



ISSUES IN THE DEFINITION OF INDIVIDUALS AS SUBJECTS OF THE RIGHT TO INFORMATION ABOUT THEIR HEALTH

Nataliia KHODEEVA,

lecturer of civil law and process

Kharkiv National University of Internal Affairs of Ukraine

Summary

In this article, we study a number of problems regarding the definition of the legal personalities to information about their health. Also some aspects of the right to information about health must be investigated, because they lead to uncertainty of theoretical and methodological bases, as well as inconsistent legal practice. Issues about legal personalities to information about their health are examined too, as it is a very wide and is not fully understood problem that deserves the theoretical development and legislative streamlining. Correct scientific understanding of the legal personalities to information about the health has great importance for both theory and practice.

Key words: legal personality, natural person, person, adult individual, minor individual, patient, posttatanivnyy moral rights, lawyer, medical worker.

Аннотация

В данной работе рассматривается ряд проблемных вопросов относительно определения субъектов права на информацию о состоянии своего здоровья. Также подлежат исследованию некоторые аспекты права на информацию о состоянии здоровья, которые ведут к неопределенности теоретико-методологической базы, а также к противоречивой правоприменительной практике. Поднимаются вопросы относительно субъектов права на информацию о состоянии своего здоровья, так как это очень широкая и до конца не изученная проблема, которая заслуживает теоретической разработки и законодательного упорядочения. Правильное научное представление о субъектах права на информацию о состоянии здоровья имеет большое значение как для теории, так и для практики.

Ключевые слова: субъект права, физическое лицо, человек, совершеннолетнее физическое лицо, малолетнее физическое лицо, пациент, посттанативные личные неимущественные права, адвокат, медицинский работник.

The purpose of the article. Due to the fact that there are issues in regard to determination of individuals as subjects of the right to information about their health, leading to uncertainty theoretical and methodological framework, it is advisable to pay more attention to the definition of these subjects.

Introduction. The nature of the relationship between the country and a person is an important indicator of the society in general, its aims and prospects of its development. The issue of human and civil rights today is the most important issue of domestic and foreign policy of all states of the world community. That state of affairs in the area of providing human rights and civil liberties, their practical implementation is the rule by which the level of democratic development of any country and society is assessed.

In general, the definition of legal personality for jurisprudence is basic, a socio-legal phenomenon that constantly continues to be studied. In Ukraine today

the formation of a new type of society is continuing – it is the Information Society. One of the main priorities of the country developing is recognized a building of inclusive information society, based on the interests of the people, where everyone can have easy access to any information. Based on the idea of the primary legal personality we can claim that the legal personality is not an element of legal relations, conversely, legal relations ‘belong’ to the legal personality. The legal personality is the axis around which the legal relations is formed, [1, p. 64]. Thus, the legal personality is a legal entity that is a member of the legal relationships and has the corresponding subjective rights and legal responsibilities.

Also, the health of an individual in Ukraine in accordance with Art. 3 of the Constitution of Ukraine is proclaimed the highest social value [2, p. 3]. However, despite this, there are certain issues to identify the legal personality to information about their health.



It should be noted that in the scientific literature scholars R.O. Stefanchuk [3], M.S. Maleyina [4], V.I. Akopova [5], S.M. Bratus [6], T.V. Blashchuk [7], S.O. Slipchenko [8], S.G. Stetsenko [9], V.S. Tolstoy [10], E.O. Sukhanov [11], A.O. Kodynets [12] focused their attention on the general definition of the legal personality, but the definition of the legal personality to information about their health was given enough attention.

Presentation of the main research.

The main component and, at the same time, the center, the core of the legal system is such legal personality as a person in his/her legal quality as a carrier of subjective legal rights and obligations, the participant of legal relations, that personality that has the ability to possess legal rights and obligations, making these rights and obligations really by own actions.

According to Art. 24 of Civil Code of Ukraine, the individual is every person, who is a member of civil relations [13].

The terms «individual» and «person» are interrelated, but they are not identical. Individual is not always only a person.

T. V. Blaschuk thinks that the term «person» is generic. It belongs to all the legal personalities and is used in a specific extended legal meaning (extends to the legal entity too), as a person in terms of psychology and philosophy is a subject of public relations that has definite level of mental development. Personal qualities inherent to a mentally healthy person, to a person who has reached a certain age, who is able to force the intellectual and moral qualities to be a member of public relations, to form his/her position, responsible for his/her actions. According to this, not every human can be considered a person. The term «person» is narrower the term «human». In legal literature it is correctly stressed that a person is not born, a person has become. The term «human» as a legal personality is widely used in various international documents and legislation. Thus, in Art. 6 of Universal Declaration of Human Rights adopted by the OUN General Assembly in 1948, is stated that every person, wherever he/she is, has the right to recognition of his/her legal personality. A person in similar cases is considered as a creature that combines biological and social elements which characterizes a form of mind – consciousness [7, p. 161–163].

