

## 5.3 Legal and Health Systems

### Legal System

Ukraine belongs to the continental legal system where the main source of law is a legal act. Another no less important feature of the national legal system is the principle of hierarchical subordination between various legal acts and a pronounced codified nature of law. With contemporary intense forms of communication, the boundaries between legal systems of the world lose their sharpness. Each national legal family, while self-improving, takes into consideration achievements of other systems. In particular, one observes a tendency towards significant convergence between the Roman-Germanic and Anglo-Saxon legal systems.

Legal system of Ukraine is based on several principles, which are put into the basis of law enforcement and realization of law.

**Analogy of law and analogy of the law.** When realizing legal norms law-enforcement body sometimes faces the loopholes in legislation, that is a complete or partial absence of norms regulating legal relations.

In connection with this there had been worked out means of eluding the loopholes in the process of law enforcement. That means were named an analogy. There are the following types of analogy.

**Analogy of the law** – the case or certain legal issue is solved using legal norm that regulates similar issues. Application of an analogy is forbidden if, it is directly prohibited by the law, or if the law associates the appearance of certain legal consequences with availability of specific norms.

**Analogy of law** – the case or certain legal issue is solved on the basis of legal principles, general basics and content of the legislation.

An analogy is not used in the sphere of criminal legislation and legislation on administrative offences.

According to the Letter of Ministry of Justice of Ukraine of January 30, 2009, No H-35267-18, when solving the case on the analogy of law or analogy of the law it is obligatory to observe the following requirements.

- An analogy is admissible only in case of complete or partial absence of legal norms;
- Public relations, where an analogy is applied, must be of legal nature;
- Merits of the case and an available legal norm shall be similar as regards their legal features.
- A legal norm that regulates similar relations search shall be primarily conducted within the frameworks of same branch of law and only then in other branches of law and in legislation in general.
- A decision passed as a result of analogy application shall not be in conflict with rules of the law and its aim.
- The reasons for analogy application to a certain case shall be motivated.

When applying analogy of law of essential importance are legal principles, fixed in the Main Law of the State. Taking into account the fact that constitutional norms

are norms of direct action, therefore a law enforcement subject, relying upon his own conscience, can motivate the decision, referring to constitutional norms. An analogy shall be applied on the grounds of legality. Therefore only judicial bodies – the courts are empowered to use the analogy, observing all procedural norms and procedural guarantees. A case decision, passed owing to the analogy, shall not be in conflict with current legislation.

**Concurrence of legal norms.** Concurrence of legal norms, that is when certain legal issue can be regulated by different legal acts, which are in conflict with each other is typical for the legal system of Ukraine. In order to solve legislative clashes in a proper way, one should keep in mind clarifications, indicated in the letter of Ministry of Justice of Ukraine of December 26, 2008. No. 758-0-2-08-19 “To the practice of application of legal norm in case of a clash”, in particular:

1. In case legal norms issued by the same lawmaking body are in conflict, there should be applied an act, that was issued later, even if an act, which was adopted earlier is still standing. Such inconsistency may appear as a result of the fact that adoption of a new act is not usually followed by abolition of a prior outmoded act, regulating the same issue.
2. In case legal acts adopted by different bodies, superior and inferior are in conflict, there should be applied an act, adopted by superior body, the one that has higher legal force.
3. In case two acts adopted by the same body, but with different legal force are in conflict, there should be applied an act of higher legal force. For instance, in case of inconsistency between Constitution of Ukraine and the law of Ukraine, adopted by the same body – Supreme Rada of Ukraine, there should be applied a Constitution as an act of higher legal force.
4. In case of divergence between general and special acts, priority has the special one, if it wasn't abrogated by the general act that was adopted later.
5. If international treaty of Ukraine, which come into force in an established order, foresees other rules than acts of national legislation, there should be applied an international treaty (paragraph 2 article 19 of the law of Ukraine “On international treaties” of June 29, 2004)

Current international treaties of Ukraine, that were ratified by the Supreme Rada of Ukraine, are considered to be part of national legislation and are applied in order foreseen for the norms of national legislation. If international treaty which come into force in an established order, foresees other rules than acts of national legislation of Ukraine, there should be applied the rules of international treaty.

## Health Care System

The Law of Ukraine “Principles of Ukrainian Health Care Legislation” enforces the principles of the health care system of Beveridge (English model), which are gradually implemented both in legislative and in medical practice and are manifested in family and private health care, insurance, multi-source financing, high social standards. Management of the health care system is carried out by the Ministry of Health of Ukraine and other central bodies of executive power which constitute authority for individual health care institutions, local state administration and local authorities, the Academy of Medical Sciences of Ukraine. Besides state bodies, that are closely connected with health care sphere, this system functionates owing to control and managing functions of other state institutions, in particular President of Ukraine (through the activity of Administration of President of Ukraine, Council of National Security and Defense of Ukraine), Supreme Rada of Ukraine (in particular, Committee of Supreme Rada on Health Care Issues), Ukrainian Parliament Commissioner for Human Rights, Cabinet of Ministers of Ukraine (in particular through the activity of profile Ministries and other central bodies of the executive state power), General Procurators Office of Ukraine and its local bodies, and bodies of the judicial system of Ukraine.

Consulting and advisory bodies, subject to regulation in the health care sector, include: 1) National Council on TB and HIV/AIDS Prevention, 2) National Coordinating Council Against Drug Abuse at the Cabinet of Ministers of Ukraine, 3) Inter-departmental Coordinating Council at the Ministry of Health on Inter-departmental Cooperation Between Health Care Institutions. 4) Public Council at the Ministry of Health of Ukraine (permanent, central, public, collegiate, consulting and advisory, supervisory and expert body), 5) Public Council at the Ministry of Health of Ukraine on the Issues of Cooperation with All-Ukrainian Council of Churches and Religious Organizations (permanent, consulting and advisory body), 6) Council of Young Scientists at the Ministry of Health of Ukraine (permanent, consulting body), 7) Board of the Ministry of Health of Ukraine. 8) Scientific Medical Board of the Ministry of Health of Ukraine (permanent, consulting body considering the issues of medical science in Ukraine development), 9) Coordinative Board on the Management of Quality of Medical Care of the Ministry of Health of Ukraine (permanent, consulting and advisory body), 10) Coordinative Board on the Management of Quality of Medical Care of the Ministry of Health of Autonomous Republic of Crimea, of Regional Headquarters, of Kyiv and Sevastopol Local State Administrations, 11) Coordinative Board on the Management of Quality of Medical Care of Local Health Care Departments of Local and Regional Bodies of Self-government 12) Clinical and Expert Commissions of the Ministry of Health of Ukraine (permanent body, executing coordinative, consulting and advisory function concerning organization of clinical and expert quality of medical care evaluation), 13) Clinical and Expert Commissions of the Ministry of Health of Autonomous Republic

of Crimea, Departments of Health Care, Kyiv and Sevastopol Local State Administrations (permanent body for collegiate consideration of the clinical and expert issues of diagnostics, treatment and rehabilitation, of citizens' complaints and other persons, who were provided with medical care on a certain medical territory, issues of medical care quality, as far as applications of enterprises, organizations, institutions and funds of social insurance, courts, bodies of procuracy, regards these issues on behalf of chief of health care institution, 14) Clinical and Expert Commissions of Health Care Departments of Local Regional Bodies of Self-Government, 15) Medical Board of a Health Care Institution (permanent, consulting and advisory body).

## STRUCTURE OF THE MINISTRY OF HEALTH OF UKRAINE

