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ПРАВА ДИТИНИ В МЕДИЧНИХ ПРАВОВІДНОСИНАХ: ДО ПОСТАНОВКИ ПИТАННЯ ПРО ПОНЯТТЯ

Анотація. *Дитина як суб'єкт будь-яких правовідносин користується особливою увагою з боку права, а забезпечення її прав у всіх сферах життя є безумовним пріоритетом у розвитку сучасного суспільства. Мета статті полягає у дослідженні основних проблем у сфері правового регулювання відносин у галузі охорони здоров'я за участю неповнолітніх, їх правосуб'єктності при наданні медичної допомоги. Методика дослідження полягала у визначенні особливостей та підстав для застосування такого способу захисту, як визнання права дитини в медичних правовідносинах, виявленні суперечностей у законодавстві України, судовій практиці та вироблені пропозицій щодо їх усунення. Окреслена в статті проблема первинності суспільних відносин, зокрема й правовідносин у сфері медичного права набуває особливого значення за участі дітей. Суб'єкти відносин у сфері медичного права переважно виступають як учасники цивільних відносин, відтак характеризуються цивільно-правовим статусом. Правовий статус дитини та обсяг її дієздатності в медичних правовідносинах залежать від віку, та поділяється на два періоди: до 14 років та з 14 до 18 років. Однак в законодавстві мають місце численні суперечності у регулюванні відносин у сфері медицини за участі дітей, а з окремих питань правове регулювання взагалі відсутнє. На практиці проблемними питаннями є застосування норми про надання згоди батьками, права дитини на відмову від лікування, відкликання батьками згоди на лікування тощо. Окремі проблеми у сфері медичних відносин за участі дітей були предметом розгляду не тільки національних судів, а й Європейського суду з прав людини. У міжнародних актах у сфері прав дитини виокремлюють два основних принципи у сфері охорони здоров'я дітей: принцип найкращих інтересів дитини та принцип участі дитини. Рівень участі дітей залежить як від їхнього віку, можливостей, зрілості, так і від важливості рішення, яке необхідно ухвалити. Проблематика дослідження є вкрай актуальною як для України так і на міжнародному рівні.*

Ключові слова: згода на медичне втручання, відмова від лікування, допоміжні репродуктивні технології, медична допомога, медичні документи.

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THE RIGHTS OF THE CHILD IN MEDICAL RELATIONS: ADDRESSING THE MATTER OF THE CONCEPT

Abstract. *The child as a subject of any legal relationship enjoys special attention from the law and ensuring its rights in all spheres of life is an unconditional priority in the development of modern society. The purpose of the study is to investigate the main problems in the field of legal regulation of relations in the field of healthcare with the participation of minors, their legal personality in the provision of medical care. The research methodology consisted in determining the characteristics and grounds for the application of such a method of protection as recognition of the child's right in medical legal relations, identifying contradictions in the legislation of Ukraine, judicial practice, and developing proposals for their elimination. The outlined issue of the primacy of public relations, in particular legal relations in the field of medical law, acquires special significance with the involvement of children. The subjects of relations in the field of medical law mainly act as participants in civil relations, and therefore are described by civil status. The legal status of a child and the extent of its legal capacity in medical relations depend on age and is divided into two periods: up to 14 years and from 14 to 18 years. However, there are numerous contradictions in the legislation regarding the regulation of relations in the field of medicine with the participation of children, and some issues lack any legal regulation whatsoever. In practice, the problematic issues are the application of the rule on parental consent, the child's right to refuse treatment, withdrawal of parental consent for treatment, etc. Certain problems in the field of medical relations with the participation of children have been the subject of consideration not only by national courts but also by the European Court of Human Rights. International instruments on the rights of the child distinguish two basic principles in the field of child health: the principle of the best interests of the child and the principle of the participation of the child. The level of children's participation depends on their age, abilities, maturity, and the importance of the decision to be made. The research issues are extremely relevant both for Ukraine and at the international level.*

Keywords: consent to medical intervention, refusal of treatment, assisted reproductive technologies, medical care, medical documents.

