

Mariana Shchyrba, PhD in Law

Lesia Ukrainka Eastern European National University, Ukraine

ELEMENTS OF THE PATIENT'S LEGAL STATUS

The article analyzes the legal status of the patient. The relevance of this field of research is due to the following factors: a) characteristic of public relations area, since a patient is an every person throughout life, since this is an area that affects every person living in society; b) special sensitivity of legal relations, usually the patient is a sick person who needs care, concern, efficient qualified medical assistance; c) the initial stage of medical (health protection) jurisprudence development in the Ukraine law system and the lack of comprehensive theoretical achievements in this area; d) conflicts and gaps in the national institute of legal regulation of the patients' legal status.

The conclusion is made that the legal status of a person in our view should include the following elements: primary – the patient's rights and responsibilities; secondary - the principles of legal status, the guarantees of patients' rights and responsibility.

Key words: legal status of a patient, patient's rights and responsibilities, principles of legal status, guarantees of patients' rights and responsibility.

Formulation of the problem. The person in the law of modern society is an independent subject. The classic Soviet approach to understanding of the role of person in law only through its legal personality is not acceptable for a democratic society that defends the ideas of humanism and justice.

In modern jurisprudence «personality» is understood as the center of public relations, as a social being, endowed with dignity, will and consciousness as a result of certain evolutionary process. The relationships and dependencies of society and personality, citizen and the state, individual and community become more complicated; their interests and needs become closer and more organic; the unity between them is deeper, the responsibility of people is increasing. In modern terms, due to the increasing of the human factor role, the problem of personality is getting particular importance. A new phenomena arises in the life of society and modifies the universal phenomena that need additional generalization. Among them there is a theoretical-legal institute as a legal status. In recent years, the intensity of including the issues of legal subject in theoretical-legal discourse is due to the need to find new approaches to the study of the given legal phenomenon.

The analysis of recent researches and publications. The problems associated with specific human rights were investigated by experts in law, including in particular N. Onishchenko, N. Opolska, O. Skakun and others. In the issues of the theoretical and legal understanding of the legal status were involved I. Zharovska, A. Kolodiy, O. Petryshyn, M. Tsvik and others. However, considering the range of issues and latest trends of its legal regulation, remains a number of unexplored theoretical problems, including the elements of patients' legal status.

The aim of the article is to analyze patient's legal status concept and to determine its elemental composition.

The presentation of the research main material. A person who is an active participant of legal relations, acts in law in a different situation, so nowadays it is not sufficient to determine only the general, constitutional status of the individual. The development of science of state and law theory should be made towards comprehensive study of the legal status of certain social groups, communities such as pensioners, disabled, children and others.

Among these categories it's important to investigate the legal status of the patient. We explain this need by the following circumstances: a) characteristic of public relations area, since a patient is an every person throughout life, since this is an area that affects every person living in society; b) special sensitivity of legal relations, usually the patient is a sick person who needs care, concern, efficient qualified medical assistance; c) the initial stage of medical (health protection) jurisprudence development in the Ukraine legal system and the lack of comprehensive theoretical achievements in this area; d) conflicts and gaps in the national institute of legal regulation of patients' legal status.

The legal status is a comprehensive, integrative category, reflecting the relationship between person and society and state. Therefore, it is important that a person will have a correct understanding of his/her

position, rights and responsibilities, place in a particular political and legal structure. The improvement of health care sphere significantly depends on legal awareness of citizens and medical personnel on the rights and duties which belong to them, which creates efficiency of realizable activity. The legal status of individual outlines its «space» in the legal system, puts obstacles to undue legal regulation, and defines the criteria for legal prohibitions. Therefore, a clear definition of the nature and elements of legal status of certain categories of persons is prerogative to increase the level of legal culture of society.

It's the theory of law, based on its fundamental nature and purpose, theoretical study of sectoral legal phenomena, is able to promote the development of the patient's legal status institute. Moreover, particularly the use of common provisions and principles of the theory of law allows a detailed analysis of this complex legal phenomenon. So before we define the concept of the legal status of the patient, it's necessary to be based on primary legal structure - legal status of the person.

The legal status - is one of the most important political and legal categories, but it should be noted there is no single approach to understanding of this concept. Also there're discussions on the elements of person's legal status.

At the same time it should be noted that the «status» - is a significant abstract term; in a general sense it means the set of stable parameters, values of object or subject. Law dictionary defines the category of «status» as legal position of a legal subject - a citizen or a legal person, that is characterized and defined by its organizational and legal form, the charter, a certificate of registration, the rights and duties, responsibilities, powers, emanating from legislative and normative acts¹.

At the same time there are two areas of research: primary understanding of the legal status and modernist. This second area not only criticizes the first, but also widely uses its achievements, especially in categorical field. On this basis, there is a conclusion of inappropriate contrast between these areas, but their consensual use in legal subject research.

