

# Protection of the Right to Information on One's Health – A Non-Jurisdictional Form of Protection

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**Abstract:** The article analyzes the theoretical aspects of protection as directly subjective civil rights and defines them within the framework of civil relations regarding the information on one's health. A clearer and complete description of the features of the realization of the right to information on one's health in the normatively established system of protection of subjective rights of a person has been obtained.

It has been determined that the protection of the right to information on one's health is exercised freely, and the failure of a person to exercise the right to protection is not a ground for termination of this right. It is noted that during the protection of their violated right to health information, the authorized person may perform certain actions that are not related to the appeal to the competent state bodies and are a non-jurisdictional form of protection.

The list of actions of an individual to protect the right to information on one's health in the case of a non-jurisdictional form of protection of the above-mentioned right has been systematized.

**Keywords:** The right to information, state of health, protection of subjective civil rights.

## INTRODUCTION

At the present time, there are discussions due to the fact that in civil law science, there is no single definition of the protection of subjective civil rights that would fully satisfy all scholars. In connection with the above-mentioned facts, it is necessary to analyze the theoretical aspects of protection of directly subjective civil rights, as well as to define them within the framework of civil relations in relation to the information on one's health, as a result of which it seems possible to obtain a complete description of the features of the implementation of the right in question in the normatively established system of protection of subjective civil rights of the person.

Thus, it is in the legal literature that certain views of scholars prevail, in which the main emphasis is placed when considering the protection of subjective civil rights directly on its state-legal character, which consists in ensuring the fulfillment of a legal obligation, in the restoration of the violated right (USSR 1991). Based on the above, protection is considered 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.

Thus, S.S. Alekseev noted that the protection of subjective civil law is a state-coercive activity aimed at restoring the violated right, as well as ensuring the fulfillment of legal obligations (On the Land Reform 1990), that is why the question arises about the nature of the right to self-defense and its exercise, in particular during the seizure of a medical book from persons who do not have the right to read it. R.B. Shyshka approached this quite significantly, noting that the protection of subjective civil law is precisely the activity of the rights holder or authorized bodies for the application of law enforcement measures of a state-coercive nature (measures of responsibility or measures of protection) aimed directly at recognition or restoration of the violated subjective right (AgroPolit.com).

Thus, contrary to scholars' aforementioned views, 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 (Musayeva AK, 2010; Vasylyev and Oleksyuk 2018). Yet, we should agree with V.P. Grybanov, in the sense that the right to protection can not be 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 terminate actions that violate it (Iasechko *et al.*, 2020).

Any subjective right, and therefore the right to information on one's health, has real value only if it can

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be protected in case of violation. Legal protection is important in the study of the right to information on one's health and directly for its realization. Emphasizing his attention to this, V.P. Gribov noted that the subjective right granted to a person but not secured from its violation by the necessary means of protection is only a "declarative right" (Iaschko *et al.*, 2020). Therefore, the study of certain features of the protection of such a right is critical.

## METHODS

The civil law of Ukraine, determining the right to protection, is not limited to the activities of a state or authorized bodies, which is aimed at the application of means of coercion to the offender but rather regulates the relationship of self-defense directly to the victims (Article 19 of the Civil Code) which will no longer contain a state-coercive nature. And also Art. 20 of the Civil Code of Ukraine provides for the peculiarities of exercising the right to protection of the violated right. Thus, R.B. Shyshka included the following forms in the protection of rights (jurisdictional and non-jurisdictional), means, and methods (Semenyak YA, 2011).

Thus, it is reasonable to conclude that legal protection can not be limited to the possibility of using legally-established protective mechanisms, and the person 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 abandon the use of protection remedies altogether.

Thus, the *protection* of the right to information on one's health, therefore, means a lawful reaction to violations by individuals and legal entities, as well as society and the state, by not recognizing or challenging the right to information about one's health in order to stop the violation, resume or recognition of the specified right, or compensation of the caused damage to the authorized person.

The subjective right to protection in the mechanism of exercising the right to information on one's health can also be considered an opportunity for a person to use an unlawful encroachment on the subjective right to information on their health and restore it a case of violation certain law enforcement measures.

First of all, a person's ability to protect the right to information on their health is based on the provisions of Part 5 of Art. 55 of the Constitution of Ukraine, Art. 15

and Art. 275 of the Civil Code of Ukraine, which provides for the right of a person to protect their subjective rights in case of violation, non-recognition, or contestation, and Para 2 of Art. 7 of the Law of Ukraine "On Information", which enshrines the possibility to demand the elimination of any violations of the right to information.

