

IMPROVING THE LEGAL FRAMEWORK FOR PROSECUTORIAL SUPERVISION OVER THE IMPLEMENTATION OF PUBLIC HEALTH LEGISLATION

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Abstract

The article discusses the need for prosecutorial control over the implementation of laws on health care, legal means of prosecutorial activity and their features, problems of national legislation and ways to solve them.

Keywords: prosecutor's office, prosecutor's supervision, medical legislation, legality, legal means of the prosecutor, national legislation, problems and solutions.

As part of the implementation of measures to reform the health care system in Uzbekistan, certain results have been achieved in the formation of a modern system of medical care. Since taking office, Shavkat Mirziyoyev has made improving the health care system one of the main goals of the Action Strategy for the five priority areas of development of the Republic of Uzbekistan in 2017-2021. Through the action strategy, improving the convenience and quality of medical and socio-medical services for the population, promoting a healthy lifestyle among the population, further reforming the health care system, first of all, its primary link, the system of emergency and urgent care, focusing on strengthening the material and technical base of medical institutions were identified as priority areas.¹

In order to implement these priorities, many programs and legislation were adopted, in particular, the Decrees of the President of the Republic of Uzbekistan "On comprehensive measures to radically improve the health care system of the Republic of Uzbekistan"², "On measures to introduce completely new mechanisms in the activities of primary health care facilities and further increase the effectiveness of

¹ 1. Decree of the President of the Republic of Uzbekistan No. F-4947 of February 7, 2017 "On the strategy of further development of the Republic of Uzbekistan" // Collection of Legislation of the Republic of Uzbekistan, 2017. February 13, No. 6, Article 70.

² 2. Decree of the President of the Republic of Uzbekistan dated December 7, 2018 No PD-5590 "On comprehensive measures to radically improve the health care system of the Republic of Uzbekistan" // <http://old.lex.uz/docs/4096197>

reforms in the health care system”³, and “On the gradual continuation of reforms in the health care system and the creation of the necessary conditions for capacity building of medical personnel”⁴.

It is known that Article 40 of the Constitution of the Republic of Uzbekistan guarantees everyone has the right to receive qualified medical care.⁵ This constitutional guarantee is developed in other laws of the country. In particular, the Laws of the Republic of Uzbekistan “On Public Health”⁶, “On Reproductive Health”⁷ and “On Medicines and Pharmaceutical Activities”⁸ (new edition) are among them. One of the priorities of state policy in the context of building a new Uzbekistan is to ensure the security of the people, the basic value of every human being. The proposal of Shavkat Mirziyoyev to declare 2022 the “Year of ensuring human interests and development of the mahalla” in Uzbekistan has a special meaning.

“Honoring human dignity means ensuring the rights and freedoms and legitimate interests of everyone living in our country... In 2022, all resources will be mobilized for the development of social spheres, especially health, education and science.”⁹

Clearly, the health care system plays an important role in the life of society and the state. Because its main goal is to maintain and strengthen the health of the population, to ensure life expectancy, to provide highly qualified medical care if necessary. Therefore, the importance of prosecutorial supervision over the implementation of public health legislation is very high.

³ 3. Decree of the President of the Republic of Uzbekistan dated November 12, 2020 No PD-6110 “On measures to introduce completely new mechanisms in the activities of primary health care facilities and further increase the effectiveness of reforms in the health care system” // National Database of Legislation, 13.11.2020, No. 06/20/6110/1512; 06.05.2021 y., 06/21/6221/number-0428.

⁴ 4. Decree of the President of the Republic of Uzbekistan No. PD-6221 of May 5, 2021 “On the gradual continuation of reforms in the health care system and the creation of the necessary conditions for capacity building of medical personnel” // National Database, 06.05.2021, 06/21/6221/number-0428, 05.10.2021 y., 07/21/5254/ number-0933.

⁵ 5. Constitution of the Republic of Uzbekistan. -Tashkent, Uzbekistan. 2020. - 9 pages.

