

Right To Health Protection in the Former-Soviet Constitutions: Constitutional and Legal Analysis

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Abstract

The constitutional framework for legal aid to available health care therefore determines one of the strategic areas of policy of democratic, social and law-governing states (former Soviet states). This determines the relevance of studies of resistance to constitutional and legal regulation of the health system formed as a result of changes in the skin and radical structure of social structure in previous USSR states. The article contains the constitutional and legal analysis of the right to health protection in the former-Soviet constitutions by reviewing the constitutional healthcare provisions and specifying the groups of qualified bearers of right to health protection and variety of rights as the healthcare system elements. The studies are to be continued, as well as the review and summary of information about constitutional and legal regulation of the right to health protection in the former-Soviet states are needed.

Keywords: Health, healthcare, right to health protection, Constitution, former-Soviet states.

Introduction

The public welfare directly depends on the health status of the population that is conditioned by availability of the medical assistance, medical supplies, as a whole and its services, in particular. That is why the constitutional framework of the legal support of the available healthcare set forth one of the strategic areas in the state policies of the democratic, social and law-governed states (the former-Soviet states constitute themselves as such). This determines the relevance of study of contradictory features of the constitutional and legal regulation of the healthcare systems in the former USSR states formed as a result of the accelerated and radical formation changes in the social structure.

Method

To prepare the article, the following general scientific and special study method were used: analysis, synthesis, information search, structured system analysis, dogmatic, comparative legal.

Results and Discussion

The similar topics were studied by S.V. Agievets, K. Bendukidze, A.O. Dichko, L.V. Zhylskaya, O. A. Kovalenko, N. P. Kryzina, V.S. Lysenko, V.M. Oleynik, V. Petrovsky, V.V. Puchkova, F. S. Reder, S.A. Rudy, S.G. Stetsenko, M. Taner, A. Urushadze, M. A. Shevchenko, L.Z. Shupa, et al. The studies are to be continued, as well as the review and summary of information about constitutional and legal regulation of the right to health protection in the former-Soviet states are needed.

There are broad and narrow definitions of the term "right to health protection" in the scientific literature. Broadly, this is a collection of legal norms regulating the relations of the population health protection in socio-economic, healthcare and other spheres of the state life. Narrowly, this is an intersectoral legal institution directly aimed at health protection (Agievets SV 2012)¹.

The constitutional lawmaking of the states-the union republics of the former USSR in the past - is distinguished by inert continuity of the lawmaking aimed at sectoral

regulation of the social sphere, including the right to health protection. The statements on the guaranteed free medical aid are contained in the most of the new Constitutions of the CIS members and others.

That is why, to guarantee the constitutionally objectified right to health protection, its international legal recognition, documentation, as well as provision and preservation of the implementation mechanisms are of critical importance and have been realized since H2 XX century in view of the lawmaking process of the UNO and WHO and other subjects of the international legal relations.

The principle of priority and rule of the international law embodied in the Constitutions of the former-Soviet states provides for the required state obligation on the guaranteed safeguards for the human and civil rights to the available healthcare and excludes any avoidance of its fulfilment that is motivated by explanations regarding insufficient capacities of the national economy.

The mandatory legislative regulation of the available right to healthcare by all the former-Soviet states is determined by their UN membership as the parties to the Covenant on Economic, Social and Cultural Rights of 1966. The Covenant Preamble sets forth the regulation of the UN charter binding the states “to promote universal respect for and observance of, human rights and freedoms” (Agievets, S. 2002)²

Substantiating the above provisions, L.V. Zhilskaya fairly points out the unlawful interpretation of the principle of “the gradual implementation of obligations” embodied in the Covenant as ensuring these rights only when the state achieves a certain economic development level, whereas according to the above obligation, all the member states, irrespective of the degree of their national welfare, must undertake the immediate steps to exercise economic, social and cultural rights not postponing them for an indefinite period (Zhilskaya LV. 2005)³.

Clause 1, Article 12, of the Covenant contains a mandatory provision for the member states regarding recognition of the right of everyone to the highest achievable level of physical and mental health specified in cl. 2 of this Article: «a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; b) the improvement of all aspects of environmental and industrial hygiene; c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; d) the

creation of conditions which would assure to all medical service and medical attention in the event of sickness” (Agievets, S. 2002)².

The mentioned provision in brief or in detailed wording is reflected in the Constitutions of all the former-Soviet states, at this, the detailed wording assumes the presence of a system of the state guarantees for ensuring the maximum possible level of mental and physical health.