The place of the right to protection in the system of civil rights is ambiguously defined in the legal literature. Thus, according to the traditional concept, the right to protection is an integral part of subjective civil law, along with the right to one's own actions and the right to demand appropriate conduct from obligated persons. At least the owner of the information of its documentary form prevents access to it by third parties.

Supporters of this concept argue that an integral quality of subjective law is to ensure its possibility of protection, which, in turn, does not exist in parallel with other possibilities enshrined in subjective law but is inherent in them directly (AgroPolit.com, pp. 73-74).

Contrary to the traditional concept, there are other opinions of scholars, according to which the right to protection is an independent subjective right. Confirming this fact, it is emphasized that the right to protection appears in the subject only at the time of violation or challenge of the right and its implementation takes place within certain limits of the emerging civil legal relations (Law of Ukraine 2020).

We believe that the right to protection is a characteristic of all subjective rights, including the right to information on one's health, because every subjective right is subject to protection, even if the right to protection is not provided by civil law, but in any case, should not contradict its norms.

As for the subjective right to information on one's health, we believe that the right to protection is part of this right together with the right to one's own actions regarding the collection, use, distribution, and storage of information on one's health. The need to protect the right to information on one's health arises when there is an encroachment on it, which can be carried out in certain ways, as defined in Part 1 of Art. 15 of the Civil Code of Ukraine, according to the content of which each person has the right to protection of their civil rights in case of violation, non-recognition, or contestation. However, at present, these grounds for protection are not fully explored, which, in turn, is negatively reflected in the choice of protection of the right to information on one's health, as well as any

other subjective right, in connection with so that the choice of a certain method of its protection depends on the exact definition of the nature of the encroachment on the subjective right.

### **Encroachment on a Subjective Right by Violating it**

In the doctrine of civil law, a violation is usually understood as a state of subjective law in which it has been unlawfully influenced by the offender, which has led to a reduction or termination of the subjective right, as a result of which the authorized person is deprived of the opportunity to exercise it (Stupin RM, 2015). Thus, a violation of the right to information on one's health is to deprive an authorized person of the opportunity to perform certain actions provided for in the content of this right (collect, use, distribute, store information on one's health). Violation of the right to information on one's health occurs through the implementation of certain actions, which may be actions of a factual or legal nature:

- regarding actual actions, it can be noted that they may be an obstacle to the person to collect, use, disseminate, store information both directly and through various technical devices, including electronic equipment;
- regarding actions of a legal nature, it can be noted that these actions consist in the adoption by public authorities of illegal acts that restrict the ability of a person to collect, use, disseminate, store information on their health;
- other actions of persons who may use documents containing such information. Thus, doctors' delays in medical books and cards are typical, as a result of which the right to receive medical data on time is violated.

Violation of the right to information on one's health is the basis for the application of various methods of protection of civil rights, and their choice depends on the nature of the violation of the right in question. If actions that violate the right to information on one's health contain a civil offense, it is possible to use remedies that are measures of legal responsibility, namely: compensation for property damage (Articles 16, 22 of the Civil Code of Ukraine); compensation for moral damage (Articles 16, 23 of the Civil Code of Ukraine).

All other methods of protection, which are provided in Part 2 of Art. 16 of the Civil Code of Ukraine, do not belong to the measures of legal responsibility, namely

recognition of the right to information on one's health; termination of an action that violates the right; recognition of illegal decisions, actions, or inaction of public authorities, the authority of the Autonomous Republic of Crimea or local government, their officials and officials who violated the right of a person to information on their health.

### **Encroachment on a Subjective Right by not Recognizing it**

Non-recognition of the right to information on one's health is manifested in passive denials of the person's existence of this subjective right or the right to collect, use, distribute, store information on one's health. Non-recognition of the right to information on one's health does not harm the authorized person themselves but makes them unsure of their right to information on their health. In order to protect it, the person endowed with it must take active action – to apply to the court for recognition of the right to information on their health.

### **Encroachment on a Subjective Right by Challenging it**

In the legal literature is considered as an encroachment on a certain subjective right, which, in turn, is not a violation of this subjective right but complicates the position of the person endowed with this right (Land Code of Ukraine, 2001).

To challenge the right to information on one's health is to deny that one has it or the ability to collect, use, disseminate, and store information on one's health in a jurisdictional body. Unlike non-recognition, the right to information is challenged as a result of the active actions of a third party, which calls into question the right of a person to collect, use, disseminate, store information on their health. In this case, the person entitled to information on their health must ask the competent authority to confirm that they have such a right.

