



Wiadomości Lekarskie

Czasopismo Polskiego Towarzystwa Lekarskiego



Pamięci
dra Władysława
Biegańskiego

TOM LXXII, 2019, Nr 12 cz. II, grudzień

Rok założenia 1928



Ministry of Science
and Higher Education

Republic of Poland

The journal *Wiadomości Lekarskie* is financed under Contract No. 888/P-DUN/2019 by the funds of the Minister of Science and Higher Education.

The Journal has been included in the register of journals published by The Polish Ministry of Science and Higher Education on July 31st, 2019 with 20 points awarded.

Wiadomości Lekarskie is abstracted and indexed in: PubMed/Medline, EBSCO, SCOPUS, Index Copernicus, Polish Medical Library (GBL), Polish Ministry of Science and Higher Education.

Copyright: © ALUNA Publishing.

Articles published on-line and available in open access are published under Creative Commons Attribution-Non Commercial-No Derivatives 4.0 International (CC BY-NC-ND 4.0) allowing to download articles and share them with others as long as they credit the authors and the publisher, but without permission to change them in any way or use them commercially.

Zasady prenumeraty miesięcznika Wiadomości Lekarskie na rok 2020

Zamówienia na prenumeratę przyjmuje Wydawnictwo Aluna:

– e-mailem: prenumerata@wydawnictwo-aluna.pl

– listownie na adres:

Wydawnictwo Aluna

ul. Z.M. Przesmyckiego 29, 05-510 Konstancin-Jeziorna

**Prosimy o dokonywanie wpłat na numer rachunku Wydawnictwa:
Credit Agricole Bank Polska S. A.: 82 1940 1076 3010 7407 0000 0000**

Cena prenumeraty dwunastu kolejnych numerów: 240 zł/rok (w tym VAT)

Cena prenumeraty zagranicznej: 120 euro/rok.

Cena pojedynczego numeru – 30 zł (w tym VAT) + koszt przesyłki.

Przed dokonaniem wpłaty prosimy o złożenie zamówienia.

