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**GENERAL DECLARATION OF HUMAN RIGHTS
AND CONSTITUTIONAL HUMAN RIGHT ON HEALTH PROTECTION,
MEDICARE AND MEDICAL INSURANCE IN UKRAINE:
PROBLEMS OF SEARCH AND SETTING OF NORMS
OF THE UNIQUE HUMANITARIAN VALUES**

Celebration in honour of the most respected international acts in the field of human rights 60 anniversary of General declaration of human rights - allows to rethink the value of the real epochal human rights act for law-creation and enforcement activity in the sphere of realization and guaranteeing of constitutional rights and freedoms of man in Ukraine, to conduct an intersentinel legal "bridge", which will allow to find out the issues of the day of embodiment of ideas and ideals of humanism, fixed in Declaration in modern constitutionally legal realities. As in all of times the inalienable constituent of ideas of humanism was actually healthy existence to the individual, creation of the proper terms for providing of health of man on the whole, and also timely and effective medicare that, who needs herein, fully logical will be realization of analysis of problem of development of positions of General declaration of human rights in a current legislation, which determines the order of realization and guaranteeing of constitutional human right on a health protection, medicare and medical insurance.

General declaration of human rights incarnated in the positions millennial experience and achievements of fight for human rights which most concentrated represent ideas and ideals of supremacy of right and humanism. On every stage of civilization history of humanity ideas of

human rights, as well as their maintenance changed. In this sense, it follows to accede to the academician Y. Shemshuchenkom who asserts justly, that "human rights - historically changeable category which evolves together with society and state" [1].

On the way of claiming of human rights freedoms, fixed in Declaration, humanity passed a difficult and thorny way, step by step limiting absolute power of the state, diffusing principle of equality of rights on greater circle of persons and relations between them. Often fight for the human rights, for the new and new degrees of freedom became the catalyst of large-scale changes in social and political life of that or other country, led to the new comprehension of the roles of man in its relationships with society and state. In different epoches the problem of human rights, unchanging remaining political and legal, acquired the religiouslyethics, philosophical, culturalogical sounding.

The idea of human rights, on our persuasion, began to acquire the usual for nowadays value only through the prism of realization of ideals of classic European constitutionalism during bourgeois-democratic revolutions in Europe at the end of XVIII - at the beginning of the XIX century. Although, civilization history of humanity know more early attempts of constituting of human rights, in particular, in Constitution of

Philip Orliko in 1710, which presently remains prominent sight of the European constitutionally legal idea.

Human rights became a basic slogan and most achievement of that time revolutions and wars. Not by chance, that one of the first confessedly constitutional acts in history of humanity became Declaration of human and citizen rights in 1789 in France which can be considered the forerunner of General declaration of human rights of 1948.

In subsequent, in XIX-XXI centuries development of constitutionalism was accompanied expansion of nomenclature of the rationed human rights and improvement of legal mechanisms of their guaranteeing. However, this process was halted and even returned in reverse direction during I and II World Wars which showed fragility and impressionability of humanitarian ideals of mankind and human rights and freedoms in default of the proper international guarantees.

In force of it, the founders of UNO, accepting Regulation of this worthy international organization at Conference in San Francisco in 1945, defined principle of respect of human rights as primary purpose and task activity of UNO. On implementation of the regulation tasks already in 1946 year of UNO founded Commission on human rights as basic organ within the framework of the system of UNO, which determines the policy of this organization in the sphere of human rights. However, the post-war world expected not only proceeding in the ideals of humanism and humaneness, incarnate in human rights but also on their confession and guaranteeing at an international level. The proper trouble work was done with success by the members of Commission.

Commission, chaired by known human rights advocate Eleanor Roosevelt undertook a task to define and formulate basic human rights and freedoms. Fruitful activity of such members of Commission as René Cassin (France), Charles

Malik (Lebanon), Peng Vat Cheng (China), Eran Santa Kruz (Chile), Alexander Bogomolov and Alex Pavlov (the former USSR), Lord Dukestone and Jeffrey Wilson (Great Britain), William Hodgson (Australia) and John Humphrey (Canada), etc., had the investigation of work of project of General declaration of human rights. A key role in writing of Declaration belongs to our compatriot, whose name presently carries Institute of the state and right for National Academy of Sciences of Ukraine - to Vladimir Korecke, the member of delegation of Ukraine on 1, 2 and 4 sessions of General Assembly of UNO. Authorship of the item 1 of Declaration belongs him: "All of people give birth free and even in the dignity and rights. They are provided with a mind and conscience and must operate in attitude toward each other in a spirit fraternity".