INTRODUCTION

The child as a subject of any legal relationship enjoys special attention from the law. The state of Ukraine guarantees the rights and freedoms of man and citizen in accordance with generally accepted norms and principles of international law. Numerous international instruments state that children need special care, security, and protection. In

particular, the preamble to the UN Convention on the Rights of the Child[1] states that "the need for such special protection of the child was stipulated in the Geneva Declaration of the Rights of the Child of 1924[2] and the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959[3], and recognised by the Universal Declaration of Human Rights[4], the International Covenant on Civil and Political Rights (in particular Articles 23 and 24)[5], the International Covenant on Economic, Social, and Cultural Rights (in particular Article 10)[6], and the statutes and relevant instruments of specialised agencies and international organisations dealing with issues of children's well-being"[7]. Ensuring the rights of the child in all spheres of life is an unconditional priority in the development of modern society. However, despite the rapid dynamics of science, technology, and medicine, in the doctrine of private law there are gaps in the application of the rights and interests of such a special group of society as children, and hence doubts about the effectiveness of human rights in general.

The rights and interests of the child, in particular in the medical field, have been studied in the Ukrainian legal literature in the scientific works of T.V. Bodnar [1], S. Buletsa [2], V.V. Valakh [3], R.A. Maidanyk [4], V.Ya. Kalakura [5], L.V. Krasytska [6], I.Ya. Seniuta [7; 8], H.O. Reznik [9] and others. Among European and American scholars, the rights of the child in medical relations were studied by: C.J. Wick [10], L.A. Weithorn [11], C. Jenny, J.B. Metz [12], R. Ciliberti [13], M.A. Ott [14], Y. Nazarko [15], S. Breathnach [16], M. Peled-Raz [17], M. Abbasi [18]. Therewith, the issue of children's rights in the field of healthcare indicates the need to further study the theoretical provisions of children's rights, identify problems of their legal regulation and provide suggestions for improving the legislation of Ukraine in this area.

In particular, V.V. Valakh focuses on the special legal status of the child as such, and notes that the child patient has a set of rights, among which the right to tactful treatment constitutes an independent subjective medical right of the child to polite, friendly, attentive, individual treatment by the physician and other healthcare professionals, taking into account the latest features of the psychology of each child [3]. S. Buletsa points to the problems in the field of exercise of children's rights to medical care, namely that the participation of children and adolescents (10-18 years) in making medical decisions should be proportional to the degree of their development, which will

[1] Convention on the Rights of the Child (1989, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_021#Text

[2] Geneva Declaration of the Rights of the Child. (1924, November). Retrieved from https://www.humanium.org/en/text-2/

[3] Declaration of the Rights of the Child (1959, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_384#Text

[4] Universal Declaration of Human Rights (Russian/Ukrainian). (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015?lang=uk#Text

[5] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text

[6] International Covenant on Economic, Social and Cultural Rights. (1966, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_042#Text

[7] UN Convention on the Rights of the Child, Convention. (1989, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_021#Text

allow them to understand the essence and consequences medical problem, assess the expected risks and benefits of treatment [2]. I. Seniuta emphasises the importance of compliance with international standards on the rights of the child, on which national legislation is based in this area, in particular in the field of healthcare. The author draws attention to the state of Ukraine in the fight against poverty and ensuring the right of children to medical care in Ukraine [7]. The scientist draws attention to the fact that one of the most pressing problems in the field of medical law in the context of ensuring the patient's rights is the exercise of his or her constitutional right to personal inviolability, projecting which for the healthcare sector, one can obtain the right to consent or refuse medical intervention. The role of legal representatives in the exercise of these patient's rights is, under certain conditions and grounds, decisive [8].

The purpose of the study is to investigate the main issues concerning the legal regulation of relations in the field of healthcare with the participation of minors, their legal personality in the provision of medical care.