The healthcare issues are highlighted in Articles 37, 41, 42 of the Constitution of the Russian Federation. The basic scope of the right to health protection, including the medical aid, is included in cl. 1, Art. 41, providing the relevant right to everybody, that is not only to the citizens. At the same time, the medical aid guarantees consisting in the free medical aid provision by the state and municipal healthcare institutions out of the relevant budget, insurance contributions, other revenues, are addressed to the citizens only. Cl. 2 of Art. 41 provides for financing the federal programs on health protection and promotion, undertaking the measures to develop the state, municipal and private healthcare systems. But at the same time, the activity facilitating the health promotion by developing the physical training and sports, establishing the ecological and sanitary and epidemiological welfare is only “encouraged”. Consequently, ensuring the natural human right to health and medical aid is not guaranteed by Art. 41 of the Russian Constitution in contrast to the legal rights of a citizen. This contradicts the provision of cl. 1 of Art. 17 concerning recognition and guarantee of the human and civil rights and freedoms in the Russian Federation pursuant to the general principles and norms of the international law and this Constitution. Nevertheless, cl. 3 of Art. 41 establishes the responsibility of the state, in the persons of officials of the state system, for life and health of people. The sanction for suppression by such officials of the life and health threatening facts and circumstances attracts a legal responsibility as provided by the Federal Law. At the same time, cl. 3 of Art. 37 grants to everyone the right to work in the conditions meeting the safety and hygiene requirements and Art. 42 - the right to favourable environment and reliable information on its state that is substantiated by the restorative justice norm on compensation of damage caused to health and property by an environmental offence (The Constitution of the Russian Federation 1993)⁴.

Notwithstanding that cl. 3 of the Constitution of Ukraine of June 28, 1996 recognizes the human life and health as the highest social value, such contradiction is also present in the wording of the human right to health protection in cl. 49 of the Constitution declaring the right of everyone to health protection, medical aid and medical insurance to be provided by the state funding of the relevant socio-economic, medical-sanitary and health improvement and prevention programs. At the same time, the assessment criteria of the proper level of the medical services - their efficiency and availability, embodied in para. 3 of this Article refer not to everyone but only "all citizens". The free medical aid must be provided by the state and municipal healthcare institutions and the state shall "promote" the development of such institutions of all legal forms of organization. At this, the state guarantee is contained in the norm prohibiting the reduction of the network of the state and municipal healthcare institutions, although the current implementation of the medical reform in Ukraine actually transforms this guarantee into the declaration. According to para. 4 of Art. 49, the state shall take care of developing the physical training and sports, ensuring the sanitary and epidemiological welfare. Art. 50 contains a natural human right to the life and health safe environment that simultaneously provides for compensation of damage caused by infringement and a guarantee for free and available information with the right of its distribution and prohibition of its classification (The Constitution of Ukraine. 1996)⁵.

The Constitution of the Republic of Belarus of 1994 (as amended and supplemented, adopted at the National Referendums on November 24, 1996 and October 17, 2004) clearly restricts a range of subjects having the guaranteed right to health protection with its citizens. The guarantees embodied in Art. 45 include free treatment in the state healthcare institutions, available medical services, development of the physical training and sports, environmental improvement activities, opportunity to use the recreational institutions, labour protection improvement; and those in Art. 47 include the right to social security in old-age, in case of disease, disability, loss of earning capacity. and only the norm stated in Art. 46 grants the right to favourable environment and compensation of damage caused by breach of this right of everyone (The Constitution of the Republic of Belarus 1994)⁶.

The specific feature of Art. 37 of the Constitution of Georgia of August 24, 1995 as amended on October

15, 2010 is the interpretation of health insurance as the available means of the medical aid being a right of everyone. At the same time, the free medical aid is limited by the legally established "specific conditions". The state control covers all healthcare organizations, pharmaceutical production and trade. All people have the right to harmful environment, use the natural and cultural environment. The environmental conservation and protection and sustainable use pursuant to the ecological and economic interests of the society constitute the common obligation of "all" and the state (The Constitution of Georgia. 2005 Aug 24., Kryzina NP,KOO. 2016)^{7, 8}.

The Constitution of the Republic of Armenia of July 05, 1995 as amended on December 06, 2015, Art. 85, very briefly declares the right of everyone to health protection according to the law, thus restricting the list and procedure of the basic free medical services not mentioning the medical aid and guarantees (The Constitution of the Republic of Armenia. 1995)⁹.