The original legal understanding connects a legal subject with a legal personality category, which is defined as a special legal quality or property, which allows person or organization to become legal subject and this legal quality is recognized by the state personality, and the subject is characterized as an element of legal relations. Since there's no need to explore this position more objectively, we will focus only on quoting the bright representatives of this doctrine. Thus, N. Marchenko points out that «not nature, not society, but in fact only government determines who and under what circumstances can be the subject of law and, consequently, participant of legal relations, what qualities he/she must possess. Only by the law can be established or recognized that particular legal quality or feature that allows the person or organization to become a legal subject. This quality or feature is called legal personality. It cannot be arbitrary set, changed, or canceled. Legal personality does not depend on the will and desire of private persons and organizations. It is the same as its constituent units - the capacity and capability, arises, changes or ceases none other than just using the objective law «². The understanding exclusively through the normative approach to law and state - accordingly creates the understanding of the place of person in the right only through the established rules of conduct.

The modernist perception of the person's legal status indicates the need for a recognition a complex of characteristics in a person, that in the legal, democratic state would provide the opportunity to be an active participant in the legal life, have an impact on definition of their rights, to be able to fully implement them and to demand guarantees for their protection. We believe that legal capacity must be understood as a precondition for legal status; however it is not quite right to deny the rights and freedoms of a legal subject and bring them exclusively to capacity in the law. Thus, the legal capacity and legal status are interrelated but not identical phenomena and categories, the latter is broader, structurally complex, and richer, acts as generalizing, modular concept. However, the set of rights implies their interconnectedness with the duties of the subject, because without retroactive effect the adjustment of law and order and legitimacy in society is not possible.

As M. Kozyubra pointed out «rights, freedoms and duties of a person and citizen are one of the most important social and legal institutions, which is a measure, the standard for determining progress of society, the optimal indicator of the level of civility of state and society, a radical change in relationship between citizen and state, when a person, a citizen does not owe state for granted rights and freedoms, but turns into a free and equal partner of state, which has not only rights but also responsibilities»³.

¹ Сухарева, А.Я., Крутских, В.Е. (2004). *Большой юридический словарь*. Москва: ИНФРА, 601.

² Марченко, Н.М. (2004). *Теория государства и права*. Москва: Зерцало, 592.

³ Козюбра, М.І. (1996). Права і свободи людини і громадянина в новій Конституції України. *Адвокат*, 3-6.

Thus the legal status of a person - is a proper system of his/her rights and obligations. Such approach to things is defended by many scientists who are engaged in research of this issue. Thus Ye.Lukashova understands the legal status as the complex relationships that occur between state and individual, and the mutual relationships of persons that are fixed by the state in a legal form - in the form of rights, freedoms and duties which organize in its unity legal status of individual¹. A similar opinion was expressed by V. Kotyuk. He includes in this concept a set of legal rights, freedoms and duties of person, that are enshrined in the current legislation and form socially acceptable and necessary potential capabilities of a person to have subjective rights and responsibilities and implement them in a system of social relations². Another category of researchers interprets broadly the legal status, adding to the basic elements several additional.

A classic legal status is divided into types, which include the general legal status, special, or else called ancestral and individual legal status.

The general legal status is not able to consider the whole variety of entities, their characteristics, differences, specifics. Therefore, it does not include many subjective rights and duties, that constantly arise and terminate in subjects according to their work, the nature of relationships in which they enter and other situations. As A. V. Brushlyns'kyi rightly said, because any human individual is a part of humanity, he is necessarily included in the various social groups, is the indissoluble developing unity of the social and individual³. The absence of listed rights and obligations in the concept of the general status of citizen has allowed maintaining its stability. These «variables rights» and obligations are members of the special and individual legal status. The general legal status is a base, the starting point for all others. Based on this is possible to judge on the character, social nature and democracy extent of a given society. Special, individual and all other statuses listed above may not contradict the general (constitutional) status. Instead, they must meet it as basic, primary, original. The legal status of the patients belongs to a special legal status.

On the basis of the theoretical constructs it is important to summarize what can be considered the elements of the patients' legal status. The element is treated as a concept of the object that is part of a certain system and is considered in its limits as indivisible⁴.

In our view, there're no objections to attribute to the patient's legal status his/her rights and responsibilities. The rights and responsibilities - are the main source element of the law. It has become a classic position that the system of rights and responsibilities - is the core, the center of the legal sphere, and here lies the key to solving the basic legal problems.

We also include several other categories in the legal status of a person. Let us consider the reasonableness of their inclusion in the legal status of the patient.

1. Legitimate interest. As I. Lychenko pointed out, a legitimate interest gives us a vivid picture of legal aspirations and indicates the individual system of interferences in each case, is characterized by a number of economic, professional, and other physiological characteristics of individuals, which together affect the legal status of citizens⁵. Thus, a legitimate interest in the broadest sense is a desire of a legal person, his/her aims that encourage him/her to enter into a relationship. We deny the assignment of legitimate interest to the elements of the patient's legal status on the following reasons. Firstly, in addition to the interest, generally many other factors influence on the status of legal person such as political, international and military situations. This list can go on. These external factors at the same time with internal, to which we assign - legitimate interest, legal awareness, legal identity, legal activity, etc.; create a common «background» for legal phenomena, but do not form their structure. Secondly, for most patients legitimate interest will be health, i.e. its improving, maintaining or restoring, so patient's health can be a subject of relationships, but not an element of the status. Thirdly, legitimate interest, in a legal state it is shown in the rights of a legal subject, he should be put in the basis of legal policy that upholds the principles of humanism and humanocentrism.