1. MATERIALS AND METHODS

The study of the issue of children's rights in medical relations is not possible without the use of methodological basis as a tool with which it is possible to solve certain problems of private law. Studying the rights of children in the field of medical relations, the authors agree with the opinion of O.Yu. Ilyina, that the family law methodology is quite difficult to combine private and public principles, dispositive and imperative norms [19]. The difficulty in combining private and public principles regarding the rights of the child is considered at least for the reason that their settlement almost always occurs from a public legal position. Given that the field of medical relations is complex, the legal regulation may not always be properly implemented. Life and health constitute the fundamental goods of a person; therefore, the field of medicine as particularly sensitive to a person in general and children in particular requires special treatment and legal regulation.

The methodology of this study is determined by its purpose and lies in the determination of the features and grounds for such a method of protection as recognition of the rights of the child in medical relations, identifying inconsistencies in the legislation of Ukraine, judicial practice arising from the application of appropriate subjective rights, and made proposals for their elimination. The methodological framework of scientific study of children's rights in medical relations has been developed at the general scientific and special levels, including the philosophical basis. The dialectical method, institutional, comparative legal approach, and other scientific methods were used to study the outlined problems. The general scientific method of analysis and synthesis, deduction and induction allowed to form an understanding of the concept of children's rights in medical relations, led to the identification of gaps in their legal regulation and further formulation of proposals to improve private law in Ukraine. The comparative method provided an opportunity to analyse the proposed approaches to the definition of "children's rights", the creation of a single legal understanding of children's rights, knowledge of which will enrich the content of legal science, including the science of family law. The institutional and axiological approach provided an opportunity to consider such basic categories as "the right of the child" and "the interest of the child", which form the basis for the

development of medical relations. The special scientific level of the study was covered due to the comparative legal method because modern Ukrainian realities contain many problematic aspects regarding the protection of children's rights in medical relations, related on the one hand to imperfect legal regulation of the medical sphere, and on the other hand, to rapid development of society and scientific progress.

The use of Aristotelian and system-structural methods allowed to conclude that children, taking into account their age and maturity, as well as their families, should be fully informed and involved in the exercise of their right to take an active part in decision-making concerning their health. The method of systematic analysis allowed for a generalisation of the accumulated theoretical knowledge on the understanding of children's rights in medical relations, its relationship with key categories of family and civil law, the prospects of creating a collective understanding, including in the international sphere of medical relations. The materials of judicial practice on violations of children's rights in the field of medical relations were studied using the empirical method. The method of theoretical cognition was used to generalise and develop a holistic understanding of the mechanism of resolving differences in judicial practice. The systematic method provided an opportunity to investigate the sustainability of the practice of the Supreme Court as an important feature of the system of legal means to ensure the unity of judicial practice. The application of a systematic approach, interpretation, and construction of a theoretical model of the studied phenomena provided an opportunity to identify and develop problematic aspects of law enforcement and offer an original vision for their solution.

All scientific research methods were used in interconnection and interdependence, which contributed to the comprehensiveness, objectivity, and completeness of the study. The chosen aspect allowed to lay the foundation for further directions of scientific development of theoretical ideas about the rights of the child in medical legal relations.

2. RESULTS AND DISCUSSION

One of the basic civilistic categories is legal relations. Unfortunately, the modern doctrine of private law still lacks a holistic theory of civil legal relations. The fundamental work "Legal Doctrine of Ukraine", which considers the subject, method, system of private law and relations, contains no special section that would cover the general problems of understanding the category of legal relations. Ye.O. Kharytonov, O.I. Kharytonova have repeatedly addressed this issue. [20]. Legal relations are considered as a legal relationship between the subjects. However, sometimes scholars do not distinguish or fail to clearly distinguish public relations and legal relations in cases where they are included in the legal sphere by the legislator. This is conditioned by the insufficient consideration of the need to differentiate legal relations at the level of the general division of rights into private and public. This also applies to legal relations in the field of medical law, the subjects of which are children.

