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## **FEATURES OF THE STUDY OF THE MECHANISM OF ADMINISTRATIVE AND LEGAL REGULATION OF THE HUMAN RIGHT TO HEALTH CARE IN MODERN CONDITIONS<sup>1</sup>**

**JEL Classification: K 14  
SECTION "LAW": Право**

**Анотація.** Сталий розвиток будь-якої демократії залежить від багатьох факторів, основними з яких є дотримання прав людини та забезпечення права громадян на охорону здоров'я. Це пов'язано з тим, що успішно розвиваються лише ті держави, на території яких кожен відчуває себе захищеним і при необхідності має можливість реалізувати своє бажання належним чином підтримувати свій фізичний стан.

Україна проголосила себе суверенною, незалежною, демократичною та правовою державою. При цьому основними цінностями на її території були визнані людина, її життя і здоров'я, честь і гідність, недоторканність і безпека. Розвиваючи ці положення, ст. 49 Конституції України закріпила право кожного громадянина на охорону здоров'я, медичну допомогу та медичне страхування.

В статті висвітлюються особливості дослідження механізму адміністративно-правового регулювання забезпечення права особи на охорону здоров'я. В сучасних умовах розвитку нашої держави особливу роль відіграють наукові дослідження, результати яких мають бути покладені в основу реформування функціонування

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держави взагалі та системи забезпечення охорони здоров'я зокрема. В цьому аспекті особливу роль відіграє методологія дослідження як теоретичне обґрунтування доцільності застосування відповідних підходів і способів, які використовуються для проведення теоретико-юридичного дослідження державної політики охорони здоров'я, а також дібрана на науковій основі для зазначеної мети система прийомів і способів, тобто відповідних методів.

На сучасному етапі розвитку нашої держави основу методології дослідження забезпечення права особи на охорону здоров'я має складати: а) філософська і світоглядна складова розвитку суспільства; б) політико-правова основа функціонування держави, на території якої відбувалися становленні і законодавче закріплення права на охорону здоров'я; в) ієрархічність відносин та правового регулювання права на охорону здоров'я включаючи міжнародний елемент.

Формування дослідницької методології на основі запропонованих складових при дослідженні механізму адміністративно-правового забезпечення права особи на охорону здоров'я дасть можливість не лише отримати об'єктивні та науково-обґрунтовані результати, а й значно підвищать дослідницький потенціал здійснюваної науковцем роботи.

**Ключові слова:** право, дослідницька методологія, механізм правового регулювання, охорона здоров'я, система охорони здоров'я.

**Annotation.** The article highlights the features of the study of the mechanism of administrative and legal regulation of the human right to health care. In the current conditions of development of our state, a special role is played by scientific research, the results of which should be the basis for reforming the functioning of the state in general and the health care system in particular. In this aspect, a special role is played by research methodology as a theoretical justification for the appropriateness of appropriate approaches and methods used for theoretical and legal research of public health policy, as well as selected on a scientific basis for this purpose system of techniques and methods, i.e. appropriate methods.

At the present stage of development of our state, the basis of the research methodology for ensuring the right of a person to health care should be: a) philosophical and ideological component of the development of society; b) the political and legal basis for the functioning of the state on the territory of which the formation and legislative consolidation of the right to health care took place; c) hierarchy of relations and legal regulation of the right to health care, including the international element.

The formation of research methodology based on the proposed components in the study of the mechanism of administrative and legal support of the right to health care will not only provide objective and scientifically sound results, but also significantly increase the research potential of the scientist's work.

**Keywords:** law, research methodology, mechanism of legal regulation, health care, health care system.

### **Introduction**

The sustainable development of any democracy depends on many factors, the main one of which, in our opinion, is respect for human rights and ensuring the right of citizens to health care. This is due to the fact that only those states are successfully developing in the territory of which everyone feels protected and, if necessary, has the opportunity to realize their desire to properly maintain their physical condition.

Ukraine has declared itself a sovereign, independent, democratic and legal state. At the same time, the main values in its territory were recognized a person, his / her life and health, honour and dignity,

inviolability and security. Developing these provisions, Art. 49 of the Constitution of Ukraine enshrines the right of every citizen to health care, medical assistance and medical insurance.