After the careful study of geared-up Commission project of General declaration of human rights and 1400 stages of voting practically on every his point and word General Assembly accepted General declaration of human rights solemnly. This notable event took place on December, 10, 1948 in Paris. Since marking of anniversaries from the day of acceptance of Declaration began to be justly considered the holiday of consolidation of all of human rights advocates of the world.

What does an unicity and epochal value consist in this international document? General declaration of human of 1948 rights became the first document of universal character which at an international level proclaimed basic civil, political, social, economic and cultural rights and the same set their standards. A lot of countries of the world, including Ukraine, included reference to Declaration or its position in the constitutions and constitutional acts, besides, absolute majority of pacts, conventions and agreements, on questions of human rights, accepted after 1948 year, based on its principles. And presently, in the XXI Declaration, not having legal force of internation-

al agreement, remains the priority source of human rights activity and determining act in the field of general motion on defence of human rights.

Representing essence and spirit of General declaration of human rights Constitution of Ukraine sets in the article 3, that man, his life and health, honour and dignity, inviolability and safety, recognize in Ukraine the greatest social value, and rights and freedoms of man and their guarantees determine maintenance and orientation of activity of the state. Presently Basic Law of Ukraine rations the system of right and freedom of man, and also general principles of their realization and guarantee, in close as 40 articles.

Swingeing majority from these rights and freedoms reproduce the proper positions of Declaration, but since its acceptance in domestic and world constitutional practice became firmly established and got the normative fixing and new rights and freedoms of man and even their group. There is a question in the context of it: what do constitutional rights and freedoms and their system show by itself?

Part 2 of article 3 of Constitutions of Ukraine they "determine maintenance and orientation of activity of the state". Thus, constitutional human rights and freedoms are not only the important element of constitutionally legal status of man and citizen, independent institute of constitutional right, pointer of social orientation of the Ukrainian state, but also by the basic sentence of modern constitutionalism.

Modern constitutional human rights and freedoms differ the variety, and the questions of their classification and systematization became traditional for legal science and practice. Most often human rights distinguish after the sphere of public relations which these rights exist in, naming civil, political, social, economic, cultural, ecological, informative and other rights. Indisputably, exist and other points of view in relation to the system of rights and freedoms of man and its parts.

However, any, even perfect and in theory legal model of human rights and freedoms of checked up its effectiveness, that, by perfection of legal mechanisms of realization of human rights and level of their assuredness. If the personal and political human rights, fixed in General declaration of human rights and reproduced in the national constitutions of the most world powers realized on the whole without difficulty, rights for the last generations - economic, social, cultural, ecological and informative, and also rights for collective subjects require the improvement of the system them legal guarantees, before all at constitutional level. The same situation is characteristic for our state.

Not how many XXI item was obviously marked by appearance of the newest rights and freedoms of man, so much by aspiration of the real rich in content filling already of fixed in constitutions and constitutional acts of rights and freedoms of man. In this sense, suitable are appeals of the Ukrainian politicians, statesmen, research workers and expert environment, in relation to *переосякнення* of the rights and freedoms of man and bringing them over vested presently in Constitution of Ukraine in accordance with modern *політико-правових* realities. Constitution of Ukraine in Section II "Right, freedom, and duties of man and citizen" fixed the perfect system of human rights and freedoms, and also general principles and positions which have an object to define maintenance of guarantees and mechanisms of realization of these rights and freedoms sufficiently. Together with that, separate from them, especially in a socio-economic sphere (right on habitation (item 47), right on the sufficient standard of life on your own and the family (item 48), right on accessible medical service (item 49), etc), remain for today mainly declarative. Marks instrumental in distribution of legal nihilism in society and doubts of citizens in possibility of the state to provide them constitutional rights.

Being traditionally attributed to the social sphere, these rights correlate with the most personal or civil, political, economic, other social and cultural human rights, in the first time system rationed at an international level in General declaration of human rights. In the first place, it's about confessedly for today in the whole civilized world human right on a health protection and medicare, which in the days of creation of Declaration did not purchase such determining character and it was not borne in this text important internationally wrongful document.