2. The rules of law. The legal status should be enshrined in legislation, so the rules of law by some scholars are defined as elements of status (M. Matuzov⁶, M. Muzychuk), determining that the rules of law

¹ Лукашова, Е.А. (1996). *Общая теория прав человека*. Москва: Издательстве НОРМА, 28.

² Котюк, В.О. (1996). *Теория права: Курс лекций*. Київ: Вентури.

³ Брушлинский, А.В. (1996). *Субъект: мышление, учение, воображение*. Москва: Воронеж.

⁴ Фролова, И.Т. (1991). *Философский словарь*. Москва: Политиздат, 127.

⁵ Личенко, І.О. (2011). Законні інтереси як складова адміністративно-правового статусу громадян України у сфері власності. *Університетські наукові записки*, 228.

⁶ Матузов, Н.И. (1987). *Правовая система и личность*. Саратов: Изд-во Саратов. ун-та, 59.

actually form the basis of the legal status of the legal subject or specific legal relationship¹ [10, p. 317]. Indeed, the rules of law - are formally defined, legally fixed rules of conduct. They fix the rights and responsibilities of a legal subject, so their separate selection only introduces an aggravating element, which will lead to the need of delimitation of rights and responsibilities and legal norms in the system of patient's legal status.

3. Legal guarantees. Thus V. Pohorilko defined the legal guarantees as specific legal means of provision, realization, protection and enforcement of human and civil rights². O.V. Zaychuk and N.M. Onishchenko determine guarantees as a system of coordinated factors that ensure actual implementation and full protection of the rights and freedoms³. The analysis of modern legal reality in Ukraine makes it possible to categorically assert the importance of human rights guarantees. The declaration of rights and freedoms at the legislative level is not enough. The exclusive right of the patient does not have capacity for adequate right-realizable function. The real protection of rights, freedoms and responsibilities of citizens can only be done using the complex interaction between general and special guarantees. The general guarantees are directly dependent on the level of development of society and are a measure of the democracy degree. They create the atmosphere where a legitimate realization of legal person status is possible⁴. It is the political, economic, legal, organizational and other support of rights, they are effective safeguards, are necessary, integral part of the legal status, a tool for implementing rights of the patient in the legal reality. The existence of a widespread rights protection mechanism is also a permanent element of the effective functioning of the health system in general. The guarantees 'accompany' the rights during all stages of functioning from creating the rules of law in the form of legislative activities till their protection in national or international judicial bodies. So, taking into consideration the inseparability of rights and guarantees, we defend the position for recognition them as a separate element of the legal status of the patient.

4. Responsibility. Here scientists also debate about the inclusion of legal liability in the system of status (e.g. O. Petryshyn⁵, O. Kharytonova⁶). Responsibility is the right-providing element for the obligations. If the rights cannot be implemented without the guarantees, the responsibility serves the same category for obligation. Of course, you can perform obligation without the liability, but its preventive function plays a restraining role. Without the liability obligations are banning slogans, and considering that they are closely related to the rights, such institution as liability exists for implementation of the main elements of the legal person status; by its legal potential reinforces the importance of status of the individual in society and state.

5. The principles of the legal status. The need to include to the status such an item as the principles was told by representatives of the Soviet school of law. The principles are based on justice; advocate the moral foundation of law, ensuring the transfer of natural rights into the positive law. The principles of the legal status establish the «roadmap» for its development acting as criteria of justice, legitimacy and legality of the law. In the health sector, which as we have noted, is especially sensitive to the person, because concerns the most important human values - life and health, the implementation of such element as principles, creates the proper legal regulation and development of legal policy that aims maximum safety and protection of all spheres of activity of a person, including medical.

Conclusion. The legal status of a person in our view should include the following elements: primary – the patient's rights and responsibilities; secondary - the principles of legal status, the guarantees of patients' rights and responsibility.

The expansion of the structure, in our opinion, will lead to its encumbrance, will introduce in its scheme discrepancies, repetitions or inaccuracies, so making impossible an effective functioning of the legal status of the patient as the special status of the person.

¹ Музичук, О.М. (2008). Уточнення сутності категорії «правовий статус» суб'єкта адміністративно-правових відносин та його елементного складу. *Форум права*, 317.

² Погорілко, В.Ф. (1999). *Конституційне право України*. Київ: Наук. думка, 40.

³ Зайчук, О.В., Оніщенко, Н.М. (2006). *Теорія держави та права*. Київ: Юрінком Інтер, 35.

⁴ Безусий, В.В. (2009). Окремі питання правового статусу людини в державі. *Форум права*, 46.

⁵ Петришин, О.В. (1990). *Статус службової особи: природа, структура, спеціалізація*. Київ: УНКВО, 41.

⁶ Харитонов, О.І. (2004). *Адміністративно-правові відносини (проблеми теорії)*. Одеса: Юридична література.

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