Амстердамського 1999 р., Ніццького 2000 р. договорів, Договору про ЄС і Договору про функціонування ЄС в редакції Лісабонського договору 2007 р. у сфері соціальної політики Союзу. Зосереджено увагу на європейських спеціалізованих актах у цій царині, зокрема означено вплив Європейської соціальної хартії 1961 р., прийнятої в межах Ради Європи, на розвиток всеосяжної правової основи в соціальній сфері Європейських співтовариств; розкрито сутність і значення Хартії основних соціальних прав трудящих Співтовариства 1989 р.

Підкреслено значення соціального діалогу, як невід'ємної складової Європейської соціальної моделі. Зазначено роль Комітетів галузевого діалогу, що сприяють діалогу між соціальними партнерами на європейському рівні. Розкрито значення соціальних самітів та ролі прийнятих ними рішень у сфері соціальної політики; акцентовано увагу на діяльності держав та їхніх партнерів у розробці соціальних стандартів.

Означено роль інституцій ЄС, зокрема Європейської Комісії, яка доповнює політику держав-членів в галузі соціальної інтеграції та соціального захисту шляхом розробки стратегічних актів (напр., Стратегія «Європа-2020»), спрямованих на покращення соціального статусу осіб; надає рекомендації державам-членам щодо модернізації їхніх систем соціального забезпечення з метою соціальних інвестицій тощо. Зроблено відповідні висновки.

Ключові слова: *правова основа, соціальний діалог, соціальна політика, соціальні стандарти.*

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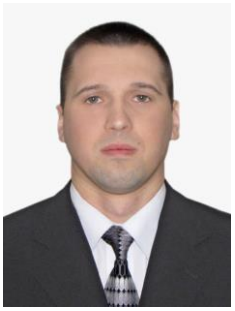

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CONSTITUTIONAL AND LEGAL REGULATION OF THE RIGHT TO PROFESSIONAL LEGAL AID IN UKRAINE AND THE COUNTRIES OF CONTINENTAL EUROPE: COMPARATIVE ANALYSIS

Abstract. The article examines the constitutional practice of normative regulation of the right to professional legal assistance, enshrined in Art. 59 of the Constitution of Ukraine and in similar norms of the constitutions of the states of continental Europe. The necessity of presenting the mentioned article in the new edition is substantiated. It is determined that the right to professional legal assistance, which is enshrined in Art. 59 of the Constitution of Ukraine, is one of the inalienable human rights, which provides a state-guaranteed opportunity for any person to receive assistance in legal matters in the amount and forms which is needed. It is noted that the right to professional legal assistance in various formulations and volumes is reflected in the constitutions of Andorra, Azerbaijan, Belarus, Belgium, Armenia, the Netherlands, Serbia, Slovakia, the Czech Republic, Montenegro and Switzerland. In other European countries such right is regulated at the level of sectoral legislation. The expediency of separating the provisions on the free choice of each defender of their rights and freedoms in an independent part of Art. 59 of the Constitution of Ukraine and supplement it with provisions on the prohibition to influence a person in any way when choosing a lawyer, as well as the prohibition to interfere with the lawyer in his / her activities to provide the legal assistance, is substantiated.

Keywords: *constitution, assistance, professional legal assistance, right to professional legal assistance, free of charge.*

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Relevance of the study. The main duty of the state is to establish and ensure human rights and freedoms, among which a special place is occupied by the right to professional legal assistance, which is enshrined in Art. 59 of the Constitution of Ukraine. As a fundamental and inalienable right, it is an effective guarantee of other constitutional rights and freedoms of man and citizen

Recent publications review, that have begun to address this issue. The scientific and theoretical basis for the study of this topic were the constitutional legislation of Ukraine and European countries, as well as scientific works of scientists on selected issues.

