

Analysis of International Legislation Regulating the Protection of Patients' Rights

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Abstract

The article researches the mechanism of international legal regulation of patients' rights in the framework of Global Health as a modern institution of the right to health. It is determined that regional mechanisms for protecting patients' rights are more effective than universal ones. In addition, the progressive foreign experience of protecting the rights of patients is analyzed. The article also focuses on the rights of patients declared in international documents.

Keywords: Right to health- patients' rights- Global healthcare- international standards- universal mechanisms

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Introduction

Today, the right to health is recognized by the international community as a major inherent right that belongs to everyone. It is enshrined in the very first international legal instruments and referred to a group of economic, social and cultural rights. When the world's largest organizations have special units, whose duties include the legislative initiative, the development of international legal instruments to implement the right to health; the implementation of the provisions of the international instruments that perpetuate human rights and freedoms ratified by the states. The right to health is an integral part of the complex human rights recognized in virtually all countries, even in those where it is not formally recorded. In many countries, the right to health care has become part of domestic law, enshrined in the basic legal acts, provided ample opportunities for the realization of this right in accordance with internationally recognized standards. In Uzbekistan, many components of the right to health are also one of the inalienable constitutional rights, as guaranteed by the Basic Law (Art. 40) and are under the state protection. But some of the components of the right to health in the current legislation to date in implementing needed improvements and additions [1].

In May 2019, the 72nd World Health Assembly approved the proclamation of World Patient Safety Day

in a Global Action for Patient Safety resolution.

The first ever World Patient Safety Day will be observed on September 17, 2019. It will aim to raise public awareness around the world about patient safety issues and encourage solidarity and collective action. The theme of the first World Patient Safety Day will be "Patient Safety is a Global Health Priority" under the slogan "Speak Up for Patient Safety!" [2].

One of the latest documents on patient rights is the Tokyo Declaration on Patient Safety, adopted at the III World Ministerial Summit on Patient Safety, held in April 2018 in Tokyo, Japan. The summit participants unanimously recognized that ensuring patient safety is a fundamental requirement for any healthcare management system, one of the most important conditions for universal access to medical services and achieving the goals set by the UN General Assembly Resolution A/RES/70/1 of 25.09.2015 in the document "Transforming our world. 2030 Agenda for Sustainable Development".

The Tokyo Declaration on Patient Safety is based on the principles of World Health Assembly Resolution No. WHA55.18 (2002), which called on participating countries to "pay close attention to the issue of patient safety, establish and strengthen evidence-based systems necessary to improve patient safety and quality of medical

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care.

The Fourth Global Ministerial Meeting on Patient Safety was held in the Kingdom of Saudi Arabia on March 2-3, 2019. The meeting focused on low- and middle-income countries, which account for two-thirds of the burden of harm to patients worldwide. The meeting launched the Jeddah Declaration on Patient Safety, which will set out meaningful recommendations, especially for low- and middle-income countries.

In recent years, patient safety has become a major global health problem. Despite differences among national health care systems, many patient safety threats have similar causes and can often be addressed in similar ways [3].

The Universal Declaration of Human Rights of 1948 laid the foundation for international recognition of such values as human dignity, human life and health. The provisions of the Declaration were further developed and specified in various international legal documents. The importance of legal regulation and protection of patients' rights has grown with the development of medical science, the expectations and requirements of patients in relation to the quality and safety of medical care. Since 1970, a number of international documents of a universal and regional nature on the rights of patients have been adopted.

An analysis of the main international legal documents in the field of patients' rights indicates the absence of a universal definition of the concept of "patient". The definition of a patient is contained, *inter alia*, in the United Nations Principles for the Protection of Mentally Ill Persons and the Improvement of Mental Health Care (1991). In this document, a patient is defined as a person receiving mental health care, including those admitted to a mental health facility.

The following formulations are found in the scientific literature.

So, A. V. Tikhomirov calls a patient a person who turns to "a doctor with a need for his professionalism for advice and correction of well-being"[4].

A. N. Pishchita proposes to understand the patient as "a person who has entered in legal relations with medical workers and (or) other representatives of a medical institution regarding the receipt of medical care ... Neither the place of medical care, nor the state of human health are of decisive importance [5].

G.R.Kolokolov and N.I.Makhonko: "A patient is a person who has applied to a medical institution of any legal form, to a private practice doctor for diagnostic, therapeutic, preventive care, regardless of whether he is sick or healthy" [6].

