

NORMATIVE AND ECONOMIC ENSURING OF HUMAN RIGHTS IN THE HEALTHCARE SECTOR

Olena Kopytova¹, Larysa Didenko², Denys Shchambura³

Abstract. The article is devoted to the issue of normative and economic ensuring of human rights in the healthcare sector. The *purpose of this study* is to analyse the current state of normative and economic mechanisms for ensuring human rights in healthcare, with a focus on: a) defining international standards in this field; b) identifying and analysing the extent to which national legislation influences the protection of human rights in healthcare; c) defining a national health insurance model as a regulatory and economic tool for ensuring human rights in healthcare. The *methodology* employed in this research comprised a range of general and special methods of scientific inquiry. These encompassed the method of system analysis, the dialectical method, formal-logical and structural-functional methods, and a number of empirical techniques. The *results of the study* indicate that the implementation of international standards for human rights in healthcare is supported by regulatory, jurisdictional and economic instruments. The issue of economic attractiveness is not considered to be of key importance, since the object of economic influence is the initial public interest. Human rights in healthcare are regarded as an industry-specific institution of medical law, a component of the system of fundamental human rights, and a type of social rights. It is important to note that the national model of medical insurance is in compliance with international requirements, while also maintaining a discrepancy between legislative guarantees and their implementation in practice. The *following proposals are hereby put forward*: the establishment and fortification of autonomous mechanisms for the monitoring and response to violations of medical rights; the introduction of an ombudsman for patients' rights or a specialised unit under the Verkhovna Rada Commissioner for Human Rights; the enhancement of the disciplinary responsibility of medical workers for human rights violations; the simplification and acceleration of judicial and pre-trial mechanisms for the protection of medical rights.

Keywords: civil legislation, human rights, economic provision, right to health, medical insurance, budgetary financing.

JEL Classification: K10, K12, K15, H50, I18

1. Introduction

It is an irrefutable assertion that human rights in the field of healthcare are inherent to every individual from birth. This right is independent of any other consideration, including race, gender, language, religion, nationality, social origin, or other characteristics. The fundamental principles of the Universal Declaration of Human Rights (1948) include the rights to a dignified existence, freedom, equality, and personal security. The protection of human rights in healthcare is a fundamental element of social stability, security, and public welfare. In the context of contemporary global challenges, such as pandemics,

armed conflicts, and migration crises, the observance of patient rights, access to quality medical care, the protection of personal medical data, and fair treatment assume particular significance.

In Ukraine, the challenges associated with safeguarding human rights in healthcare are compounded by armed aggression, encompassing both direct and indirect ramifications of temporary occupation, internal migration patterns, and constrained access to medical services. The critical strain on the national healthcare system has been caused by the destruction of healthcare facilities, increased demand for certain types of medical services, and the destruction

¹ National Academy of Internal Affairs, Ukraine (*corresponding author*)

E-mail: Olena.Kopitova@ukr.net

ORCID: <https://orcid.org/0009-0009-4843-0249>

² International Humanitarian University, Ukraine

E-mail: didenko1980@ukr.net

ORCID: <https://orcid.org/0000-0002-6806-5017>

³ International Humanitarian University, Ukraine

E-mail: civilden123@gmail.com

ORCID: <https://orcid.org/0000-0002-5845-8650>



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of civil infrastructure. This has affected service accessibility, patient routing, and resource distribution. The development of mental health and rehabilitation systems, as well as forensic medicine, necessitates comprehensive resource planning and training. The economic aspect of ensuring human rights in healthcare must also consider negative factors. In Ukraine, the proportion of total current health expenditures accounted for by out-of-pocket expenditures by patients for healthcare services, medicines, and medical devices is almost 48%. In 2021, 17.1% of households experienced catastrophic health-related expenses, which is one of the highest rates recorded in Europe. This poses particular risks for vulnerable groups. The largest categories of out-of-pocket spending are on medicines (often with unproven or low efficacy) and inpatient treatment (The Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Strategy for the Development of the Healthcare System for the Period until 2030 and Approval of the Operational Plan of Measures for its Implementation in 2025-2027", 2025).

