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MEDICAL NEUTRALITY AS A HUMAN RIGHTS IN PATIENT CARE PROTECTION CONCEPT: EXPERIENCE OF UKRAINE

War is a traumatic epidemic
Mykola Pyrogov
(surgeon, the founder of field surgery)

A new for the law system of Ukraine legal instrument – medical neutrality, which is aimed at creating a reliable «umbrella» for the human rights in patient care protection, is elucidated. An intent was made to lay theoretical foundation for the national concept using special international and regional standards, doctrinal research works and experience of foreign countries. Features and functions of medical neutrality are developed and its principles are formulated. Authors suggest their own definition of the phenomenon medical neutrality, which reads as follows: a human rights concept that provides for the protection and respect medical-legal relations subjects, guarantees safety of organization and provision of medical care both in times of armed conflicts and in peacetime, and obliges medical personnel to promote equal access to medical services and provide medical care to those in need, without discrimination on any grounds.

Main theoretical approaches to understanding the concept of medical neutrality are analyzed and the gaps in the national legislation in the contest of respecting the concept of medical neutrality are clarified and proposals in order to exclude these gaps are provided. Proposals to the recommendations of the General

Assembly, which should be prepared for the execution of the UN General Assembly Resolution «Global Health and Foreign Policy» are made (of December 2014, 69 UN GA session).

Key words: medical neutrality, human rights, medical care, medical professional, impartiality, health care.

The issue of human rights has been always relevant. It needs permanent promotion from the side of the state and that everybody respects the most valuable achievement of the mankind. The importance of human rights is increasing in the time of war – traumatic epidemic when everybody is taking efforts to stop this epidemic, to find a «vaccine», which will help fight the threats within the country. These are the recipes, which today are looked for in Ukraine – a country, which unintentionally joined the group of states, where the basic principles of medical neutrality are violated.

Given the socio-political realities of modern Ukraine, many new challenges and obstacles that require immediate response, appeared. This is because they relate to fundamental constitutional values, guaranteed by the Basic Law of a state, which foresees that «A human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value.» According to the data of the interactive map «Health Care under Attack in Conflicts and Crises» Ukraine belongs to the group of countries, where the attacks on medical personnel, medical transport and health care facilities occur. This group includes Iraq, Afghanistan, Ukraine, Burma, Yemen, South Sudan, Palestine, Sierra Leone, Liberia, etc. State immunity is under threat, since basic human rights concepts are under the threat. In such circumstances, not only the state mechanism suffers, but also each human organism suffers, therefore, systemic state law-enforcement and realization decisions are necessary.

A state should be urgently focused on a symbiosis of human rights and health care, since accessibility, quality and safety of medical care as a fundamental triad of human rights in patient care are under the threat. These accents are caused by the following postulates: 1) health in all policies (Paragraph «e», section 1 of article 427 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part); 2) national security – protection of vital interests of citizens, society and the state, which provides for a sustainable development, in particular of the health care (Article 1 of the Law of Ukraine «On National Security of Ukraine»).

These are the normative frameworks, which outline the scope of the research as international, regional and national, where human rights and health care are recognized values, which require spectral care to be taken.

Medical neutrality is a new structure for the Ukrainian legal system, which requires systemic and integrated theoretical developments in order to create a reliable «umbrella» for human rights in patient care. Building a national concept will be conducted on the fundamental basis, which is composed of special international and regional standards, doctrinal developments of scientists and experience of foreign states.

The aim of article is to establish basic general-theoretical foundations of the concept of medical neutrality and to develop legal mechanisms of human rights in patient care protection through the prism of this concept.