However, a person may or may not be a member of civil relations. Besides, a person can be considered as a legal personality, and may be the subject of scientific research or considered as an object of study in another system of social relations. An individual has peculiar natural features and civil characteristics. For example, handwriting recognition as a major individual property necessitated signing contracts and other agreements. A name, nationality, social status, languages and more should be included to public descriptions of a human. The combination of these characteristics makes it possible to call a person or a citizen. Thus, we can say that every citizen has the natural properties and public features that determine the possibility of participating in civil relation as subject of them (the individual).

According to Art. 34 of the Constitution of Ukraine it is provided that everyone has the right to collect free, store, use and distribute information orally, in writing or other form – of their choice [2]. The above is also confirmed in civil law, in accordance with which: part 1. Art. 302 CC of Ukraine says that the individual has the right to collect free, store, use and distribute information, and also part 1. Art. 285 CC of Ukraine indicates that it is an adult individual has the right to accurate and complete information about his/her health [13].

As it is stated in the current legislation, citizens of Ukraine, foreign citizens and stateless persons can take part in civil relations. Thus, foreigners and stateless persons who have legitimates in Ukraine take the same rights and liberties and also have the same obligations as citizens of Ukraine – the exceptions are established by the Constitution of Ukraine, laws or international contracts of Ukraine. However, to be a civil legal personality, a person must have civil capacity art. 25, art. 30 of Civil Code of Ukraine [6, p. 5].

Only individuals who realize the importance of their actions and can manage them have civil capacity. The capacity arises in full with the achievement of individuals eighteen years (age of majority) (Art. 34 of CC). Children under the age of 14 years (minor persons) have partial capacity, commit small transactions.

Especially minors are not responsible for causing it damage (Art. 31 of

CC). Minors aged from 14 to 18 have incomplete capacity. Minor persons can commit other crimes, but only with the consent of their parents (adoptive parents) or guardians (Art. 32 of CC). However, an adult individual can be limited by a court decision in his/her capacity, if he/she suffers mental illness that significantly influence his/her ability to realize the value of actions and (or) manage them (Art. 36 of CC). That means with regard to minors and disabled persons their parents (adoptive parents), guardians, trustees have the right to information about their health. This does not mean that the principle of truthfulness does not apply to relationship health worker with children and disabled persons, but it does not follow the law, but the general requirements of medical ethics. In accordance with paragraph 2, Art. 285 of CC of Ukraine before achieving age of majority parents (adoptive parents), guardians, trustees have the right to obtain information about the health of the child or ward.

According paragraph. 4. art. 285 of CC of Ukraine in case of death of an individual members of the family or other individuals authorized by them, may be present in the study of the causes of death and see the conclusions about the causes of death, and also have the right to appeal these conclusions in the court.

In the doctrine there are several approaches to determining the determination of the time of occurrence and cessation of moral rights.

S. O. Slipchenko has another opinion, he thinks that good separation can occur regardless of the orientation or the legality of actions, and sometimes as a result of the events. Herewith the object is not a stranger to the primary holder. After his death, opportunities are usually kept to establish to whom they belonged, properties intangible benefits are kept to personalize their former media [8, p. 198].

We agree with the doctrinal approach of R. O. Stefanchuk and consider that posttatanatvni moral rights, namely the right to information about the health of the person who died there are at the time of the death and because of the death of the individual, the members of his/her family or other persons authorized by the individual, have the possibility to be present during the examination of causes of death and learn the conclusions about



the causes of the death, and have the right to appeal these conclusions in the court, therefore, unlike other subjective civil rights death in this case will not be a *proistanai* or *proprietray* legal fact, but a lawmaking one.

