

ЦИВІЛЬНЕ ПРАВО ТА ПРОЦЕС

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THE RIGHT TO HEALTH AS AN OBJECT OF PERSONAL NON-PROPERTY RIGHT

It can hardly be doubted that the most important welfare for every person is his health and health of his family. This position corresponds to the mentality and moral principles of Ukrainian society. And the Constitution consolidated it at the normative level, recognizing human life and health as the highest social values. This relation to this welfare also finds its place in the branch civil legislation, in accordance with its provisions the health of an individual acquires the legal regime of non-property welfare [Art. 201 Civil Code of Ukraine]. In the scientific development by L.O. Krasavchikova, M.M. Maleina, O.V. Tikhomirov and other scientists, mainly the study of health is in the context of medical law, the provision of medical assistance, or individual aspects of personal non-property rights. The purpose of this work is to analyze the concept of “health” as an integrated personal non-property welfare and as an object of the right to health.

The current legislation does not operate with the term “right to health”. The legal consolidation of opportunities for the individual's own health is enshrined in a number of rights enshrined in articles 282-287 of the Civil Code of Ukraine. But, this position of the legislator, narrows the scope and content of the individual's capabilities in relation to his own health, giving them a protective nature. From this we can conclude that the current civil legislation should not only fix the protective nature of the individual's right to own health, but also provide a real legal opportunity to commit the widest possible aspect of actions in relation to one's own health, aimed at satisfying one's own interests in this area. In order to clarify the legal nature and content of the right to health, firstly it is necessary to decide the question of the object of this right. In general, it is widely believed that the object of the right to health is the non-property welfare of “the health of an individual”. But for today, in fact, there is no clear and legally capable concept of “health”, that is, the concept of “health of an individual” as a non-property welfare.

The dictionary of the Ukrainian language defines health as the correct normal activity of the organism.

The notion of “health” at the legislative level has its legitimate meaning, which means a state of complete physical, mental and social well-being, and not only the absence of disease and physical defects. Exactly this definition of the concept of “health” is in the Charter of the World Health Organization, and it is also extrapolated in Part 2 of Art. 3 of the Fundamentals of Ukrainian legislation about health and some other regulatory and legal acts.

In the medical encyclopedia health is called a state opposite to the disease, which cannot be determined with sufficient accuracy, since it is associated with a large breadth of fluctuations of the most important indicators of human activity and the adaptive capabilities of the organism. The same opinion is held by V.M. Soloviev, saying that for legal practice the meaning is not so much in the concept of personal health but in the evaluation of its quality status. [6, p. 23].

In the legal literature, the notion of “health” is increasingly singled out through such a category as “well-being”, which means a qualitative characteristic of the best possible state. [3, p. 75; 1, p. 18; 2, p. 70; 4, p. 283] It, in turn, consists of physical, mental and social health. This approach has several major drawbacks, because of this it is not accepted for enforcement, namely:

1. According to R.O. Stefanchuk this definition has an idealistic character, and it can be interpreted as a definition of the concept of “ideal health”

2. Being an ideal by its nature, most people do not take into account the fact that health by its nature is a dynamic category, which is characterized by physiological and pathological changes.

3. It is impossible to apply the notion of “health” specifically for civil law because of the lack of allocation of public and private moments in it. To date, defining the concept of health as a personal non-property welfare, in the legal literature comes out of its broad interpretation. T. Gurskaya believes that health is a personal non-property welfare that is not related to the commodity-money form. This definition contains only the features inherent to all non-property welfares without exception and does not disclose the nature and content of the health concept precisely as personal non-property welfare.

Therefore, analyzing these and other definitions, we can draw the following conclusions: firstly, the notion of health as personal non-property welfare should be determined not with the notion of “well-being”, but through the existing position of the vital activity of the organism. And, secondly, it is

inappropriate to determine the state of health through the complex of normative morpho-functional indicators in the human body, since for its understanding, a quantitative evaluation is also needed. Given this, I want to agree with the definition of the concept of health, which was proposed by R.O. Stefanchuk, namely: health, as a non-property welfare, should cover the existing somatic and mental state of the body's vital activity, that is determined by a system of qualitative and quantitative medical indicators. In my opinion, this definition is the most suitable to norms of civil legislation, and fully reveals the essence of the concept of "health".

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ТЕОРЕТИКО-ПРАВОВОЙ АНАЛІЗ ДЕРЖАВНОЇ РЕЄСТРАЦІЇ В МЕХАНІЗМІ ВИНИКНЕННЯ РЕЧОВИХ ПРАВ НА ЧУЖЕ НЕРУХОМЕ МАЙНО

Протягом останніх років проведено значне реформування цивільного законодавства України у сфері виникнення речових прав на нерухомість, насамперед стосуються зміни щодо норм процедури реєстрації цих прав. Тому потреба у проведенні теоретико-правового