**Arbitration in Medical Cases in Ukraine**

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Current political and legal conditions caused by the medical reform implementation, transformation of legislation, and increased activity of patients to protect their rights, have given rise to the need to find the best forms, methods and means of protecting human rights in the field of medical care.

The Council of Europe recommends the governments of member states to ensure that patient safety becomes a cornerstone of all relevant healthcare strategies and defines that, while people can make mistakes in all areas of activity, they can turn those mistakes to experience in order to prevent their repeating, and medical professionals and medical organizations that have reached a high level of security have the potential to recognize errors and learn to avoid them. Given the risky nature of the provision of medical care, it is not always possible to achieve the desired result, as well as the inadequate provision or non-provision of medical care can be harmful to the patient's life and health. According to the practice of law enforcement and the current state of development of these relationships, the patients themselves are more vulnerable and their rights are most often being violated.

Given the modern period of medical and legal practice implementation, attention should be drawn to arbitration as an out-of-court jurisdictional form of protecting the subjects’ to legal relations rights in the provision of medical care.

Although the arbitral tribunal does not belong to the judicial system, while being a quasi-judicial authority; however, this form is considered to be jurisdictional, since it is a special non-governmental authorized body created to resolve disputes arising from civil and commercial relations. The Constitutional Court of Ukraine notes that the arbitration of disputes between the parties in the field of civil and commercial relations is a kind of non-governmental jurisdictional activity, which arbitration courts conduct on the basis of the laws of Ukraine, including, in particular, the methods of arbitration. In performing the functions of protection, arbitral tribunals do not exercise justice, but arbitration of disputes. The peculiarity of this method of protection is that, on the one hand, it has similar features with state justice (for example, in the aspect of the adoption of binding decisions), but at the same time it is similar with extrajudicial forms of non-jurisdiction, as, in particular, mediation (however, there is a significant difference between them: the mediator does not make decisions, but only contributes to the decision making by the parties).

One of the major issues in the scope of the study is the question of the possibility of referring subjects to medical legal relations medical to an arbitration tribunal to resolve disputes arising from the provision of medical care. The criteria for the jurisdiction of arbitration courts include: a) the nature of the controversial legal relationship: arbitration court subordinate cases of civil and commercial relations; b) the subjects of controversial legal relations: legal entities and/or individuals; c) the existence of an arbitration agreement between the parties to the dispute.

Novadays, both in national and foreign legal practice, medical arbitrations have been established and operate. In 2009, the first and only Permanent Court of Arbitration was established at the All-Ukrainian Public Organization "Foundation for Medical Law and Bioethics of Ukraine". The purpose of this specialized court is to ensure fair, speedy and effective arbitration of disputes arising from healthcare legal relations and reconciliation of parties to the dispute. However, this court has not yet considered a case due to a number of factors, such as: 1) the lack of legal awareness of the subjects to medical legal relations regarding the possibility of resolving the case through an arbitration court; 2) low level of legal culture of subjects of legal disputess, generating judicial way of disputes resolution as the only possible option; 3) the introduction of amendments to the Law of Ukraine "On Arbitration Courts" in the aspect of excluding from the jurisdiction of arbitration courts disputes related to the protection of consumer rights, including those in the sphere of medical services.

The experience of foreign countries in this aspect is positive. Thus, Arbitration Court for Health Insurance and Health, which is a specialized arbitration in healthcare issues, operates at the St. Petersburg Chamber of Commerce and Industry. It is a self-standing permanent authority that resolves disputes arising from civil legal relations between actors and participants in the health insurance system and the healthcare system in St. Petersburg.

In the United States, there is the Federal Arbitration Law that encourages the use of arbitration in all matters, if the agreement contains a clause on arbitration. Most states have adopted relevant legislation that regulates health arbitration and imposes special requirements for arbitration agreements.

National Medical Arbitration Commission under the Ministry of Health, which exercises medical arbitration and aims to resolve disputes between a doctor and a patient using alternative ways of resolving conflicts, operates in Mexico. All employees and experts are fully funded at the expense of state budget. The Commission is an official body authorized to provide, at the request of judges, expert opinions, which may in future be the basis for judgements. In order to resolve a dispute, whether through the application of a conciliation procedure or arbitration, both parties need to agree that the case would not be tried in court and that the purpose of the Commission's work is not limited to imposition legal liability to a doctor. The Commission is not a judicial body, therefore, it cannot impose penalties, but only gives the parties the opportunity to make reparations under contract.

Taking into account the above, the institute of medical arbitration in Ukraine is worth implementation, as the number of medical cases increases and more and more individuals apply for the protection of violated rights in healthcare system. Advantages of resolving disputes that arise in the provision of medical care in arbitration courts are: 1) simplification of the trial procedure; 2) short terms of consideration of the case; 3) possibility of choosing a judge; 4) preservation of confidentiality; 5) freedom to establish rules of arbitration; 6) voluntary involvement in the arbitration process; 7) synthesis of discretion, which is covered by the review procedure, and the imperativeness due to the binding decision of the parties.

Functions of medical arbitration are the following: a) protective: protection of rights of subjects of legal relations in the field of medical assistance; b) controlling: it is the component of healthcare quality management system; c) educational: enhancement of legal culture and legal awareness of the subjects of medical legal relations, as well as promotion of confidence in arbitration proceedings.

Taking into account foreign experience and national legal regulation, and according to the specific nature of legal relations in the field of medical assistance and the task of arbitration proceedings in defense of non-proprietary rights, it would be advisable to make modifications to reduce the scope of subordinate prohibitions for arbitration, in particular, in cases concerning disputes in the field of consumer rights protection, identifying only those categories that would be banned (the cases for medical services consumers’ rights protection should not fall into scope of such limitation), as well as conducting spectral work on increasing the authority of the arbitration proceedings and the level of competence of arbitrators. Also, it should be noted that tort cases can be subject to arbitration in case entering into agreements (arbitration agreements) between the creditor and the debtor in order to achieve the purpose of the obligation: the reimbursement of the harm done to the victim.