

Issues of Implementing International Legal Norms on the Right to Health in the National Legislation of the Republic of Uzbekistan

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Abstract

This article deals with current issues of implementing international norms in medicine into the national legislation, the concept of the definition of implementation, analyzes international legal instruments, the right to health care, policy, and national legislation of Uzbekistan in public health care. In the concluding part of the article, there are proposals for improving the Republic of Uzbekistan to ensure health.

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Introduction

The current stage of development of international law characterizes by more and more active global legal regulation of relations, which were the subject of domestic legal influence.

At the same time, in the context of the globalization process, the issues of international cooperation and development of international and national strategies in public health and the implementation of international standards in the field of human rights to health into national legislation are of great importance. In these circumstances, there is a need for a comprehensive analysis of the problems associated with the implementation of international legal norms in medicine, the correlation and interaction of international instruments, and the legislation of states in the field of health protection.

Implementation of international legal norms in domestic law is a basic form of implementation and fulfillment of states' international obligations.

In English, implementation of international law ("implementation, execution, practical realization") is the actual implementation of international obligations at the domestic level and the inclusion of international legal norms in the national legal system. Implementation of international standards implies their reflection in the national legislation and their actual implementation.

Thus, implementation means that an international legal norm is adapted in the national legislation within the framework of the execution of an international treaty, following the peculiarities of the national legal system. The implementation may be either direct or indirect. In the case of straightforward implementation, the norms of international law are given effect through an act of ratification. In this case, the standards of global law copy into the national legal system. This form of implementation, based on a literal reproduction of an international legal norm in a national act, is called incorporation [1].

As G.Yuldasheva notes, the term "implementation" is firmly rooted in international legal practice. It can be found in numerous resolutions of the UN General Assembly and its bodies, decisions of other international organizations adopted in connection with the discussion of the implementation of international treaties in the humanitarian sphere [2].

If the national legislation contains more advanced legal protective positions than international norms, they must leave their national standards using reservations. Suppose the national legislation is inferior in improving the adopted international norms. In that case, it should change, improve these norms, raise the national standard of freedoms, and protect human and civil rights [3].

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Today, the implementation of international legal norms in the national legislation in Uzbekistan is acquiring a sustainable and systemic nature. As a result of this phenomenon, the laws units and subordinate legislation are completely revised to align with the requirements of generally recognized principles and norms of international law.

It should be noted that the Republic of Uzbekistan has succeeded in implementing international norms in the national legal system. As a result of Uzbekistan's ratification of the core international human rights conventions, virtually all their principles and standards have been incorporated into domestic law. They, as well as the provisions of other international treaties and agreements to which Uzbekistan is a participant, are given preference over the norms of national legislation [4]. However, as practice shows, for international standards to act thoroughly and effectively, it is necessary to create an appropriate mechanism to implement these norms.

Regarding the right to health, international legal instruments define the state's responsibility for human health by recognizing the right to health as a human right. Accordingly, such agreements provide for "the right to the highest attainable standard of health" as referred to in Article 12 of the International Covenant on Economic, Social and Cultural Rights; moreover, the health as that term is used in the preamble to the Constitution of the World Health Organization, that is, "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".

Thus, Article 25 of the Universal Declaration of Human Rights provides for the individual's right "... to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services". As can be seen from the text of this provision, the human right to health is essentially the right to a certain standard of living in which all the conditions, circumstances, and factors for the possession and maintenance of the good in question exist.

Moreover, the Universal Declaration of Human Rights norms is widely used in developing and organizing national legislation to ensure guarantees of medical care.

For example, the preamble to the Constitution of the World Health Organization states: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition. In contrast to the Universal Declaration of Human Rights, the Constitution of the World Health Organization, an international treaty of a universal nature, is clear enough in its definition of health as a human right. The primary significance of the meaning of health in the Constitution of the World Health Organization is that it was from that moment that the right to health became regulated by international law, which was the starting point for the subsequent development and specification of this right in other international and national documents [5].

Thus, on the one hand, international acts proclaim the right to health as a human right, at the same time,

establishing its rather general formulation, on the other hand, it is assumed that the scope and content of this right and specific measures aimed at its implementation are established in national legislation, where it receives substantial filling as a citizen's right. This is entirely consistent with the nature of socio-economic rights, the realization of which requires active state action to create a mechanism of legal regulation and depends on its economic potential.

In the Republic of Uzbekistan, the human right to health has become part of domestic law. Moreover, it is proclaimed in normative legal acts, which provide ample opportunities for realizing this right following international legal standards.

Thus, in its preamble, the Republic of Uzbekistan Constitution prioritizes generally recognized norms of international law over domestic law. Accordingly, human and civil rights and freedoms are recognized and guaranteed by the generally recognized principles and standards of international law and the Constitution.

