisfy all scholars. In this regard, we consider it necessary to analyze the theoretical aspects of protection of directly subjective civil rights and to determine them in civil relations regarding the information on one's health, as a result of which we can get a more complete description of the features of the implementation of this right in the normatively established system of protection of subjective rights of the person [1].

The legal literature is dominated by certain views of scholars, in which the main emphasis in the protection of subjective civil rights is placed directly on its state and legal nature, which is to restore the violated right, ensuring the fulfillment of legal obligations [2]. Thus, protection is seen as a function of the state, which, with the help of certain special measures, is aimed both at stopping specific offenses and at restoring the violated interests or providing conditions for their satisfaction in other forms [3].

According to S.S. Alekseev, the protection of subjective civil law is a state-coercive activity aimed at restoring the violated right, ensuring the fulfillment of legal obligations [4]. Then the question arises about the nature of the right to self-defense and its implementation, in particular the seizure of a medical book from persons who do not have the right to read it. R.B. Shyshka approached this carefully, noting that the protection of subjective civil law is the activity of the holder of rights or authorized bodies for the application of law enforcement measures of a state-coercive nature (measures of responsibility or measures of protection) aimed at recognizing or restoring the violated subjective law... [5].

Contrary to the aforementioned views of scholars [7], there are others in which protection is defined as the ability of an authorized person to apply certain law enforcement measures to restore their violated or disputed rights [6]. It is worth agreeing with V.P. Grybanov that the right to protection is not limited to the application of coercive measures by the state but is associated primarily with the activities of the subject to restore the violated right and stop actions that violate it [1].

The civil law of Ukraine, defining the right to protection, is not limited to the activities of a state or other authorized bodies, which is aimed at applying coercive measures to the offender, but quite widely regulates the relations of self-defense of the rights of the victims themselves (Art. 19 of the Civil Code of Ukraine), which do not contain state-coercive nature. Also, Art. 20 of the Civil Code of Ukraine provides for certain features of the exercise of the right to protection. R.B. Shyshka included forms (jurisdictional and non-jurisdictional), means, and methods in the protection of rights [8].

In general, it can be concluded that legal protection cannot be limited to the possibility of applying legally established protective mechanisms. The person independently has the right to choose certain means of protection in accordance with the content of the violated right, the nature of the offense and its consequences, or to abandon to use of remedies altogether.

So, *the protection* of the right to information on one's health is understood as a lawful reaction to violations by individuals, legal entities, as well as society and the state, by not recognizing or challenging the right to information on one's health recognition of the specified right, or compensation of the caused damage to the authorized person.

Thus, in accordance with Art. 20 of the Civil Code of Ukraine, a person exercises the right to protection at their discretion, and the failure of a person to exercise the right to protection is not a ground for termination of this right. The person whose right to information on their health has been infringed independently decides whether or not to apply law enforcement measures to restore the violated, disputed, or unrecognized right, as well as chooses the forms and methods of its protection.

The jurisdictional form of protection of the right to information on one's health is carried out by the authorized state bodies. According to Art. 16-18 of the Civil Code of Ukraine, they include the court, public authorities of Ukraine and the Autonomous Republic of Crimea, local governments, notaries. The jurisdictional form of protection of civil rights provides general (judicial); special (administrative) procedures for the protection of subjective civil rights; notarial.

According to the *general (judicial)* form of protection, the right of an authorized person to apply to the court for protection of the right to information on their health is based on the provisions of Art. 55 of the Constitution of Ukraine, Art. 8 of the Law of Ukraine "Fundamentals of the legislation of Ukraine on Healthcare", Art. 16 of the Civil Code of Ukraine, procedural legislation (Article 4 of the Civil Procedure Code of Ukraine [9], Article 1 of the Commercial Procedural Code of Ukraine [10], Article 6 of the Code of Administrative Procedure of Ukraine [11]), which provide for the possibility of judicial protection of the subjective right.

Judicial order of protection in comparison with the special (administrative) order of protection of the rights and interests is used much more often as it is fully capable to guarantee equality of all participants of legal relations. This fact is also confirmed by the fact that, in accordance with Part 2 of Art. 124 of the Constitution of Ukraine, the jurisdiction of the courts extends to any legal dispute and any criminal charge.

Nevertheless, only a small number of individuals go to court to protect their violated right to information on their health. According to V.B. Filatov, the reason for such a large number of patients' appeals to the court to protect their violated rights is primarily lack of awareness of their rights and lack of awareness of their protection, as well as fear of possible disclosure of information on the diagnosis and doubts about the effectiveness of such treatment [12]. At present, this is not facilitated by medical corporatism and the shortcomings of justice.