The Constitution of the Republic of Azerbaijan of November 12, 1995 (as amended and supplemented on 25/07/2016) and vice versa, Art. 41 more meaningfully sets forth the right to health protection and medical aid covering everyone, binding the state to undertake necessary measures to develop all kinds of healthcare on the basis of various kinds of ownership, guarantee the sanitary and epidemiological welfare, create the opportunities for various forms of the medical insurance. In the given wording, the right to health protection and right to medical aid are considered as individual interconnected varieties of healthcare rights. The state provides for development of all kinds of healthcare in various forms of organization, guarantees the sanitary and epidemiological welfare, creates the opportunities for various forms of medical insurance. Similarly to the Russian Constitution, the officials concealing the facts and events that create danger for health and life shall be brought to the responsibility as provided by the law(The Constitution of the Republic of Azerbaijan. 1995 Nov 12.)¹⁰.

The Constitution of the Republic of Moldova of July 29, 1994, Art. 36, briefly and without details, guarantees the right to health protection, declares the minimum level of the free state medical supplies and refers to the organic act establishing the national healthcare system structure and facilities intended for physical and mental health protection (The Constitution of Georgia 2005

Aug 24, The Constitution of the Republic of Azerbaijan. 1995 Nov 12)^{8,11}.

The Constitution of the Republic of Kazakhstan (adopted at the National Referendum on August 30, 1995) (as amended and supplemented as of 23/03/2019 г.), Art. 29, grants the right to health protection and statutory guaranteed scope of the free medical aid to the citizens only. The medical aid can be paid not only at the private health care centers and when provided by the persons engaged in the private medical practice, but also at the state medical institutions on the basis and in a manner provided by the law (The Constitution of the Republic of Moldova. 1994 July 29)¹².

According to Art. 47 of the Constitution of the Kyrgyz Republic of June 27, 2010, the right to health protection, the state-created conditions for medical services and measures to develop the state, municipal and private healthcare sectors shall cover all people. But it does not specify the scope of subjects of the right to free medical services, as well as medical services on favourable conditions in the scope of state guarantees provided by the law. Similarly, to Russia and Azerbaijan, there exists the legal responsibility of the officials for concealing the health and life-threatening facts and events (The Constitution of the Kyrgyz Republic. 2010 June 27.)¹³.

The Constitution of the Republic of Uzbekistan of December 08, 1992, is limited by the right of everyone to the qualified medical services declared in Art. 40 (The Constitution of the Republic of Uzbekistan 1992 Dec 8.)¹⁴.

The Constitution of Turkmenistan of May 18, 1992, as amended and supplemented on December 27, 1995, Art. 52, stipulates the right of “each person” to health protection, including free use of services of the state healthcare institutions. Along with the paid medical services, it also embodies the alternative medicine on the basis and in a manner provided by the law. Art. 53 grant to every person the right to life and health favourable environment, reliable information on its state and compensation of damage caused to health and property by an environmental offence or natural disasters (The Constitution of Turkmenistan. amended and supplemented. 1992 May 18)¹⁵.

According to the Constitution of the Republic of Tajikistan (as revised by Referendums on 26/09/1999, 22/06/2003, 22/05/2016), Art. 38, the right to health

protection cover everyone and the free medical aid shall be provided by the state institutions as legally provided. This also refers to the other forms of the medical aid. The measures to improve the environment, create and develop the mass sports, physical training and tourism are the responsibility of the state (The Constitution of Turkmenistan. 1992 May 18)¹⁶.

The Constitution of the Republic of Lithuania of October 25, 1992, Art. 53, binds the state to take care of the people’s health and guarantee the medical aid and services to a person in case of disease. But the law establishes the procedure of free medical aid provided at the state healthcare institutions for the citizens only. The state encourages the physical training and promotes or the sports. The environmental protection against harmful impacts is a common responsibility of “each person” and the state (The Constitution of the Republic of Lithuania. 1992 Oct 25)¹⁷.

The Constitution of the Republic of Latvia adopted at the general meeting of the Constitutional Assembly of Latvia on February 15, 1922, revised on 22/07/2014, cl. 111 of Chapter VIII, is limited by the statement of the state health protection and guarantee of minimum medical aid to everyone and cl. 115 – by the statement of right of everyone to live in the favourable environment by providing the information on the state of the environment and taking care of its protection and improvement (Kryzina NP,KOO. 2016 No.2. 2018, The Constitution of the Republic of Estonia. 1992 June 28.)^{18, 19}.

