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## INTERNATIONAL COOPERATION AND ITS ROLE IN ENSURING EVERYONE'S RIGHT TO HEALTH CARE AND MEDICAL ASSISTANCE

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### **Basalayaeva A. International cooperation and its role in ensuring everyone's right to health care and medical assistance.**

The article states that the right to health care and medical care is a guarantee of the right to life. To the state in accordance with Part 2 of Art. 3 of the Constitution of Ukraine is entrusted with the duty to affirm and ensure human rights and freedoms, including the right of everyone to health care and medical assistance. Such a duty of the state is defined as the main one among its other duties. For its implementation, Ukraine must create an effective mechanism for ensuring the above-mentioned right. The Covid-19 pandemic, Russia's aggression against Ukraine and, as a result, Russia's temporary occupation of part of the territory of Ukraine, the commission of crimes in such territories that fall under the jurisdiction of the International Criminal Court and testify to violations of human rights in the field of health care, have actualized the issue of the specifics of international cooperation of states in the field of health care under conditions of military occupation, pandemics, etc. and its role in ensuring the above-mentioned right of every person.

The doctrinal approaches to defining the concepts of «cooperation», «international cooperation», and international treaties on human rights are analyzed. It has been established that diametrically opposite points of view are expressed in the scientific literature: from the declaration of cooperation as a duty of states to the complete denial of the legal force of this principle. The author's definition of the concept of international cooperation in the field of health care is formulated - it is a complex of legal means, methods and institutions that are the result of joint multilateral or bilateral activities of states and which they use to achieve common goals of sustainable development in the field of health care in accordance with generally recognized principles and norms of international law. Attention is focused on the fact that the result of international cooperation are international standards of human rights in the field of health care, which are adopted by international organizations of a universal and regional nature, and which are implemented in national legislation, but such standards are the result of the cooperation of states, albeit within the framework international intergovernmental organizations, since these organizations are not endowed with special competence by nature, but are endowed by states by defining it in the charter of such organizations.

**Key words:** human rights, the state, the right to health care and medical care, ensuring the human right to health care and medical care, cooperation between states, international standards of the right to health care and medical care. *Басалаєва А. Міжнародне співробітництво та його роль в забезпеченні права кожного на охорону здоров'я та медичну допомогу.*

### **Басалаєва А. Міжнародне співробітництво та його роль в забезпеченні права кожного на охорону здоров'я та медичну допомогу.**

В статті зазначається, що право на охорону здоров'я та медичну допомогу є гарантією права на життя. На державу відповідно до ч. 2 ст. 3 Конституції України покладається обов'язок утверджувати і забезпечувати права і свободи людини, в тому числі – право кожного на охорону здоров'я та медичну допомогу. Такий обов'язок держави визначається як головний з-поміж інших її обов'язків. На його виконання Україна має створити ефективний механізм забезпечення згаданого вище права. Пандемія Covid-19, агресія росії щодо України і як наслідок тимчасова окупація росією частини території України, вчинення на таких територіях злочинів, що підпадають під

юрисдикції Міжнародного кримінального суду і свідчать про порушення прав людини в сфері охорони здоров'я, актуалізували питання особливостей міжнародного співробітництва держав в сфері охорони здоров'я в умовах режиму воєнної окупації, пандемій тощо та його ролі в забезпеченні вище зазначеного права кожної людини.