It should be noted that there are no significant research in Ukraine has been conducted on the comparative legal analysis of the provisions of the Constitution of Ukraine with the relevant provisions of the constitutions of continental European states, which enshrine the right to professional legal assistance. G. Dzhuska's dissertation research "Constitutional human right to professional legal aid in Ukraine" (Kyiv, 2018) is devoted to the generalized characteristics of the right to professional legal aid. The analysis of this work makes it possible to determine the state of the researched issues and to outline the range of issues that have not yet been the subject of a separate scientific research.

The article's objective is to conduct a comparative analysis of the provisions of the constitutions of Ukraine and the states of continental Europe, which enshrine the right to professional legal assistance, as well as the formulation of specific proposals to improve the provisions of Art. 59 of the Constitution of Ukraine.

Discussion. The right to professional legal assistance, which is enshrined in Art. 59 of the Constitution of Ukraine, is one of the inalienable human rights, is of particular importance in the period of legal transformations and reforms, and provides "state-guaranteed opportunity for any person regardless of the nature of its legal relations with state bodies, local governments, associations , legal entities and individuals are free, without undue restrictions to receive assistance on legal issues in the amount and forms as it requires" [1]. In this case, as noted by V. Isakova, the right to legal aid should be considered as a natural inalienable right of the individual (the right to legal aid in the subjective sense) and is essentially a civil right [2, p. 344]. Moreover, the scholar emphasizes that this right has a special, dual nature: on the one hand, it is revealed as one of the human rights, covering a system of certain fundamental legal possibilities, and on the other – acts as an important guarantee of other human rights, including law for effective judicial protection [3, p. 8].

As state guarantees are an important factor in the realization of specific rights and freedoms and ensuring their legal protection, we propose to strengthen the first sentence of Art. 59 of the Constitution of Ukraine the word "guaranteed", which will emphasize not only the constitutional and legal obligations of the state, but will promote compliance with Ukraine's international legal obligations in accordance with international human rights instruments, as well as the experience of some European states. Thus, in Part 1 of Art. 67 of the Serbian Constitution stipulates that "everyone is guaranteed the right to legal aid under the conditions provided by law" [4].

It should be emphasized that this is the only human right in Section II "Rights, freedoms and responsibilities of man and citizen" of the Constitution of Ukraine, which in Art. 59 the word "legal" has been replaced by the phrase "professional lawyer", which in our opinion cannot be considered successful compare to the previous definition of this word. Thus, in the Great Explanatory Dictionary of the modern Ukrainian language the word "legal" means the same as "juridical" [5, p. 917]. That is, from the point of view of linguistics, these concepts are synonymous. And therefore it is unclear why the domestic legislator in Part 5 of Art. 55 of the Constitution of Ukraine replaced the word "legal" with the word "juridical", and in Part 4 of Art. 29 and Part 1 of Art. 59 he replaced the word "legal" with the word "juridical", adding the word "professional", which is an adjective to the word "profession", which, in turn, means "related to a certain profession" [5, p. 995]. In this regard, we propose the first sentence of Art. 59 of the Constitution of Ukraine to state as follows: "Everyone is guaranteed the right to receive legal aid", which is more understandable for citizens.

A careful analysis of the constituent constitutions of continental European states has shown that the right to professional legal assistance in various wordings and volumes is reflected in the basic laws of Andorra, Azerbaijan, Belarus, Belgium, Armenia, the Netherlands, Serbia, Slovakia, the Czech Republic, Montenegro and Switzerland. Thus, in paragraph 1 of Art. 18 of the Constitution of the Netherlands states that "everyone has the right to legal assistance in representing his interests in civil, criminal or administrative proceedings"

[6, p. 479]. At the same time, in other European countries, the law under study is regulated by sectoral legislation. In addition, some European constitutions also state that legal aid is provided to a suspect, accused or defendant in criminal proceedings. For example, in paragraph 2 of Art. 48 of the Russian Constitution states that "every detainee, detainee, accused of committing a crime has the right to use the assistance of a lawyer (defense counsel) from the moment of detention, detention or indictment" [7, p. 349].