Within the research the following tasks shall be fulfilled: 1) to distinguish the features and functions of medical neutrality; 2) to suggest a definition of the term «medical neutrality»; 3) to formulate and find out the essence of the principles of medical neutrality; 4) to find out the main theoretical approaches to understanding the concept of medical neutrality; 5) to identify gaps in the national laws of Ukraine in the context of the concept of medical neutrality; 6) to develop proposals to address these gaps; 7) to prepare proposals to the draft recommendations of the UN General Assembly on the implementation of UN General Assembly Resolution «Global Health and Foreign Policy» (11 December 2014.; 69th session of the UN) (hereinafter – the Resolution).

Given the objective and the tasks of the research there were chosen appropriate scientific research methods. A spectrum of general scientific and special methods of knowledge was used. Into the basis of the research such methods were a dialectical method with a systemic and structural approach were laid: dialectical method combined with a systemic and structural approach was used to study the materials and formulate conclusions, comparative-legal method was used to explore the norms of international and regional standards, national laws and foreign states' legislation. The methods of analysis and synthesis were applied to formulate proposals concerning national concept of medical neutrality, as well as hermeneutics-linguistic method was used to interpret legal texts of different historical-legal periods.

Medical neutrality is acquiring new colors and needs prompt decisions not only in Ukraine but the whole international community. It is no coincidence that during the 69th session of the UN General Assembly there took place a thematic session «Health Care and Violence: Need for Effective Protection». During this session, in particular Margaret Chan (WHO) highlighted that if the governments and the international community want that the problem of health care protection is effectively resolved, the following 5 «A» should be accomplished:

- Raise Awareness;
- Carry out Advocacy;
- Change Attitude;
- Effective Action;
- Establish Accountability.

Besides this, at the 69th session there was adopted a Resolution, which established a new vision of the world community as regards to concept of medical neutrality realization.

In this Resolution, the General Assembly underscored the responsibility of the member states to «build resilient national health systems and strengthen national capacities through attention to, inter alia, service delivery, health systems financing, including appropriate budgetary allocations, the health workforce, health information systems, the procurement and distribution of medicines, vaccines and technologies, sexual and reproductive health-care services and political will in leadership and governance, and recognizing the value and importance of universal health coverage in providing access to quality health services, while ensuring that the use of these services does not expose the users to financial hardship, with a special emphasis on the members of the poor, vulnerable and marginalized segments of the population».

The General Assembly also highlighted the following axiomatic provisions:

The need to prevent and address the exposure of health workers to hazardous working environments and violent incidents and the consequent trauma suffered by them in various forms;

- medical and health personnel have a duty to provide competent medical service in full professional and moral independence, with compassion and respect for human dignity, and to always bear in mind human life and to act in the patient’s best interest under their respective professional codes of ethics;
- protection of medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, hospitals and other medical facilities with the view of rules and principles of international humanitarian law, including the provisions of the four Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005 and international customary law;
- observance of the principles of humanity, neutrality, impartiality and independence in the provision of humanitarian assistance;
- acknowledgement that acts of violence or threats of violence against medical and health personnel worldwide in armed conflict and emergency situations, and stressing that such acts are detrimental to the development of sustainable health systems and the integrity of the professional codes of ethics of medical and health personnel;
- realizing that one of the most serious threats to medical and health personnel is posed by armed conflicts, acknowledging the risk to such personnel in situations that do not constitute armed conflict, and noting that it is the responsibility of national Governments to carry out appropriate preventive and remedial measures.

Of course, all UN member states including Ukraine shall seek the ways for strengthening the concept of medical neutrality. Some general recipes were given in the international standards, in particular in the Resolution. One of the key provisions is an urgent call to all UN member states together with relevant international organizations and non-state actors, to develop effective preventive measures to enhance and promote safety and protection of medical professionals as well as respect for their respective professional codes of ethics, including:

- develop clear and universally recognized definitions and norms for the identification and marking of medical and health personnel, transports and installations;
- take specific and appropriate educational measures for medical and health personnel, civil servants and the general population;
- take appropriate measures for the physical protection of medical and health personnel, their means of transport and installations;
- take other appropriate measures, such as national legal frameworks where warranted, to effectively address violence against medical and health personnel;
- organize collection of data on obstruction, threats and physical attacks on health workers.

