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## **ATTRACTING OF THE PUBLIC TO THE FORMATION, IMPLEMENTATION AND MODERNIZATION OF STATE POLICY IN THE SPHERE OF HEALTH IN UKRAINE: THE INTERNATIONAL LEGAL ASPECT**

**Abstract.** The article is devoted to the formation of conceptual bases of citizens' participation in the formation, implementation and modernization of the state policy in the sphere of public health protection in order to use the potential of participatory democracy in the process of medical reform in Ukraine. Substantiated proposals on improving the current legislation and public-management practice are substantiated. Attention is focused on the conditionality of the success of medical reform in Ukraine from its support by civil society. International treaties and other documents that are sources of international standards for participatory democratization are defined and systematized. Attention is focused on the mapping of international standards of participatory democracy

in the 21<sup>st</sup> century in the judgments of the European Court of Human Rights in the practice of criminal and human rights organizations. Their essence, content and peculiarities are revealed. The prospects for the implementation of international standards for “participatory democracy” in the reform of the public health protection system are identified.

**Keywords:** public health, medical reform, participation of citizens in medical reform, participatory democracy, international standards of participatory democracy.

### **ЗАЛУЧЕННЯ ГРОМАДСЬКОСТІ ДО ФОРМУВАННЯ, РЕАЛІЗАЦІЇ ТА МОДЕРНІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОХОРОНИ ЗДОРОВ'Я В УКРАЇНІ: МІЖНАРОДНО-ПРАВОВИЙ АСПЕКТ**

**Анотація.** Сформувано концептуальні засади участі громадян у формуванні, реалізації та модернізації державної політики у сфері охорони суспільного здоров'я з метою використання потенціалу партисипаторної демократії у процесі проведення медичної реформи в Україні, а також обґрунтовано відповідні пропозиції щодо вдосконалення чинного законодавства та державно-управлінської практики. Висвітлено залежність успіху медичної реформи в Україні від її підтримки громадянським суспільством. Визначено та систематизовано міжнародні договори та інші документи, які є джерелами міжнародних стандартів партисипаторної демократії. Акцентується увага на відображення міжнародних стандартів партисипаторної демократії у ХХІ ст. в рішеннях Європейського суду з прав людини і в практиці міжнародних лікарських і правозахисних організацій. Розкрито їх сутність, зміст і особливості. Виявлено перспективи імплементації міжнародних стандартів “демократії участі” при реформуванні системи охорони суспільного здоров'я в Україні.

**Ключові слова:** охорона суспільного здоров'я, медична реформа, участь громадян у медичній реформі, партисипаторна демократія, міжнародні стандарти партисипаторної демократії.

### **ПРИВЛЕЧЕНИЕ ОБЩЕСТВЕННОСТИ К ФОРМИРОВАНИЮ, РЕАЛИЗАЦИИ И МОДЕРНИЗАЦИИ ГОСУДАРСТВЕННОЙ ПОЛИТИКИ В СФЕРЕ ЗДРАВООХРАНЕНИЯ В УКРАИНЕ: МЕЖДУНАРОДНО-ПРАВОВОЙ АСПЕКТ**

**Аннотация.** Сформированы концептуальные основы участия граждан в формировании, реализации и модернизации государственной политики в сфере охраны общественного здоровья с целью использования потенциала партисипаторной демократии в процессе проведения медицинской реформы в Украине. Обосновываются соответствующие предложения касательно усовершенствования действующего законодательства и государственно-управленческой практики. Освещены обусловленность успеха медицинской реформы в Украине от ее поддержка гражданским обществом. Определены

и систематизированы международные договоры и другие документы, являющиеся источниками международных стандартов партисипаторной демократии. Акцентируется внимание на отображении международных стандартов партисипаторной демократии в XXI в. в решениях Европейского суда по правам человека и в практике вречесных и правозащитных организаций. Раскрыто их сущность, содержание и особенности. Выявлено перспективы имплементации международных стандартов “демократии участия” при реформировании системы охраны общественного здоровья.

**Ключевые слова:** общественное здравоохранение, медицинская реформа, участие граждан в медицинской реформе, партисипаторная демократия, международные стандарты партисипаторной демократии.

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**Target setting.** In XXI century healthy nation is as valuable for modern country as its economical, technical, military or other development. That is why most states of the world, including Ukraine, turn all their efforts to improvement of the existing systems of public healthcare. And if in some states of the world healthcare reform transformed public administration systems in healthcare into standard ones in a single time (Great Britain, 1948 – beginning of work of National Health Service), then in others they have a permanent nature, when each new government changes value orientations, strategy and approaches to reform of public administration in public healthcare.

The experience of reform of state administration in public healthcare in Ukraine also speaks for itself, in part of introduction of healthcare insurance, in particular. This is how acting Minister of Health of Ukraine U. Suprun summed up “achievements” of appropriate healthcare reforms in Ukraine: “... during the times of independence 21 healthcare insurance bills were drafted and more than 20 ministers of health

were changed, but population of Ukrainians became on 10 millions less” [13]. For this reason, new governing body of Ministry of Health of Ukraine proceeded with rationing of its own groundworks in existing legislation of Ukraine right away.