It should be noted that at the doctrinal level, the subject of legal (legal) assistance was initially considered to be the relationship that developed in the process of bringing a person to justice. Subsequently, this right began to apply to persons who were subject to any kind of legal liability. In modern conditions, preference is given to a broad understanding of the right to receive legal (legal) assistance in the exercise of rights and freedoms, legitimate interests and responsibilities, covering various types of legal services, including advice, clarification, claims and appeals, certificates, statements, complaints, representation in courts and other state bodies, protection against prosecution, etc.

It is also worth noting that in addition to the right to professional legal assistance in Art. 59 of the Constitution of Ukraine enshrines a provision providing for the provision of professional legal assistance free of charge in cases provided by law. Azerbaijan, Albania, Andorra, Armenia, the Netherlands, Serbia, Montenegro and Switzerland have enshrined a similar position at the constitutional level. Thus, in Part 3 of Art. 21 of the Constitution of Montenegro stipulates that "legal aid may be free of charge, in accordance with the lawм" [8], and in paragraph 3 of Art. 29 of the Swiss Constitution states that "every person who does not have the necessary funds has the right to unpaid justice". As this is necessary for the observance of her rights, she is entitled to free "legal aid" [9, p. 541]. At the same time, in some of these countries of continental Europe, free legal aid is provided only in criminal proceedings. For example, in paragraph d) of Art. 31 of the Albanian Constitution stipulates that "in the process of criminal proceedings everyone has the right to:… use free legal aid in cases of lack of sufficient funds" [10, p. 186-187]. At the same time, some constitutions stipulate the obligation of the state to provide free legal aid in other categories of cases. For example, in paragraph 2 of Art. 37 of the Czech Constitution stipulates that "everyone has the right to legal assistance during the consideration of his case in courts, other state bodies or public administration bodies from the moment of implementation" [9, p. 528]. The Constitutions of Azerbaijan, Belarus and Armenia have established that the financing of free legal aid is provided by state funds, i.e. the source of funding for this aid is earmarked funds allocated from the state budget. For example, in paragraph 2 of Art. 18 of the Constitution of the Netherlands emphasizes that this assistance is provided to "low-income persons" [6, p. 479]. In our opinion, the wording of the second sentence of Art. 59 of the Constitution of Ukraine does not require changes, as it is successful and understandable for the population of Ukraine.

In Art. 59 of the Constitution of Ukraine also enshrines a provision that allows everyone to freely choose a defender of their rights. According to M. Teslenko, the Constitution itself provided for a person with a "special status as a defender", who must have special knowledge in the field of law, i.e. legal education. Therefore, legal aid should be provided by a lawyer, someone who knows the law, has the appropriate skills in this area [11, p. 56]. At the same time, M. Havronyuk adds that in general, legal assistance can be provided to citizens by any person – a lawyer by profession, if he in the prescribed manner has acquired the appropriate powers and is not deprived of them [12, p. 261]. In addition, the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, provide that everyone has the right to seek the assistance of any lawyer in defending and defending their rights and protecting them at all stages of criminal proceedings, and the government must ensure that the competent authorities promptly inform each person of his or her right to the assistance of a lawyer of his or her choice in the event of detention, arrest, or prosecution. This means that everyone can defend themselves personally or through a lawyer of their choice, taking into account his or her authority, level of qualifications, professional skills and practical experience required to provide legal protection or legal aid.