CONTENS / SPIS TREŚCI

ORIGINAL ARTICLES / PRACE ORYGINALNE

| | |
|--|------|
| Oleksandra H. Yanovska, Viktor V. Horodovenko, Anna V. Bitsai LEGAL MECHANISMS OF PATIENT'S RIGHTS PROTECTION | 2399 |
| Nataliya Gutorova, Oleksii Soloviov, Dimitri Olejnik IMPROPER HEALTHCARE MARKETING: GERMAN AND UKRAINIAN EXPERIENCE IN PREVENTION | 2404 |
| Yuriy V. Baulin, Kateryna O. Pavshuk, Inna A. Vyshnevska RISK IN THE PERFORMANCE OF MEDICAL ACTIVITIES: MEDICO-LEGAL OVERVIEW | 2410 |
| Oksana V. Kaplina, Svitlana L. Sharenko, Nikolay Y. Shumylo MEDICAL ERRORS: PATIENTS' OPINION, LAWYERS' STANDPOINT, MEDICAL DOCTRINE AND PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS | 2416 |
| Vitalii M. Pashkov, Andrii O. Harkusha ENFORCEABILITY OF NON-COMPETE AGREEMENTS IN MEDICAL PRACTICE: BETWEEN LAW AND ETHICS | 2421 |
| Valery F. Obolentsev, Oleh M. Hutsa, Olga B. Demchenko INFORMATION TECHNOLOGY OF VERIFICATION OF ALGORITHMIC OF MEDICAL REGULATIONS | 2427 |
| Vladyslava S. Batyrgareieva, Alina V. Kalinina, Andriy M. Babenko ENERGY INFRASTRUCTURE OBJECTS OF UKRAINE AS A PUBLIC HEALTH THREAT: CRIMINOLOGICAL ANALYSIS | 2434 |
| Borys V. Babin HEALTH CARE FOR CRIMEAN RESIDENTS: INTERSTATE CONFLICT CHALLENGES AND POSSIBLE LEGAL AND ORGANIZATIONAL SOLUTIONS | 2441 |
| Olga I. Tyshchenko, Olena A. Leiba, Ivan A. Titko EUROPEAN STANDARDS OF RESPECT FOR HUMAN RIGHTS IN THE APPLICATION OF COMPULSORY MEDICAL MEASURES IN CRIMINAL PROCEEDINGS | 2445 |
| Andriy Babenko, Oleksandr Mazurenko, Anastasiia Mernyk CHRONIC ALCOHOLISM TREATMENT IN CUSTODIAL FACILITIES: UKRAINE'S EXPERIENCE DURING INDEPENDENCE | 2451 |
| REVIEW ARTICLES / PRACE POGLĄDOWE | |
| Mariya G. Shul'ha, Anatolii V. Mazur, Iurii V. Georgiiievskyy LEGAL REGULATION OF IMPORTATION OF MEDICINAL PRODUCTS: EUROPEAN STANDARDS AND NATIONAL PRACTICE | 2457 |
| Viacheslav I. Borysov, Olena I. Antoniuk, Ivan I. Vyshnyvetsky SPECIAL FEATURES OF THE LEGAL STATUS OF THE RESEARCH SUBJECT IN CLINICAL TESTING OF MEDICINES | 2464 |
| Igor Y. Krynytskyi, Petro P. Noha, Serhii V. Sarana SERIALIZATION AS NEW QUALITY CONTROL SYSTEM OF MEDICINAL PRODUCTS | 2473 |
| Borys O. Lohvynenko, Viktor S. Sezonov, Tetiana A. Frantsuz-Yakovets TENDENCIES FOR THE FALSIFICATION OF MEDICINAL PRODUCTS IN UKRAINE: GENERAL ANALYSIS AND AREAS OF COUNTERACTION | 2478 |
| Antonina G. Bobkova, Yuliia M. Pavliuchenko, Andrii M. Zakharchenko LEGAL SECURITY OF AGRICULTURAL PRODUCTS AS A CONDITION PUBLIC HEALTH SYSTEM'S DEVELOPMENT | 2484 |
| Alla K. Sokolova, Tetyana B. Vilchuk, Maryna K. Cherkashyna ENSURING THE ENVIRONMENTAL RIGHTS AS A PREREQUISITE FOR THE RIGHTS TO HEALTH IN UKRAINE AND THE EUROPEAN UNION | 2489 |
| Sabriie S. Shramko, Volodymyr V. Golina, Maxim G. Kolodyazhny ALCOHOLISM AS A MEDICAL AND SOCIO-LEGAL PROBLEM AND WAYS TO SOLVE IT | 2496 |
| Lidiya M. Moskvych, Oksana Z. Khotynska-Nor, Ganna A. Biletska DISEASE AS INTERFERENCE FOR JUDGE'S PROFESSION | 2501 |