It is commonly known that on 8<sup>th</sup> of June of this year Supreme Council of Ukraine – Verkhovna Rada – passed a bill of state financial guarantees of provision of healthcare and medicinal products (registration No 6327 on 10.04.2017) [12]. On June 14, 2017 government of Ukraine approved a Budget resolution on 2018–2020, which provided financing of all the stages of the established reform of public healthcare. However, at the last week before vacations in July this year Bill № 6327 was not put to a vote of Verkhovna Rada of Ukraine.

Instead, at the day of probable consideration of Bill № 6327 by parliament on July 14, 2017 near the facility of MH of Ukraine some public acts (public shows) turned around with aim to... stop healthcare reform. The deputy of minister of health O. Linchevskyi also mentioned paradoxical feature of this

situation: “Whenever on earth did it happen that directors of clinics, head physicians and Academy Fellows were coming under building of MH? Whenever did such a thing happen? Whenever did deputies lead public shows? The richest are going out on public shows under MH” [7, p. 17].

Generally, we can agree with Ukrainian scientists that the underlying principles of healthcare reform are principles of justice; solidarity; commitment to improve public health; commitment to satisfy rightful public demands; commitment to improve quality of medical care; progress; efficiency; public participation in development of things political [16, p. 3]. It is usage of potential of participatory democracy, or “democracy of taking part” which, in our opinion, is the guarantee of legitimation and popularization of public healthcare reforms in Ukraine.

**Analysis of recent research and publications.** Problems of theory and practice of implementation of public healthcare reforms in Ukraine were continually researched by such scientists on public administration as M. Banchuk, M. Bilynska, N. Vasyuk, V. Knyazevych, Ya. Radysh, M. Shcherbyna and others. It is logical to remember also about scientific achievements of such worldwide famous founders of participatory democracy as P. Bakhrahk, J. Keene, K. MacPherson, J. Mansbridge, K. Offe, O. Hioffe, J. Zimmerman and others. In the meantime, topic of international standards of participatory democracy from the perspective of its use for development, implementation and reforms of public administration in public healthcare in Ukraine in public and administrative realities of

the present time remains to be underexplored.

**The purpose of the article** is development of conceptual principles of participation of citizens in development and implementation of state policy in public healthcare with aim to use potential of participatory democracy in the process of implementation of healthcare reform in Ukraine.

**The statement of basic materials.** Ukrainian scientists describe participatory democracy or democracy of taking part as “form of political regime, which provides arrangement of all the public and state life with involvement to development and taking authoritative and administrative decisions of the public” [15, p. 27]. Interpreting the content of this category concerning scope of our research, it is arguable that participatory democracy is an important administrative and legal instrument of development, implementation and modernization of state policy in public healthcare, that provides broad involvement of citizens, the public and institutions of civil society into task-oriented process of transformation of the existing healthcare system in Ukraine into new innovative, economically justified model of provision of implementation of rights of citizens on healthcare, health intervention and healthcare insurance.

Implementation of potential of participatory democracy development, implementation and modernization of state policy in public healthcare involves availability of at least three determinative components. First, creative (doctrinal) component, which involves availability of stable theoretical and methodological approaches concerning

involvement of the public into healthcare reform, and ideally – availability of appropriate concept or strategy, approved by Government of Ukraine or profile ministry. Second, normative a legal component, represented by system of international treaties and documents and system of the current legislation of Ukraine, which allows to involve in a constructive manner potential of participatory democracy into implementation of healthcare reform. Third, organizational and administrative component, content of which is in availability of mature and structured civil society and availability of organizational and legal mechanisms of their interaction with state represented by specially approved state bodies, which develop and implement state policy in public healthcare.

These components are obviously developed in this or that manner, and they are also typical for participatory democracy in sphere of development, implementation and modernization of state policy in public healthcare in Ukraine. Let's consider one of the most important of them – international standards of participatory democracy in state policy in public healthcare and healthcare reform.

Category of “international standard” is pretty widespread. In the most general meaning these are the standards developed by determined international organization, for example *International Organization for Standardization (ISO)*. International standard are also distinctive for majority of the spheres of professional activity. When we are talking about democracy, supremacy of right, fundamental rights and freedoms of person, partnership of civil so-

ciety and state, local self-government, etc. – we're talking about requirements and provisions of international treaties (agreements), recommendations of UNO, Council of Europe or its bodies, etc., and also decisions of European court on person's rights etc.

International standards of participatory democracy in public healthcare in Ukraine are the system of general principles of international right law, requirements and provisions, international organizations and states-participants of these organizations in the sphere of implementation of rights of person to participate in administration of state affairs and freedom of associations in development, implementation and modernization of state policy in public healthcare.

