

Prospects for improving the civil law system in the medical field (On the example of the Republic of Uzbekistan)

Abrorbek Azimovich KARIMOV,
Independent Researcher Tashkent State Law University
abrorbekkarimov@inbox.uz

Abstract: The article is devoted to the analysis of the settlement criteria and concepts of qualified medical care and the right to which is guaranteed by the Constitution of the Republic of Uzbekistan, the study of qualifying signs of medical care, as well as the components that should be included in the development of the Health Code.

Keywords: qualified medical care, criteria of qualified medical care, general and special parts of the Health Code.

Introduction. Over the years of independence, the legal basis for the protection of citizens' health has been formed in accordance with market requirements and relevant laws, taking into account the social functions of the State, the sphere of medical services has been created and improved, and this process is continuing. The legal basis for the protection of citizens' health stems from the norms established in the Constitution. A number of constitutional provisions establish rules that directly or indirectly concern the health of citizens.

Under article 40 of the Constitution, everyone has the right to qualified medical services.

What is meant by the concept of qualified medical care? What are its criteria?

This issue has been studied by many scientists in our country. In particular, H. Rahmankulov, I. Zakirov.¹ from the point of view that health is a common right and interest of citizens. I.Nasriev believes that health is a non-property right of citizens². O.Akyulov and N.H.Egamberdiev³ Sh.N.Ruzinazarov researched the issue of citizens' health from the point of view of ensuring the protection of their civil rights⁴. If N. Said-Gazieva⁵ and D.I.Babaev studied legal aspects of ensuring the health of citizens as a form of consumer protection, then M.H.Baratov⁶ covered in his works the issues of compensation for the damage caused to the health of citizens by the state authorities.

In recent years, a number of researchers in this field have been involved in the legal regulation of medical services, including the works of N.S. Narmatova, T.A. Muminova, T. Isakova⁷. F.A.Vayitova studied the issues of civil law regulation of medical services⁸.

O.S.Ioffe, I.B.Novitsky, L.A.Lunts, E.A.Fljushchitz, M.M.Agarkov, M.K.Sulaimanov, E.A.Sukhanov, S.G.Stetsenko, A.A.Mokhova and other foreign scientists also studied this theme. In addition, it should be noted that in recent years the Russian Federation has defended more than 10 doctoral theses on public health and civil liability in the area of health care. These include the dissertations of A.V.Melikhov.⁹, A.S.Mnatsakanyan¹⁰, V.S.Abdullina¹¹, M.A.Kurbanova¹², O.V.Ryabinina¹³ and others.

In particular, N.L.Ulaeva¹⁴ The health problem is divided into medical services and care. In her opinion, modern medical care is the provision of services based on a market economy, the purpose of which is not to protect health but to make a profit. She believes that the provision of medical services should not be linked to the laws of a market economy. The purpose of providing medical services should be to protect health, not to make a profit.

In O.E.Zhamkova's opinion¹⁵, health care should be understood as a set of actions taken by highly skilled performers to meet the individual needs of the patient, to restore and/or maintain their health. The criteria for assessing the quality of medical services are the competence of the provider, the technical equipment of the medical organization, the completeness of examination, diagnosis and treatment, and the correspondence of the expected outcome of treatment to its actual result.

There is no unanimity in scientific circles as to what criteria the notion of qualified medical care provided for in Article 40 of our Constitution should meet.

In our opinion, qualified medical care is a system of medical education and treatment, regardless of its form of ownership, the object of which is the treatment of citizens, prevention of diseases, maintenance of sanitary security by well-trained and highly qualified personnel (doctors), controlled by the state and provided them with quality medical education, prevention and treatment of diseases, as well as protection of the affected and socially unprotected population.

The criteria for qualified medical care are based on goals and objectives in this area, pursuing not only making a profit, but in the interests of protecting public health, creating an ambulance system, emergency care, creating specialized medical institutions, sanitary institutions, as well as hospitals, equipped with the latest state-of-the-art diagnostic and treatment equipment and high technology, in which the location of medical institutions should provide an opportunity for citizens to get to them on foot or by transport.

On August 29, 1996, on the basis of the above constitutional provision, the Law of the Republic of Uzbekistan “On the protection of the health of citizens” was adopted.