This situation is due to the overload of courts, as well as the insufficient number of judges who have the appropriate level of training in medical law. Therefore, it would be expedient to introduce a separate specialization of judges in the courts, which would consider cases of a medical nature on the fact of violating the rights of

individuals, to avoid making wrong decisions due to insufficient qualification of judges in medical law. Such judges should improve their medical and bioethical skills. In court, the protection of the right to information on one's health must take place in a certain manner prescribed by procedural law.

A person who has the right to information on their health may apply for protection of the aforementioned right to courts that are part of the justice system of Ukraine, as well as to arbitration courts, international judicial institutions or organizations (of which Ukraine is a member or participant) but after using all available national remedies of legal protection.

Thus, to resolve a conflict over the violation of the right to information on their health, an individual can go to court both in case of disagreement with the results of the administrative appeal and directly in regard to the violated right (the right to information on their health). In Ukraine, the current legislation provides for certain ways of judicial protection of the rights of individuals. Thus, Article 16 of the Civil Code of Ukraine gives every individual the right to go to court to protect their personal non-property rights, and also defines a list of ways to judicially protect civil rights and interests. Justice in Ukraine for violated non-property rights is administered in the form of:

- Administrative proceedings – an appeal to the court to apply against decisions (regulations or legal acts of individual action), actions, or omissions of the subject of power (Article 55 of the Constitution of Ukraine);

- Civil proceedings – appeal to the court with a claim for the protection of violated or disputed rights and interests, as well as to compensate for material and moral damage due to violation of the rights of individuals to information on their health (Article 16 of the Civil Code of Ukraine);

- Criminal proceedings – the initiation of a criminal case against a person whose actions (inaction) led to the commission of a crime against the life and health of the patient and bringing the perpetrator to justice (Articles 115-118 of the Criminal Code of Ukraine, if the killings are intentional; Article 119 Of the Criminal Code of Ukraine – by negligence; Article 120 of the Criminal Code of Ukraine – leading to suicide).

Regarding compensation for non-pecuniary damage caused to the life and health of an individual in connection with the violation of the right or information on their health, in practice, there are many problems with correctly determining the amount of the claim, i.e. lack of specific procedures amounts, evidence that should be the basis for determining the amount of the claim, etc. Therefore, this problem can be solved only by improving the case law on the procedure for proving and compensating for damage, as well as by developing certain recommendations, which would determine the amount of compensation.

Thus, a special (administrative) form of protection is defined in Art. 17 of the Civil Code of Ukraine – protection of civil rights and interests is carried out by the President of Ukraine, public authorities, authorities of the Autonomous Republic of Crimea, or local governments.

According to Art. 17 of the Civil Code of Ukraine, the protection of civil rights and interests within the powers defined by the Constitution of Ukraine is carried out by the President of Ukraine, who is the guarantor of human and civil rights and freedoms (Part 2 of Article 102 of the Constitution of Ukraine), and in accordance with Art. 106 of the Constitution of Ukraine has the right to suspend

acts of the Cabinet of Ministers of Ukraine on the grounds of inconsistency with the Constitution of Ukraine with a simultaneous appeal to the Constitutional Court of Ukraine on their constitutionality, and repeal the acts of the Council of Ministers of the Autonomous Republic of Crimea, and have the right to veto laws adopted by the Verkhovna Rada of Ukraine (except for laws on amending the Constitution of Ukraine) and then return them for reconsideration by the Verkhovna Rada of Ukraine.

Based on the above, we can say that the President of Ukraine can protect the right to information on their health only by suspending acts of the Cabinet of Ministers of Ukraine and vetoing laws that illegally and contrary to Ukrainian law restrict a person's right to information on their health.

So, a special (administrative) form of protection, in contrast to the judicial form of protection of civil rights, provides for the protection of civil rights only in cases and in the manner prescribed by the Constitution of Ukraine and laws. The most common way to protect subjective rights in the administrative order is to declare a legal act illegal or cancel it [13, p. 34]. Thus, in the implementation of a special (administrative) form of protection of the right to information on one's health, the way to protect the violated right is, first of all, for patients to apply to the state health care system.