In the private sphere, public relations are primary. They usually arise based on such legal facts as agreement, consent, as a result of the practical acts of the parties or their inaction. The existence of private public relations is not affected by the absence or, conversely, the presence of acts of civil legislation. After all, the rights and obligations of the participants are based on the rules of natural law. However, in the public sphere,

under certain conditions, legal relations precede public relations or may arise simultaneously. Based on the presence of private and public elements of the legal relationship, which may be dominated by either private or public (in particular, organisational) elements, Ye.O. Kharytonov, O.I. Kharytonova note that civil legal relations constitute a social connection between legally equal subjects who are holders of civil rights and obligations (regardless of their regulation by legislation) [21]. The outlined problem of the primacy of social relations, including legal relations in the field of medical law, acquires special significance also in the emergence of medical relations whose subjects are children. Notably, this is a kind of special connection of a special legal nature.

Articles 1-14 of the Civil Code of Ukraine (hereinafter referred to as the "CC of Ukraine")[1], refer to civil relations. Thus, according to A.S. Dovhert, the legislator emphasised the relative independence of the existence of civil (private) relations from the provisions of acts of civil legislation and state coercion [22]. It is known that acts of civil legislation, means of state influence, etc., can be applied to the regulation of relations in the medical sphere if disputes have arisen between the participants of such relations. Therefore, several problems arise in determining and describing the features of the subject composition of civil law in the medical field. The starting point is that the subjects of relations in the field of medical law mainly act as participants in civil relations, and therefore are described by civil status. According to Article 2 of the CC of Ukraine[2], participants in civil relations may be individuals and legal entities, the state of Ukraine, territorial communities, foreign states, and other subjects of public law. The above suggests that the legislator distinguishes between two types of subjects of civil relations: private law subjects and public law subjects. For public law persons, participation in medical relations is the main purpose and may also be conditioned by a particular situation. As for the participation of individuals in these legal relations, based on this approach, children as a special category of society certainly belong to this category of persons. This raises the question of the legal personality of the child in the medical relationship.

It is known that the legal status of a child and the extent of its legal capacity in medical relations depend on age and is divided into two periods: up to 14 years and from 14 to 18 years. In accordance with the provisions of Article 43 of Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare"[3], medical intervention to a patient under the age of 14 (a minor patient) is carried out with the consent of the child's legal representatives. In turn, the provision of medical care to an individual who has reached 14 years of age is carried out with his or her own consent. In the case of exercising the right to consent to medical care, the consent must meet the following criteria of legality: a) awareness; b) voluntariness; c) competence [23]. In accordance with Part 2 of Article 284 of the CC of Ukraine[4] an individual who has reached 14 years

[1] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text
[2] *Ibidem*, 2003.
[3] Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" No 2801-XII. (1992, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2801-12#Text
[4] Civil Code of Ukraine, op. cit.

of age and who has applied for medical treatment has the right to choose a doctor and to choose methods of treatment in accordance with the obtained recommendations. However, the right to receive information is governed by Part 1 of Article 285 of the CC of Ukraine[1] and in Part 1 of Article 39 of the "Fundamentals of the Legislation of Ukraine on Healthcare"[2], which states that an adult individual has the right to accurate and complete information about the state of his or her health, including access to relevant medical documents relating to their health. The above suggests that the right to information, which is a component of the right to consent, cannot be exercised by persons aged 14 to 18 years. Admittedly, the acquisition of full civil capacity (emancipation) will not affect the legal possibility to obtain information about the state of health. Thus, a minor (child) is effectively deprived of informed consent or refusal of medical intervention until he or she reaches the age of eighteen.

