

Subjects of the Right to Information on One's Health in Private and Public Law

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ABSTRACT

The article analyzes and singles out the subjects of the rights to information on one's health in private and public law. Various groups of subjects that have the right to information not only on their health (directly the individual themselves) but also to information on the state of health of a certain natural person (a child, a ward) have been determined. In this case, it will be about subjects who have a derivative right to information on the state of their health (subjects of private and public law). Based on the aforementioned division of the subjects of the right to information on one's health (one's own or another's), the levels of the legal status of the participants of civil relations and the right to health have been determined.

Keywords: The right to information, state of health, persons of public and private law, private persons, natural persons

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INTRODUCTION

The subject of law as a concept for legal science is basic as a social and legal phenomenon that is constantly being studied. The "subject" as a category occupied a secondary place in the Soviet reality, and therefore the subject of law was interested only in the study of some elements of the mechanism of legal regulation, in particular in the analysis of the structure of legal relations. Based on the idea of the primacy of the subject of law, it can be argued that it is not the subject of law that is an element of legal relations, but, on the contrary, legal relations, connections "belong" to the subject of law. The subject is a certain axis around which legal relations are formed [1]. Thus, a subject of legal relations is a subject of law as a participant of legal relations, endowed with the corresponding subjective rights and legal obligations [2].

MAIN TEXT

The main component and at the same time the center, the core of the legal system is such a subject of law as a person – a bearer of subjective legal rights and legal obligations, a participant in legal relations, that is an entity capable of having rights and responsibilities, to actually exercise them by their own actions. Art. 2 of the Civil Code of Ukraine indicates the category of "participant in civil relations" and only in some cases uses the general theoretical concept of "subject". This emphasizes the pragmatism of civil law regulation, where subjective rights are the content of legal relations, as there are bearers of corresponding legal obligations. Such a double approach can be the key to understanding the subjects of the right to information on one's health, in particular, that such objective information can be obtained only as a result of long-term professional observation, analytical and professional activities of doctors, be documented, be communicated to others (absence from work) or other legal basis or its

component (granting permission to purchase a firearm), be notified in the prescribed amount and manner, and its carriers to be closed to persons who do not have the right to inspect it.

Part 2 of Art. 32 of the Constitution of Ukraine [3] stipulates that every citizen has the right to get acquainted with public authorities, local governments, institutions, and organizations with information on themselves that is not a state or other secret protected by law. And Art. 34 of the Constitution of Ukraine stipulates that everyone has the right to freely collect, store, use, and disseminate information orally, in writing or otherwise – at their choice. In accordance with Part 1 of Art. 302 of the Civil Code of Ukraine, an individual has the right to freely collect, store, use, and disseminate information, and according to Part 1 of Art. 285 of the Civil Code of Ukraine, it is an adult individual who has the right to accurate and complete information on their health.

The source of all the benefits necessary for human existence, as noted by E.O. Sukhanov, is the process of their appropriation, the essence of which is that for someone something becomes their own, and for someone it becomes someone else's [4]. Accordingly, in the case of the appearance of such a good as the information on one's health, it will be their own for an individual, and someone else's for others [5].

The legislator in Art. 285 of the Civil Code of Ukraine "The right to information on one's health" defines different groups of entities that have the right to information not only on their health (*directly the individual's*) but also to information on a certain natural person's health (a child, a ward). In this case, it will be about subjects who have a derivative *right to information on someone else's health*.

Given the above, it is interesting to divide the subjects of law into primary and derivative, as in intellectual property law. That is, at the level of scientific foresight

(formally), by analogy, to determine that the subjects of the right to information on their health are a) a specific person who, exercising their authority to collect information, can receive it from specialists, as well as receive it independently (a measurement of temperature, pressure, pulse); b) others who have a derivative right to information on someone else's health, who receive such information by virtue of their special legal status, or in other cases and in the form and scope provided by applicable law (this is the right to *information on someone else's health*).

Considering the primary subject of the right to information on one's health, we shall note that an individual is every individual person who is a participant in civil relations (Article 2 and Article 24 of the Civil Code of Ukraine). Since information on one's health is obtained in the institutions of the Ministry of Health of Ukraine, they are also participants in these legal relations as its producers, if they are excluded, the basis of professionalism of treatment - diagnosis stands out.