| | |
|--|------|
| Yuliia Yu. Zabuha, Tetiana O. Mykhailichenko, Olena V. Morochkovska OVERVIEW AND ANALYSIS OF OCCUPATIONAL RISKS IN HEALTHCARE OF EASTERN EUROPE COUNTRIES | 2510 |
| Lyudmila M. Demidova, Evgenia E. Demidova, Alexander Y. Dudchenko VACCINATION AGAINST INFECTIOUS DISEASES: INTERNATIONAL STANDARDS OF PATIENT'S RIGHTS | 2518 |
| Valentyna I. Borysova, Kseniia Yu. Ivanova, Larysa V. Krasytyska PROBLEMS OF ASSISTED REPRODUCTIVE TECHNOLOGY'S APPLICATION | 2524 |
| Oksana Kuchynska, Oksana Kashyntseva, Yuliya Tsyganyuk INTERNATIONAL COOPERATION IN CRIMINAL PROCEEDINGS INVOLVING ASSISTED REPRODUCTIVE TECHNOLOGIES | 2531 |
| Volodymyr V. Iemelianenko, Alesia V. Gornostay, Alona V. Ivantsova REPRODUCTIVE RIGHTS VIOLATIONS: FORCED STERILIZATION AND RESTRICTION OF VOLUNTARY STERILIZATION | 2536 |
| Mykola D. Vasilenko, Anastasiia O. Zaporozhchenko, Borys A. Perezhniak PRESUMPTION OF CONSENT IN THE ECHR PRACTICE AND LEGAL SYSTEMS: LEGAL MODELS FOR ORGAN REMOVAL FOR TRANSPLANTATION | 2541 |
| Marianna Liubchenko, Oleksii Liubchenko, Kateryna Buriakovska HEALTHCARE FOR MIGRANT WORKERS: HUMAN RIGHTS' ASPECT | 2547 |
| Anzhela B. Berzina, Ievgeniia V. Kovalevska, Inna V. Berdnik ENFORCEMENT OF THE RIGHT TO MEDICAL CARE FOR PATIENTS STAYING ABROAD | 2553 |
| Tetiana L. Syroid, Lina O. Fomina THE ROLE OF SMART TECHNOLOGY IN PROMOTING THE RIGHT TO HEALTH OF OLDER PERSONS | 2558 |
| Alexander D. Dovhan, Yan O. Bernaziuk, Taras Y. Tkachuk INTERNET OF THINGS TECHNOLOGIES IN MEDICAL SECTOR: CYBER SECURITY ISSUES | 2563 |
| Oleh A. Zaiarnyi ASSESSMENT CRITERIA FOR THE LAWFULNESS OF ARTIFICIAL INTELLIGENCE TECHNOLOGIES APPLICATION IN HEALTH CARE | 2568 |
| Yevgen L. Streltsov, Eduard E. Kuzmin ON MEDICAL PROFESSIONALS AND CRIMINAL LIABILITY: A DARK SIDE OF GOOD INTENTIONS | 2573 |
| Andrii V. Lapkin, Daryna P. Yevtieieva, Vladyslav V. Karelin INTERNATIONAL STANDARDS FOR APPLICATION OF COMPULSORY MEDICAL MEASURES | 2579 |
| Olha H. Shylo, Nataliia V. Glynska, Oleksii I. Marochkin CRITERIA FOR RECOGNITION OF APPROPRIATE MEDICAL ASSISTANCE TO DETAINEES IN THE EUROPEAN HUMAN RIGHTS COURT'S PRACTICE | 2585 |
| Oleksandr V. Petryshyn, Svitlana H. Serohina, Mikhail V. Romanov PENITENTIARY HEALTHCARE: LEGAL AND PRACTICAL ASPECTS | 2591 |
| Vasyl Y. Tatsiy, Vladimir A. Zhuravel, Galina K. Avdeeva INDEPENDENT FORENSIC MEDICAL EXAMINATION AS A MEAN OF PROVING THE FACTS OF A TORTURE USAGE | 2596 |
| Daria I. Klepka, Iryna O. Krytska, Anna S. Sydorenko OBLIGATION OF THE DISCLOSURE OF MEDICAL CONFIDENTIAL INFORMATION IN CRIMINAL PROCEEDINGS | 2602 |
| Volodymyr I. Maryniv, Mykhailo O. Karpenko, Oleksandr I. Berezhnyi THE MEDICAL CRITERION OF RECOGNITION OF PERSON'S INSANITY DEFENCE: UKRAINIAN AND FOREIGN EXPERIENCE | 2609 |
| Maryna G. Motoryhina, Inna L. Bepalko, Vladimir V. Zuiiev LEGAL REGULATION OF COOPERATION IN THE FIELD OF FORENSIC MEDICAL EXAMINATION IN CRIMINAL PROCEEDINGS BETWEEN UKRAINE AND THE REPUBLIC OF POLAND | 2615 |
| Andrii Kuntii, Viacheslav Navrotskyi, Oleksiy Avramenko USE OF MEDICAL KNOWLEDGE BY A SPECIALIST IN THE INVESTIGATION OF PREMEDITATED MURDER COMMITTED IN A STATE OF STRONG COMMOTION | 2620 |
| Tetiana V. Kurman, Oleksandr V. Kurman, Oksana M. Tuieva THE LEGAL FOUNDATIONS OF FOOD SAFETY AS A MEANS OF PROVIDING PUBLIC HEALTH IN GLOBALIZATION | 2626 |

REVIEW ARTICLE
PRACA POGLĄDOWA

ENFORCEMENT OF THE RIGHT TO MEDICAL CARE FOR PATIENTS STAYING ABROAD

DOI: 10.36740/WLek201912226

Anzhela B. Berzina¹, Ievgeniia V. Kovalevska¹, Inna V. Berdnik²

¹ BOGOMOLETS NATIONAL MEDICAL UNIVERSITY, KYIV, UKRAINE

² CHERNIHIV NATIONAL UNIVERSITY OF TECHNOLOGY, CHERNIHIV, UKRAINE

ABSTRACT

Introduction: The right to health care is one of the fundamental human rights, at the same time the right to medical care is the main component of such right. The issue of medical care obtaining while staying in the territory of a foreign country is relevant for all categories of foreign nationals – those who during a temporary being outside their own country have a need to receive unplanned or planned medical care.

