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TO THE PROBLEM OF THE LEGAL REGIME OF CONFIDENTIAL INFORMATION IN THE FIELD OF HEALTH CARE

The main problem that arises in the aspect of understanding and enforcement of the legal regime of confidential information in the field of health care is the imperfection of the regulation of information relations in general and confidential information in the field of health care in particular.

In the science of civil law at the moment, the prevailing opinion is that information is any information and/or data that can be stored on physical media or displayed in electronic form (part 1 of Article 200 of the Civil Code of Ukraine and Article 1 of the Law of Ukraine "On information"). Based on this point of view, the legislator of Ukraine formulated a derivative legal provision, according to which information and all its varieties, such as, for example, confidential information, including in the field of health care, are "information" and/or "data".

We cannot agree with this formulation of the concept of information and believe that it is inadequate and does not fully reflect this objective phenomenon in law. And in continuation of this thesis, we can state that to date, the national legal doctrine has not developed a unified approach to understanding the legal nature of information in general and confidential information, including in the field of health care.

In our opinion, this can be explained to some extent by the fact that information and such a variety of it as confidential information, including in the field of health care, are not classic objects of civil law.

The prescriptions of Part 2 of Article 21 of the Law of Ukraine "On Information" define confidential information as information about a natural person, as well as information to which access is limited to a natural or legal person, except for subjects of authority. That is, such a legal construction and the corresponding legal definition of confidential information enshrined in the legislation does not reveal its essence at all and does not give a complete picture of it as such. Also, such a vague understanding of the concepts of "information" and "confidential information" leads to problems in the understanding and enforcement of the concept of "confidential information in the field of health care".

Along with such a fragmentary definition of the general concept of confidential information, we can state that the definition of confidential information in the field of health care is generally absent in the legislation, therefore the issue of a comprehensive study of the legal nature of such an atypical object of civil law as information in general and confidential is relevant in domestic science information in the field of health care, in particular.

And in this context, it should also be noted that the analysis of judicial practice also shows that participants in informational legal relations, and in case of disputes and participants in court proceedings, jurisdictional bodies have significant difficulties when they need to apply this or that rule of law, the disposition of which contains the term "information", "confidential information", "confidential information in the field of health care".

It should be noted that at this time there is no unanimity in scientific circles not only in the definition of the concept of confidential information in the field of health care, but also in the definition of concepts related to it. Thus, scientists use different terms "medical secret", "secret about the state of health", "doctor secrecy". However, these concepts are not synonymous and have different content.

We can note that the lack of clear structuring of the concepts used by the legislator and the definition of the constituent parts of the indicated intangible good of an individual arose due to the fact that the legal construction "the right of an individual to secrecy about the state of health" was revealed through the use of institutions confidentiality, privacy of personal and family life, medical information, medicinal and medical secrecy.

At the same time, there are significant differences in the understanding of the concepts of "medical secrecy" and "doctor secrecy", as well as disputes regarding which of these concepts is generic and which is specific.

The current legislation of Ukraine uses the term "doctor secrecy", which stipulates that medical workers and other persons who, in connection with the performance of professional or official duties, became aware of an illness, medical examination, examination and their results, intimate and family aspects of a citizen's life, do not have the right to disclose this information, except for the cases provided for by legislative acts.

However, in our opinion, it would still be more appropriate to use the term "medical secret", which should be understood as information that medical workers and other persons became aware of in connection with the performance of their professional or official duties in the process of providing medical assistance. Accordingly, such information should not be disclosed, except in cases provided for by law.

All researchers who study the issue of personal non-property rights and the right of an individual to secrecy about his health indicate that there is an urgent need to structure the existing conceptual apparatus.

Considering the concepts of medical secrecy, doctor secrecy, the right of an individual to secrecy about his state of health, scientists are divided into supporters of the expediency of leaving the term “doctor secrecy” and those who believe that it unnecessarily narrows the circle of obliged persons, and therefore propose replace it.

In our opinion, the term “medical secrecy” is more general (generic) in relation to the term “doctor secrecy”, which is specific, as it indicates the obligation to keep information confidential for all representatives of the medical field.

In the Association Agreement between Ukraine and the European Union, considerable attention is paid to deepening cooperation and harmonizing the national legislation of Ukraine with European standards in the field of public health (Chapter 22), as well as the development of the information society (Chapter 14), including the introduction of online services and electronic security health.

By signing the Association Agreement, Ukraine undertook to recognize and support the common values on which the European Union is built – democracy, respect for human rights and fundamental freedoms, and the rule of law. This significantly affected the development of legal protection, the adoption of a balanced legislative mechanism for providing access to information, as well as ensuring the confidentiality of information about a person’s health and other information, which are types of information about a person.

Actually, the analysis of international standards and national legislation gives reasons to assert the need for further improvement at the legislative level of the concept of “confidential information in the field of health care”, detailed study and introduction of clear and understandable changes to the conceptual apparatus.

The definition of these concepts and their components will allow the formation of a system of protection of the legitimate interest in confidentiality in the field of health care, since confidentiality in the relationship of providing medical care ensures the realization by a person of his right to respect for private and family life and contributes to the establishment of proper regulation of the relationship between the doctor and a patient.

In addition, in order to eliminate the shortcomings of the legal regulation of concepts that regulate confidential information in the field of health care, it is necessary to develop scientific provisions and proposals for legislation based on theoretical sources, the legal framework and judicial practice regarding the legal regime of confidential information in the field of health care health, its constituent parts and their clear demarcation, as well as studying the issue of the right of access to confidential information in the field of health care and “legally protected interest” in relation to it.