According to Part 2 of Article 285 of the CC of Ukraine[3], parents (adoptive parents), guardian, and trustee have the right to information about the health of the child or ward. If information about the disease can worsen the child's health, impair the process of treatment, health professionals have the right to provide incomplete information about the health of the individual, to limit their access to certain medical documents. In urgent cases, in the presence of a real threat to the life of an individual, medical care is provided without the consent of the individual or his or her parents (adoptive parents), guardian, or trustee. The consent of the patient or his or her legal representative to the medical intervention is not required only in the presence of signs of direct threat to the patient's life, provided that it is impossible for objective reasons to obtain consent for such intervention from the patient or his or her legal representatives. According to Article 44 of the "Fundamentals of the Legislation of Ukraine on Healthcare"[4], new methods of prevention, diagnosis, treatment, rehabilitation, and medicines that are under consideration in the prescribed manner, but not yet approved for use, and unregistered medicines can be applied or administered to a person under 14 years of age (minor) with the written consent of his or her parents or other legal representatives, and to a person aged from 14 to 18 – with his or her written consent and the written consent of their parents or other legal representatives.

In practice, the problematic issue is the application of the rule on parental consent. According to the literal interpretation, both parents, the mother and the father, must consent to the provision of medical care. In practice, if the parents are married, then they are guided by the provision of Part 3 of Article 54 of the Family Code of Ukraine (hereinafter referred to as "the FC of Ukraine")[5], which stipulates that the actions of one spouse regarding the life of the family are committed with the consent of the other spouse, health professionals provide aid to the child with the consent of one parent. If the

[1] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text

[2] Law of Ukraine No 2801-XII "Fundamentals of the Legislation of Ukraine on Healthcare". (1992, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2801-12#Text

[3] Civil Code of Ukraine, op. cit.

[4] Law of Ukraine No 2801-XII "Fundamentals of the Legislation of Ukraine on Healthcare", op. cit.

[5] Family Code of Ukraine. (2002, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2947-14#Text

other parent objects to the child's medical care, the dispute between the parents may be resolved by a guardianship authority or a court. Unfortunately, there are currently many questions regarding the consent to the treatment of children whose parents are outside Ukraine, live separately or are not married or whose whereabouts are unknown. There is also no mechanism for the parents' transfer of authority to treat children to another person. Situations of abortion in persons aged 14 to 18 without the consent of parents and other legal representatives are also common. According to the order of the Ministry of Health No. 423 "On approval of the Procedure for providing comprehensive medical care to pregnant women during unwanted pregnancy, forms of primary accounting documentation and instructions for their completion" dated 24.05.2013[1], artificial termination of unwanted pregnancy, the term of which is from 12 to 22 weeks, if there are grounds of a non-medical nature specified in the Procedure, are carried out at the request of a pregnant minor woman or her legal representatives and in accordance with the provided documents confirming these circumstances.

According to Article 13 of the Law of Ukraine "On the use of transplantation of anatomical materials to humans"[2], if the recipient has not reached 14 years of age or declared legally incapable, transplantation is performed with the consent of objectively informed parents or other legal representatives. In case of recipients over the age of 14 or who are legally recognised as having limited legal capacity, transplantation is used with the consent of such objectively informed persons. In case of refusal of parents or other legal representatives of the recipient to provide medical care with the use of transplantation to a person under 14 years of age or a person declared legally incapable in accordance with the law, if such refusal may lead to serious consequences for the recipient, the head of healthcare institution must immediately notify the guardianship authority, which no later than 24 hours from the date of notice decides to consent or disagree to the provision of medical aid to such a person with the use of transplantation, which can be appealed in accordance with the law, including in court.