However, the analysis of Art. 59 and Part 2 of Art. 131–2 of the Constitution of Ukraine, which states that "only a lawyer represents another person in court, as well as protection against criminal charges" [13], gives grounds to conclude that the right to free

choice of defense counsel is limited to such a choice only between the lawyers. At the same time, in our opinion, a logical mistake is made, as the defense attorney is not dependent on the quality of defense, but only on membership in the bar. Regarding this thesis, the question formulated by A. Kozlov is correct: "Are a doctor of law or an honored lawyer less prepared if they are not lawyers ?!" [14, p. 29]. Therefore, it is difficult to disagree with the opinion that it is inadmissible to secure the right to provide legal (legal) assistance exclusively to lawyers. After all, this would mean recognizing their monopoly position in the market of legal services, which would limit the right of everyone to freely choose a lawyer, as well as violate the rights of persons engaged in private law practice and have a degree in law. At the same time, as noted by scholars, national law does not restrict competition in the provision of services by private law entities [15, p. 380]. This is also explicitly stated in paragraph 3, item 6 of the motivating part of the Judgment of the Constitutional Court of Ukraine of 16. November 2000 №13-rp / 2000: "persons who are held administratively liable do not promote competition for the provision of qualified legal assistance in these areas and the training of specialists in the field of law" [16]. Thus, limiting legal aid to services provided only by lawyers will be in the best interests of the lawyers themselves, rather than the interests of those in need of legal aid. And therefore it is impossible to agree with the new edition of Art. 59 of the Constitution of Ukraine, proposed by V. Rechytsky, and which, according to the scientist, encourages the use of professional legal assistance in many spheres of life of Ukrainian society [17, p. 54].

We also believe that the provision on the free choice of each defender of their rights should be separated into an independent part of Art. 59 of the Constitution of Ukraine and supplement it with provisions on the prohibition to influence a person in any way when choosing a lawyer, as well as the prohibition to interfere with the lawyer in his activities to provide legal assistance.

Conclusions. Thus, given the above and taking into account the results of comparative legal analysis of Art. 59 of the Constitution of Ukraine with similar provisions of the constitutions of the states of continental Europe, we consider it necessary to present this article in the following wording:

"Everyone is guaranteed the right to legal aid. In cases provided by law, this assistance is provided free of charge.

Everyone is free to choose a defender of their rights and freedoms. It is prohibited to influence the person in any way when choosing a lawyer and to hinder the lawyer in his / her legal aid activities".

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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КОНСТИТУЦІЙНО-ПРАВОВЕ РЕГУЛЮВАННЯ ПРАВА НА ПРОФЕСІЙНУ ЮРИДИЧНУ ДОПОМОГУ В УКРАЇНІ ТА КРАЇНАХ КОНТИНЕНТАЛЬНОЇ ЄВРОПИ: ПОРІВНЯННЯ

Анотація. У статті досліджена конституційна практика нормативного регулювання права на професійну правничу допомогу, закріпленого у ст. 59 Конституції України та в аналогічних нормах конституцій держав континентальної Європи. Обґрунтована необхідність викладення зазначеної статті у новій редакції.

Визначено, що право на професійну правничу допомогу, яке закріплене в ст. 59 Конституції України, є одним із невід'ємних прав людини, що передбачає гарантовану державою можливість будь-якій особі незалежно від характеру її правовідносин з державними органами, органами місцевого самоврядування, об'єднаннями громадян, юридичними та фізичними особами, вільно, без неправомірних обмежень, отримувати допомогу з юридичних питань в обсязі і формах, як вона того потребує.

Запропоновано перше речення ст. 59 Конституції України посилити словом «гарантується», що, на нашу думку, підкреслить не тільки конституційно-правовий обов'язок держави, а й буде сприяти дотриманню взятих Україною міжнародно-правових зобов'язань відповідно до положень норм Загальної декларації прав людини, Конвенції про захист прав людини і основоположних свобод, Міжнародного пакту про громадянські і політичні права тощо.

Наголошено, що право на професійну правничу допомогу є єдиним правом людини в розділі ІІ «Права, свободи та обов'язки людини і громадянина» Конституції України, в якому в ст. 59 здійснена заміна слова «правова» на словосполучення «професійна правнича», що не можна визнати вдалим порівняно з попереднім визначенням цього слова.