Another important aspect is the need for high-quality economic regulation to ensure medical rights. To ensure effective performance, accessibility and equality in receiving healthcare services, it is important to consider the interconnected functions of healthcare financing: a) fundraising (attracting sufficient funds to the healthcare system; b) pooling funds (removing financial barriers to facilitate access to medical care and reduce financial risks associated with morbidity); c) purchasing medical services from suppliers (rationally using limited economic resources) (Pariya, 2021: 130).

The importance of renewing the system for ensuring human rights in healthcare is evidenced by strategic acts such as the Decree of the President of Ukraine "On Measures to Improve the Competitiveness of Healthcare Institutions and Provide Additional Guarantees for Medical Workers" (2021), and the Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of July 30, 2021 'On the State of the National Health Care System and Urgent Measures to Provide Medical Assistance to Citizens of Ukraine'" (2021). The scientific literature pays insufficient attention to the issue of ensuring human rights in healthcare, both normatively and economically. Notable examples include: Arulkumaran (2017), who analysed human rights violations in health research and clinical settings; Wolff (2012), who outlined human rights risks in healthcare; and Nampewo et al. (2022), who explored mechanisms for protecting human rights in healthcare.

Accordingly, this study explores the protection of human rights in healthcare for the first time, examining how they are determined at both the normative (international and national) and economic levels.

2. International Legal and Economic Instruments for Ensuring Human Rights in Healthcare

The international legal framework for protecting health rights forms the foundation for national legislation and sets universal standards for their implementation. Article 25 of the Universal Declaration of Human Rights (1948) declares that "... everyone has the right to a standard of living adequate for health and well-being, including medical care, food, housing, and social services". This article defines the main health concept as a social category that includes access to medical services and living conditions that improve physical and mental health. Similarly, Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966) enshrines the right of every person to the highest attainable standard of physical and mental health. This right includes access to healthcare facilities and quality medical services that are culturally and ethically acceptable, timely and effective. The pact calls upon states to create conditions that reduce maternal and child mortality, combat infectious and chronic diseases, develop preventive healthcare systems and guarantee universal access to medical care.

The International Covenant on Civil and Political Rights (1966) protects health within the remit of criminal jurisdiction by prohibiting torture and inhumane treatment, and by obliging states to ensure adequate detention conditions, including access to healthcare. In this way, it complements the social and economic guarantees of the Pact of Economic, Social and Cultural Rights, which form a complex system of legal norms established to protect the physical and mental health of humans.

At the regional level, Article 11 of the Revised European Social Charter (1966) requires states to take action to eliminate the causes of disease, promote health education and ensure access to healthcare. The European Committee of Social Rights has emphasised that legal recognition alone is insufficient and that states must adopt real and effective measures. Despite the fact that the European Convention on Human Rights (1950) does not explicitly recognise the right to health, the European Court of Human Rights (ECtHR) has developed its protection through Articles 2 (right to life), 3 (prohibition of torture) and 8 (respect for private life). For instance, in the case of *Cyprus v. Turkey*, the court observed that the failure to provide adequate medical care could be considered a violation of Article 2 of the Convention, if it results in a threat to the individual's life (European Court of Human Rights. *Cyprus v. Turkey*, 2001). In the case of *Kudła v. Poland*, the European Court of Human Rights emphasised that the failure to provide adequate medical care to a prisoner suffering from a serious illness may constitute inhuman or degrading treatment,

thereby violating Article 3 of the Convention (European Court of Human Rights. *Kudła v. Poland*, 2000). In the case of *Z v. Finland*, the European Court of Human Rights (ECHR) emphasised that the confidentiality of medical information is an integral component of the right to respect for private life as guaranteed by Article 8 (European Court of Human Rights. *Z v. Finland*, 1997).

One particularly significant instrument is the 1997 Oviedo Convention on Human Rights and Biomedicine, which regulates human rights in biomedicine and medical intervention. It introduces the concepts of informed consent (Article 5), privacy and confidentiality (Article 10), the prohibition of genetic discrimination (Article 11) and protections for persons unable to consent. Although Ukraine has not ratified the convention, its provisions serve as ethical and legal benchmarks.