According to the requirements of Article 14 of the Law of Ukraine "On the Use of Transplantation of Anatomical Materials to Humans"[3], a living donor of anatomical materials can only be an adult legally capable individual, except for the donation of hematopoietic stem cells, provided there is no adult legally capable compatible donor for medical reasons; the recipient is a full brother or full sister of the donor; transplantation is performed to save the life of the recipient. One of the possible risks is the birth of a child, including through ART programmes, only to become a donor for a sick child. Currently there is no mechanism in Ukraine for monitoring the living conditions of this child. Some problematic issues concern the child's right to refuse treatment. Thus, according to the provisions of Article 43 of the "Fundamentals of the Legislation of Ukraine on

[1] Order of the Ministry of Health No 423 “On approval of the Procedure for providing comprehensive medical care to pregnant women during unwanted pregnancy, forms of primary accounting documentation and instructions for their completion”. (2013, May). Retrieved from https://zakon.rada.gov.ua/laws/show/z1095-13#n25

[2] Law of Ukraine No 2427-VIII “On the use of transplantation of anatomical materials to humans”. (2018, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2427-19#Text

[3] Law of Ukraine No 2427-VIII “On the use of transplantation of anatomical materials to humans”, op. cit.

Healthcare"[1], a patient who has acquired full civil capacity and is aware of the importance of their actions and can manage them, has the right to refuse treatment. According to Part 4 of Article 284 of the CC of Ukraine[2] an adult legally capable individual who is aware of the significance of one's actions and can manage them has the right to refuse treatment. The analysis of the above provisions indicates the existence of a certain conflict, as the concepts of "full civil capacity" and "adulthood" are not identical. After all, adulthood occurs at the age of 18, while full civil capacity can occur in an individual before he or she reaches 18 years, in particular in cases of marriage registration, employment contract, as well as minors registered by the mother or father of the child. Full civil capacity may be granted to an individual who has reached the age of sixteen and is registered as a business entity. Thus, the above suggests that there is a problem of application of special and general regulations in the medical field, especially when a child chooses between the enjoyment of the right to treatment or refusal thereof. Guided by the rules on special regulations, in the above case, the application of competition rules is subject to a special regulation – "Fundamentals of the Legislation of Ukraine on Healthcare".

Since medical care is provided to children with the consent of parents, the latter have the right not to give such consent, or to withdraw it later. In the context of granting consent to certain types of medical treatment, an interesting situation is highlighted in the ECtHR decision (*Case of Glass v. the United Kingdom*) [24], where the applicant's son was treated without her consent and received treatment as directed by doctors without a court order. The Court concluded that the authorities' decision to ignore the second applicant's objection to the proposed treatment without the permission of the judicial authorities had violated Article 8 of the Convention[3]. However, in accordance with Ukrainian legislation, in particular Article 43 of the "Fundamentals of the Legislation of Ukraine on Healthcare"[4], if the refusal is given by the patient's legal representative and it may have serious consequences for the patient, the doctor must notify the guardianship authorities. According to the Law of Ukraine "On Child Protection"[5], in case of refusal to provide the child with the necessary medical care, if it threatens its health, parents or persons replacing them are liable under the law. Medical staff in case of a critical condition of a child in need of urgent medical intervention is obliged to warn the parents or persons replacing them of the responsibility for leaving the child in danger (Article 12). The refusal of a child or its parents (adoptive parents), guardians, or custodians to consent to prevention (including vaccination) makes it impossible, in particular, to properly exercise the child's right to education. Indicative in this sense is the Resolution of the Supreme Court of the panel of judges of the First Judicial Chamber of the Civil

[1] Law of Ukraine No 2801-XII "Fundamentals of the Legislation of Ukraine on Healthcare". (1992, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2801-12#Text

[2] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text

[3] Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text

[4] Law of Ukraine No 2801-XII "Fundamentals of the Legislation of Ukraine on Healthcare". (1992, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2801-12#Text

[5] Law of Ukraine No 2402-III "On Child Protection". (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2402-14#Text

Court of Cassation of April 17, 2019 in case No. 682/1692/17[1] on the claim for the obligation not to interfere with the acquisition of preschool education. The content of this Resolution emphasises the predominance of the principle of public interest over personal interests in matters of compulsory vaccination of the population against particularly dangerous diseases and the possibility of exercising the child's right to preschool education. The right of the plaintiff's minor son to education in a preschool educational institution was, in view of public interests, temporarily limited (until vaccination, improvement of the epidemiological situation, obtaining a positive opinion of the medical advisory commission) due to the fact that the plaintiff herself, having distrust in the quality of the vaccine (without properly motivating her distrust or inability to use the vaccine she trusts), did not follow the calendar of mandatory vaccinations and refused the next vaccination of the child[2].