It should be noted that the protection of the right to information on one's health is carried out freely. Thus, in accordance with Art. 20 of the Civil Code of Ukraine, a person exercises the right to protection at their discretion, 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 state of health has been infringed shall independently decide whether or not to apply law enforcement measures to restore the violated, disputed, or unrecognized right, as well as choose the forms and methods of its protection.

Among the forms of protection are jurisdictional and non-jurisdictional forms of protection of the right to information on one's health.

According to the Constitution of Ukraine and the current legislation of Ukraine, healthcare in Ukraine is provided by the activities of state and non-state bodies and organizations. That is, while protecting their violated right to information on their health, the authorized person may perform certain actions that are not related to the appeal to the competent state authorities and constitute a non-jurisdictional form of protection.

A non-jurisdictional form of protection is that the protection of the right is carried out by citizens and individuals independently through certain independent actions that are not related to recourse to the competent state authorities (Law of Ukraine 2012). Thus, this form of protection of the right to information on one's health of individuals may include certain actions of an individual to protect the above right, namely:

**1) Appeal of an Individual in Case of Violation of their Right to Information on Health and for the Purpose of their Protection to Non-Governmental Organizations**

Thus, Art. 6 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare", provides that citizens have the right to join public organizations to promote healthcare, and the Law of Ukraine "On Public Associations" defines the creation and operation of public organizations (Gudz *et al.*, 2010).

Depending on the activities of public organizations that protect the rights of individuals to information, and hence the right to information on their health, they can be divided into public organizations of broad and narrow orientation.

Public organizations of broad orientation deal with all legal assistance to individuals in violation of their rights in the medical field, as for narrow organizations, they are usually limited to a certain group of individuals (depending on their state of health) or a certain range of activities carried out (All-Ukrainian Association of Diabetics, All-Ukrainian Association of Parents of Children with Oncology, etc.) (Brinkman T, 1925). There are also various charitable organizations, funds, foundations, which are guided in their activities by the Law of Ukraine "On Charity", and the All-Ukrainian

Council for the Protection of Patients' Rights and Safety in the medical field.

Protection of the rights of individuals who have suffered violations in the medical field, public, and charitable organizations are carried out mainly as conducting explanatory work on legal and medical issues (by providing oral and written advice); preparation of procedural documents and letters for the patient to apply to various authorities; representation in court; assistance in negotiations with representatives of various medical institutions and organizations, etc. (Brinkman T, 1925). Thus, the important role of non-governmental organizations is that the appeal to them of an individual about the violated rights to information on their health makes it more likely to solve their problem because the main purpose of such an organization is to help individuals whose rights have been violated, and the interest of the representatives of such an organization is aimed at a positive solution to the problem of the aforementioned persons. Appeals to non-governmental bodies and organizations do not yet have significant practical support, but their role in protecting the rights of individuals, including violated rights in the medical field, is growing every day;

**2) Appeal of an Individual in Case of Violation of their Right to Information on their Health and for the Purpose of their Protection to the Arbitration Court**

The arbitration court is an independent non-governmental body. It can be appealed by an individual in case of violation of one's right to information on their health, protection of their property and non-property rights, as well as interests protected by law. Arbitration courts resolve disputes arising from civil and commercial legal relations.

**3) Appeal of an Individual in Case of Violation of their Right to Information on their Health and for the Purpose of their Protection to Legal Clinics of Higher Educational Institutions**

In accordance with Para 1.1 of Art. 1 of the Standard Regulation "On the Legal Clinic of a Higher Educational Institution of Ukraine", the legal clinic is a structural unit of higher education of III-IV levels of accreditation, which trains specialists in the field of "Law", and is created as a basis for practical training and internships for senior students courses [15]. Legal clinics are widespread in Ukraine; their activities are mainly aimed at providing free legal aid to students studying law under the supervision of experienced teachers;

#### **4) Appeal of an Individual in Case of Violation of their Right to Information on their Health and for the Purpose of their Protection to a Mediator**

The term “mediation” comes from the Latin *mediatio* – intermediary; the words *mediation* (Eng.), *médiation* (Fr.) have a similar meaning. In social psychology, scientists consider mediation as a specific form of regulation of disputes, conflicts, coordination of interests. Scientist H. Bessemer defined mediation as a technology for conflict resolution with the participation of a neutral third party (Land Matrix).

