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INDIVIDUAL WAYS OF PROTECTING THE PERSONAL NON-PROPERTY RIGHTS OF INDIVIDUALS IN THE HEALTHCARE SECTOR

Some scientific methods of protection of personal non-property rights of individuals in the field of health care are considered in the scientific work, the content of the concepts of «protection» and «protection» and their correlation are analyzed, as well as peculiarities of jurisdictional and non-jurisdictional form of protection of personal non-property rights of individuals Health Care.

Keywords: *non-property rights, remedies, health care, jurisdictional form, non-jurisdictional form.*

Коротка Наталія. *Окремі способи захисту особистих немайнових прав осіб у сфері охорони здоров'я.*

У науковій роботі розглянуто окремі способи захисту особистих немайнових прав осіб у сфері охорони здоров'я, проаналізовано зміст понять «захист» і «охорона» та їх співвідношення, а також особливості юрисдикційної та неюрисдикційної форм захисту особистих немайнових прав фізичних осіб у сфері охорони здоров'я.

Ключові слова: *немайнові права, засоби правового захисту, охорона здоров'я, юрисдикційна форма, неюрисдикційна форма.*

Relevance of the research topic. Personal non-property rights of natural persons in the field of health, enshrined in the law, for the possibility of their smooth implementation must be protected by the statutory ways, since in the absence of an individual the opportunity to protect a particular right in that field, such a person may lose the possibility of exercising such a right.

Formulation of the problem. The assertion of personal non-property rights of an individual in the field of health care in the Civil Code of Ukraine gave rise to the need for further development of legislation, implementation of its provisions, and in case of non-recognition, violation or contestation of the rights of this area, their

protection and protection. the protection of the rights mentioned above, the content of which is substantive and their practical implementation will be discussed in this article.

Analysis of recent research and publications. Protection of personal non-property rights of an individual in the field of health care is the subject of research by O.I. Antonyuk, Y.G. Basin, M.I. Braginsky, V.P. Griбанov, M.I. Klein, O.V. Kohanovskaya, V.A. Ryasentseva, G.A. Sverdlik, G.Y. Stoyakin, E.L. Struning, E.O. Sukhanov, M.I. Usenko, etc. However, at present there is a lack of sufficient scientific research. in the aforementioned field, and therefore the ways of protecting the individual's non-property rights in the field of health care require further thorough scientific analysis.

Presenting main material. Subjective right granted to a person but not secured by the necessary remedies is only a «declaratory right». Without providing it with state law enforcement measures, one can only count on the voluntary respect of such a right by unauthorized members of society; it acquires, by virtue of this nature, only a morally secured right, which is based only on the responsibility of members of society and the authority of state power (Griбанov, 2000, p. 104).

Before moving on to the consideration of forms and civil remedies, we must first analyze the content of the concept of «protection» itself. To defend means to defend, to protect someone, something from attack, assault, hostile action, to watch for the inviolability of something (Yaremenko, 2006, p. 926).

Attention should also be drawn to the distinction between «protection» and «security». There are two main traditional ways of solving this problem.

Supporters of the first approach distinguish the concept of protection and protection, stating that protection is the establishment of a general legal regime, and protection – those measures taken in the event of violation or contestation of civil rights (Matuzov, 1987, p. 131; Peshkova, 1997, p. 217).

Supporters of the second approach include protection of the right to the concept of protection [Tertyshnikov, 1999, p. 5; Sergeev, 1998, p. 279; Dzera, 2001, p. 7; Krasavchikova, 1979, p. 8], noting that the concept of protection includes both its own security activities, and the exercise of law, and self-protection of law, and protection of law (Tertyshnikov, 1999, p.5).

We believe that the terms «security» and «protection» are not identical. The concept of «protection» is primordial because it exists before a violation of one or another right, and at the moment of violation, when it comes to the need to cease misconduct and restore the violated rights, a «right to protection» arises.

Thus, protection of personal non-property rights of individuals in the field of health care is the use of the forms and methods established by law in the case of violation of certain rights in the said area, aimed at termination of the violation, restoration of the violated rights, as well as in certain cases of receiving compensation by the person who was harmed.

According to Art. 15 of the Civil Code of Ukraine, every person has the right to defend his or her civil right in case of violation, non-recognition or contestation. Everyone has the right to the protection of his interests which is not contrary to the general principles of civil law.

As a general rule, the protection of civil rights and the interests protected by law is exercised by the courts. Part 1 of Art. 16 of the Civil Code of Ukraine provides that every person has the right to go to court for the protection of their personal property or property rights and interests.

Soviet legal literature denied the possibility of protecting such rights as the right to life, health, and other measures of civil law. It was pointed out that a court decision may not be rendered in all cases of violation of personal goods: civil law cannot protect these goods unless there is a question about the task of unlawful act violating these benefits, property damage (Egorov, 1953, p. 155–156).

Indeed, in the case of deliberate deprivation of life, or an attempt on life or grievous bodily harm, criminal liability exists, but to exclude the possibility of civil liability with regard to health rights in any case can not.