⁶ 6. Law of the Republic of Uzbekistan No. 265-I of August 29, 1996 “On Public Health” // <http://old.lex.uz/docs/26013>

⁷ 7. Law of the Republic of Uzbekistan No. ZRU-528 “On protection of reproductive health of citizens” dated March 11, 2019 // National Database of Legislation, 21.04.2021, No. 03/21/683/0375.

⁸ 8. Law of the Republic of Uzbekistan No. ZRU-399 of January 4, 2016 “On medicines and pharmaceutical activity” (new edition) <https://lex.uz/docs/2856464>

⁹ 9. From the New Year greetings of the President of the Republic of Uzbekistan Shavkat Mirziyoyev to the people of Uzbekistan, January 1, 2022 // “New Uzbekistan”. <https://yuz.uz/news/ozbekiston-xalqiga-yangi-yil-tabrig>

Especially in today's conditions of building a new Uzbekistan, the task is to ensure the observance of human rights in the field of health by public authorities, access to medical care for all segments of the population and social protection of citizens in case of loss of health. In this sense, the scientific and practical study of the prosecutor's control over the implementation of health laws is currently relevant.

As for the legal basis of the prosecutor's control over the implementation of the legislation on public health, first of all, the Law of the Republic of Uzbekistan "On the Prosecutor's Office" plays an important role in this regard. According to Article 4 of this Law, control over the implementation of laws aimed at ensuring the rights and freedoms of citizens is one of the main activities of the prosecutor's office. Also, in accordance with Article 24 of this Law, The subject of control over the observance of the rights and freedoms of citizens by ministries, state committees, agencies, citizens' self-government bodies, public associations, enterprises and institutions, organizations and military units of state committees and agencies, military structures, governors and other officials respect for the rights and freedoms of citizens¹⁰.

Thus, the legal basis for prosecutorial control over the implementation of legislation on public health is to ensure the implementation of prosecutorial control, determine the organization and procedure of its activities, regulate the powers of law enforcement agencies and the rights of citizens to health and its implementation. a set of legal documents defining the necessary conditions for improvement, including the mechanism and guarantees of compliance with the rights of citizens to health care, the powers and responsibilities of the objects of prosecutorial control.

The legal basis for the activities of the Prosecutor's Office of the Republic of Uzbekistan, including prosecutorial control, is determined by the new edition of the Law of the Republic of Uzbekistan "On the Prosecutor's Office" of August 29, 2001, the Constitution of the Republic of Uzbekistan, other laws and international treaties.

In the legal literature, it is proposed to divide the legal framework of the prosecutor's control over the implementation of legislation on public health, depending on the subject of its regulation, into the following groups:

1) a set of legal documents that organize and regulate the activities, powers of subjects controlling the observance of the rights of citizens to health care.

These legal documents can directly include the Law of the Republic of Uzbekistan "On the Prosecutor's Office", which organizes and regulates the activities and powers of the prosecutor's office.

¹⁰ 10. Law of the Republic of Uzbekistan "On the Prosecutor's Office" // National Database of Legislation, August 29, 2001, 04.12.2019, 23.01.2020, No. 03/20/603/0071

2) A set of normative and legal documents regulating the mechanism and guarantees of observance of the rights of citizens, the powers and responsibilities of the objects of prosecutorial control.¹¹

Normative documents belonging to this group do not directly regulate the activities of the prosecutor's office, but contain rules that are essential for its implementation. These are, first of all, the norms of the Constitution of the Republic of Uzbekistan on human and civil rights and freedoms, the norms of legislation establishing liability for non-compliance with human and civil rights (criminal, administrative, etc.) and others.