The right to appeal against the actions of officials of state and public bodies is granted to citizens by the Constitution of Ukraine and is also regulated by the Law of Ukraine "On Citizens' Appeals". Thus, the Law of Ukraine "On Citizens' Appeals" provides citizens of Ukraine with opportunities to defend their rights and legitimate interests and restore them in case of violation. Article 3 of the Law "On Citizens' Appeals" defines the types of citizens' appeals, namely, allocates a proposal (remarks), application (petition), complaint. It should also be noted that in addition to the considered types of citizens' appeals, there is another one – a request for information.

A request for information is a request of a person to the information manager to provide public information in their possession. This explanation is defined in Art. 19 of the Law of Ukraine "On Access to Public Information" [14].

According to Art. 6 of the Law of Ukraine "On Information", in order to guarantee the right to information, the subjects of power are assigned the obligation to determine special units or responsible persons who will provide access to information seekers. Information on the state of one's health is confidential, so in accordance with Art. 11 of the Law of Ukraine "On Information", everyone is provided with free access to information that concerns them personally, except as provided by law.

The authorized person has the right to appeal to higher authorities the refusal and postponement of requests for access to official documents, the provision of written information on their health; to appeal against illegal acts committed by state bodies, local, and regional self-government bodies and their officials. Thus, according to the Code of Ukraine on Administrative Offenses, illegal refusal of a person to provide information, untimely or incomplete provision of information, provision of information that does not correspond to reality, entails administrative liability in the form of a fine.

The right to appeal against illegal decisions and actions (inaction) of both health care institutions and their employees, as well as directly to their employees

regarding the violation of the rights of an authorized person to information on their health, is enshrined in paragraph "i" of Art. 6 of the Law of Ukraine "Fundamentals of the legislation of Ukraine on Healthcare". Complaints against decisions, actions (inaction) of officials can be addressed to the administration of the relevant medical institutions, as well as to district departments and regional health departments at local state administrations, as well as directly to the Ministry of Health of Ukraine. This involves appealing directly to the decision, action (inaction) of officials of healthcare institutions, and in case the patient's requirements are not met, the appeal is carried out to a higher level. In this case, the complaint is not just a "letter" but a kind of document that protects their rights to information on their health.

In order to protect the right to information on one's health through administrative protection, it is necessary to know the appeal procedure provided by the Laws of Ukraine "On Citizens' Appeals", "On Information", as well as relevant regulations that provide for the activities, powers, and responsibilities of officials, institutions, and bodies in the field of healthcare [15].

When appealing against decisions, actions (inaction) of officials and health authorities, it is necessary to assess the appropriateness of the appeal in accordance with the structure of these bodies, namely from lower to higher level, because in case of filing a complaint to a higher body lower-level body with a resolution to understand the situation "on the spot" and then report to a higher body [16-19].

In our opinion, the methods of administrative appeal in Ukraine include appeals to licensing and accreditation bodies (when deciding on the legality of non-state medical institutions), ethics committees (when deciding on non-compliance with medical ethics), and medical insurance organizations.

Police and prosecutors play an important role in reviewing complaints against decisions, actions (inaction) of both officials and institutions, and healthcare bodies when they violate their right to information on one's health. According to the Law of Ukraine "On Citizens' Appeals" and the Law of Ukraine "Fundamentals of legislation of Ukraine on Healthcare", the Prosecutor General of Ukraine and their subordinate prosecutors exercise supreme supervision over compliance with the legislation on citizens' appeals and healthcare legislation. In cases when the authorized person-complainant considers it necessary to check for compliance with the law decisions, orders, directives of officials; to investigate their actions (inaction) or to open proceedings in the manner prescribed by law (disciplinary proceedings or proceedings on an administrative offense); to conduct examinations (forensic, handwriting) or to receive an explanation from an expert on their opinion, it is advisable to file a complaint to the prosecutor's office.

According to I.Ya. Senyuta, administrative complaints are dealt with within a single agency, often by employees who have no legal training and who have to assess the professional abilities of their colleagues, and often remain unsatisfied, and therefore cannot be fully recognized as an effective tool for bringing an official to justice. Therefore, it would be appropriate to create an independent body to resolve conflicts that arise during the provision of medical care [20]. That is why we consider it expedient to create a certain subdivision at the Ministry of Health and the corresponding subordinate subdivisions in the healthcare departments, which would

include representatives of the relevant ministry, as well as law enforcement officers, as well as members of the public who are competent in the relationship of medical institutions directly with the individual patient.

CONCLUSION

Therefore, the administrative appeal procedure, especially for violations of the right to information on one's health, has its shortcomings, as well as the judicial one, and needs to be improved.

It should also be noted that applying for protection of the right to information on one's health in an administrative manner does not deprive the authorized person of the right to further apply to the court for protection of the same right.