During its existence, Ukraine as a state has constantly tried to adhere to the provisions proclaimed and enshrined in the Constitution, but as the analysis of the current state of the health care system in Ukraine shows no single medical space. There is heterogeneity of organizational and legal forms of state and municipal health care facilities. This leads to an imbalance in the functioning of the industry, inefficient public administration in the field of health care and difficulties in planning activities at all levels of the national health care system, a sufficient level of preconditions is not provided for the population to receive timely, effective, affordable and safe medical care in accordance with the guarantees set by the Constitution of Ukraine [24]. With this in mind, Ukraine, as a state, needs to develop a more effective state policy in the field of health care and further implement an effective mechanism for administrative and legal support of the rights of individuals to health care.

Developing public policy in any industry is an extremely difficult task because it requires a large number of factors that affect the development of the industry. However, before starting the policy-making process, in any case, it is necessary to study the state of affairs in this area, study the experience of other countries and try to model the future system.

The study of the state of health care and the functioning of the administrative and legal mechanism for ensuring the rights of citizens to health care is associated with a number of difficulties that are the result of the multifaceted nature of the health care system in Ukraine. With this in mind, in order to obtain real data and results and an objective picture of the functioning of the administrative and legal mechanism for ensuring the right of citizens to health, it is necessary to develop an appropriate research methodology.

Given the above, the purpose of the article is to outline the methodological foundations of the study of the mechanism of administrative and legal support of the human right to health care as the main scientific tool for obtaining objective and scientifically sound results.

Outlining the methodological foundations of the study of the mechanism of administrative and legal support of the human right to health care is a rather difficult task, whereas the functioning of the administrative and legal mechanism for ensuring the human right to health care is intertwined with at least three components of this phenomenon, namely, the peculiarities of public administration as a type of activity of state-authorized bodies, the sphere of health care and state policy in this sphere and the right of citizens to health care as an integral element of the legal status of a citizen of Ukraine. Given this, in these areas we note the main scientific achievements of researchers.

An appeal to the professional legal literature makes it possible to say that the theoretical and methodological foundations of the study of various legal phenomena have become the subject of study of many legal scholars. However, from our point of view, the greatest contribution to this area was made by A. M. Vasyliiev [5], who revealed the essence of legal categories and their role in legal science and practice, D.A. Kerimov [13, 14], who covered the methodological problems of law in his works and explored the philosophical foundations of political and legal phenomena and V.M. Syrykh [27, 28] who outlined the methodological tools for conducting legal research. Among the foreign authors whose works have become classics and have made a significant contribution to the methodology of studying state and legal phenomena are the works of Ronald Dworkin [9], Lon Fuller [31], J. Finnis [30], H.L.A. Hart [32], John Rawls [10]. Ukrainian scholars also paid attention to the methodological problems of law, in particular, the problems of methodology of law have become the subject of attention of such scholars as M. Kelman [12], M.V. Kostytskyi [15], N.V. Kushakova-Kostytska [17], R.M. Shevchuk [34].

A significant number of scientists studied the activities of state bodies in the framework of their implementation of their competence, among which it is worth mentioning the works of V. Averianov [1], H.V. Atamanchuk [2], A.M. Voloshchuk [6], V.M. Harashchuk [8], B.P. Kurashvili [16], B.M. Lazarev [18], M.V. Luhynia [19], A.A. Manzhula [21] and others. In the framework of their research, scientists identified the features of public administration, its structure, described the activities of public administration and described public control in the field of public administration. The study of state policy

in the field of health care was carried out by such as M.V. Belaniuk [3], V.V. Borshch [4], V.M. Pashkov [25], S.V. Petrova [22] and others. The works of such researchers as S. Popov, I. Voshko [23], H. Muliar [7] are devoted to the study of foreign experience in reforming national health care systems.

The methodological basis of the article is a complex combination of philosophical (laws of dialectics and metaphysics), general scientific (logical method, systemic and structural-functional methods) and special legal research methods, as well as the principles of objectivity and historicism.