The Constitution of Uzbekistan is established that everyone has the right to qualified medical care (art. 40). Several laws and regulations have been adopted to implement this norm, including the Law "On protection of people's health" №265-I of August 29, 1996. Thus, article 13 of the Law states that citizens of the Republic of Uzbekistan have an inalienable right to health care. The State provides health protection to citizens regardless of age, sex, race, nationality, language, attitude towards religion, social origin, beliefs, personal and social status. Furthermore, article 24 of the Law defines the fundamental rights of patients. It is within the framework of the implementation of these norms that the rights of citizens to health care are guaranteed.

Following the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and other international instruments, the Law "On protection of people's health" provides exceptional health care for minors, persons with disabilities, elderly citizens, and citizens affected by emergencies.

The problem of ensuring accessibility and quality of medical care provided to citizens in the Republic of Uzbekistan, among other aspects of the organization of the healthcare system today, is the most relevant. Therefore, adopting the Concept of Development of the healthcare system of the Republic of Uzbekistan for 2019-2025 provides measures to improve the quality and accessibility of medical care, supporting healthy lifestyles, prevention, and control of infectious and non-infectious diseases. The Concept provides for the establishment of the Agency for the Development of Medical and Social Services under the Ministry of Health; the main objectives and activities are the formation and implementation of a unified policy of medical and social assistance aimed at further improvement and coordination of medical and social services provided to the elderly, persons with disabilities and other socially vulnerable categories of the population; organization and coordination of medical and social facilities in matters of medical and social services to the elderly, persons with disabilities and other socially

vulnerable categories of the population, etc. The right to medicines is an element of medical care and ensures comprehensive treatment and prevention of illnesses.

The provisions of the fundamental international treaties formed the basis for the formation of Uzbek legislation on medical care and social security. For example, the Law “On protection of people’s health” stipulates that medical institutions of the State health care system provide state-guaranteed medical care to the population free of charge. The Uzbek legislation establishes the scope and procedure for free medical care. The list of medical-preventive facilities rendering free medical assistance is determined by the Decree of the President of the Republic of Uzbekistan on the 10th of November, 1998, №UP-2107 [6].

According to Article 16 of the Law “On protection of people’s health”, in case of illness, disability, and in other cases, citizens have the right to medical and social assistance, which includes preventive, therapeutic and diagnostic, rehabilitation, sanatorium, prosthetic and orthopedic and other types of service, as well as social measures to care for the sick, disabled and invalids, including payment of benefits for temporary disability. Article 29 of the Law established that primary health care, provided by state health care system facilities, public associations, is the basic, accessible and free type of medical care [7].

According to Article 10 of ILO social security Conventions №102 (1952) on Minimum Standards of Social Security, medical care must include, among other things, at least the provision of primary pharmaceutical products prescribed by a physician or other qualified practitioner. ILO Convention №130 on Medical Care and Sickness Benefits Convention (1969) contains a similar provision, making the supply of necessary medicines prescribed by a physician or other qualified practitioner a mandatory part of medical care for countries that have ratified the Convention. Unfortunately, both Conventions have not been approved by Uzbekistan.

According to the Law “On protection of people’s health” (art. 34), in the practice of health care, only the measures of prevention, diagnostics, treatment, medical technologies, medicines, and disinfectants are permitted for use by the procedure established by the legislation are used. Based on Article 3 of the Law of the Republic of Uzbekistan “On Drugs and Pharmaceutical Activities” [8], the State guarantees the availability of basic types of medicines and their quality. All forms of treatment with medication and medical devices not approved for medical use are prohibited. The list of medications and medical devices permitted in medical practice is determined by the Ministry of Health of the Republic of Uzbekistan. The Resolution of the Cabinet of Ministers of the Republic of Uzbekistan №204 dated 22.07.2013 [9] approved the list of categories of persons entitled to preferential medicines in outpatient treatment.

State regulation of drug provision performs an important social function. By imposing restrictions on pricing, providing medicines for free or at a discount in specified cases, the State supports the nation’s health.

In addition, it prevents the decline in the standard of living of the population of the Republic of Uzbekistan.

WHO defines the protection of reproductive health at the global level as a priority area, which was emphasized in the Resolution of the World Health Assembly held in May 1995 (WHA 48.10). This Resolution calls on member states to develop and strengthen reproductive health programs.

In Uzbekistan, on February 15, 2019, the Law “On the protection of the reproductive health of citizens” was adopted, which states: “If an international treaty of the Republic of Uzbekistan establishes other rules than those provided by the legislation of the Republic of Uzbekistan on the protection of the reproductive health of citizens, then the rules of the international treaty shall apply” [10]. The document creates a legal basis for this direction of medicine, introducing advanced methods into its practice, including infertility treatment. In addition, the Law defines the main principles of state policy in the field of protection of reproductive health of citizens, state guarantees of implementation of the reproductive rights of citizens, reproductive rights of citizens, preventive measures to protect the reproductive health of citizens, preventative measures to protect the reproductive health of citizens, etc.