Therefore, according to this method in law, in case of violation of the right of an individual to information on their health, the aforementioned person, in order to protect their rights, may turn to a specialist mediator, who may be a psychologist, lawyer, and who can help hold a meeting, negotiations with a representative of a medical institution, an organization in order to reach an agreement on a disputed issue regarding the information on one's health, without resorting to administrative and judicial appeal procedures;

#### **5) Appeal of an Individual in Case of Violation of their Right to Information on their Health and in Order to Protect it Independently to the Representatives of Medical Institutions of Organizations, Companies in Order to Reach a Positive Solution to the Violated Right**

Another form is the self-defense of civil rights, which is the commission of an authorized person actual de facto acts aimed at protecting their subjective right, and also involves the use of measures of operational influence – law enforcement, which have a legal nature and is applied by an authorized person without recourse to state or other organs. It should also be noted that in accordance with Part 1 of Art. 19 of the Civil Code of Ukraine, the basis for the application of self-defense of the right to information on one's health is the presence of certain violations or illegal encroachments on the civil right in question.

The sphere of protection of the right to information on one's health does not provide ample opportunities for the use of means of counteraction not prohibited by law by oneself. It is limited by the nature of the rights in respect of which the offense has been committed or infringed. Thus, the actual prohibited actions taken by an individual in self-defense of the right to information on their health can include, for example, a public statement by the victim that a particular natural or legal person is illegally disseminating certain information on their state of health.

As a result of self-defense of the right to information, a person who has committed an unlawful encroachment (according to the aforementioned example – a public statement that a particular natural or legal person illegally disseminates certain information on the health of the authorized person) may suffer property and moral damage. The composition of the civil offense as a basis for liability for moral and property damage is recorded in Art. 1166, Art. 1167 of the Civil Code of Ukraine. However, a person who has protected the right to information on their health does not have an obligation to compensate for such damage, as the basis for the obligation to compensate for damage is a civil offense, includes wrongful conduct, harm, causal connection between wrongful conduct and harm, guilt (Report of the non-governmental organization Eco Ruralis 2015; Vasylyev and Oleksyuk, 2018).

Actions on self-defense of the right to information on one's health are not illegal, as the current legislation of Ukraine (Article 19 of the Civil Code of Ukraine, Part 4 of Article 55 of the Constitution of Ukraine) establishes that they do not create obligations for the authorized person to compensate the violator of the right in question. Also, this provision is enshrined in Art. 1169 of the Civil Code of Ukraine, according to which the damage caused in the exercise of the right to self-defense is not reimbursed. We note that the right to protection can be exercised in the event of termination of the subjective right (death). In this case, the interest associated with the lost right is protected. Thus, in accordance with Part 4 of Art. 285 of the Civil Code of Ukraine, in case of death of an individual, members of their family, or other individuals authorized by them have the right to investigate the causes of their death and read the conclusions on the causes of death and have the right to appeal these conclusions in court. Thus, the death of a person is a ground for protecting the right of family members of the deceased, or other individuals authorized by them, to be in the investigation of the causes of death and to get acquainted with the conclusions on the causes of death, as well as the right to appeal these conclusions to the court in case of their violation. Thus, the right to protection has a broader meaning, as it not only accompanies the subjective civil right but also continues to exist in case of its termination.

#### **CONCLUSION**

Thus, legal protection cannot be limited to the possibility of applying legally-established protective

mechanisms. The person independently has the right to choose certain methods of protection and forms – in particular the non-jurisdictional one, in accordance with the content of the violated right, the nature of the offense and its consequences, or to refuse to use remedies at all. Thus, the non-jurisdictional form of protection is precise that the exercise of protection of rights is carried out by citizens, as well as individuals by performing certain independent actions (independently), which are not related to appealing to public authorities of the relevant competence. In turn, the non-jurisdictional form of protection of the right to information on one's health of individuals may include certain actions of an individual to protect the aforementioned right (appeal of an individual in case of violation of their right to information on one's health and to protection to non-governmental organizations; appeal of an individual in case of violation of their right to information on one's health and for the purpose of their protection to the arbitration court; appeal of an individual in case of violation of their right to information on their health and for the purpose of its protection to legal clinics of higher educational institutions; appeal of an individual in case of violation of their right to information on their health and for the purpose of its protection to a mediator; appeal of an individual in case of violation of their right to information on their health and in order to protect it independently to representatives of medical institutions of organizations, companies in order to reach a positive solution to the violated right), which have their own specifics and features.

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