The aim: To study the peculiarities of enforcement of the right to medical care for patients staying abroad and to formulate proposals on legislation improvements on the basis of the analysis of the international law and national legislation of the European Union countries.

Materials and methods: International acts and practice of the European Union legislation application in the field of patients' rights protection abroad were used in the study. The methodology of the study is based on a combination of philosophical approaches, general scientific and special legal research methods.

Conclusions: On the basis of the international treaties, the practice of application of the European Union legislation analysis we can conclude that in the EU the right of an insured person (patient) while receiving unplanned medical care in another EU Member State is ensured by a number of regulatory requirements and confirmed by the European Medical Insurance Card.

KEY WORDS: patient, medical care, right to health care, implementation, foreign nationals

Wiad Lek 2019, 72, 12 cz. II, 2553-2557

INTRODUCTION

The deepening of integration has led to a significant increase in the influence of international organizations on all spheres of public life, and on people's mobility in particular. Health care in a globalized environment is not confined by national borders, and as a result of increased mobility of people more and more issues of social security and medicine are arising. One of such an issue is the right to access to medical care for citizens while they are outside their home country. This problem is derived from two criteria: the need for access to unplanned medical care during temporary staying abroad, as well as the availability of the right to access to planned medical care, that is, when a person insured in one country has the need to obtain some medical services outside of that country. The question naturally arises as to the grounds, guaranteed scope and conditions for receiving medical care by such patient – a national of a foreign country. The issue of receiving medical care staying in the territory of a foreign country is relevant for all categories of foreign nationals – those who, during a temporary being abroad, have the need to receive unplanned or planned medical care.

The international legal regulation of the right to receive medical care is not perfect; the existing interstate agreements contain only general provisions in the field

of the health care Law. At the same time, the acts of the national legislation of the states have provisions that fragmentarily regulate the rights of foreign patients to medical care.

Despite the fact that Ukraine is not a member of the European Union, our country clearly defined the integration vector of its development, so the reforms of the health care system should be based on the European values and standards of medical care. Thus, the creation of an effective mechanism for ensuring the citizens with rights that are equal to European Union citizens' ones in terms of accessibility and quality of healthcare should be a strategic aim.

THE AIM

To study the peculiarities of enforcement of the right to medical care for patients staying abroad and to formulate proposals on legislation improvements on the basis of the analysis of the international law and national legislation of the European Union (EU) countries.

MATERIALS AND METHODS

International acts in the field of protection of the rights of the patients staying abroad, in particular, legislative acts

of the EU states, court decisions of the European Union, national legislation of foreign countries, scientific publications of the leading experts in the field of medical law, legislation of Ukraine in the field of protection of patients' rights to medical care were used in the study. Access to court decisions and legislative acts was obtained via official websites of the Court of Justice of the European Union, the Supreme Court, the Verkhovna Rada of Ukraine, the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine. The analysis and comparison of the medical laws' provisions of the EU states and Ukraine were done in the course of the study. In addition, scientific publications of the leading experts in medical law, current international and national legislation were used.

The methodology of the study is based on a combination of philosophical approaches, general scientific and special legal methods of research. In particular, the systematic method was used to carry out a systematic analysis of the current EU legislation on the procedure for receiving medical care by the patients abroad. The structural-and-functional method allowed us to examine the main aspects of proceedings of the EU court. The comparative-and-legal method has made it possible to compare EU legislation on access of patients to medical care with Ukrainian national health legislation. The legal modeling method was used to formulate proposals for improving current legislation.

Problems of enforcement of the right to medical care for patients were studied in science, however, due attention was not paid to the issues of enforcement of the right to medical care for patients staying abroad. Therefore, the chosen topic is obviously relevant.