### **Results**

Identifying the theoretical and methodological foundations of the study of the mechanism of administrative and legal support of the right of a person to health care requires to determine the content of such a category as “research methodology”. This will give us the opportunity to understand its essence and understand the subject component of our study.

Paying attention to the content of the category “methodology of scientific research”, we will focus on the definition of the term “methodology”, which are provided in the scientific and reference literature.

The philosophical encyclopedic dictionary defines methodology (from “method” and Greek “logos” – word, concept, doctrine) as a system of principles and methods of organizing and constructing theoretical and practical activities, as well as the doctrine of this system [29, p. 359]. An analysis of the scientific literature shows that the concept of “methodology” is used in a broad and narrow sense. In particular, in a broad sense, methodology is a theory of human activity, “it is the activity of cognition, thinking, or, to be more precise, all the activity of mankind, including not only our own knowledge, but also production. In this aspect, the methodology “is a theory of human activity” [35, p. 6]. Narrow understanding of methodology is based on the fact that it is a set of methods, techniques, procedures of scientific research.

Summarizing the above, we can state that the term “methodology” has at least two meanings, namely: 1) a system of certain principles and methods used to organize and build certain activities (in science, politics, art, etc.); 2) the doctrine of this system, the theory of method [34, p. 31-45]. Given this, we can state that the structural methodology of scientific knowledge in general, and the methodology of research of the mechanism of administrative and legal support of the right of a person to health care in particular, contains two substantively different elements: ontological, which is a system of means of finding and systematizing new knowledge; epistemological, i.e. the doctrine of this system.

Given this, in the further study, the methodology will be understood as a theoretical justification for the appropriateness of approaches and methods used to conduct theoretical and legal study of the mechanism of administrative and legal support of the right to health care, as well as a system of techniques and methods, i.e. appropriate methods, selected on a scientific basis for this purpose.

Outlining the theoretical and methodological foundations of the study of the mechanism of administrative and legal support of the human right to health care requires to determine the two main categories that are important for our study, namely the category “mechanism of administrative and legal support of rights” and “right to health care”.

An analysis of the scientific literature shows that in the legal literature there is no established concept of the mechanism for ensuring the rights and freedoms of human and citizen. This is a result of the fact that the concept of “provision” has a broad and ambiguous interpretation: it is the creation of reliable conditions for the implementation of something; and guaranteeing something; and protection of someone or something from danger. As a result, along with the term “security mechanism” such terminological phrases as “implementation mechanism”, “implementation mechanism”, “guarantee mechanism” of rights and freedoms are used. However, our analysis allows us to say that the mechanism of rights and freedoms is often understood as the system of means and factors, by means of which the rights and freedoms of the person and their protection by the corresponding obligatory subjects of the government are realized, and in case of violation – their protection and restoration, or a system of interacting legal means by which the state exercises legal influence on legal relations between legal entities in order to recognize, respect and implement human and civil rights [33, p. 75]. Based on these perceptions, we note important points for us,

namely that the mechanism of provision is a system of means by which the state, represented by state bodies, exercises legal influence on public relations. The state acts through the mechanism of the state as a system of state bodies within the functioning of which the tasks and functions of the state are performed. Given the fact that public authorities operate within the current legislation through the adoption of relevant regulations and in which relations are dominated by the relationship of power and subordination, we can talk about the administrative and legal mechanism for ensuring rights. In this aspect, when we decide on the methodology of research of administrative and legal support of law, we must take into account the peculiarities of the state and its mechanism, as well as the methodological tools of their study.

The “right to health” is a rather complex category and includes a number of elements that together make it possible to understand its essence. The right to health care means the right of a person to maintain and develop physiological and psychological functions, optimal performance and social activity at the maximum biologically possible individual life expectancy [26, p. 91–93]. The content of the right to health care is defined in Art. 6 of the Law of Ukraine “Fundamentals of the legislation of Ukraine on health care” [11]. When defining the methodology of the study of the right to health care, it should be borne in mind that it has undergone a complex path of development and had different meanings in different historical periods. Special attention should also be paid to the establishment of this right in the international arena, as the international community has become one of the biggest catalysts for its formation and consolidation at the level of national legislation.