Consequently, the international framework, which together with other standards, makes up an incorporated Constitution, induces our country as well to take active law-making and research actions directed at establishment and development of the national concept of medical neutrality.

A concept of medical neutrality plays a key role among the mechanisms for the realization of human rights in patient care during armed conflicts, which have either international or non-international nature and as well as in peacetime. In the opinion of scholars Michael Gross, Don Carrick medical neutrality derives from more general ethical principle of war, which foresees that violence should be not applied to people, who do not participate in the conflict – the so called principle of non-combatants immunity. Analyzing historical stages of the concept of medical neutrality, these scholars note that some features of this phenomenon are traceable to ancient times and are connected with the Greek term «philanthropy», and Roman term «humanitas». They highlight that the Greeks and the Romans were not generous with their defeated enemies, but at the same time they severely condemned certain cruelties such as mass enslavement, indiscriminate massacre, rapacious pillage of unprotected populations and systematic mutilation [1].

Initially, by its nature medical neutrality resembled the agreement between the confronted parties, who consented that medical care should be provided to the wounded persons and if necessary they could be evacuated from the battlefield. Medical neutrality was interpreted mainly from the viewpoint of convenience of waging war and there was agreement between the parties concerning provision of medical care. Later on medical neutrality is acquiring legal frames and the agreement between the parties derives from the relevant legal rules [2]. For the first time medical neutrality gained its legal frames in the provisions of Geneva Conventions of 12 August 1949 for the Protection of War Victims and in the Additional Protocol No. 1 to Geneva Conventions, which comprise a source of the international humanitarian law. Article 3, of Geneva Conventions, foresees minimal standards for the protection of the persons, who are not taking active part in the hostilities, including members of armed forces, who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause. Notwithstanding this, the rule of this article does not explicitly provides for the responsibility to protect medical mission. In this respect the International Committee of the Red Cross noted that this rule encompasses also the responsibility to protect medical mission, since it can be viewed as an additional form of protections of the sick and wounded [3]. Besides this, Additional protocol No. 2 to Geneva Conventions in its article 9 clearly foresees that medical personnel shall be respected and protected [4]. Additionally these relations shall be regulated by Rule 25 of the Rules of Customary International Humanitarian Law (medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances) [5].

Nowadays there is no consensus between scholars in understanding the essence of the concept of medical neutrality. First of all, the most controversial is the issue connected with the place of medical neutrality within the system of different types of regulators of social relations such as international law, customary law, medical ethics and national laws. In the opinion of Justin M. List medical neutrality is a component of international medical ethics [6]. This opinion is also shared by Vivienne Nathanson [7]. This scientific approach, in particular, is caused with the existence of the relevant norm in the Regulations in Times of Armed Conflict and other Situations of Violence (hereinafter – Rules), adopted by the World Medical Association in 1956. According to these Rules, medical ethics in times of armed conflict is identical

to medical ethics in times of peace. If, in performing their professional duty, physicians have conflicting loyalties, their primary obligation is to their patients in all their professional activities, physicians should adhere to international conventions on human rights, international humanitarian law and World Medical Association declarations on medical ethics. Besides this, the rules foresee that physicians must be granted access to patients, medical facilities and equipment and the protection needed to carry out their professional activities freely (Rule 12). The Rules also envisage the responsibility to secure unimpeded provision of medical services as well as safety for medical personnel (Rule 5) [8]. In his turn Louis Reno when considering the issue of medical neutrality noted that the term «neutrality» requires from physicians to be indifferent towards parties of the conflict. In his opinion, actually military physicians are enemies for one of the conflicting parties, but at the same time they have special tasks and enjoy special immunity, which enables them to fulfill these tasks. With the view of this, as Louis Reno notes, Geneva Conventions do not use the term «neutral», instead such terms as «respect» and «protections» are used and these terms should be applicable to the wounded, sick and medical personnel [9].