REFERENCES

- Grybanov V.P. Realization and protection of civil rights. 2nd ed., stereotype. Moscow: Statut, 2001. 411 p.
- Illarionova T.I. Fundamentals of non-contractual responsibility of the organization: author's ref. Cand. jurid. science dissertation. Sverdlovsk, 1971.
- Romovskaya Z.V. Protection in Soviet family law. Lviv: Publishing House at the Lviv State University of the Higher School Publishing Association, 1985. 180 p.
- Alekseev S.S. General theory of law: in 2 vols. Vol. 1. Moscow: Legal literature, 1981. 359 p.
- Shyshka R.B. Protection of intellectual property rights: copyright and legal aspect. Monograph. Kharkiv: National University of Internal Affairs Publishing House, 2002. 369 p.
- Civil law. Volume 1. Textbook: 6th ed. Edited by A.P. Sergeev, Yu.K. Tolstoy. Moscow: TK Velbi, 2002. 776 p.
- Civil law. Textbook: in 2 volumes. Volume I: 2nd ed., reworked and ext. Resp. ed. – E.A. Sukhanov. Moscow: Volters Kluver, 2004-2005. 816 p.
- Civil law of Ukraine: textbook. Edited by prof. Boshytsky Yu.L. and prof. Shyshka R.B. (supervising aut). General part. Kyiv: Lira-K, 2014. 760 pages. P. 335.
- Civil Procedure Code of Ukraine dated March 18, 2004. Bulletin of the Verkhovna Rada of Ukraine. 2004. #40-41. Art. 492.
- Economic Procedural Code of Ukraine dated November 6, 1991. Bulletin of the Verkhovna Rada of Ukraine. 1992. #6. P. 56.
- Code of Administrative Procedure of Ukraine dated July 6, 2005. Bulletin of the Verkhovna Rada of Ukraine. 2005. #35-36. P. 446.
- Securing and protecting the rights of the patient in the Russian Federation. / V.B. Filatov, I.A. Petrova, E.P. Zhilyaeva. Edited by O.P. Shchepin, V.B. Filatov. Moscow: Grant, 2003. 160 p.
- Civil Code of Ukraine: Scientific and practical commentary: in 2 volumes. Part 1 [gen. ed. by Ya.M. Shevchenko]. Kyiv: In Jure, 2004. 692 p.
- On access to public information: Law of Ukraine dated January 13, 2011, № 2939-VI. URL: <http://zakon2.rada.gov.ua/laws/show/2939-17>.
- Khodeeva N., Bed V., Bertsikh M., Prypolova L., Hrechaniuk R., Lasko I. (2020). Legal regulation of the right to information about one's health. Journal of Sys Rev Pharm, 11(8), 295-300. - Access mode: <http://sysrevpharm.org/fulltext/196-1602267714.pdf?1605112521>
- Iasechko S., Zaitsev O., Kozhevnykova V., Melnyk K., Kulchii O. Transactions with the Personal Non-Property Right. SRP. 2020; 11(10): 49-52. doi:10.31838/srp.2020.10.10
- Iasechko S., Haliantsch M.K., Skomorovskyi V.B., Zadorozhnyi V., Obryvkin O., Pohrebniak O. Contractual Relations in the Information Sphere. SRP. 2020; 11(8): 301-303. doi:10.31838/srp.2020.8.46
- Iasechko S., Bratsuk I., Petrechenko S., Kazanchuk, I., & Liashenko, R. (2020). Development Of The Doctrine On Certain Personal Incorporeal Rights In European Countries. Journal Of Advanced Research In Law And Economics, 11(4), 1169-1174. Doi:10.14505/Jarle.V11.4(50).12
- Iasechko S., Puzyrnyi V., Puzyrna N., Kostyuk N., Bakhnovska I., & Litvinova, I. (2020). The Investigation of Peculiarities Of The Occurrence Of Subjective Civil Rights In Registration Of A Patent. Journal of Advanced Research In Law And Economics, 11(3), 844 – 849. Doi:10.14505/Jarle.V11.3(49).17
- Senyuta I.Y. Administrative and legal protection of patients' rights in Ukraine. Administrative Law and Process: Ways to improve legislation and practice. Coll. of materials of scientific-practical conf. (Kyiv, December 22, 2006); ed. count.: O.M. Dzhuzha, V.M. Dzyuba, S.G. Stetsenko, and others. Kyiv: Kyiv National University of Internal Affairs, 2006. Pp. 225-229.