I would like to pay special attention to the author's definition of A. G. Blinov, who defines "a patient as a person who has entered into healthcare legal relations through the exercise of the subjective right to receive medical, psychiatric, pharmaceutical services in specialized institutions of any organizational and legal form or invited to participate in a biomedical experiment as a test subject [7].

The definition of a patient proposed by him, which

is new in legal doctrine in terms of form and content, is based on the following key features: 1) in a legal sense, a patient is recognized as a person who has entered into health care legal relations; 2) participating in health care legal relations, he realizes the subjective right to receive services of a medical, psychiatric, pharmaceutical nature or becomes a subject in a biomedical experiment; 3) for receiving services of a medical, psychiatric, pharmaceutical nature, he can apply to health care institutions of any organizational and legal form.

The concept of a patient is defined as:

A person who needs medical attention;

A person receiving medical care or treatment;

A person under the care of a physician in connection with a specific disease or condition;

A person who is waiting for or undergoing medical treatment and care;

A sick, injured or wounded soldier who is receiving medical attention or treatment from a medically qualified staff;

Healthy (healthy) or sick (sick) consumer (consumers) of medical services.

Patient's rights include a set of legal and social relations that arise when citizens apply for medical care.

Health protection is a set of political, economic, social, legal, sanitary-hygienic and anti-epidemic measures aimed at preserving and strengthening the physical and mental health of each person, maintaining his active long life and providing him with the necessary medical care in case of loss of health.

About 15% of hospital spending in developed countries is related to the elimination of problems caused by violations of patient safety. And the social and economic consequences of harming a patient in a broader sense cost billions of dollars a year.

Safe care delivers better outcomes not only for patients and their families, but for health systems as a whole, by avoiding the costs of addressing adverse events, forced hospital stays, and reimbursement [8].

Among international documents, conventions and declarations adopted within the framework of the World Health Organization (WHO) and the World Medical Association (WMA) are of great importance.

WHO Alma-Ata Declaration on Primary Health Care (1978), WHO Lublin Charter on Health Reform in Europe (1996), MBA Tokyo Declaration "Recommendations on the position of physicians regarding torture, punishment and other suffering, as well as inhumane or degrading treatment in connection with arrest or detention" (1975), Declaration of Helsinki (VMA) "Ethical principles for conducting medical research involving people as subjects" (1964). The WMA Declaration of Geneva defines the doctor's duty in the following words:

"The health of my patient will be my main concern."

International legal regulation of patients' rights is carried out both at the international and regional levels. The key international documents on patients' rights are the Declaration on Policies for Ensuring the Rights of the Patient in Europe (1994) and the Lisbon Declaration on the Rights of the Patient (1981). These acts contain

international legal standards that must be implemented in national legislation, taking into account the national characteristics of the legal system.

In 1996, the European Forum of Medical Associations and WHO was held in Stockholm, which adopted the Regulations on the Promotion of Patients' Rights. This Regulation combined the Declaration of the Rights of Patients in Europe and the Declaration of the International Medical Association. The regulation has increased the role of national medical associations in protecting the rights of patients. In 1997, the Council of Europe adopted the Convention "On the Protection of the Rights and Dignities of Man" in the field of biology and medicine (1999). It was actually the first international and binding document on the rights of citizens in the field of health.

In 1999, the Council of Europe adopted a Recommendation on the protection of the rights of the mentally ill. Council of Europe Recommendations on the Rights of the Sick and Dying (1976), Charter on the Rights of Hospital Patients (1979), Patient Rights in Europe (WHO, 1993), Amsterdam Declaration on Patient Rights Policy in Europe (1994), Tallinn Charter: Systems Health for Health and Wealth (2008).

The Basic Rights of Patients Declared in International Documents Can Be Generated Into 4 Types:

1. Accessibility and Quality Of Medical Care.

The prohibition of any discrimination in relation to the provision of medical care; the right to choose a doctor and medical institution; the right to have family members present when treating patients; the right to consult another doctor or specialist and a consultation; the right to outpatient medical care at a convenient time for the patient; the right to examination, treatment and maintenance of patients in conditions that meet sanitary and hygienic requirements, etc.

2. Right to Information. Be aware of your health status, risk level, diagnostic options, available treatments; the right to confidentiality of medical care and medical secrecy; to information about the mode of operation of the institution where the patient is being treated, about the professional qualities of the attending physician, etc.