At the same time other scholars note that medical neutrality is based mainly on the rules of international humanitarian law [1; 10; 11; 12]. In our opinion, the most relevant seems to be a symbiotic approach, according to which medical neutrality is a multidisciplinary concept, which should be based on the rules of international humanitarian law, international human rights law, medical ethics and national legislation. In this respect we agree with the opinion of Brigit Toebe, who indicated that medical neutrality as a standard of medical ethics is an important value, which was embodied in the rules of rules of international humanitarian law, and is realized owing to the rules of human rights law, in particular the human right to health care. All parties to the conflict have both ethical and legal responsibility to protect and respect medical professionals, who fulfill their professional duties. Besides this, medical professionals shall respect the right of the people – parties to the conflict to health care as well rights of patients, who they provide medical care to [13].

In our opinion, medical neutrality – is a human rights concept that provides for the protection and respect medical-legal relations subjects, guarantees safety of organization and provision of medical care both in times of armed conflicts and in peacetime, and obliges medical personnel to promote equal access to medical services and provide medical care to those in need, without discrimination on any grounds. The analysis of literary sources gives reasons to say that in most cases medical neutrality is considered by scholars in connection to armed conflicts, which have either international or non-international character and during the period of unrest. We consider that such approach is a bit narrow, since it does not include other situations, which are not connected to armed conflicts but still they can be characterized as violations of basic medical neutrality principles. In scientific literature one can encounter a general approach due to which medical neutrality is composed of two main aspects: 1) medical professionals shall provide medical care to the people, who need it, staying neutral that is not paying attention to such factors as nationality, gender, religion, political views; 2) medical professionals, who are neutral and impartial when providing medical care

shall not be attacked or unlawfully persecuted for the fulfillment of their professional duties [14]. Michael Gross interpreted the abovementioned postulates of medical neutrality: 1) patients (all people, who need medical care) and those, who provide medical care shall not be a target of the attack, this is the so called «duty to protect»; 2) medical professionals shall provide medical care to all people, who need such care, observing relevant standards of professional activity and notwithstanding various circumstances, such as being a member of any part of the conflict [1].

Given the abovementioned basic postulates of medical neutrality, the attention of many scholars is focused on the issue of correlation between «medical neutrality» and «medical impartiality». There are various approaches to answer this question. According to the first approach, scholars note that medical neutrality and medical impartiality differ in their content, but to certain extent the content of these notions overlaps with one another. This opinion shares Vivienne Nathanson, who in her scientific work indicated that impartiality as a fundamental component of medical practice is about medical professional, who shall provide medical care to patients basing on the needs they have instead of their ethnicity, religion, gender or other factor, which can lead to discrimination. To certain extent impartiality overlaps with medical neutrality, which in her opinion requires from medical professionals not to take part in any political parties or other issues, related to the conflict, within their workplace [7]. Another approach says that impartiality and neutrality are two principles of humanitarian activity, and the content of these notions is mutually overlapped. Neutrality is a principle of abstention from actions, that is a third party, who does not take part in the conflict, shall not take measures, which are aimed to support any party to the conflict. Impartiality is a principle of action due to which a humanitarian action should be conducted in accordance with established standards and on equal conditions for all parties of the conflict [15]. Despite this approach first of all relates to peculiarities of humanitarian actions, we consider that the essence of this approach is applicable to clarifying basic principles of medical neutrality as an integral concept.

The doctrinal system of medical neutrality is characterized by different components, which form the basics of this concept.