This law establishes the goals and principles of healthcare, the powers of the government and local authorities, the healthcare system, the forms of medical care, the provision of medical services to minors, the disabled, the military, citizens and stateless persons, regulates the provision of emergency, emergency and specialized medical care, medical indications activities, medical intervention, medical labor, forensic medicine and forensic psychiatric examination, and also establishes a medical oath.

In addition, the analysis shows that the Law does not regulate the criteria for the concept of qualified medical services, the right to which is guaranteed by the Constitution of the Republic of Uzbekistan. It should be noted that issues related to the realization of the rights to medical care and the distribution of powers in this area are not systematized and are scattered regulated by laws and by-laws.

Approved by Decree of the President of the Republic of Uzbekistan dated December 7, 2018 No. UP-5590 “On comprehensive measures to radically improve the healthcare system of the Republic of Uzbekistan”, the Concept of development of the healthcare system in the Republic of Uzbekistan for 2019-2025 opened a new era in the medical field.

The decree is aimed at improving legislation in the field of healthcare, improving the organization and management of healthcare, improving the financing system for healthcare, improving the quality and accessibility of medical care, supporting a healthy lifestyle, preventing and combating infectious and non-communicable diseases, improving the system of medical care for mothers and children, the development of private health care, public-private partnerships and medical tourism, the further development of the pharmaceutical industry, the formation of an effective system of training, retraining and advanced training of medical personnel, as well as the development of medical science, the widespread introduction of information and communication technologies and e-health. The basis for the implementation of the provision of this Concept will be the systematization of health legislation by adopting a single document that will facilitate its compliance and application; adoption of the Health Code of the Republic of Uzbekistan and the Code of Ethics for medical workers, as well as the settlement of issues of professional liability insurance for medical workers.

The study of civil law bases of medical law of foreign countries shows that the development of a unified systematized law on health care is a requirement of time. In particular, in the Republic of France ¹⁶ and the USA ¹⁷ The Code of Medical Ethics has been adopted in the Russian Federation. ¹⁸– Code of Ethics for Physicians in the Republic of Kazakhstan ¹⁹– Health Code of the People and Health System in the Republic of Tajikistan ²⁰– Health Code.

Fully supporting the provisions of the Concept of health care development for 2019-2025, approved by the Decree of the President of the Republic of Uzbekistan from December 7, 2018 № UP-5590 "On comprehensive measures to radically improve the health care system of the Republic

of Uzbekistan", we believe that the Code of Health Care should consist of a general and special part, and include:

First, the basic concepts, goals and objectives of health care, mechanisms of state management and regulation in the field of health care, the powers of state and local government bodies, licensing procedures, accreditation and certification in this area, issues of advertising, medical care and organization of work, state control and supervision in the field of health care, with the establishment of control over the quality of medical services and compliance with sanitary requirements;

Secondly, a clear definition of the health care financing system, a list of paid and free services, a precise list of diseases and a list of persons entitled to receive preferential services, and procedures for international cooperation;

Third, the definition of the conditions, norms, scope of medical and sanitary services, the scope of paid and free services, the requirements for medical activities and care, the rights and obligations of outpatient, inpatient, ambulance and emergency medical services, the definition of the types and procedures of medical expertise, pharmaceutical activities, requirements, terms and conditions of production, use and circulation of medicines and medical devices;

Fourthly, since the Constitution of Uzbekistan guarantees the provision of qualified medical services, it is necessary to establish rules of social guarantees taking into account the age, sex of citizens, medical accommodation, determine the scope of the parties' responsibilities in the treatment, hospitalization and isolation of patients with diseases that pose a danger to other persons, including tuberculosis, AIDS, skin and venereal diseases, narcological diseases and other diseases, and determine the social protection of such persons, as well as the social protection of persons with disabilities

Fifth, requirements to ensure the sanitary well-being of the population, specific norms and regulations for relevant periodic health measures, including measures to prevent iodine deficiency and micronutrient deficiencies;

Sixth, taking into account the fact that organ transplantation is performed in our country by close relatives, the Code should define the rights and obligations of blood and blood components donors, organ donors, social protection of donors, conditions of import, transportation, transportation of organs, tissues, biological fluids;

Seventh, taking into account that in developed countries health is seen as a strategic area and medical education plays an important key role, standards for medical education and research should be established in the Code;

It is also necessary to establish the conditions and procedures for periodic medical examinations of the population.