REVIEW AND DISCUSSION

Provision on the human right to health is contained in the Preamble to the Charter of the World Health Organization (hereinafter - WHO), according to which: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition" [1]. The Universal Declaration of Human Rights, although it does not include a direct reference to the right to health care, points to the human right to the standard of living that is necessary for maintaining health (and for medical care) [12]. Also, the human right to health is enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966, which emphasizes "the recognition by States of the right of every person to the highest attainable level of physical and mental health" [3]. At the same time, Article 7 of the International Covenant on Civil and Political Rights, 1966, contains the provisions on the right not to be subjected to the medical and scientific experiments without consent [4]. The studied provisions allows to conclude that the right to health care is inextricably connected with other social-and-economic, civil-and-political rights and other factors, such as living conditions, infringement of physical or mental inviolability, which can directly affect the level of health, and therefore, the right to health care itself.

According to V.V. Sokurenko, the imperative link to the state and its institutions concerning recognition, respect and protection of the rights and freedoms of a human and citizen is formed in a society that perceives the human, his internal freedom and rights as a manifestation of that freedom, as the most important social value [5].

The implementation of the human right to health care by the state is a mechanism of creating the conditions for equal access to medical care based on the resources of each individual state. As the scientific literature indicates, ensuring of equal access to medical care does not mean providing the same amount of medical services for all categories of patients. Each state, first of all, ensures the enforcement of the rights of its citizens, and the regime for providing of medical care to non-citizens is regulated by the national legislation [6]. Despite the proclamation of the general right to health care, there are no provisions of the international acts that disclose the content, the mechanism of providing guarantees and the enforcement of such a right. Of course, the right to health care is a set of rights that make up one whole: the right to access to medical care, the right to be informed about the condition of providing of such care, and also the right to safe environment.

However, the enforcement of the human right to health care is impossible without the mutual cooperation of states [7], since state borders are not an obstacle for the spread of epidemics and infectious diseases. In addition, many international legal acts contain the direct obligation of the states concerning establishing of international cooperation in a wide variety of fields including health care. Thus, Article 56 of the Charter of the United Nations (hereinafter - "UN") of 1945 contains a provision under which Member States are required to undertake both independent and collective actions in coordination with the United Nations on the issues of medical care [8]. These include ensuring of equal access to medical care.

A particular problem is presented by the situation in which non-nationals of the states apply for receiving of such care. States may not restrict the right to access to medical care on the basis of the patient's nationality. This follows from the provisions of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 1965 concerning removing of administrative restrictions on using of social and economic rights by non-nationals. The above acts proclaim the human right to health care, but do not contain specific provisions on the mechanisms for proving of such a right.

The Council of Europe adopted the European Convention on Social and Medical Assistance in 1953 [9]. The Convention's provisions specify providing of medical and social care to the nationals of the contracting states when staying outside of their own country on an equal basis with the nationals of the country where they stay, as well as to stateless persons in case of legality of their staying in the territory of the contracting state. However, the Convention norms apply only to those who do not have sufficient livelihood.

The European Social Charter of 1996 [10] in Article 13 regulates the right to social and medical care, which should

be provided to any person who does not have sufficient livelihood or is unable to obtain it through his own efforts or from other sources. The ratification of the Charter on the basis of the Law of Ukraine “On Ratification of the European Social Charter (Revised)” gave a qualitatively new impetus to the social democratic changes in Ukraine [11].

One way or another, the main volume of the enforcement of the right to health care, including medical care, is governed by the national legislation. A person who is in the territory of another state falls under the jurisdiction of that state, in the case of providing medical care to a foreign person, the provisions of domestic law usually considering the provisions of international law is applied. However, depending on the country the legal status of such a patient may vary: it depends on the existence of international agreements in the field of medicine and health care between the country of stay and the country of citizenship, on participation in conventions governing the right to medical care, and state participation in the international intergovernmental organizations, integration projects, etc. In addition, there is a social and health insurance system in some Member States of the European Union, a nationally funded public health system in others. In both cases it is possible to conclude on the “medical-and-social state security” or “health care system”.