Functions of medical neutrality are the main directions of influencing social relations that are connected with providing for the human right to health care both in peacetime and in the time of armed conflicts. Among the functions of medical neutrality we distinguish the following:

- 1) normative-regulatory – regulation of behavior of the subjects of social relations on international, regional and national levels;
- 2) protective – protection of medical professionals, patient, health care facilities, medical equipments and medical transport from attacks, destruction or from illegal interference;
- 3) educative – providing for the influence on legal conscience and formation of respect to human rights during the times of armed conflicts;
- 4) political – influencing the formation of a state policy connected with creation of military-medical doctrine;
- 5) constitutive – promoting the formation of protection institute of medical professionals, who fulfill their professional duties.

We suggest dividing principles of medical neutrality into two groups, in particular general principles, such as:

- 1) humanism (humane attitude to the whole civilian population);
- 2) non-discrimination (absence of discrimination in the course of treatment of the sick and wounded);
- 3) democratism (respecting the rights of medical-legal relations subjects);
- 4) bioethical character (respecting the deontological foundations in the course of providing medical care);
- 5) equality (providing for an equal opportunities under the same conditions but in case of different conditions – just differentiation, for example medical sorting);
- 6) accessibility (free access to medical care including treatment);
- 7) inevitability of legal liability (holding responsible for actions directed at violation of medical neutrality).

And special principles, which are the basic for the concept of medical neutrality:

- 1) neutrality (principle of abstention from actions, which says that medical professional provides medical care without interfering into the conflict, and takes a neutral position in relation to parties of the conflict);
- 2) impartiality (principle of action, which foresees that a medical professional fulfills his professional responsibilities connected with provision of medical care to everyone, who applied for such care or needs such medical care, on equal basis and without discrimination on any on any grounds). When performing their professional duties medical professionals may not be required to give priority to any person except on medical grounds.

The features of medical neutrality include:

- 1) human rights focus, since human rights in patient care in conflict situations and peacetime are the main idea of this concept;
- 2) definiteness, that is the necessity of clear legal formulation «categorical imperative» – to protect medical professionals, who are fulfilling their professional duties in order to protect patients in the course of receiving medical care;
- 3) state nature, that is the state recognizes and establishes guarantees of the concept of medical neutrality;
- 4) systemic character, that is an integral approach directed at combining of ethic-legal principles in one vector for the protection of human rights in patient care;
- 5) equity, that is the value aimed at building a social model, in which the balance for respecting human rights in times of conflict is preserved.

Nowadays, scholars, who research the issues of medical neutrality, are prone to consider that international standards, which are binding for the international community and relate to armed conflicts, as a rule, are not applicable to rebellions, repressions of the opposition forces of non-international nature and occur within the borders of one country [9]. Among such situations of unrest we can also name mass riots, strikes and any kinds of realizing the right of the people to peace protest, which depending on the situation can develop into an armed rebellion with violence applied. In our opinion, under such situations, a proper reaction to any kinds of violations of medical neutrality shall be

provided for by the national legal system of a state. First of the states should develop and adopt the norms, which set guarantees for professional activity of medical professionals as well as establish liability for any kinds of interference into professional activity of medical or pharmaceutical professionals. A pioneer in terms of establishing on the legislative level criminal liability for the attacks on medical professionals are the United States of America, where in some states there had been adopted and are effective respective legal norms. For example according to the law of Arkansas a person shall be liable for second degree battery if such person consciously and unlawfully causes bodily injures to other person, who is providing treatment or provides emergence medical care while fulfilling ones professional duties 1) physician; 2) paramedic; 3) person, who carries out medical practice based on license; 4) any other person, who provides medical care [16]. Similar laws were adopted and are effective also in other states of the USA.