It is well known that in order to become a party to civil legal relations, a person must be endowed with civil legal capacity and civil capacity (Article 25 of the Civil Code of Ukraine). The latter is available only to individuals who are aware of the significance of their actions and can control them. Related to this is the right to information, in particular on one's health of minors who are unable to perceive, assess, and exercise the rights arising from it. Therefore, in relation to them and incapacitated persons, the right to receive information on their health is exercised by their parents (adoptive parents), guardians, and trustees. They exercise the right to receive such information against their will, it is acquired at each request to the doctor of a child or a ward; acquired from the words of guardians and trustees; is a condition for the exercise of other rights (education, sports, work, competitions, etc.). In all cases, such information is generated or produced by professionals, namely doctors who have been consulted about the disease and the provision of medical care. Accordingly, before such information becomes fully available to the holder of the exclusive right to it and they can evaluate and use it, it is already known to doctors and medical institutions as its producers, guardians and trustees, and others, which can also be formally defined as subjects that have a derivative right to information on someone else's health. Here the subjective factor from erroneous diagnosis is possible.

Formally, the right to information on one's health belongs to private individuals: the individual themselves (discussed above); their guardians and trustees; one of the spouses who has such a right at the time of marrying; indirectly, other family members who take care of other family members, including their health, monitor their contraindications, diet, etc. According to Part 2 of Art. 285 of the Civil Code of Ukraine, until an individual reaches the age of majority, parents (adoptive parents), a guardian, or a trustee shall have the right to receive information on the health of a child or a ward. Thus, there is a holder of the right to information, a person who can request it, and producers - doctors who can make an accurate diagnosis, other persons for whom it is the basis for making legally significant decisions. According to Paragraph 4.3 of the Rules of Guardianship and Custody for № 34/166/88 [6] of 26.05.1999, it is provided that guardians (trustees) of minors are obliged to take care of their health, spiritual and physical development; must carry out a full medical examination of the wards once a year; must notify the district (city) police department and

take steps to send the ward to a psychiatric hospital for treatment of the wards of the mentally ill who are dangerous to themselves or the environment. Obviously, they can't do any of this without exercising their right to know the ward's health. Nevertheless, sometimes in life, the person of the guardian or trustee may be the same as the person of the medical institution or caregiver. Thus, paragraph 3.6 of the Rules of Guardianship and Custody states that if the guardians (trustees) are not appointed to the children brought up in educational institutions for orphans, children deprived of parental care, persons in need of guardianship (custody) and placed in appropriate medical institutions or institutions of social protection, then the performance of duties of guardians and trustees are carried out by these institutions in the person of the heads of these institutions on behalf of the state [6].

In accordance with Part 4 of Art. 285 of the Civil Code of Ukraine, in case of death of a natural person, members of their family or other natural persons authorized by them shall have the right to be present during the investigation of the causes of death and to read the conclusions on the causes of death, and have the right to appeal these findings in court.

There are several approaches in the doctrine of law in order to determine the moment of origin and termination of personal non-property rights. As noted by prof. R.O. Stefanchuk, posthumous personal intangible rights do not arise at the time of the birth of an individual, but at the time and on the death of another individual, therefore, in contrast to other subjective civil rights, death, in this case, will be not a law-terminating or law-changing legal fact, but a law-making one [7].

Agreeing with the opinion of R.O. Stefanchuk, we can conclude that the right to information on the health of the deceased arises at the time and on the death of the individual for their family members or other individuals authorized by them. It is embodied in the opportunity to be present at the investigation of the causes of their death and to get acquainted with the conclusions about their causes, and the right to appeal these conclusions in court. Thus, unlike in other subjective civil rights, death in this case is not a law-terminating or law-changing legal fact, but a law-making one. Indirectly, other family members, who take care of other members, have the right to information on their health, including their health itself, monitor their contraindications, diet, etc. [8].