The Treaty on European Union, signed on 7 February 1992 in Maastricht (hereinafter TEU) and the Treaty on the Functioning of the European Union [13] (hereinafter - TFEU), signed in Rome on 25 March 1957 are the main sources of European Union law [12] which are of supreme legal force.

The Preamble to the Treaty on European Union emphasizes the direct link between Member States and the fundamental social rights set out in the European Social Charter of 1961 [14], which also include the right to health care. Therefore, the right to health care is one of the fundamental provisions on which the European Union is built. Moreover, the objectives of the Union as defined in the Treaties are the well-being of the peoples of Europe, the promotion of social justice and social protection, the fight against discrimination and social marginalization, as well as the achievement of a high level of health care of the citizens.

Receiving of medical care in another country is always determined by different reasons. If medical care in another country can be provided without delay, by highly qualified specialists, will meet all the requirements of quality and safety, as well as the possibility of providing the most effective treatment, not available in the territory of their own country, then the patients will be motivated to receive such care in another country.

Since 1998, the Court of Justice of the European Union (hereinafter - the Court of EU) has begun to study the practice in this field based on the provisions of the EU treaties, such as the freedom of movement of persons, capitals and services principle. As a consequence, this raised a question in the context of the right to compulsory health insurance in an EU Member State in which the patient is not

insured. In this regard EU Member States are adjusting their national health systems in accordance with the regulations and norms established by the European Union.

The European Commission, as the EU’s executive body, held many consultations on health care issues. These actions resulted in the adoption, in particular, of Directive 2011/24/EU of the European Parliament and of the Council of the European Union of 9 March 2011 “On application of the patients’ rights to cross-border health care services” [15] (hereinafter - Directive 2011/24/EU).

According to Article 3 (e) of Directive 2011/24/EU, cross-border medical care is understood as medical care provided or received in other Member State of EU than the country of the insured person. This definition is rather narrow, since the sphere of its application is the issue of providing or receiving medical care within the territory of the European Union. At the same time, the tendency of providing cross-border medical care is only increasing every year, and it is possible to talk about the development of cross-border medical care not only within the EU but also within other international organizations. Within the EU cross-border medical care is governed by Directive 2011/24/EU and the European Economic Community (hereinafter - EEC) Regulations No.3/58 on social security for migrant workers (entered into force on 1 January 1959), No.1408/71, EU Regulations No.883/2004 [16] and No.987/2009 [17], which the social security system of the EU Member States is coordinated by.

Coordinating Regulations No.883/2004 and No.987/2009 regulate the procedure for receiving both planned and unplanned medical care. In this case, medical care to the patients from other EU countries is provided only in public health care institutions. At the same time, Directive 2011/24/EU does not contain provisions on their application in cases of unplanned medical care. The provisions of the Directive regulate the rights of the patients traveling outside the country for the purpose of receiving medical care. As a conclusion, the Directive applies only in cases of planned medical care. However, the Administrative Commission of the European Commission in its decision explained that the provisions of Directive 2011/24/EU are also applied to the cases of unplanned medical care. This leads to the need to amend Article 1 of Directive 2011/24/EU on patients’ rights to cross-border services in the field of health care, stating that the provisions of Directive 2011/24/EU are expanded to the situations of providing both planned and unplanned medical care.

Thus, the EU in accordance with the ordinary legislative procedure, determines the volume of the rights of third-country nationals legally residing in the territory of the Union, including conditions regulating freedom of movement and residence in other EU Member States (other than the country of residence). These provisions are important because Article 63 p.4 of the Treaty on European Union (equivalent to Article 79 p.2 of the Treaty on the Functioning of the European Union) was used to extend the scope of implementation of regulations of the EU (and, accordingly, regulation of cross-border health care) to third-country nationals.

The patient has the right to free emergency medical care when temporarily staying abroad in the territory of another EU Member State, in such cases the patient does not have to pay in advance for provided medical services. That is, a foreign patient is subject to the same conditions as local patients who are covered by the state social security system upon presentation of a European Health Insurance Card (hereinafter - EHIC). Thus, if local patients do not have to pay for the provided medical services, then the foreign patient also does not have to pay [18, 19]. However, this rule does not apply to the persons residing abroad permanently.