With the view of the conducted research we consider of a high priority in establishing the concept of medical neutrality should be a well-thought national law-making activity, which will foresee a number of actions, including:

a) Gradual implementation of the concept of medical neutrality by establishing guarantees for the activity of medical and pharmaceutical professionals in the course of fulfillment of their professional duties (as an example there are guarantees for other professional communities: journalists, advocates). This can be achieved by amending the law of Ukraine «Principles of Ukrainian Health Care Legislation». Therefore we suggest adding one more additional article, which reads as follows:

«Article 78-2 Guarantees of medical and pharmaceutical activity

- 1) Professional rights, honor and dignity of medical and pharmaceutical professional is guaranteed and secured by the Constitution of Ukraine, this Law and other laws, in particular:
 - 1) any interference and impeding lawful medical and pharmaceutical activity is prohibited;
 - 2) it is prohibited to require from medical professionals and other persons, who got to know about the disease, medical screening, medical observation, intimate and family spheres of persons' life, in the course of fulfilling professional duties, information, which comprises medical secret. These persons cannot be questioned about the data, which comprise medical secret, except cases, when a person, who provided such data, released from the responsibility to preserve medical secret in the amount, established by such person. Such release shall be do in written under the signature of the person, who provided such data;
 - 3) interference into the provision medical care, without consent of a medical professional and a patient/ his or her legal representative is prohibited;
 - 4) inspections, disclosure, demanding or removal of records, which are connected with medical activity, except cases, foreseen by the laws of Ukraine.

b) Securing guarantees can be done by, for example, establishing criminal liability for obstructing lawful professional activity of medical and pharmaceutical professionals (as an example article 171 of the Criminal

Code of Ukraine «Obstructing lawful professional activity of journalists»). A relevant norm of the Criminal Code of Ukraine could foresee the following:

«Obstructing lawful professional activity of medical and pharmaceutical professionals»

1. Any form of obstruction of lawful activity of medical and pharmaceutical professional, connected with provision of medical care or fulfilling other professional responsibilities foreseen by the law of violation of the guarantees of their professional activity and observing medical secret, –

Shall be punishable by a fine of hundred to two hundred tax-free minimum incomes, or correctional labor for a term up to two years, or an arrest for a term up to six months, or restraint of liberty for a term up to three years.

2. Same actions, committed by an official, who uses his official position, committed repeatedly or by a group of persons upon their prior conspiracy, –

Shall be punishable by a fine of three hundred to five hundred tax-free minimum incomes, or restraint of liberty for a term up to five years and deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

c) A concept of medical neutrality shall be foreseen in the Military-medical doctrine of Ukraine. Persons, who are subject to military service, including physicians, nursing staff need: guarantees of professional activity, normative fixing of the concept of medical neutrality, providing for human rights in patient care.

Medical neutrality is one of the basic concepts of the health care system, which guarantees security for participants of medico-legal relations. It is necessary to develop the most effective mechanisms for the implementation of this concept into the national legal system of Ukraine, with a system of coordinates there can be taken relevant international and regional standards in order to most effectively provide for the human rights in patient care.

«A point of space» of this system is being established on the international arena today as well. Not accidentally in paragraph 14 of the Resolution 69/132 Global Health and Foreign Policy it is indicated that the General Assembly requests the Secretary-General, in close collaboration with the Director General of the World Health Organization, to submit a report on the protection of health workers, which compiles and analyses the experiences of Member States and presents recommendations for action to be taken by relevant stakeholders, including appropriate preventive measures. With the view of the conducted research, we suggest to include the following actions to this report:

- 1) to foresee on the level of national laws guarantees for the activity of medical professionals along with establishing effective mechanisms of liability for obstruction of lawful professional medical activity.
- 2) include to the codes of ethics of professionals, who provide medical care, provisions aimed at implementation of the concept of medical neutrality.
- 3) implement the issues of medical neutrality into the academic curricula of the educational disciplines (for example medical law or bioethics). It should be noted that today medical neutrality is included to the binding academic curricula on the discipline «Medical law of

Ukraine», approved by the Ministry of Health of Ukraine, hence medical professionals will learn the basics of this concept, when studying medical law.