Uzbekistan has signed and ratified many international treaties, rules, recommendations, and documents related to the problems of public health and health care. These include the International Covenant on Economic, Social, and Cultural Rights, the International Health Regulations (IHR), the WHO Framework Convention on Tobacco Control, the United Nations Millennium Declaration, and several other critical international documents related to health.

In 2012, the Republic of Uzbekistan acceded to the World Health Organization Framework Convention on Tobacco Control dated May 21, 2003 [11]. Provisions of this convention were implemented in the Law of the Republic of Uzbekistan “On Restricting of hookah and E-cigarette smoking in public places” from October 4, 2018 [12], which is aimed at protecting the health of citizens from the harmful effects of hookah and E-cigarette smoking, related social and other negative consequences, as well as creating organizational and legal conditions of formation and approval in the society of a healthy lifestyle.

States implement a set of organizational and legal measures to implement international legal norms on the human right to health. However, the implementation of international legal provisions on the human right to health directly depends on the current level of development of medical science and technology. That is why most of these provisions are of a conditional nature of implementation or contain wording indicating the possibility of their application, considering the current level of development of science and technology. Consequently, the application of the norms of international law on the human right to health is limited by the capabilities of the states themselves, namely the level of economic, socio-cultural, and political development of society.

Currently, Uzbekistan is a member of almost all major international intergovernmental organizations dealing with

health and related problems (UN, WHO, ILO, UNICEF, UNESCO), has its territories, and participates in their programs.

Today in Uzbekistan, there is purposeful work on further developing a health care system to combat the spread of HIV/AIDS and protect the population from tuberculosis infection. The number of people living with AIDS in the country is more than 40 thousand. However, in recent years, there has been a decline in the incidence of HIV infection among children in Uzbekistan [13].

In recent years, it should also be noted that cancer has become one of the top three leading causes of death in many developed countries.

The incidence of malignant tumors in Uzbekistan is 66.7 per 100,000 people, with about 10 cases per 100,000 children. In recent years, morbidity and mortality from malignant neoplasms in the country have been gradually increasing, and the dynamics of morbidity and mortality vary from region to region. One of the large regions of Uzbekistan is the Republic of Karakalpakstan, which has several specific climatic-geographical, ethnic, social, and anthropogenic factors. Therefore, we have taken the Republic of Karakalpakstan as a model to study the peculiarities of malignant neoplasms spread in different localizations. The Republic of Karakalpakstan, like the whole country, has a growing incidence of malignant neoplasms. Annually more than one thousand patients with newly detected oncopathology are registered. Of the total number of newly detected patients, 2.6% are children under 18, and almost half are residents of rural areas. Among the total population in general, the most frequently registered are esophageal cancer (13.5%), stomach cancer (10.6%), breast cancer (10.8%), cervical cancer (9.1%), liver cancer (5.6%), and others [14]. It should be noted that the rate of cancer is increasing worldwide.

Uzbekistan is currently implementing a Concept of development of security service of mental health of the population of the Republic of Uzbekistan for 2019-2025. One of the main directions is eliminating discrimination and stigmatization based on mental disorders.

Thus, in Uzbekistan, the issues of ensuring human rights, including the right to health, the implementation of international legal norms in the national legislation, is considered one of the state policy priorities.

In conclusion, in contemporary international law, implementation means the adaptation of international legal norms in the national legislation in the framework of the execution of international treaties by the peculiarities of the national legal system.

Uzbekistan has now developed its model for systematically incorporating international human rights standards into national legislation and law enforcement practice.

Uzbekistan's legislation in health care and medicine is generally in line with international instruments in this area. However, the country significantly lags in the development of its scientific, technological and economic aspects of health care - in the degree of realization of the scientific potential of the sector, in its computerization and implementation in practice of international rules,

standards, and recommendations in reasonable health care, in attracting foreign investment, etc.

Considering the global nature of the growth of oncological diseases and multifactorial reasons, it is necessary to introduce international protocols on early detection and timely treatment with modern medicines of this disease in the Republic of Uzbekistan. For this purpose, based on the international protocol on early detection and timely treatment, it is necessary to study and amend the normative legal acts of the Republic of Uzbekistan regulating these issues.

Active use of opportunities provided by globalization to strengthen national healthcare is hindered primarily by an unsatisfactory introduction of advanced achievements of medicine into treatment and diagnostic process, which does not allow meeting expectations and demands of the population on the quality of healthcare. Elimination of shortcomings and creation of conditions (financial, guarantee, administrative, etc.) for expansion and strengthening of international cooperation, the introduction of international standards in the field of healthcare will enable healthcare to successfully strengthen its material and scientific and technical base and provide generally accessible quality medical care to the population, realizing the positive opportunities of globalization of the sector.

In connection with the spread of COVID-19, the introduction and implementation of IHR by states acquire particular relevance. A country's ability to identify, report, and respond to health threats requires strong linkages, for example, between clinical laboratories, health information systems, medical technology, and between the number of emergency personnel and public health training.

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