

PROBLEMATIC ASPECTS OF INTERNATIONAL STANDARDS REGULATING HUMAN RIGHTS TO HEALTH AND MEDICAL CARE

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ABSTRACT

This article is conducted to legal analysis of international and domestic laws that ensure human rights to health and medical care, as well as mechanisms of its realization in the legislative framework using the examples of specific states. The methods and forms of securing this right in the basic law of states is being researched through comparative analysis without going into detailed consideration of special normative legal acts. Health and the right to its protection is a fundamental factor for achieving peace and security throughout the world. Despite the universal recognition and consolidation of the right to health and medical care in various international agreements, its implementation rests on a particular state. Basing on international standards in the area of rights to health and medical care and also forming a national health care system, states are obliged to rigorously follow the norms of international treaties which they had ratified. Problematic aspects that arise in this case are also analysed in this article.

Keywords: The Right to Health and Medical Care, International Standards, The National Health System, Normative Legal Acts, Rights and Obligations, Legal Analysis.

INTRODUCTION

The right to health and medical care is recognized as an absolute and inalienable, since it belongs to a person from the moment of his birth until his life ends.

Modern international relations have initiated the assurance of observance and protection of human right to health and medical care, which outgrew the national borders of states and became an object of international norms' regulation, such as the Universal Declaration of Human Rights 1948 and the International Covenant on Economic, Social and Cultural Rights 1966.

Recognizing the human rights to health and medical care as natural and inalienable, the international community has developed certain standards that reflect the scope of such rights and basic conditions for their realization. (Evstratova, 2016) The term “стандарт” comes from English word “standard”; in Russian it means a norm, a sample. According to Professor A.B. Borisov's Great Dictionary of Economic, the term “standard” has two meanings: “1) The standard is an official state or normative-technical document of industry or enterprise that establishes necessary qualitative characteristics, requirements that this type of product must meet; 2) The standard is a sample, a model to which other similar objects are compared”

(Borisov, 2009).

International legal standard in the area of health and medical care may be defined as the most progressive international legal norms which were adopted by an authorized international body that secures human rights and freedoms in the area of health care, as guarantees for this right's provision, forms of international cooperation and as well as privileges to various categories of individuals (Dyuzhikov, 2001). The objectives of international standards' adoption in the area of health care are: The effective realization of citizens' right to health and medical care in accordance with the procedure and on conditions that meet modern requirements (Kamenskaya, 2011).

Legal Analysis of Universal International Treaties in the Area of Health and Medical Care

Universal sources include international legal instruments such as Universal Declaration of Human Rights (adopted by UN General Assembly Resolution 217A (III) of December 10, 1948), Convention on the Elimination of All Forms of Racial Discrimination (adopted by General Assembly resolution 2106 (XX) of 21 December, 1965), Convention on the Rights of the Child (adopted by General Assembly resolution 44/25 of 20 November, 1989), Convention on the Rights of Persons with Disabilities (adopted by General Assembly resolution 61/106 of 13 December, 2006).

In the second part of article 12 the 1966 Covenant reflects the desire for "health" as a broad concept that includes environmental hygiene, health care and occupational diseases (Toebe, 1999). Thus, according to article 5 of the Convention on the Elimination of All Forms of Racial Discrimination of 1965, member states are obliged to prohibit and eliminate racial discrimination in all its forms and to ensure everyone's equality before the law in regard to the right to health and medical care, social security and social services and other rights, without distinction as to race, colour, national or ethnic origin (Convention on the Elimination..., 1965).

Aside from prohibiting the imposition of acts of torture or ill-treatment, article 7 of the ICCPR explicitly prohibits medical or scientific experimentation on human beings without full understanding of the extent of the experiment and prior consent (Human Rights Committee..., 1992). The UN Principles of Medical Ethics relevant to the Role of Health Personnel establish a series of guidelines to guarantee that health personnel will protect prisoners and detainees against any form of ill treatment or punishment (Principles of Medical Ethics, 1982).

Specific Features of Legal Norms Enshrined in International Regional Treaties

We may include to regional health and medical care standards the European Social Charter of 3 May 1996 (Strasbourg) (entered into force in 1999), the Alma-Ata Declaration on Primary Health Care of 12 September 1978, the Convention Of the Commonwealth of Independent States on human rights and fundamental freedoms of 26 May 1995 (Minsk), the African Charter on Human and Peoples' Rights of 26 June 1981 (Nairobi) (entered into force on 21 October 1986), the Charter of Rights and Social Welfare of the Child 1990 (entered into force on November 29, 1999), the American Convention on Human Rights on November 2, 1969 (San Jose, entered into force on July 18, 1978).

In order to ensure the effective realization of the right to medical care, article 13 obliges states to ensure that every person who does not have sufficient resources to live in case of illness has appropriate care for depending on his conditions, as well as receiving any advice and any

individual assistance that may be required without any discrimination (European Social Charter, 1996).

The Alma-Ata Declaration on Primary Health Care (hereinafter the Alma-Ata Declaration) adopted by the CIS states, unlike other international instruments, “proclaims health as complete physical, spiritual and social well-being, not only the absence of disease or infirmity” (Alma-Ata Declaration..., 1978; Akanov, 2006).

Also within the CIS countries there was adopted the Convention on Human Rights and Fundamental Freedoms of May 26, 1995 (here in after the Convention on Human Rights and Fundamental Freedoms). This convention enshrined the human right to health care (European Convention..., 1995).