According to part 1, art. 39 of «Basic Laws of Ukraine Healthcare», the patient who has reached the age of majority has the right to obtain accurate and complete information about his/her health, including learning relevant medical documents concerning his/her health [14]. Consequently, in determining the individual as the subject of the right to information about health, it is necessary to consider in more details the concept of «patient.» Patient (lat. *patiens* – patient, suffering) is a person who receives medical care (preventive, diagnostic, therapeutic) or is subjected to medical and biological researches (clinical trials), or is a donor of blood or a particular organ transplantation etc. [15]. The patient is a fairly common, but not constant concept which requires further clarification. For example, a widely used pharmaceutical terms are: a visitor, a customer, a sick man, much less – a patient. With the changing priorities of society individuals (entities) change too who in the market conditions, offering a wide range of services, are becoming more discerning and demanding. Visiting medical institutions, individuals usually want to communicate with specialists not only about their existing diseases, but also about the exclusion of their occurrence in the future, about moral support, and about providing the necessary assistance in response to the question of human physiology etc. Ukrainian legislation has not general definition of «a patient.» The definition of the term is stipulated in the draft law «On the financing of health care and health insurance» from the 19th of September, 2006, according which the patient is a person who has applied for medical services; and «On the basics of bioethics and legal guarantees of its security» of the 8th of June, 2005, where the patient is a healthy or sick consumer of health services [16, p. 96].

At the same time, during the studying the scientific literature to formulate this concept, it was necessary to give a clear definition. S. G. Stetsenko said that «a patient» is a person who has referred to any health care facility for diagnostic, therapeutic or preventive medical care

or participates as tested in clinical trials of medicines [9, p. 154]. In other words, for becoming a patient a person must have a real relationship with medical institution regardless of its legal form (state, municipal, private), based on the appeal rights in the facility for medical help or participation of its clinical trials. We agree with his definition, but there are, for example, cases where a person has lost the results of the inspections and appeals to the health institution to re-obtain preliminary results. In this case, the citizen enters into a relationship with the medical establishment, but this appeal does not involve the performance of health interventions. A citizen in this case is endowed with certain rights and obligations, get the right to acquainted with medical records and dispose of confidential information concerning the health.

We also agree with the definitions by V. I. Akopov and E. M. Maslov, who noted that «the patient is any person who has turned for medical assistance, regardless of the health status or the presence of any disease that is a broader concept than a sick man» [5, p. 217]. However, there are cases when a person is suffering from the disease, but is engaged in self-treatment at home, or when an individual refuses the proposed medical intervention, so he/she does not call for medical help, and thus does not come with health workers in medical-legal relations, even if a person is suffering from the disease. So these persons can not be considered as patients.

Considering the above, for acquiring the status of a patient, the individual does not need to: enter into a relationship with a medical facility for performing medical procedures, and not always in circulation he/she can have any disease; and on the contrary, he/she can have any disease, but with a certain objective or subjective reasons does not seek for medical help, and therefore does not engage in medical and legal relationship with the medical staff. Based on the above, it is advisable to change ch. 1, art. 39 of Basic Laws of Ukraine about health care, the term «patient» to «individual».

Another subject of the right to information about the health is a lawyer. A lawyer (from the latin. *advocates* – from the latin. *advoco* – invite) is a jurist who provides professional legal assistance to

citizens and legal entities by realization the rights of their interests [17].

In Ukraine, a lawyer is an individual who carries out advocacy on the basis and in the order provided by the Law of Ukraine «About Advocacy» [18]. In performing their professional duties in providing legal aid lawyers often need copies of various medical documents and information from medical institutes (using their lawyer requests). To request a lawyer must add copies of the certificate of the right to practice law and order by the body authorized by law to provide free legal aid. For the request a lawyer must be provided within five working days of receiving a request, to extend its review can not be more than twenty working days (for example, if you want to prepare a large amount of information). Due to the fact that information about a person's health is classified information, such as confidential lawyer may only request medical information about his/her client, which, for example, signed an agreement on legal assistance. This power for a lawyer the client must give. Providing medical information about other individuals (other than his/her client) is improperly.

Medical workers as legal personalities that are working for the health care, medical workers as entrepreneurs are directly involved in providing information about the health of individuals, and therefore they are also subjects of the right to information their health. In the healthcare individual entrepreneur operates only if the license for the respective type of business in this area, namely the production of medicines; wholesale and retail trade in medicines; processing of donor blood and its components, the manufacture of these products; carrying out disinfection, pest, deratization works; medical practice. In addition, medical practice is carried out in the field that are specified in the license in accordance with the Nomenclature of medical specialties. Consequently, an individual is an entrepreneur who operates without creation of a legal entity, and at the same time performs the full range of special actions and services of a medical nature that is inherent to health care, and creates for this necessary facilities special basis, may not gain status, corresponds to the status of health facilities.