Consequently, international documents have been instrumental in promoting a value-based approach to human rights in the context of healthcare. These documents serve to establish guidelines for national healthcare systems and the establishment of effective mechanisms for ensuring patients' rights.

It is important to acknowledge that the declaration of rights in the field of healthcare alone will not provide adequate protection. Consequently, the international community has also resorted to economic instruments.

International standards for the economic provision of medical care are predicated on the principles of universal health coverage, a concept which is promoted by organisations such as the WHO and the International Labour Organization. The standards under discussion place significant emphasis on the notion that healthcare constitutes a fundamental human right, entailing the provision of financial protection against the burden of catastrophic out-of-pocket expenses and ensuring equitable access to quality services. This access is typically facilitated through a combination of public funding, compulsory insurance, and the strategic strengthening of primary healthcare (PHC). The primary objectives of the initiative include the assurance of affordability, accessibility, and adequacy in the provision of services, in addition to the implementation of financially sustainable systems that promote health equity.

By incorporating all aspects of economics into healthcare, the focus can shift towards instruments such as MEAT Value-Based Procurement, which support informed decisions about the future direction of health policies. Policymakers should embrace this new approach to value, which considers both outcome and economic value, to inform investment in health and care (Economic Value as a guide to invest in Health and Care Concept Framework). For instance, the EU4Health Programme (Programme for the Union's

action in the field of health for the period 2021-2027, 2021) was initiated in response to the pandemic caused by the COVID-19, with the objective of enhancing the EU's crisis preparedness. The programme received an initial budget of 5.3 billion EUR for the 2021-2027 period. The EU4Health programme is an unprecedented financial initiative by the European Union with a primary focus on the following areas: improving and strengthening health (for example, health promotion and disease prevention, including cancer); protecting people (i.e., activities to supplement national stocks of essential crisis-related goods); access to medicines, medical devices, and crisis-related products; and strengthening health systems (e.g., through the use of digital tools and services).

It is evident that compliance with international healthcare rights standards is supported by both normative-jurisdictional and economic mechanisms. This is indicative of healthcare being regarded as a public interest rather than a matter of market attractiveness.

3. Regulatory Framework for Human Rights in Healthcare: National Level

The cornerstone of healthcare rights protection in Ukraine is enshrined in the Constitution of Ukraine (1996), which proclaims the individual, their life, and their health as the highest social value (Art. 3), guarantees the right to life (Art. 27), and the right to health protection, medical care, and medical insurance (Art. 49). The Fundamentals of Ukrainian Legislation on Health Protection (1992) remain the core legislative act defining the legal, organisational, economic, and social principles of healthcare, including citizens' rights to medical services (Arts. 6–8, 39), guarantees of accessibility and quality (Art. 49), and state obligations to ensure sanitary and epidemiological safety. The Law of Ukraine "On Public Health System" (2022), a relatively recent legislative act in the development of the modern healthcare system, defined and improved the principles of operation of public health system entities, as well as the rights and obligations of citizens in the field of disease prevention and the preservation of public health as a whole.

In addition, the special legislation in the field of human rights protection in healthcare includes the following laws of Ukraine: "On Ensuring Sanitary and Epidemic Well-being of the Population" (1994); "On Psychiatric Care" (2000); "On Counteracting the Spread of Diseases Caused by Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV" (1991); "On State Financial Guarantees of Medical Service to the Population" (2017). When considered collectively, these normative legal acts constitute the national legal framework for the implementation, protection, and

guarantee of human rights and freedoms in the field of healthcare.

It is important to acknowledge that human rights in the field of healthcare are regarded not only as a sectoral institution of medical law but also as an integral component of the system of fundamental human rights, based on the principles of indivisibility and universality (Universal Declaration of Human Rights, 1948). The right to health is defined as the right of every individual to the highest attainable standard of physical and mental health. This right encompasses access to timely, acceptable, and quality medical care, as well as to living conditions that are conducive to maintaining such health (World Health Organization. Constitution of the World Health Organization). It is evident that the right to health within the national legal order is of a comprehensive nature. This is evidenced by the fact that it encompasses both legal guarantees of access to healthcare services and mechanisms for exercising the right to dignity, privacy, and personal autonomy in the process of medical intervention.