Зазначено, що право на професійну правничу допомогу в різних формулюваннях та обсягах знайшло своє відображення в конституціях Андорри, Азербайджану, Білорусі, Бельгії, Вірменії, Нідерландів, Сербії, Словаччини, Чехії, Чорногорії і Швейцарії. В інших європейських державах досліджуване право врегульоване на рівні галузевого законодавства.

Звернуто увагу на те, що крім права на професійну правничу допомогу в ст. 59 Конституції України закріплено положення, що передбачає надання професійної правничої допомоги у випадках, передбачених законом, на безоплатній основі. Такий підхід застосовано і в законодавстві Азербайджану, Албанії, Андорри, Вірменії, Нідерландів, Сербії, Чорногорії і Швейцарії.

Обґрунтовано доцільність виокремити положення про вільний вибір кожним захисника своїх прав і свобод в самостійну частину ст. 59 Конституції України та доповнити її положенням про заборону будь-яким чином впливати на особу при виборі нею захисника, а також про заборону перешкоджати захиснику в його діяльності з надання юридичної допомоги.

Запропоновано, враховуючи європейський досвід конституційно-правового регулювання права на професійну правничу допомогу, положення ст. 59 Конституції України викласти в такій редакції: "Кожному гарантується право на отримання юридичної допомоги. У випадках, передбачених законом, ця допомога надається безоплатно. Кожен є вільним у виборі захисника

своїх прав і свобод. Забороняється будь-яким чином впливати на особу при виборі нею захисника та перешкоджати захиснику в його діяльності з надання юридичної допомоги".

Ключові слова: *конституція, допомога, професійна правнича допомога, право на професійну правничу допомогу, безоплатність.*

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ADMINISTRATIVE AND LEGAL STATUS OF GENERAL PRACTICE – FAMILY MEDICINE

Abstract. The article is devoted to the disclosure of the problem of administrative and legal status of a general practitioner - a family doctor. Emphasis is placed on the importance of clearly defining the legal personality of the family doctor in view of reforming the health care system and overcoming the negative consequences of counteracting the COVID-19 pandemic.

Disclosure of administrative and legal status was carried out through the generally accepted categories of "legal status" enshrined in legal science. It is stated that there is no codification of legal norms in this area. This problem is emphasized against the background of the rapid response of the primary level to the threats of outbreaks of epidemics and pandemics.

Keywords : *legal status, medical worker, general practitioner, health care, family doctor.*

Relevance of the study. The restructuring of the health care system from a budget-organized to an insurance model has contributed to the emergence of a new form of relationship between patients and doctors. This transition contributed to the formation of a new form of medical care and the emergence of the institution of general practitioner - family medicine (hereinafter - family doctor). The creation of the new institute caused a number of organizational and legal problems related to the organization of the family doctor's work, financing of his activity, definition of the range of powers and stimulation of activity in the direction of his constant improvement of his qualification.

Unfortunately, it has to be stated that the existing legal regulation of a family doctor in Ukraine does not correspond to the level of development of public relations in the field of health care. Insufficiently taken into account specific aspects of activities that affect the quality of the treatment process, there are a number of problems with ensuring the rights and freedoms of the doctor, defending his rights and creating appropriate conditions for self-realization of a qualified specialist and counteracting the spread of COVID-19 [1].

Recent publications review. The problems of the formation of medical law were devoted to the work of S. Stetsenko, who is the founder of domestic medical law, V. Stetsenko actively worked on the issue of insurance medicine as another round of reform of the medical system. B. Logvinenko actively researched the legal regulation of departmental medicine. The work of O. Skochylias-Pavliv was dedicated to the legal status of a medical worker. However, it is necessary to state the absence of a single systematic approach to determining the priority of research on medical law in general, and the lack of work on the disclosure of the administrative and legal status of a general practitioner - family medicine.

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