Conclusions:

So to individuals as legal personalities to information about their health are included:

1) the individual who is a citizen of Ukraine, a member of Civil Affairs (must be endowed with legal capacity, civil capacity);

2) foreign citizens and stateless persons; parents (adoptive parents) guardians, trustees if the individual (child or ward) is minor or incapacitated;

3) family members of an individual or other individuals who are authorized by them (in case of death of an individual may be present in the study of the causes of death and see the conclusions about the causes of death);

4) health workers as subjects that are employed with health care;

5) health workers as entrepreneurs who are directly involved in providing information about the health of individuals;

6) the patient – a person who receives medical care or undergoes medical and biological experiments;

7) lawyers who are defined by law as individuals;

8) individuals as subjects who are in labor relations with entities that are parties of civil relations concerning obtaining information about health.

The lack of comprehensive research despite elucidations of some scientists about some aspects of the right to health information leads to uncertainty theoretical and methodological framework, controversial law enforcement. So the issue about the definition of the right to information about the health is very broad and not fully understood problem that deserves the theoretical development and legislative arrangement. Proper scientific understanding of individuals' right to information about health is of great importance for both theory and practice.

References:

1. Архипов С.И. Субъект права (Теоретические исследования) : дис. ... д-ра юрид. наук : 12.00.01 / С.И. Архипов. – Екатеринбург, 2005. – 522 с.
2. Конституція України : від 28.06.1996 р. // Відомості Верховної Ради України. – 1996. – № 30. – 141 с.
3. Стефанчук Р.О. Особисті немайнові права фізичних осіб у цивільному праві України : дис. ... д-ра юрид. наук : 12.00.03 / Р.О. Стефанчук. – К. : Ін-т держави і права ім. В.М. Корецького, 2007. – 541 с.
4. Малеина М.Н. Личные неимущественные права граждан (понятие, осуществление, защита) : дис. ... д-ра юрид. наук : 12.00.03 / М.Н. Малеина. – М., 1997. – 431 с.
5. Акопов В.И. Право в медицине / В.И. Акопов, Е.Н. Маслов. – М. : Книга-сервис, 2002. – 352 с.
6. Братусь С.Н. Субъекты гражданского права / С.Н. Братусь. – М. : Госюриздат, 1950. – 367 с.
7. Блашук Т.В. Фізична особа як суб'єкт підприємницької діяльності / Т.В. Блашук // Підприємництво, господарство і право. – 2009. – № 7. – С. 161–163.
8. Сліпченко С.О. Особисті немайнові правовідносини щодо об'єктів / С.О. Сліпченко. – Х. : Діса плюс, 2013. – 552 с.
9. Стеценко С.Г. Право и медицина: проблемы соотношения. – М. : Международный университет (в Москве), 2002. – С. 154–167.
10. Толстой В.С. Личные неимущественные правоотношения / В.С. Толстой. – Изд-во Академ. повыш. квалиф. и проф. переподг. раб. образования, 2009 [Электронный ресурс]. – Режим доступа : <http://www.lawmix.ru/commlaw/321>.
11. Суханов Е.А. Российское гражданское право. Т. I : Общая часть. Вещное право. Наследственное право. Интеллектуальные права. Личные неимущественные права / отв. ред. Е.А. Суханов. – М. : Статут, 2010. – С. 176, 887.
12. Кодинець А.О. Засоби індивідуалізації учасників цивільного обороту, товарів і послуг у цивільному праві України : дис. канд. ... юрид. наук / А.О. Кодинець. – К., 2006. – 219 с.
13. Цивільний Кодекс України від 16.01.2003 № 435-IV ... 1206-VII від 15.04.2014 // ВВР. – 2014. – № 24. – 885 с.
14. Основи законодавства України про охорону здоров'я : Закон України від 19 листопада 1992 р. № 2801-XII // Відомості Верховної Ради України. – 1993. – № 4. – 19 с.
15. Фармацевтична енциклопедія. – 2-ге вид., переробл. і доповн. / голова ред. ради та автор передмови В.П. Черних. — К. : МОРІОН, 2010. – 1632 с.
16. Стеценко С.Г. Законодавче забезпечення охорони здоров'я в Україні / С.Г. Стеценко, І.Я. Сенюта // Право України. – 2007. – № 6. – С. 96–100.
17. [Електронний ресурс]. – Режим доступа : <https://uk.wikipedia.org/wiki/%D0%90%D0%B4%D0%B2%D0%BE%D0%BA%D0%B0%D1%82>.
18. Про адвокатуру та адвокатську діяльність : Закон від 05.07.2012 № 5076-VI [Електронний ресурс]. – Режим доступа : <http://zakon5.rada.gov.ua/laws/show/5076-17>.