Simultaneously, the concept of rights in the domain of healthcare can be regarded as a specific category of social human rights. The purpose of these rights is to guarantee the physical, mental, and social well-being of individuals (The Law of Ukraine "On Social Services", 2019). Their content reflects the humanistic orientation of legal regulation in the sphere of medical care, as they are directed towards ensuring human dignity, autonomy and equal access to necessary medical services. The social nature of these rights means that the state is obliged not only to refrain from violating citizens' rights, but also to actively create conditions for their realisation. This includes financing the healthcare system, introducing medical insurance mechanisms, guaranteeing accessibility of basic services and developing the public health system (The Law of Ukraine "On Public Health System", 2022).

The key elements of the right to health protection within both the national and international legal systems include, in particular: the right of access to healthcare services without discrimination (The Law of Ukraine "On the Principles of Preventing and Combating Discrimination in Ukraine", 2012), the right to freely choose a doctor and methods of treatment (The Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare", 1992), the right to protection of medical confidentiality (The Civil Code of Ukraine, 2003), and the right to legal assistance in the event of a violation of medical rights (The Law of Ukraine "On Free Legal Aid", 2011).

It is evident that, despite the right to health protection not being absolute, it is recognised as a fundamental social right. The state is bound by both negative obligations (to refrain from actions that may violate this right) and positive obligations (to create an

effective medical infrastructure, ensure equal access to healthcare services, and provide adequate financing of the healthcare system). The realisation of human rights in healthcare is based on general and specific legal principles. These include humanism, which recognises the supreme value of life, health, honour, dignity and the inviolability of the individual. This principle requires respect for patients, prohibits cruel treatment and ensures the right to palliative care, pain relief and psychological support. Equality and non-discrimination guarantee that everyone has the right to healthcare, regardless of race, gender, age, social origin or health status. Respect for the dignity and autonomy of individuals ensures the right to make independent decisions about one's body, treatment methods and way of life. This includes the right to refuse medical intervention and to maintain medical confidentiality (The Civil Code of Ukraine, 2003).

It is imperative to emphasise that patient autonomy is not merely a legal obligation, but rather a moral duty incumbent upon medical professionals. This entails that irrespective of the severity of illness, the individual retains the right to make independent choices, to consent to, or to refuse, the proposed treatment. In a broader sense, the principles of humanism, equality, and respect for dignity should not remain mere declarations; rather, they must become effective criteria for assessing the efficiency of state medical policy and the quality of healthcare practices. Adherence to these principles is pivotal in ensuring that the right to health protection is not only formally enshrined in law but also effectively realised as a genuine social guarantee.

In the context of attracting sufficient funds to the healthcare system, the introduction of state solidarity health insurance in Ukraine is key. At the same time, the State Budget of Ukraine will remain the main source of financing for the updated healthcare system, with funds received from national taxes. Payments for treatment will not depend on the size of individual contributions (The Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Concept of Healthcare System Financing Reform", 2016). Medical guarantees provide for the receipt of necessary medical services and medicines related to the provision of: emergency medical care; primary medical care; secondary (specialised) medical care; tertiary (highly specialised) medical care; palliative medical care; medical rehabilitation; medical care for children under 16 years of age; medical care related to pregnancy and childbirth. Medical services not included in this list are paid for by the patient (The Law of Ukraine "On State Financial Guarantees of Medical Service to the Population", 2017).

The national system of protecting rights in healthcare is integrated into the international legal framework. This is evidenced by Ukraine's ratification of numerous international treaties that regulate or

influence medical rights. These international standards serve as benchmarks for the harmonisation of domestic legislation and its law enforcement practices.