These normative legal acts create the necessary conditions for the exercise of prosecutorial control. Also, based on the requirements of Article 6 of the Law of the Republic of Uzbekistan "On regulatory legal acts", the legal basis of prosecutorial control can be divided into the following types: Constitution of the Republic of Uzbekistan; Laws of the Republic of Uzbekistan; Resolutions of the chambers of the Oliy Majlis of the Republic of Uzbekistan; Decrees and resolutions of the President of the Republic of Uzbekistan; Resolutions of the Cabinet of Ministers of the Republic of Uzbekistan; Orders and decisions of the Prosecutor General of the Republic of Uzbekistan. Due to the specific nature of the legal basis of the prosecutor's control, it is not advisable to include in its types of orders and decisions of ministries, state committees and agencies, as well as decisions of local authorities. According to Article 3 of the Law of the Republic of Uzbekistan "On the Prosecutor's Office", entitled "Legal basis of the prosecutor's office", the procedure for the establishment and functioning of the prosecutor's office, as well as their powers, shall be determined by the Constitution of the Republic of Uzbekistan, this Law and other legislative acts.

There is also a legitimate question as to whether international agreements of the Republic of Uzbekistan can be included in the legal framework of prosecutorial control. The content of Article 3 of the Law "On the Prosecutor's Office" shows that international agreements of the Republic of Uzbekistan are not directly specified as the legal basis for the activities of the prosecutor's office. Also, Article 6 of the Law of the Republic of Uzbekistan "On regulatory legal acts" does not provide for international agreements of the Republic of Uzbekistan as types of regulatory legal acts. However, in the legislation on the prosecutor's office of some foreign countries studied, the international agreements of that country are included in the legal framework of the prosecutor's office. For example, according to the second part of Article 3 of the Federal Law of the Russian Federation "On the Prosecutor's Office", the activities of the Prosecutor's Office of the Russian Federation are also carried out in accordance with international treaties of the Russian Federation. Decisions of

¹¹ Shibina A.V. Prosecutorial supervision over observance of the rights of citizens to health care // Dissertation. on sois. scientist step. cand. legal Sciences. - Moscow, 2018. - 18 p.

interstate bodies in interpreting them in accordance with the provisions of international treaties of the Russian Federation, which contradict the Constitution of the Russian Federation, may not be enforced in the Russian Federation.¹²

Article 5 of the Law of Georgia “On the Prosecutor’s Office” also recognizes the Constitution of Georgia, international treaties and agreements of Georgia, this Law and other legal acts as the legal basis for the activities of the prosecutor’s office.¹³ The legal literature also argues that international treaties of the state are an integral part of the legal framework of the prosecutor’s office and can be divided into two main groups: 1) international agreements containing rules applicable to the activities of the prosecutor’s office; 2) international agreements containing norms determining the organization and procedure of activity of bodies and organizations of the prosecutor’s office.¹⁴

As a rule, intergovernmental agreements and interdepartmental agreements do not affect the legal regulation of the prosecutor’s office, because the prosecutor’s office is not part of the executive branch, but may be of interest to the prosecutor’s office as a source of information of a certain content. However, if the participation of the prosecutor’s office in the implementation of this type of agreement is required, the bodies authorized to regulate the activities of the prosecutor’s office may issue relevant regulations on the activities of the prosecutor’s office (e.g., Presidential decrees, interagency agreements between the Prosecutor General’s Office and other law enforcement agencies, ministries).

Analyzing the legal basis for prosecutorial oversight of the implementation of public health legislation, most of the legislation that forms the legal basis for prosecutorial oversight¹⁵ does not explicitly address the role of the prosecutor’s office in ensuring the rule of law in relevant areas of public relations.

However, decrees and decisions issued by the President of the Republic of Uzbekistan as a guarantor of the observance of the rights and freedoms of citizens, the Constitution and laws of the Republic of Uzbekistan have a special place in the legal framework of prosecutorial control. Therefore, according to the third part of Article 8 of the Law “On Public Health”, the treatment and prevention facilities of the public health system provide free medical care guaranteed by the state. The list of medical

¹² Federal law from 17.01.1992 N 2202-1 (ed. From 01.07.2021) “О прокуратуре Российской Федерации” (с изм. и доп., вступ. в силу с 01.09.2021) // http://www.consultant.ru/document/cons_doc_LAW_262/66d9005e3c5f7634606c91c694bbdbf31f83c4e6/

¹³ Law of Georgia “On Prosecutor’s Office”. Tbilisi, October 21, 2008. <https://matsne.gov.ge/ru/document/download/19090/7/ru/pdf>