Promoting health, one of the fundamental aspects of primary health care, has been addressed independently by four successive conferences, the first in Ottawa, Canada, in 1986 and the most recent in Jakarta, Indonesia, in 1997 (The Ottawa Charter..., 1986).

Article 16 of the African Charter on Human and Peoples' Rights, 1981, proclaims everyone's right to the highest possible level of physical and mental health. Member states of the Charter must take all necessary measures to protect the health of their people and ensure that they receive medical care in case of illness (African Charter of Human..., 1981).

The Charter of Rights and Social Welfare of the Child of 1990 is another regional document adopted within the framework of the African Union. This Charter contains an extensive list of child's right. Article 14 enshrines the child's right to the best attainable state of physical, mental and spiritual health (African Charter..., 1990).

Comparative Analysis of the Main Provisions of the Foreign States Constitutions' in the Area of the Right to Health and Medical Care

The national law of states is formed on the basis of international universal and regional treaties. The order and terms of action of international treaties, the participant of which is Kazakhstan, in the territory of the Republic of Kazakhstan, shall be defined by the legislation of the Republic (Constitution of the Republic..., 1995).

As everyone knows, “the Constitution is the most important and basic politico-legal normative act that has the highest legal force and regulates the foundations of the state and its relationship with society and the individual (man and citizen)” (Engibaryan & Tadevosyan, 2000). The Swedish Constitution covers a broad understanding of physical inviolability. The competence of the Sweden's Government includes the adoption of a decree on the prescription in regard of life protection, personal safety, health (Dyuzhikov, 2001).

The article 21 of the Greece's Constitution of June 11, 1975, provides for a number of guarantees, including the state duty to take special care of patients suffering from incurable physical and mental ailments (The Constitution..., 1975).

The Constitution of Belgium of February 17, 1997, in its article 23, states that “Everyone has the right to live a life that corresponds to human dignity, including the right to social insurance, health protection, social, medical and legal assistance” (The Constitution..., 1997).

The Constitution of the Kingdom of the Netherlands dated February 17, 1983, in article 22, “obliges state bodies to take measures to protect the health of the population, to take care of providing the population with an adequate standard of living, to support the social and cultural development of society and the development of leisure and recreation” (Constitution of the Kingdom..., 1983).

On this matter article 32 of the Italian Constitution of December 22, 1947, states: “The Republic protects health as the fundamental right of the individual and the interest of society and guarantees free treatment for the poor” (Constitution of Italy..., 1947).

The 1843 Mexican Constitution included references to the state’s responsibility for preserving public health (Macias, 2011). Article 41 of the Constitution of the Republic of Azerbaijan of 12 November, 1995, enshrined the right to health and medical care: “Everyone has the right for protection of his/her health and for medical care. Officials concealing facts and cases dangerous for life and health of people will bear legal responsibility” (Constitution of the Republic..., 1995). The Constitution of the Republic of Armenia of 5 July, 1995, does not contain particular article regulating the right to health care, however, according to paragraphs 4 and 6 of article 48: “The basic tasks of the state in the economic, social and cultural spheres are: To implement health care programs for the population and contribute to the effective and affordable medical service for the population; to promote the physical culture and sport”.

Article 29 of the Constitution of the Republic of Kazakhstan proclaims everyone’s right to health and medical care and provides for the right to a guaranteed amount of free medical assistance, as well as receiving payable medical care in public and private medical institutions.

The Right to Health and Medical Care in the Constitution of the Republic of Kazakhstan

In the Republic of Kazakhstan, the right to health and medical care for at the constitutional level the first time was proclaimed in 1978. According to article 40 of the Constitution of the Kazakh Soviet Socialist Republic of April 20, 1978, “Citizens of the Kazakh SSR have the right to health care (Tatarinova, 2016). This right is provided by free qualified medical care guaranteed by public health institutions; development and improvement of safety engineering and production sanitation; special care for the health of the younger generation, including the prohibition of child labour not related to training and labour education” (Constitution of the Kazakh..., 1978).

The first Constitution of independent Kazakhstan, adopted at the 9th session of the Supreme Council of the Republic of Kazakhstan on the 12th convocation on January 28, 1993, also proclaimed adherence to preserving the social rights of citizens. Thus, according to article 23 of the 1993 Constitution of the Republic of Kazakhstan, “citizens of the Republic have the right to receive free guaranteed amount of medical care that established by law” (The Constitution of Kazakhstan..., 1993).

Identical norm providing the right to health medical care is contained in the current Constitution of the Republic of Kazakhstan of August 30, 1995, in article 29.

CONCLUSION

In conclusion, on the grounds of the scientific and legal analysis of the norms that are shown in existing international universal, regional treaties and the national legislation of particular states, it can be concluded that human health is one of the main social values of a modern civilized society, the greatest public and personal good and wealth which is the basis of state’s national security.

As soon as the international states community faced the necessity to solve problems concerning public health, international law was chosen as an instrument for creating common rules, institutions and values for this category. States, being aware of the importance of the right

to health care, began to seek cooperation with each other by concluding universal and regional international treaties.

Thus, it is necessary to ascertain that states, by implementing these international legal norms (standards) in their national legislation, create the rules of legal behaviour in relation to the human's health and medical care that are aimed for the continuation of citizens' life, maintaining their health and building comfortable conditions to live.

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