The Constitution of the Republic of Estonia of June 28, 1992, is distinguished by the major social right to health protection as provided by cl. 28 stating that everyone has the right to health protection. A citizen of Estonia has a priority right to the public support in old age, in case of disability, loss of breadwinner, poverty. Its kinds, size, provisions and procedure are established by the law. Simultaneously, if not contradicting to the law, such support can be provided to foreign citizens and stateless persons coming to Estonia (Kryzina NP,KOO 2018, Dichko GO. 1993 July 16)^{8,18}

The considered constitutional and legal provisions of the former-Soviet states concerning the right to health protection make it possible to conclude on the following:

1. The guaranteed free medical aid (maintenance, services) is present in the most of the post-Soviet constitutions as a result of inertia of the Soviet

constitutional system.

2. The priority of the international right is one of the principles of the state of law and the most important factor for the required fulfilment by the former-Soviet states of their constitutionally acceptable international liabilities on guaranteeing the right to health protection and implementing the complex measures to ensure availability and efficiency of the healthcare system.
3. The constitutional provisions on free medical aid (maintenance, services) is embodied as the relation with the paid aid in various ratios, but a common feature of the post-Soviet constitutions is a statutory restriction of the free-of-charge basis and a trend to its minimization.
4. The scope of subjects - the qualified bearers of the right to health protection - is represented in all constitutions by two main groups: all individuals having the natural human rights and citizens having the legal rights. At this, the absolute majority of the constitutions provide the free medical aid (maintenance, services) for the citizen only.
5. In all post-Soviet constitutions, the right to health protection is related to the right to health living environment that is ensured by common responsibilities on its conservation and protection by a human, citizen and state. Simultaneously, there is the human and civil right to compensation of damage caused by violations in the sphere of natural management. At this, there is the constitutionally accepted legal responsibility of officials for concealing the information concerning any danger to life and health.
6. A number of constitutions include the rights to improvement of occupational hygiene and labour protection, physical training and sports, use of recreational facilities demonstrating these states striving for achievement of the ecological and sanitary and epidemiological welfare, maximum possible level of mental and physical health of population.

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References

1. Agievets SV. Theoretical Problems of Legal Regulation of the Medical Aid: Monograph. Grodno: GrGU,. 2012;; p. 168.
2. Agievets SV. Theoretical Problems of Legal Regulation of the Medical Aid: Monograph. Grodno: GrGU. International Covenant on Economic, Social and Cultural Rights. 2002;; p. 168.
3. Zhilskaya LV. Entrenchment by the CIS Constitutions of the Rights to Health Protection and Promotion (constitutional and legal analysis). Vestnik of St. Petersburg University of the MIA of Russia. 2005; 28(4): p. 66-70.
4. The Constitution of the Russian Federation. Adopted by the National Referendum. 1993 Dec 12.
5. The Constitution of Ukraine. Sumy: IPP NOTIS LLC. 1996 June 28;; p. 52.
6. The Constitution of the Republic of Belarus 1994 (as amended and supplemented as adopted at the National Referendums. 2004 Oct 17.
7. The Constitution of Georgia. 2005 Aug 24.
8. Kryzina NP,KOO. State Policy on the Healthcare System Development in Ukraine and Other Post-Soviet Countries. Theory and Practice of State Management and Local Self-Government. 2016 No.2. 2018.
9. The Constitution of the Republic of Armenia. 1995 July 5.
10. The Constitution of the Republic of Azerbaijan. 1995 Nov 12.
11. The Constitution of the Republic of Moldova. 1994 July 29.
12. The Constitution of the Republic of Kazakhstan. 1995 Aug 30.
13. The Constitution of the Kyrgyz Republic. Adopted at the National Referendum. 2010 June 27.
14. The Constitution of the Republic of Uzbekistan. the Eleventh Meeting of the Supreme Council of the Republic of Uzbekistan of the Twelfth Session. 1992 Dec 8.
15. The Constitution of Turkmenistan. amended and supplemented. 1992 May 18.

16. The Constitution of the Republic of Tajikistan. 1999 Sept 26.
17. The Constitution of the Republic of Lithuania. 1992 Oct 25.
18. Dichko GO. Comparative Analysis of the Legal Support and Organization of Health Protection in Foreign Countries. The Constitution of the Republic of Latvia. Adopted at the general meeting of the Constitutional Assembly of Latvia. 1993 July 16.
19. The Constitution of the Republic of Estonia. 1992 June 28.