Проаналізовано доктринальні підходи щодо визначення понять «співробітництво», «міжнародне співробітництво», міжнародні договори з прав людини. Встановлено, що в науковій літературі висловлюються діаметрально протилежні точки зору: від проголошення співробітництва як обов'язку держав до повного заперечення юридичної сили цього принципу. Сформульовано авторське визначення поняття міжнародне співробітництво в сфері охорони здоров'я – це комплекс правових засобів, способів та інститутів, які є результатом спільної багатосторонньої або двосторонньої діяльності держав і які вони використовують для досягнення спільних цілей сталого розвитку в сфері охорони здоров'я відповідно до загальноновизначених принципів, норм міжнародного права. Акцентовано увагу на тому, що результатом міжнародного співробітництва є міжнародні стандарти прав людини в сфері охорони здоров'я, які прийняті міжнародними організаціями універсального та регіонального характеру, і які імплементуються в національне законодавство, але такі стандарти – результат співробітництва саме держав, хоча і в рамках міжнародних міжурядових організацій оскільки ці організації не наділені спеціальною компетенцією від природи, а наділені нею державами шляхом її визначення в статуті таких організацій.

**Ключові слова:** права людини, держава, право на охорону здоров'я та медичну допомогу, забезпечення права людини на охорону здоров'я та медичну допомогу, співробітництво держав, міжнародні стандарти права на охорону здоров'я та медичну допомогу.

**Formulation of the problem.** Article 49 of the Constitution of Ukraine guarantees everyone the right to health care and medical assistance [1]. To the state in accordance with Part 2 of Art. 3 of the Constitution of Ukraine is entrusted with the duty to affirm and ensure human rights and freedoms, including the right of everyone to health care and medical assistance. Such a duty of the state is defined as the main one among its other duties. For its implementation, Ukraine must create an effective mechanism for ensuring the above-mentioned right.

As a result of Russia's aggression against Ukraine, part of the territories of Ukraine are temporarily occupied by Russia, and part is under the temporary control of Russia [2]. Questions arise: what are the obligations of Ukraine to ensure the right to health care and medical assistance, what are the obligations of the occupying state to ensure this right in the territories under its control, what are the features of cooperation with international intergovernmental organizations and international non-governmental organizations that peculiarities of ensuring the right to health care and medical assistance under the regime of military occupation, etc. It is certain that in the conditions of a full-scale invasion of Russia on the territory of Ukraine, international cooperation in the field of health care becomes key.

At the same time, in the doctrine of constitutional law, the issues of the concepts of «cooperation» and «international cooperation» are among the most controversial. L. Deshko raised it in his studies [3; 4], S. Perepiolkin [5], O. Yakovenko [6] and other scientists. But there is no unanimity among scientists. The change in social relations, the strengthening of the influence of such factors as Covid-19 on them, Russia's aggression against Ukraine testify to the relevance and feasibility of researching the meaningful content of the concept of «international cooperation in the field of health care» and determining the role of such cooperation in ensuring everyone's right to protection health and medical care.

**The purpose of this article.** The purpose of this article is to formulate the author's definition of the concept of «international cooperation in the field of health care».

**Presenting main material.** Scientist S. Perepiolkin notes that the term «cooperation» is interpreted as «conducting some activity jointly with someone» [5, p. 8]. It can be seen that such a definition can be taken as a basis, because it allows identifying such qualifying signs of cooperation as: 1) dynamics of the process; 2) presence of two or more parties; 3) community of actions.

According to O. Yakovenko, cooperation is the duty of states to cooperate in various spheres of international relations regardless of the development of their political, economic and social systems with the aim of maintaining international peace and security, promoting economic stability and progress, the general welfare of peoples and international cooperation [6, p. 9]. Thus, cooperation is considered by the scientist as an obligation, and not as a right of a sovereign state. Such a point of view is debatable. Indeed, no state can be forced to certain actions without its consent. Also, the state cannot be forced

to implement, for example, international standards on human rights in the field of health care, because they are provided for by certain international human rights documents and the state must voluntarily undertake obligations under these international treaties. According to I. Lukashuk, legally obliging a state to a specific type of cooperation is as difficult as obliging it to friendship with one or another state» [7, p. 286].