In addition to the restrictions laid down by the TFEU, there are restrictions created by the case law of the EU Court. In some cases, restrictions on the freedom to provide care may be a matter of national interests for Member States. For example, limiting the amount of social security treatment received abroad as a way to maintain a financial balance in the national health care system. However, as stated in doctrine, the principle of proportionality must be applied in all cases even when it comes to the protection of national interests [20].

The specificity of the right to medical care enforcement in Ukraine by the foreigners stems from the provisions of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, according to which the foreigners and stateless persons residing permanently in Ukraine, as well as those foreigners who have been granted refugee status in Ukraine, receive medical care on an equal basis with the Ukrainian citizens [21]. Other foreigners and stateless persons receive medical care in accordance with the procedure approved by the Decree of the Cabinet of Ministers of Ukraine No.121 of 19 March 2014. This procedure defines three categories of the foreigners and stateless persons: who resides or stays temporarily in the territory of Ukraine; who lives permanently in the territory of Ukraine; who is recognized as refugees or persons in need of additional protection.

The procedure of providing medical care also differs depending on the legal status of foreigners and stateless persons. In particular, medical care is provided to the foreigners and stateless persons who reside or stay temporarily in the territory of Ukraine on a paid basis, unless otherwise provided by the international treaties or laws of Ukraine. Medical care is provided at the expense of budgetary funds provided for this purpose in the state and local budgets to the foreigners and stateless persons permanently residing in the territory of Ukraine, to the foreigners and stateless persons recognized as refugees or persons in need of additional protection. The above provisions of the national legislation differ significantly from the provisions of the EU legislation on the rights of the foreigners to medical care.

Thus, relevant measures on the changes of the national legislation in the field of enforcement of the right to medical care by the foreigners in Ukraine have not been taken despite the declared intentions for an association between Ukraine and the European Union, which determines the perspectives for the further study of this issue and related legislative activity.

CONCLUSIONS

One can conclude that the right of an insured person (patient) in the EU to receive unplanned medical care in the territory of another EU Member State is ensured by a number of regulatory requirements and confirmed by the European Medical Insurance Card while analyzing the international treaties, the practice of applying the legislation of the European Union. However, there is a legal gap in the provision of unplanned medical care in the between two legal instruments (coordinating Regulations and Directive 2011/24/EU) governing patients' rights on cross-border health care. Coordinating Regulations No.883/2004 and No.987/2009 regulate the procedure for receiving both planned and unplanned medical care. In this case, medical care to the patients from other EU countries is provided only in public health care institutions. At the same time, Directive 2011/24/EU does not contain provisions on their application in cases of unplanned medical care. The provisions of the Directive regulate the rights of the patients traveling outside the country for the purpose of receiving medical care. It follows that the Directive applies only to the cases of planned medical care. However, the Administrative Commission of the European Commission in its decision explained that the provisions of Directive 2011/24/EU are also applied to the cases of unplanned medical care. This leads to the necessity to amend Article 1 of Directive 2011/24/EU on patients' rights to cross-border services in the field of health care, stating that the provisions of that Directive are expanded for providing both planned and unplanned medical care.

There is a need to develop and adopt a unified domestic legislative act on the rights of the patients receiving medical care abroad and to make corresponding changes to the legal acts on health care in accordance with the provisions of the Association Agreement between Ukraine and the European Union, under which the Contracting Parties should develop cooperation in the field of health care in order to improve its safety and protection of human health as a prerequisite for sustainable development and economic growth; which in turn determines the perspectives for further study of this issue.

REFERENCES

1. Valeev R, Vseobshchey deklaracii prav cheloveka – 60 let [Universal Declaration of Human Rights - 60 Years] *European Law Journal*. 2008;3:11–16 (Ru)
2. Universal Declaration of Human Rights from 10.12.1948 Available from: <https://www.un.org/en/universal-declaration-human-rights/> [reviewed 2019.09.10]
3. International Covenant on Economic, Social and Cultural Rights from 19.12.1966 Available from: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> [reviewed 2019.09.10]
4. International Covenant on Civil and Political Rights from 19.12.1966 Available from: http://www.un.org.ua/images/International_Covenant_on_Civil_and_Political_Rights_CCPR_eng1.pdf [reviewed 2019.09.10]
5. Sokurenko V. Prava liudyny yak fundamentalna tsinnist [Human Rights as Fundamental Value] National and international mechanisms for the protection of human rights: Abstracts of the All-Ukrainian Round Table (Harkiv KhNUVS 2016); 7-9 (Ua)