These international standards are realized in:

a) universal and regional international treaties and agreements of human rights nature (Universal Declaration of Human Rights 1948, [2], European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, [4], International Covenant on Civil and Political Rights 1966, [8], International Covenant on Economic, Social and Cultural Rights 1966, [9], Convention on participation of foreigners in public life on local level 1992, [5] and etc.);

b) recommendations of international organizations and their bodies (resolutions, recommendations, codes, conclusions – European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations (ETS No. 124) [3], Document of the Copenhagen meeting of the Conference on the human Dimen-

sion of the CSCE from June 29, 1990, [1], Charters of Paris for a New Europe 1990, [10] etc.);

b) decisions of European Court of Human Rights, which concern protection of rights on participation in administration of state affairs and protection of right on healthcare (*Winterwerp vs the Netherlands*, (1979), *Pretty vs the United Kingdom* (2002), *Vo vs France* (2004), *Byrzykowski vs Poland* and etc.).

Universal and regional international agreements of human rights content consolidate fundamental right of citizens on freedom of associations and right to participate in state administration. For example, part one of art. 22 International Covenant on Civil and Political Rights 1966 mandates: "Everyone shall have a right to freedom of association with others, including the right to form and join trade unions for the protection of his interests" [8]. And only in part one of art. 12 International Covenant on Economic, Social and Cultural Rights, 1966, standardized: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" [9]. However, among measures, determined by the last International Covenant, involvement of the public into development and implementation of state policy in healthcare was not determined. Although such measure would be a logical continuation of rights of citizens, individually or through institutions of civil society, to participate in state administration in public healthcare.

Important international standards concerning participation of the public in development, participation and

modernization of state policy in public healthcare are in recommendations of international organizations and their bodies. Thus, European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, accepted by Council of Europe in Strasbourg on April 24, 1986, determines, that international NGO must: a) have a non-profit-making aim of international utility; b) have been established by an instrument governed by international law of a Party; c) carry on substantive activities in at least two parties; d) have its statutory office in the territory of a Party and central management and control in that state or in another Party [3]. In our opinion, the mentioned standards are of vital importance for international NGO, which today act in public healthcare and favour to implementation of healthcare reform in Ukraine.

It is commonly known that European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 does not solidify right on healthcare, but among decisions of European Court on Human Rights, which relate to right of citizens on healthcare, there are such weighty ones as "Gorshkov vs Ukraine" (2005), "Yefymenko vs Ukraine" (2006), "Benderskyi vs Ukraine" (2007), "Kaverzin vs Ukraine" (2012), "Barilo vs Ukraine" (2013), "Salakhov and Islyamova vs Ukraine" (2013), "Vitkovskyi vs Ukraine" (2014), "Sergiy Antonov vs Ukraine" (2015), "Lutsenko vs Ukraine" (2015) etc [6, p. 76].

We can also assume that the sources of international standards of using participatory democracy in healthcare are also generalized and systematized prac-



tice of activity of non-governmental organizations (NGO), in the first place, international organizations of physicians-volunteers and human rights organizations. It is obvious that authority of such international NGOs as *Medecins sans frontiers*, *MSF*, *Mercy Corps*, *Human Rights Watch*, International non-governmental organization *Freedom House*, *Amnesty International*, is important for states of young democracy including Ukraine. For example, we can notice importance for such countries of their place in *Nations in Transit* rating, which is developed by organization of *Freedom House* [11, p. 6].

So long as participation of the public in development and implementation of state policy in public healthcare has an intention not only to improve and provide transparency of the appropriate sector of state administration, but also creation of efficient mechanisms of provision of right of people on qualitative and accessible medicine, the important are also recommendations, monitoring reports, methodological recommendations, materials of round tables, collection of best practices and other documents, which determine achievements and drawbacks of participation of the civil society and its institutions in healthcare reforms and everyday interaction of the public with governments and profile ministries in development and implementation of state policy in public healthcare.

The important source of development of participatory democracy in healthcare reform is also an "Association Agreement between European Union, European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other

part" from September 16, 2014, ratified in 2017 by all the states-participants of EU. By Article 44 of this Treaty the following measures necessary for achievement of declared objectives by parties: 1) solidification of contacts and mutual exchange of experience between organizations of civil society I Ukraine and states-participants of EU, particularly conducting of professional seminars, upgrade qualification etc.; 2) favourability to process of institutional building and consolidation of civil society, including, among others, lobbying, socializing, visits and seminars, etc.; 3) provision of awareness of Ukrainian representatives concerning organizations within the frameworks of EU advices and dialogue between social and public partners with aim to involve civil society to political process of Ukraine [14].

In our opinion, implementation of international standards, solidified in Ukraine-EU Association Agreement, provides a broad involvement to healthcare reforms in Ukraine not only national, but also international NGOs, which have a high reputation and successful results in implementation of healthcare reform. For the perspective of creation of joint NGO-platforms, it would be reasonable if they combined efforts of physicians', patients', human rights and other public organizations in Ukraine and states-participants of EU, USA, Canada, Switzerland, Japan and other states in reform of state policy and administration in public healthcare in Ukraine.

**Conclusions.** It is obvious that the guarantee of successful implementations of healthcare reform in Ukraine is not only its support by the public, but also participation in development of

its aims, points and strategies of implementation by citizens, in situations of civil society in general. Upon that it is important to implement the existing international standards of participatory democracy in sphere of participation of citizens state administration into transformation of national system of public healthcare, and also to initiate approval of new standards of participatory democracy adjusted to needs of healthcare sphere.

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