Thus, drawing an intermediate conclusion, we can emphasize that from our point of view, the methodology of research of the mechanism of administrative and legal support of the right of a person to health care should take into account: a) philosophical and ideological component of the development of society; b) the political and legal basis for the functioning of the state on the territory of which the formation and legislative consolidation of the right to health care took place; c) hierarchy of relations and legal regulation of the right to health care, including the international element.

Characterizing the ideological, philosophical and socio-cultural component of the methodology of research of the mechanism of administrative and legal support of the human right to health care should be indicated, that it includes the whole set of philosophical and ideological methods of research and cognition, which are used in scientific research, and which are the foundation for obtaining scientifically sound results. The system of philosophical and ideological methods includes such structural parts as: 1) philosophical principles, which include the principles of interconnection, development, integrity, systematics, determinism, fundamental knowledge of the world, etc.; 2) laws and categories of dialectics and logic that perform epistemological and methodological functions; 3) general scientific principles, which include the principles of objectivity, validity of scientific conclusions, mandatory proof of reason, certainty, etc.; 4) general scientific methods, including analytical, historical, comparative, structural, etc.

Paying attention to the political and legal basis of the state, on the territory of which the formation and legislative consolidation of the right to health care took place, it should be noted that the greatest result can be achieved using the methods of historicism and comparativism.

The use of the historical method of research will provide an opportunity to understand the peculiarities of the development of society, the mechanism of administrative and legal support of the right to health care of the person under study, to follow the transformation of its content. By studying the changing nature of the right to health care at different stages of development of the state, it is also possible to accumulate sufficient material for its analysis and development of predictive models for the development of this phenomenon. In this aspect, it is worth agreeing with D.A. Kerimov, who noted that “outside the historical context, which connects the phenomena and processes of modernity with the phenomena and processes that preceded it, as well as with those that will arise on their basis in a more or less distant perspective, it is impossible to know modernity” [13, p. 111].

The use of the comparative method in the study of the mechanism of administrative and legal support of the right of a person to health care provides an opportunity to explore the positive and negative aspects of the functioning of the health care system in other countries. Given that health care is an

extremely important area for the state, the use of the comparative method will help to build a quality theoretical model of public health policy and analyze its effectiveness without implementing it in real life. Analysis of implementation practices in other countries is an invaluable source not only of testing the effectiveness of certain management decisions of state authorities, but also the ability to make more efficient use of limited financial resources, especially in areas that are extremely financially intensive.

In determining the methodology for studying the mechanism of administrative and legal support of the right to health care, special attention should be paid to the fact that health care relationships are complex hierarchical. The complexity of this hierarchy is manifested in the fact that: a) on the one hand, the right to health care is enshrined in the relevant regulations adopted by the state, the provisions of which are developed in the bylaws of the bodies authorized by the state; b) on the other hand, within the framework of the modern world legal order there is a large number of international acts that regulate the issue of ensuring the right to health care and which extend their effect to the territory of the state. This leads to a situation where the state-authorized bodies, which are competent to ensure the right to health care, in the process of exercising their competence to take into account the provisions and acts of international institutions.

The other side of the complex hierarchical relationship of ensuring the right to health care is related to the existing in any state hierarchy of state-authorized bodies acting on behalf of the state to perform its functions.

Given the above, in determining the methodology for studying the mechanism of administrative and legal support of the right of a person to health care, the researcher should use methodological tools to study the functioning of the state and its bodies.

### **Conclusions**

In the current conditions of development of our state, a special role is played by scientific research, the results of which should be the basis for reforming the functioning of the state in general and the health care system in particular. In this aspect, a special role is played by the research methodology as a theoretical justification for the feasibility of appropriate approaches and methods used to conduct theoretical and legal research of public health policy, as well as selected on a scientific basis for this purpose a system of techniques and methods, i.e. appropriate methods.

At the present stage of development of our state, the basis of the research methodology for ensuring the right of a person to health care should be: a) philosophical and ideological component of the development of society; b) the political and legal basis for the functioning of the state on the territory of which the formation and legislative consolidation of the right to health care took place; c) hierarchy of relations and legal regulation of the right to health care, including the international element.

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