After II World War, when a lot of countries of Asia and Africa were in the colonial state and the dictatorial mode of Franco operated even in the center of Europe, idea of providing of everyone by the proper and timely medicare seemed though desired, but impracticable. Fixing of the proper right in General declaration of human rights would conflict with principles of forming this important document, namely - to principle of realism of the declared rights and freedoms of man and citizen. In fact, item 22 of Declarations fixed, that everybody, as a member of society, has a right on public welfare and on realization of necessary for maintenance of its dignity and for free development of its face of rights by "national efforts and international cooperation and in accordance with a structure and resources of every state". But, national resources of the post-war states, well-off to provide the real, but not declarative right each on a health protection were formed only through decads of years after acceptance of Declaration. And already in 90th of XX the proper constitutional right got distribution in majority of the world powers, regardless of form them state rule and administrative-territorial device.

Indisputably, XXI put before humanity a lot of sharp and difficult problems in the field of health protection and providing of human rights for medical help. Presently civilization achievements in the field of health protection are added

criticism. Non lonely is ideas in relation to a scale crisis in this sphere and in relation to illusiveness declared in constitutions and constitutional acts of human right for medical help. The new paradigms of the future of modern medicine appear.

Yes, interesting is opinion of the known American futurology John Naisbitt, which in the world-wide work of "Megatrend" expressed a prognosis in relation to claim of the newest paradigm of health and the basis will be, alternative medicine, self-treatment and personal healthy habits of everybody [2]. However, on our persuasion, strengthening of activity of the state must become major trend of the future in the field of providing of health protection, medicare, medical insurance, healthy way of life and creation vitally of safe terms, for healthy longevity of man.

Obviously, that realization of the proper function of the state, except for considerable administrative, financially budgetary, socio-economic and humanitarian resources, will need the due of the legal providing. In this sense, it is possible confidently to assert that Constitution of Ukraine, guaranteing in item 49 right each on a health protection, medicare and medical insurance, logically continues and develops idea and ideal of post-war humanism, rationed in General declaration of human rights.

Therewith, a constitutional right is marked, getting the development in the current legislation of Ukraine, it must be perfected, converting the declared ideas and principles in reality of everyday life of ordinary ukrainian. But, these realities are unencouraging presently - Ukrainians continue stably to keep doubtful championship from chronic diseases, approach an epidemiology network from AIDS, to tuberculosis and other diseases, and also have low in Europe of providing of life, etc. Thus, exactly Ukraine has in Europe most of area of establishments of health protection per capita.

Except for administrative paradoxes such situation is explained by absence in Ukraine of

integral legal conception of constitutional human right on a health protection, medicare and medical insurance, and the proper monographic constitutionally legal researches, devoted this range of problems.

For example, state of investigation of problems of theory and practice of constitutional right on a health protection, medicare and medical insurance, sufficiently relief reproduced in modern educational literature from a constitutional right of Ukraine. Most modern textbooks and train aids on constitutional rights of Ukraine are characterized by essence and maintenance of right on a health protection, medicare and medical insurance, mostly from positions of fragmentary comments of the proper article of Constitution of Ukraine (item 49), pointing, for example, some acts of current legislation, which develop and go into a detail the probed constitutional right, higher mentioned by us [3]. An academic course from a constitutional right of Ukraine (in 2008) in a section, devoted human rights does not expose maintenance of right of everyone on a health protection, medicare and medical insurance [4], in general.

To our opinion, conception of constitutional human right on a health protection, medicare and medical insurance, must become the result of the detailed researches of range of questions, related to determination of essence and maintenance of category "constitutional human right on a health protection, medicare and medical insurance", by research of genesis of this constitutional right in the context of genesis of Ukrainian constitutionalism and human rights activity on the whole, by establishment of mechanisms of co-operation of this constitutional right with other human rights and freedom, rationed Constitution and laws of Ukraine.

In a context of marked, requires the detailed research and problem of structuring and next systematization of right for a person on a health protection, medicare and medical insur-

ance. Obviously, that this right is not the unique, or such which can be fully generalized in a concept "right on a health protection". Thereby, it is possible to assert proper constitutional about system character.

Appropriately, that effectiveness of any fixed by Constitution of Ukraine of human right determined perfection of guarantees of his realization. It stipulates an urgent requirement in research of social and special legal guarantees of right each on a health protection, medicare and medical insurance.

These and other problems, related to law-creation and by enforcement activity in the field of health protection, medicare, and medical insurance, and also have guaranteing of of the same name constitutional human right the Ukrainian state in the nearest time to become the article of the detailed constitutionally legal researches.

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