Formally, other participants in public and private law have the right to information on one's health, in particular, when the state of health is a condition for the performance of duties, the exercise of the right to engage in activities where excellent health is a condition for exercising such a right [9]. Thus, in the event of an insurance relationship, the insurer when concluding a health insurance contract, as well as in the event of an insured event under the contract in question, also has the right to collect and use the information on the health of insured persons in the manner prescribed by law, including diagnoses, medical examinations, the fact of seeking medical help, other information obtained from medical examination documents. Paragraph 9 of Part 2 of Art. 13 of the draft of the Law of Ukraine "On Obligatory National Social Medical Insurance of Ukraine" provides what is not considered disclosure of information on the health of a particular individual:

- by the insurer in respect of insured persons (the fact of seeking medical care, diagnosis, and other information obtained from medical examination documents that became known to the insurer as a result of concluding or

fulfilling contracts of compulsory state social health insurance); competent bodies of state power and local self-government; placement of information in the Unified information system; providing to the court at the request of a judge or when the provision of such information is necessary to protect the interests of the insurer or public and private law when the health of employees is a condition for the performance of duties, and the exercise of the right to engage in certain activities requires excellent health condition – as a condition for exercising such a right.

Organizations, institutions, agencies represented by their employees and officials are acquainted with the state of health of individuals when hiring, when establishing good reasons for absence from work, when transferring to another job, when fired, etc.

Certain ministries and services have the right to information on human health, and indirectly to those informed of such a state. The service of individuals in these units is possible only when determining the degree of fitness (absence of disease and physical defects), which is checked by certain medical commissions, which makes a decision on the suitability or unsuitability for service. That is, ministries and services receive complete information on the health of individuals who have passed certain commissions. Such subjects of public law include the Ministry of Internal Affairs of Ukraine, the Ministry of Defense of Ukraine, the State Penitentiary Service of Ukraine, the State Border Guard Service of Ukraine, the State Fiscal Service of Ukraine, the Security Service of Ukraine, and the State Aviation Service of Ukraine. Passage of medical commissions is carried out on the basis of certain procedures of medical examination established by the legislation of Ukraine.

Thus, a medical examination is conducted to identify the suitability for military service of conscripts, conscripts, and indicators for their proper distribution by type of the Armed Forces of Ukraine, types of troops and military specialty according to health and physical development; suitability for military service in the military specialty of servicemen; suitability of candidates for admission to military educational institutions; suitability of servicemen, conscripts, employees of the Armed Forces to work with radioactive sources and other sources of ionizing radiation, components of rocket fuel and other highly toxic substances, radio engineering devices that generate electromagnetic fields; opportunities for military service by officers, ensigns, midshipmen, women servicemen abroad, and residence of their family members, as well as the need for long-term specialized treatment and medical examination of their family members, their transportability by health status [10].

In order to comply with Art. 21 of the Law of Ukraine "On Protection of the Population against Infectious Diseases", the Cabinet of Ministers of Ukraine approved a list of professions, industries, and organizations whose employees are subject to mandatory preventive medical examinations, and the procedure for mandatory preventive medical examinations, and issuance of personal medical records. According to the list of professions, industries, and organizations whose employees are subject to mandatory preventive medical examinations, there are 28 industries and organizations whose employees are subject to mandatory preventive medical examinations: food and processing industry (except for employees of enterprises – manufacturers of certain goods), food trade enterprises, maternity hospitals, children's hospitals, laundries, baths, sports

and health complexes, educational institutions, cultural institutions, the subway, private services at home, etc. [11]. Therefore, these industries and organizations are also in the process of labor relations, receiving information on the health of individuals – employees, are subject to the right to information on their health.

Healthcare facilities are directly involved in the legal relationship that arises when receiving information on one's health. It is known that public health is provided by sanitary-preventive, treatment-and-prophylactic, sports-and-health, sanatorium-and-spa, pharmacy, scientific-medical, and other healthcare institutions. They are created by enterprises, institutions, and organizations with various forms of ownership, as well as individuals with the necessary material and technical base and qualified specialists. In Art. 3 of the Law of Ukraine "Fundamentals of the legislation of Ukraine on healthcare", the term "healthcare facilities" is defined as enterprises, institutions, and organizations whose task is to meet the various needs of the population in healthcare by providing health care, including a wide range of preventive and curative measures or services of a medical nature, as well as the performance of other functions based on the professional activities of medical care professionals.