6. Bogdanova D. Sotrudnichestvo gosudarstv po obespecheniyu prava cheloveka na poluchenie medicinskoj pomoshchi pri nahozhdenii za predelami sobstvennogo gosudarstva' [Cooperation of States in Ensuring the Human Right to Receive Medical Assistance While Outside Their Own State] thesis abstract for obtaining the degree of Candidate of Law. 2013:15–16 (Ru)
7. Kapustin A. Pravo na ohranu zdorov'ya v mezhdunarodnom prave [The right to health care in international law] Modern problems of medical law and the right to health protection: materials of the international scientific-practical conference Moskou 2003;138–141 (Ru)
8. Charter of the United Nations from 26.06.1945. Available from: <https://www.un.org/en/charter-united-nations/index.html> [reviewed 2019.09.10]
9. European Convention on Medical and Social Services from 11.12.1953. Available from: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/014> [reviewed 2019.09.10]
10. European Social Charter (Revised): Council of Europe Charter from 03.05.1996. Available from: <https://www.coe.int/ru/web/conventions/full-list/-/conventions/treaty/163> [reviewed 2019.09.10]
11. Pro ratyfikatsiiu Yevropeiskoi sotsialnoi khartii (perehlianutoi): Zakon Ukrainy [About the ratification of the European Social Charter (revised): Law of Ukraine] №137-V vid 14 veresnya 2006 roku Available from: <https://zakon.rada.gov.ua/laws/show/137-16> [reviewed 2019.09.10] (Ua)
12. Law of the European Union: a Textbook for Master Students. Voronezh, 2016:78–100.
13. Treaty on the Functioning of the European Union from 26.10.2012. Available from: <https://www.refworld.org/docid/52303e8d4.html> [reviewed 2019.09.10]
14. Churchill R., Khaliq U. The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights? *European Journal of International Law*. 2004;Vol. 15(3):417–456.
15. Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (2011) OJ L88/45. Available from: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0045:0065:EN:PDF> [reviewed 2019.09.10]
16. Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland) Available from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R0883> [reviewed 2019.09.10]
17. Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland) Available from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0987> [reviewed 2019.09.10]
18. Case C-211/08 european Comission v Kingdom of Spain 2010 ECR-I-5627 paras 45-50 Available from: <http://www.brugesgroup.com/eu/the-yvonne-watts-case-the-eu-and-health-care.htm?xp=media> [reviewed 2019.09.10]
19. Case C-208/07 Petra von Chamier v Deutsche Angestellten-Krankenkasse 2009 ECR I-6095 para 75, relating to reliance on care Available from: <http://www.brugesgroup.com/eu/the-yvonne-watts-case-the-eu-and-health-care.htm?xp=media> [reviewed 2019.09.10]
20. Lenaerts K., Nuffel P., Bray R. *European Union Law*. London, 2011:280–284.
21. Pro pravovij status inozemciv ta osib bez gromadyanstva: Zakon Ukrainy [About the Legal Status of Foreigners and Stateless Persons: The Law of Ukraine] № 3773-VI vid 22.09. 2011 Available from: <https://zakon.rada.gov.ua/laws/show/3773-17> [reviewed 2019.09.10] (Ua)

The topic of the research work within which the work was performed: "Legal mechanisms for ensuring the protection of human rights and freedoms".

Authors' contributions:

According to the order of the Authorship.

ORCID numbers:

Anzhela B. Berzina: 0000-0002-9885-309X

Ievgeniia V. Kovalevska: 0000-0002-1338-7158

Inna V. Berdnik: 0000-0002-1447-2629

Conflict of interest:

The Authors declare no conflict of interest.

CORRESPONDING AUTHOR

Ievgeniia V. Kovalevska

Bogomolets National Medical University,

Kyiv, Ukraine

tel: +380939932353

e-mail: e.kovalevska@gmail.com

Received: 05.09.2019

Accepted: 22.11.2019