International instruments on the rights of the child identify two main principles in the field of children's health. The first is the principle of the best interests of the child. In all actions against children, whether carried out by public or private social security institutions, courts, administrative or legislative bodies, priority is given to the best interests of the child (Article 3 of the UN Convention on the Rights of the Child)[3]. Article 1 of the Law of Ukraine "On Child Protection"[4] stipulates that ensuring the best interests of the child – actions and decisions aimed at meeting the individual needs of the child according to his or her age, sex, health, development, life experience, family, cultural and ethnic belongings and take into account the opinion of the child, if he or she has reached such an age and level of development that can express it. The second is the principle of child participation. Article 12 of the UN Convention on the Rights of the Child establishes the obligation of States parties to ensure that a child who is capable of expressing his or her views has the right to express those views freely on all matters affecting the child, with due regard to the child's age and maturity.

According to the Recommendations of the Committee of Ministers of the Council of Europe on Child-Friendly Health, approved by the Committee of Ministers of the Council of Europe at the 112th Meeting of the Ministers' Deputies on 21 September 2011[5], there are five principles of child-friendly healthcare, among which is participation, which means that children should have the right to be informed, listened to or advised, to express their opinion independently of their parents and the right to have their opinion to be taken into account.

[1] Resolution of the Supreme Court in the composition of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation in the case No 682/1692/17. (2019, April). Retrieved from http://www.reyestr.court.gov.ua/Review/81652333

[2] Resolution of the Supreme Court in the composition of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation in the case No 682/1692/17. (2019, April). Retrieved from http://www.reyestr.court.gov.ua/Review/81652333.

[3] Convention on the Rights of the Child. (1989, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_021#Text

[4] Law of Ukraine No 2402-III "On Child Protection". (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2402-14#Text

[5] Council of Europe guidelines on child-friendly healthcare adopted by the Committee of Ministers at the 1121st meeting of the Ministers' Deputies. (2011, September). Retrieved from https://rm.coe.int/090000168046ccef

CONCLUSIONS

Legal relations in the field of medical law also acquire special significance with the participation of a special subject – a child. It is a kind of special connection of a special legal nature. The level of children's participation depends on their age, abilities, maturity, and the importance of the decision to be made. The legal status of a child and the extent of his or her legal capacity in medical relations depend on age and is divided into two periods: up to 14 years and from 14 to 18 years. Children, taking into account their age and maturity, as well as their families, should be fully informed and involved. According to the current legislation, the right to be informed, which is a component of the right to consent, cannot be exercised by persons aged 14 to 18, and the acquisition of full civil capacity (emancipation) will not affect the legal possibility to obtain health information. In practice, the problem lies with the application of the rule on parental consent to provide medical care to the child. Unfortunately, currently there are many questions regarding the consent to the treatment of children whose parents are outside Ukraine, live separately, or are not married, or whose whereabouts are unknown. There is also no mechanism for parents to delegate the authority to treat children to another person. Since medical care is provided to children with the consent of parents, the latter have the right not to give such consent, or to withdraw it later.

International instruments on the rights of the child distinguish two basic principles in the field of child health: the principle of the best interests of the child and the principle of the participation of the child. Children should be encouraged to exercise their right to take an active part in making decisions about their health. There are problems with the application of special and general regulations in the medical field, especially when a child chooses the right to undergo treatment or to refuse from it.

The issues outlined in the study are important both for health professionals and directly to legal practitioners, as they will serve in the future for a more detailed scientific analysis of children's rights in the medical field, including their protection, as well as developing a common legal approach and judicial practice.

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