Professionals are usually doctoring for whom such information is the source of their professional activities and qualified performance of duties to the person and other participants in the legal relationship. Medical workers (doctors) – (entities in employment with medical institutions), participate in the formation and provision of information on the health of individuals, and therefore are also obliged participants in such legal relations and must keep secretly acquired information. In statistical and scientific research, this also applies to those who are acquainted with such information.

It is possible to get qualified help as well as information on your health from doctors. It is medical workers (doctors) who "produce" such information at the request of an individual, based mainly on medical indicators (according to the dictionary of the Ukrainian language, to produce means to manufacture, to fabricate, to release something) [12].

Therefore, we consider it expedient to unite all doctors of different specializations, who produce information on an individual's health, by one term – "producers". Hence, "Producers of health information" are doctors who have the right to enter and certify the information received on one's health in a medical book or another document – the holder of rights to information on one's health.

In accordance with Part 1 of Art. 285 of the Civil Code of Ukraine, it is an adult individual who has the right to receive complete, accurate, and timely information on their health state in a form accessible to them, including access to relevant medical documents relating to their health.

Formally, the right to information on one's health belongs to other persons to whom such information became known regardless of the grounds for its acquisition, including physiognomists, who are able to make a diagnosis on the face, but they have a derivative right to information on one's health. The exclusive right to information on one's health to the natural person themselves – the owner of such information. It is also possible to single out educational institutions, which also have the right to information on the health of an entrant and a student. Educational institutions represented by their officials receive information on the state of health of

all employees of the educational institution (according to the resolution of the Cabinet of Ministers of Ukraine, a list of professions, industries, and organizations whose employees are subject to mandatory preventive medical examinations when hiring has been approved), in determining the level of stress, especially physical, on those who study. A special case is a conduct of medical certificates and certain types of examination, including psychological and psychiatric [13-15]. A variant of the latter is the establishment of opportunities for physical activity of students, the exercise of the right to play sports. The reasons for this are more than valid, namely, cases of death of pupils, students, sportsmen during sports, as well as passing the necessary certifications.

We will also identify attorneys who are formally entitled to information on the client's state of health for use as a mitigating circumstance for guilt and punishment. When providing legal assistance and protecting clients' rights, lawyers often need to obtain copies of various medical documents and information from health care facilities (using a lawyer's request). The response to the lawyer's request contains information with limited access to the client's condition. Accordingly, the client must provide the lawyer with such authority.

Thus, positive civil law distinguishes special participants in civil relations, in particular in the field of activity (medical, civil service), and increases guarantees for them, as well as protects subjective rights and legally protected interests in terms of professionalism and competence.

Based on the above, those who are formally entitled to such information are:

1) Private individuals: a) the individual themselves; b) their guardians or trustees; c) one of the spouses who has such a right at the time of marrying; indirectly, other family members who take care of other family members, including their health, monitor their contraindications, diet, etc.

2) Persons of public and private law, when the state of health is a condition for the performance of duties and the exercise of the right to engage in activities where excellent health is a condition for exercising such a right.

3) Professionals, usually doctors, for whom such information is the source for the implementation of their professional activities and qualified performance of duties to the person and other participants in the legal relationship.

4) Other persons, to whom such information became known regardless of the grounds for its acquisition, including physiognomists, who are able to make a diagnosis on the face.

5) Educational institutions regarding the level of workload, especially physical, on those who study.

6) Lawyers for using such information as mitigating circumstances for guilt and punishment.

CONCLUSION

Based on the given division of subjects of the right to information on health (one's own or someone else's), we will define the levels of a legal position of participants of civil relations in regard to the right to information on one's health: 1) common as an individuals' in general; 2) professional, in particular, a doctor's and persons' providing medical care, a medical institution's; 3) individual – a specific individual's, their representatives'; 4) special – an employer's when hiring employees for positions, holding which requires reporting information on the health state; 5) public – state bodies' (Ministry of

Defense of Ukraine, Ministry of Internal Affairs, Security Service of Ukraine, etc.) during recruitment and service.

Taking into account the aforementioned, we can say that it is the individual who is the main entity that has the exclusive right to information on their health, yet other entities have a derivative right to information on someone else's health and are formally defined by analogy in accordance with the definition of the subjects of the right to information on one's health according to Art. 285 of the Civil Code of Ukraine.

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