3. Voluntary Consent . The right to consent or refuse medical intervention; informed consent prior to any medical care; written informed consent to the use of new treatments and drugs and the possibility of refusal to participate at any stage of the experiment; consent or refusal of the patient to participate in the treatment process; consent and conditions for the participation of the patient in the medical educational process, etc.

4. Responsibility of Medical Workers. The right to appeal against the actions of medical workers in case of violation of the rights of patients; individual responsibility of the doctor and medical institution; the right to compensation for damage to the health of the patient caused by the provision of medical care). An interesting international legal document of a regional nature in the field of patients' rights is the European Charter of Patients' Rights, adopted on November 15, 2002. The charter enshrines fourteen rights of the patient. Each national health care system in the countries of the European Union

has a specific, different model for ensuring the rights of patients. The Charter enhances the protection of patients' rights in different national contexts and serves as a tool for harmonizing national health care systems to respect patients' rights.

The European Consultation on Patients' Rights, held in Amsterdam in 1994 and attended by representatives of 36 WHO Member States from the European Region, adopted the Framework for the Concept of Patients' Rights in Europe. These are general provisions that represent a set of basic principles aimed at supporting and exercising the rights of the patient in the territory of the European Member States of WHO [9].

The policy proclaimed in the Amsterdam Declaration provides for the following strategic directions:

Adoption of legislative and by-laws that define the rights and obligations of patients, representatives of medical professions and healthcare institutions the adoption of periodically revised medical and other professional codes, a charter of patients' rights and similar documents, created on the basis of consent and understanding between representatives of citizens, patients, medical professionals and politicians;

development of cooperation among and between patients, producers and providers of medical services, taking into account the differences in the views of healthy citizens and consumers of medical services;

ensuring the conduct of a study to evaluate and document the effectiveness of legislative measures and other methods and initiatives taken in various countries in the field of observance of the rights of the patient, etc.

The Amsterdam Declaration distinguishes between the social and individual rights of patients. Social rights in the field of health protection are associated with social obligations undertaken or assigned to the government, public or private organizations to reasonably provide the entire population with medical care. Social rights are also associated with equal access to medical care for all residents of a country or geographical region and the elimination of financial, geographical, cultural, social, psychological and other discriminatory barriers.

Social rights are the property of the whole society. They are determined by the level of development of society as a whole. By individual means such rights as the right to the integrity of the person, to non-interference in private life, to confidentiality and religious beliefs.

The Amsterdam Declaration is aimed at the development of social rights, its dominant focus is shifted to the area of individual rights. The conceptual framework for this review of patients' rights is largely based on a number of intergovernmental declarations on freedoms and human rights. The intentions of the authors of the declaration were not to formulate fundamentally new rights of the patient, but to create a single, consistent concept in the field of relations "patient - medicine".

Thus, international legal instruments on the rights of patients have served as the basis for protecting the right to health care. Enshrining the rights of the patient in international legal documents is an important guarantee of the recognition of the rights of patients by the world

community and imposes obligations on states to implement mechanisms for ensuring and protecting these rights. The modern systems of medical law in most countries of the world are based on the principles of international documents on the rights of patients. The concept of the rule of law implies that norms should be published, stable and predictable in their application.

Thus, one of the effective international mechanisms for protecting the rights of patients today is the European Court of Human Rights. The ECHR in its practice approaches the issue of protecting the right to health in the context of considering applications under articles 2,3,5,8 of the European Convention on Fundamental Human Rights and Freedoms.

The jurisprudence of the European Court of Human Rights shows that the violation of the right to health by the ECHR is considered in the context of a number of human rights related to health, and also reflects the broad content of the rights to health.

Such issues are, for example, pharmaceutical activities, the right to proper medical care and quality medicines, access to information about one's health status, payment for treatment, dissemination of medical information, violation of professional duties by doctors, bringing to death in medical and prophylactic, social institutions, military units, expulsion of persons suffering from diseases, and others. The main articles in the context of which applications are submitted to the ECtHR are Art. 2, 3, 5, 8, 13 and more.

Accordingly, it can be argued that the practice of the ECtHR is one of the most effective mechanisms for ensuring the right to health at the international level. The right of individual appeal of persons to the ECtHR is ensured most effectively, since this system provides access to justice and has the most "targeted" results.

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