4. The National Health Insurance Model as a Regulatory and Economic Tool for Ensuring Human Rights in Healthcare

In practice, medical insurance is one of the most effective measures for ensuring human rights in the field of healthcare. In Ukraine, for example, national-level funding of the healthcare system is based on a medical guarantees programme and regulated by the 2017 Law of Ukraine "On State Financial Guarantees of Medical Services to the Population". Accordingly, the state guarantees full payment for the specified medical services and medicines, funded by the State Budget of Ukraine. To implement these guarantees, the Cabinet of Ministers of Ukraine adopts relevant annual resolutions determining the procedure, conditions and scope of the medical services provided by the programme. In particular, the Resolution of the Cabinet of Ministers of Ukraine "Certain Issues of Implementing the Programme of State Guarantees for Medical Care for the Population in 2024" (2023) establishes the list and financial standards of medical services to be covered in 2024. Thus, the system of state financial guarantees is a key mechanism for ensuring that citizens' constitutional right to healthcare is realised in practice.

Different models of health insurance organisation have evolved globally, reflecting national historical traditions and socio-economic conditions. In Germany, the dominant model is the social health insurance system (*Gesetzliche Krankenversicherung*), in which mandatory contributions are paid by employers and employees. The accumulated funds are then distributed through 'sickness funds' that operate under state oversight and employ risk-adjustment mechanisms between funds (The Commonwealth Fund. International Health Care System Profiles). In France, the universal health insurance system (*Assurance Maladie*) provides medical coverage for employed individuals and legal residents. It is financed through social contributions and taxes, while patients cover a portion of costs themselves or through supplementary voluntary insurance (*'mutuelle'*) (*Centre des Liaisons Européennes et Internationales de Sécurité Sociale*). In the United Kingdom, the dominant model is a state-funded, tax-based system implemented through the National Health Service (NHS). Financed from the state budget, it provides the majority of medical services free of charge, leaving only a minor role for the private sector. By contrast, the United States operates a complex mixed model, whereby a significant proportion of the population relies on private insurance, while vulnerable groups are covered by federal and state

programmes such as Medicare and Medicaid. Government programmes cover the elderly, people with disabilities and those on low incomes. The rest of the population depends on private insurance or employer-based coverage (Major Medicare Changes Coming in 2026).

Ukraine has implemented a mixed model: the state provides emergency medical care, primary care, vaccinations according to the national schedule, palliative care and a number of other services free of charge under the Medical Guarantees Program. Services not included in this programme, such as a significant proportion of dental care and elective procedures requested by patients, may be provided on a paid basis. Budget financing of health care institutions is carried out through contracts with the National Health Service of Ukraine (NHSU): medical facilities receive funds for services actually provided according to approved tariffs, ensuring the principle of "money follows the patient" (Medical Guarantees Program).

A significant component of the legislation pertains to donor programmes. The legislation stipulates the provision of free donations of blood and its components, thereby offering donors social guarantees and benefits. A separate initiative is the "Affordable Medicines" programme, which, as of 2025, covers over 400 medications and ensures free or partially reimbursed access to medicines for patients with chronic diseases, including cardiovascular diseases, bronchial asthma and diabetes (Affordable Medicines Program). Medicines are dispensed via electronic prescriptions in pharmacies contracted with the NHSU (National Health Service of Ukraine. Electronic prescription).

The Ukrainian healthcare model is characterised by a combination of legislative guarantees, budgetary funding, and reimbursement mechanisms. This approach aligns it with European practices while also retaining features that are unique to its own historical development. The effectiveness of the right to healthcare, however, is contingent not only on the availability of financial instruments but also on adherence to fundamental principles of humanism, equality, and respect for patient dignity. These principles function as the standards by which to evaluate the capacity of the state to formally guarantee and practically ensure an adequate level of medical care.

In this context, the case law of the European Court of Human Rights (ECHR) assumes particular significance, as it clarifies the obligations of the state in the field of healthcare. As demonstrated in the case of *Moiseyenko v. Ukraine* (2008), the Court determined a contravention of Article 3 of the European Convention on Human Rights (prohibition of inhuman or degrading treatment) on account of the failure to furnish adequate medical care to a person in detention. In a similar vein, in the case of *Lopata versus Ukraine* (2013), the Court determined a contravention of Article 2

(right to life) in conjunction with the unsatisfactory investigation of a fatality that may have been occasioned by medical malpractice. In the case of *Salman v. Turkey* (2000), the European Court of Human Rights (ECHR) emphasised that the right to proper medical care constitutes an integral part of the right to life.