- 4) increase legal awareness and access to information concerning the issues of medical neutrality.
- 5) include to the events, which are dedicated to the commemoration of the International Day of Human Rights (10th of December) the issues of medical neutrality by engaging international and national organizations, which are dealing with human rights in patient care.
- 6) carry out thematic conferences and other scientific and practical events in order to build a doctrine and practice of medical neutrality, develop mechanisms for combating violations of medical neutrality, influence state policy with taking into account this human rights concept.

These measures, which form a framework of the recommendations is based on «three whales»: ethics, legislation and education, which owing to their synergy will help to maximally provide for the human rights in patient care.

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Сенюта І.Я., Клапатий Д.Й.

Медичний нейтралітет як концепція забезпечення прав людини у сфері охорони здоров'я: досвід України

Розкрито новельну для української правової системи юридичну конструкцію «медичний нейтралітет», покликану служити надійною «парасолею» правам людини у сфері охорони здоров'я. Зроблено спробу закласти теоретичні підвалини національної концепції з використанням спеціалізованих міжнародних і регіональних стандартів, доктринальних напрацювань учених і досвіду зарубіжних країн. Виокремлено ознаки та функції медичного нейтралітету, сформульовано принципи медичного нейтралітету. Запропоновано авторське визначення поняття медичного нейтралітету, під яким розуміється праволюдина концепція, що забезпечує суб'єктам медичних правовідносин захист і повагу, гарантує безпеку організації і надання медичної допомоги як у час збройних конфліктів, та і в мирний час, зобов'язує медичних працівників сприяти створенню рівного доступу до медичного обслуговування і надавати медичну допомогу усім, хто її потребує, без дискримінації за жодною з ознак.

З'ясовано основні теоретичні підходи до розуміння концепції медичного нейтралітету та виявлено прогалини в національному законодавстві України в контексті дотримання концепції медичного нейтралітету, а також сформульовано пропозиції щодо усунення виявлених прогалин. Підготовлено пропозиції до Рекомендацій Генеральної Асамблеї ООН на виконання Резолюції Генеральної Асамблеї ООН «Здоров'я населення світу і зовнішня політика» (11 грудня 2014 р.; 69-та сесія ГА ООН).

Ключові слова: медичний нейтралітет, права людини, медична допомога, медичні працівники, безсторонність, охорона здоров'я.

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Медицинский нейтралитет как концепция обеспечения прав человека в сфере охраны здоровья: опыт Украины

Раскрыта новая для украинской правовой системы юридическая конструкция «медицинский нейтралитет», призванная стать надежным «зонтиком» для прав человека в сфере охраны здоровья. Сделана попытка заложить теоретические основания национальной концепции с использованием специализированных международных и региональных стандартов, доктринальных наработок ученых и опыта зарубежных стран. Выделены признаки и функции медицинского нейтралитета, сформулированы принципы медицинского нейтралитета. Предложено авторское определение понятия медицинского нейтралитета, под которым понимается правочеловечная концепция, обеспечивающая субъек-

там медицинских правоотношений защиту и уважение, гарантирующая безопасность организации и оказания медицинской помощи как в ходе вооруженных конфликтов, так и в мирное время, обязывающая медицинских работников способствовать созданию равного доступа к медицинскому обслуживанию и оказывать медицинскую помощь всем, кто в ней нуждается, без дискриминации по любому из признаков.

Выявлены основные теоретические подходы к пониманию концепции медицинского нейтралитета и выявлены пробелы в национальном законодательстве Украины в контексте соблюдения концепции медицинского нейтралитета, а также сформулированы предложения по устранению выявленных пробелов. Подготовлены предложения к Рекомендациям Генеральной Ассамблеи ООН во исполнение Резолюции Генеральной Ассамблеи ООН «Здоровье населения мира и внешняя политика» (11 декабря 2014 г.; 69-я сессия ГА ООН).

Ключевые слова: медицинский нейтралитет, права человека, медицинская помощь, медицинские работники, беспристрастность, охрана здоровья.