Conclusion, the Code should also include the limits of medical liability, the concept of medical secrecy, medical risk and medical error.

The Concept "Improvement of the civil legislation of the Republic of Uzbekistan" was adopted by the order of the President of the Republic of Uzbekistan "On measures to improve the civil legislation of the Republic of Uzbekistan" dated April 5, 2019 № R-5464. This Concept defines the development of a new version of the Civil Code of the Republic of Uzbekistan and provides for the regulation of specific forms of civil law treaties and relations, including public-private partnerships, cluster production and others, the need for which is determined by the current conditions of market economy.

Based on the Concept, the proposed Health Code should also establish a legal framework for public-private partnerships in medicine, cluster production, digitization of the sector and electronic documentation.

References

- [¹Рахманкулов X. Objects of civil law. –Tashkent: TSIL, 2009.126 p.; Zakirov IB Civil rights. –Tashkent: TSIL, 2009. 218 p.]
- [²Nasriev II Civil and legal problems of realization and protection of personal non-property rights. –Tashkent: Publishing and Printing House named after Ghafur Ghulam, 2006. 240 p.]
- [³Civil law. Part II. –Tashkent: Ilm-Ziyo, 2008.625 p.]
- [⁴Ruzinazarov Sh.N. Legal monitoring and security. –Tashkent: 2006.127 p.]
- [⁵Said-Gazieva N.Sh. Consumer protection in the field of public services: Yurid. fan. candidate. diss. ... Author's abstract. –Tashkent: 2003. 26 p .; Babaev DI Problems of consumer rights and civil liability for their violation: Legal. fan. candidate. diss. ... Author's abstract. –Tashkent: 2005. 25 p .;]
- [⁶Baratov M.Kh. The state as a subject of civil law. – Tashkent: TSIL, 2005. 107 p.]
- [⁷Narmatov NS Problems of civil and legal regulation of entrepreneurial activity in the field of services. - Tashkent: Publishing House of the Institute for Monitoring Current Legislation under the President of the Republic of Uzbekistan, 2009. 262 p .; Muminov TA Civil and legal issues of remuneration: Yurid. fan. candidate. dis ... –Tashkent: 2006. 32 p; Isakov T. Problems of liberalization of health care on the basis of entrepreneurship / Legal problems of liberalization of entrepreneurial activity. –Tashkent: TSIL, 2008. 162 p.]
- [⁸Vaitova FA Civil-legal regulation of relations for the provision of medical services. Monograph. –Tashkent: National University of Uzbekistan, 2012. 163 p.]
- [⁹Melikhov A.V. Civil liability for harm caused to the health or life of the patient: theory and practice: Abstract. dis ... cand. legal sciences. - Volgograd: 2006.28 p.]
- [¹⁰Mnatsakanyan A.S. Civil liability of the provider of medical services: Author. dis ... cand. legal sciences. – Krasnodar: 2008.29 p.]
- [¹¹Abdullina V.S. Civil liability for violations in the provision of medical services: Author. dis ... cand. legal sciences. – Kazan: 2007.24 p]
- [¹²Kurbanov M.A. Civil regulation and protection of the right of citizens to mental health: Author. dis ... cand. legal sciences. –M., 2006.26 p.]
- [¹³Ryabinina O.V. Organizational and legal aspects of the introduction of liability insurance for harm to life and health as a result of medical intervention: Abstract. dis ... cand. legal sciences. –M., 2006.28 p.]
- [¹⁴Ulaeva N.L. Russian medical services: specifics and problems of legal regulation // Society and Law. 2015. –№2. 50 p.]
- [¹⁵Zhamkova O.E. Legal regulation of the provision of medical services according to the legislation of the Russian Federation: Abstract of the diss ... cand. legal sciences. –M., 2007.29p.]
- [¹⁶FRENCH CODE OF MEDICAL ETHICS // сайт: <https://www.conseil-national.medecin.fr/>]
- [¹⁷ Code of Medical Ethics//сайт:<https://www.ama-assn.org/>]
- [¹⁸Code of Professional Ethics for a Doctor of the Russian Federation // website: <http://minzdravrb.ru/>]
- [¹⁹Code of the Republic of Kazakhstan Health of the people and the healthcare system // сайт: <https://online.zakon.kz/>]
- [²⁰Health Code of the Republic of Tajikistan // сайт: <http://extwprlegs1.fao.org/>]