These decisions demonstrate that international standards obligate the state to not only proclaim the right to healthcare but also to ensure its practical implementation through the proper organisation of the medical system, the effective supervision of healthcare professionals, and the establishment of legal protection mechanisms. Concurrently, the prevailing Ukrainian national legislation in the domain of healthcare is largely aligned with international standards. Nevertheless, a discrepancy persists between the legislative framework and its practical implementation, underscoring the necessity for further examination of specific problematic aspects.

The key issues can be summarised as follows:

First, although the principle of free medical care is formally guaranteed, there is no clear mechanism for its practical implementation. As a result, the scope of services that must be provided free of charge, as well as the sources of their financing, remain legally uncertain.

Second, access to healthcare services is often limited. Remote areas, in particular, face shortages of medical infrastructure; informal (shadow) payments and out-of-pocket purchases of medicines are widespread; and certain population groups – such as persons with disabilities, people living with HIV, older adults, and refugees – may experience discrimination.

Third, a number of fundamental rights are regularly violated. These include the right to accurate medical information, the right to informed consent, the right to confidentiality of medical data, and the right to choose one's physician. Such violations stem both from insufficient legal awareness among healthcare personnel and from inadequate oversight by healthcare facility administrations.

Finally, patients' access to judicial protection remains limited in practice. Court proceedings are lengthy, case law in the field of medical law is inconsistent, and public awareness of available protection mechanisms is generally low.

In light of the issues identified in the implementation of human rights in the healthcare sector, it is imperative to delineate pivotal directions that will contribute to enhancing the legal regulation of this domain, ensuring genuine access to medical services, and effectively safeguarding patients' rights. In order to achieve this, a combination of legislative and organisational measures is required. These include the establishment and enhancement of autonomous monitoring and response mechanisms for violations of medical rights. Furthermore, the introduction of a Patient Rights Ombudsman, or a specialised unit

under the Ukrainian Parliament Commissioner for Human Rights, is necessary. Additionally, there is a need to improve disciplinary liability for medical professionals who violate human rights. Finally, judicial and pre-judicial mechanisms for rights protection should be simplified and accelerated. Concurrently, it is imperative to enhance legal awareness among healthcare professionals and patients through public information campaigns elucidating patient rights, the incorporation of fundamental health-related human rights knowledge into school and university curricula, and the facilitation of access to legal counselling within healthcare institutions, particularly for vulnerable segments of the population.

5. Conclusions

In conclusion, it should be noted that international instruments provide a value-based perception of human rights in the field of healthcare, setting benchmarks for national health systems and guiding the development of effective mechanisms to ensure patients' rights. It has been established that the implementation of international standards for the safeguarding of human rights in healthcare is supported by a range of normative, jurisdictional and economic instruments. Concurrently, economic attractiveness is not a determining factor, as the protection of rights in the field of healthcare is an imperative necessity and a fundamental matter of public interest.

It is determined that the Ukrainian model of health insurance is a tool for ensuring human rights in the field of healthcare. It combines legislative guarantees, budgetary funding and reimbursement mechanisms, bringing it closer to European practices while retaining certain transitional features. The Ukrainian health insurance system is characterised by the state providing free emergency medical care, primary care, vaccinations in line with the national immunisation schedule, palliative care and a range of other services under the Programme of Medical Guarantees. Conversely, services not included in this programme (for example, much of dental care or elective procedures requested by the patient) are provided on a paid basis.

The text highlights the shortcomings in ensuring human rights in the healthcare sector and proposes ways to address them through the implementation of measures aimed at: the establishment and strengthening of independent monitoring and response mechanisms for violations of medical rights; the introduction of the institution of a Patient Rights Ombudsman or a specialised unit under the Ukrainian Parliament Commissioner for Human Rights; the improvement of the disciplinary liability of medical professionals for violations of human rights; and the simplification and acceleration of judicial and pre-judicial mechanisms for the protection of rights.

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Received on: 15th of October, 2025

Accepted on: 25th of November, 2025

Published on: 12th of December, 2025