But on the other hand, the preamble of the UN Charter and Clause 3 of Article 1 state that the member states of the UN are obliged to carry out international cooperation in solving international problems of an economic, social and humanitarian nature» [8]. Thus, in the preamble of the UN Charter, among other things, the task of reaffirming faith in basic human rights, in the dignity and value of the human person, in the equality of men and women, and in the equality of the rights of large and small nations is declared. In turn, among the goals and principles of this organization's activity is the implementation of international cooperation in the promotion and development of respect for human rights and basic freedoms for all, without distinction of race, gender, language and religion (item 3, article 1).

The Declaration on the Principles of International Law of 1970 states that cooperation is not only a right, but also a duty of states in various spheres of international relations, regardless of their political, economic and social systems [9].

It is correct in O. Yakovenko's definition of international cooperation that it emphasizes the goal of international cooperation - support of international peace and security, promotion of economic stability and progress, general welfare of peoples and international cooperation, which is fully correlated with the goals of the UN.

Analyzing the content of the concept of international legal cooperation, the scientist S. Perepiolkin notes that it is a regular purposeful and coordinated joint activity of participants in international public relations, which is carried out on the basis of generally recognized principles and norms of international law and is aimed at harmonizing their interests to achieve common goals» [5]. Therefore, in the scientist's opinion, international legal cooperation should be regular in nature and this activity should be purposeful, that is, the goal for which such cooperation is being carried out should be determined. Also, according to the scientist, in order for the activity to be qualified as international cooperation, it must be of a joint nature and be coordinated, that is, each subject must contribute to the achievement of the goal of international legal cooperation. The scientist rightly notes that international cooperation is carried out on the basis of generally recognized principles and norms of international law. It goes without saying that the norms of international law also cover the legal norms of customary international law. Unlike other scientists, S. Perepiolkin does not focus on the specific goals of international legal cooperation, but singles out such a qualifying feature of such cooperation as the achievement of common goals.

Regarding the weak point in S. Perepiolkin's definition of the concept of international legal cooperation, it seems appropriate to note that it is also carried out in accordance with other sources of international law, and not only the general principles and norms of international law contained in international acts on human rights. As you know, there are also auxiliary sources of international law.

A. Maievska agrees with S. Perepiolkin that the concept of international legal cooperation is based on the principles and norms of international law, the legal force of which is higher than other norms [10, p. 9-10]. Indeed, A. Maievska emphasizes more aptly from a legal point of view that the foundation of the concept of international legal cooperation is the universally recognized principles of international law and norms of international law.

Academician L. Deshko notes that the international cooperation of states in the field of health care is a complex of legal means and institutions that states use to achieve common goals of sustainable development in the field of health care, which is implemented in the forms of multilateral and bilateral participation and is carried out in accordance with generally recognized principles and norms of international law. It can be carried out with the participation of both states and international organizations. At the same time, the subject of international legal relations in the field of health care can only be that international organization that is endowed by its member states with special competence, defined in its charter [11]. The scientist notes that «the objective necessity of international cooperation in the field of health care is explained by the importance of this type of activity for humanity. In particular, its results played, are playing and will play an important role in solving global problems of humanity (epidemics of plague, typhus, cholera, etc., pandemics caused by influenza viruses (H1N1, H3N2, H2N2) and highly pathogenic strains of bird flu (H5N1, H7N3) , SARS-CoV-2 coronavirus, etc., maintenance of international peace and security, etc.), as well as in ensuring sustainable development» [11].

Thus, scientists hold diametrically opposite points of view regarding the obligation or non-obligation of international cooperation.

**Conclusions.** International cooperation in the field of health care is a complex of legal means, methods and institutions that are the result of joint multilateral or bilateral activities of states and which they use to achieve common goals of sustainable development in the field of health care in accordance with generally recognized principles, norms of international rights. The result of international cooperation, among other things, is the international standards of human rights in the field of health care, which are adopted by international organizations of a universal and regional nature, and which are implemented in national legislation, but such standards are the result of the cooperation of states themselves, albeit within the framework of international intergovernmental organizations, since these organizations are not endowed with special competence by nature, but are endowed with it by states by defining it in the charter of such organizations.

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