According to Art. 275, 280 of the Civil Code of Ukraine an individual has the right to protect his personal non-property right from the unlawful encroachments of other persons. The protection of personal non-property rights shall be exercised in the manner established by Chapter 3 of this Code. The protection of personal non-proprietary right may also be exercised in another way, in accordance with the content of that right, the mode of its infringement and the consequences which caused it; if a physical person has suffered property and (or) non-pecuniary damage as a result of a violation of his or her personal non-property right, that damage shall be compensated.

Any person may be the subject of a right of appeal. Part 1 of Art. 56 of the CPC of Ukraine (Code of Civil Procedure of Ukraine, 2004, p. 492) stipulates that in cases established by law, public authorities, local self-government bodies, individuals and legal entities may apply to the court for protection of the rights, freedoms and interests of others or state or public interests. In these cases. At the same time, public authorities, local self-government bodies must submit to the court documents confirming the existence of the grounds provided by law for applying to the court in the interests of other persons.

According to Art. 257 of the Civil Code of Ukraine, the limitation period for the protection of the person of their violated rights and interests is established for a period of three years. Instead, according to Part 1 of Art. 268 of the Civil Code of Ukraine, the statute of limitations does not extend to the claim arising from violation of personal non-property rights, except in cases established by law.

Also, Articles 276-279 of the Civil Code of Ukraine set out certain ways of protecting the personal non-property rights of individuals, including in the field of health care.

Yes, a public authority, an authority of the Autonomous Republic of Crimea, a local self-government body, an individual or a legal entity whose decisions, actions or omissions violate the personal non-property right of an individual obliged to take the necessary actions for its immediate renewal. If the actions necessary for the immediate restoration of the violated personal non-property right of the individual are not taken, the court may order the restoration of the violated right as well as compensation for non-pecuniary damage caused by its violation.

Another way to protect individuals' personal non-property rights in healthcare is to refute false information. Art. 277 of the Civil Code of Ukraine provides two special ways of protection of personal non-property rights, which is the right to deny false information and the right to reply.

«Right to refuse» means the right of an individual to demand from a person who violated the personal non-property right of individuals by disseminating false information, recognition of this information as false in a form that is identical or adequate to the form of dissemination of false information.

In turn, the «right of reply» should be understood as the right to cover one's own views on information disseminated and circumstances of infringement of personal non-proprietary right.

Another way to protect the personal non-property rights of individuals in the healthcare sector is to ban the dissemination of information that violates personal non-property rights. Thus, the legislator defines two subspecies of this method of protection with different legal consequences of its application: the first – in the case where the personal non-property right of an individual in the field of health care is violated in a newspaper, book, movie, television program, etc., which are being prepared for release into the world, it is believed that this information has been circulated among the people who prepare the newspaper, book, movie, TV show and more. Therefore, in view of the small number of persons who own the information, the court may prohibit the release of these printed editions or of cinema, television production to the world until the elimination of violation of personal non-property rights. So, for example, when a TV show spreads information that reveals a secret about an individual's health, such a person has the right to request that he or she dismantle the recording of the TV show before it is aired. However, according to Part 2 of Art. 307 of the Civil Code of Ukraine an individual who has agreed to shoot it on a photo, film, television or video film may require the termination of their public display in the part concerning his personal life. The costs associated with the dismantling of an exhibition or recording are reimbursed by that individual; second, when the personal non-property right of an individual in the field of health care is violated in a newspaper, book, movie, television program, etc., which is released to the world, then this information is considered to be widespread. Therefore, in this case, the

court may prohibit (suspend) their distribution until the violation has been eliminated, and if the violation cannot be eliminated, the newspaper, books and the like should be removed for the purpose of its destruction.

In the legal literature, it has also been suggested to enshrine additional, in addition to the aforementioned, methods of protection: publication of court orders on the protection of personal non-property rights for the purpose of preventing offenses, expressing public reprimand, public apology of a guilty person, removal from office or a ban on occupying relevant posts [Drobyshevskaya, 2001, p. 54; Malein, 1986, p. 207–208; Borisova, 2004, p. 175]. In our opinion, the most important for the real possibility of protection of personal non-property rights of an individual in health care is not the number of ways of protection prescribed in the legislation, but the effectiveness of their implementation. The Civil Code of Ukraine states that the list of methods of protection is not exhaustive, so it is possible to apply a method not prescribed in the legislation, but one that does not violate the rights of others.

Conclusion. Therefore, protection of personal non-property rights of individuals in the field of health care is the use of statutory forms and methods in case of violation of certain rights in the specified field, aimed at termination of violation, restoration of violated rights, as well as in certain cases of receiving compensation by the person who was harmed.

In determining the amount of non-pecuniary damage in cases of violation of personal non-property rights of individuals in health care, consider the following criteria: – psychological state of health of the person before and after the violation; – somatic health before and after the disorder; – costs incurred by a person in connection with a violation of a personal property right in the field of health care.

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