¹⁴ International treaties of the Russian Federation // https://studme.org/169063/pravo/mezhdunarodnye_dogovory_rossiyskoy_federatsii

¹⁵ Laws of the Republic of Uzbekistan “On Public Health”, “On Reproductive Health” and “On Medicines and Pharmaceutical Activity” (new edition).

institutions providing free medical care in order to ensure the implementation of the norm, the volumes and procedures for providing free medical care are determined by law and approved by Decree of the President of the Republic of Uzbekistan dated November 10, 1998 No. 2107 “On the State Program for Healthcare Reform in the Republic of Uzbekistan”.

Also, the well-known article 12 of the Law “On the sanitary and epidemiological welfare of the population” states that “The sanitary and epidemiological welfare of the population is ensured through the implementation of sanitary and anti-epidemic measures by state bodies, enterprises, institutions, organizations, public associations and citizens in accordance with the law”. In order to ensure the implementation of these standards, Decree of the President of the Republic of Uzbekistan No. PD-5969 dated March 19, 2020 “On priority measures to mitigate the negative impact of the coronavirus pandemic and the global crisis on the economy”, as well as the PD “On additional measures to prevent the spread of coronavirus infection in Republic of Uzbekistan” No. -4649 dated March 26, 2020, PD No. 4652 dated March 26, 2020 “On additional measures to support employees of medical and sanitary-epidemiological services involved in the fight against the spread of coronavirus infection, Decree “On the formation of the Republican Special Commission for preparation of a program of measures to prevent the introduction and spread of a new type of coronavirus in the Republic of Uzbekistan” No. -5537 of 01/29/2020 And there are many such examples. Also, paragraph 8 of the Order of the Prosecutor General of the Republic of Uzbekistan dated November 24, 2017 No 166 “On further improvement of prosecutorial control over the implementation of social and economic legislation” recognizes universally recognized norms of international law in the field of human rights and freedoms and instructions to take measures to ensure unconditional compliance with the requirements of national legislation.

All of the above is the basis for the conclusion about the introduction of amendments and additions to Article 3 of the Law of the Republic of Uzbekistan “On the Prosecutor’s Office” and the presentation of its content in the following wording:

“The procedure for the formation and activities of the prosecutor’s offices of the Republic of Uzbekistan, as well as their powers are determined by the Constitution of the Republic of Uzbekistan, international treaties and agreements, this Law and other regulatory legal acts.

The activities of the Prosecutor’s Office of the Republic of Uzbekistan are also carried out in accordance with international treaties of the Republic of Uzbekistan. Decisions of interstate bodies, when interpreted in accordance with the provisions of international treaties of the Republic of Uzbekistan, contrary to the Constitution of the Republic of Uzbekistan, cannot be executed in the Republic of Uzbekistan.

The Constitution of the Republic of Uzbekistan occupies a special place among the legal foundations of prosecutorial supervision over the implementation of healthcare

legislation. Article 40 of our Constitution guarantees everyone the right to receive qualified medical care, and the provisions of this article are fully consistent with international standards.¹⁶ This article is a unique legal value, the main task of which is the education of a harmoniously developed generation, the education and formation of a physically healthy and mentally active person.¹⁷ It should be noted that some scientists, expressing their views on the constitutional norm that everyone has the right to receive qualified medical care, emphasize that before a person receives the right to qualified medical care, he must have the right to health protection, and the right of citizens to health protection should be enshrined at the constitutional level, as well as the right to life.¹⁸ Guarantees for the exercise of rights in this area are the main principles that ensure their implementation, aimed at their development and creation of conditions for their equal use, which are reflected in the entire system of laws of the country. The state guarantees the realization of citizens' rights to health through the activities of three health care systems - state, local and private.

Uzbekistan recognizes and guarantees the rights and freedoms of man and citizen in accordance with the generally recognized principles and norms of international law. The right of everyone to qualified medical care, guaranteed by Article 40 of our Constitution, fully complies with international standards.¹⁹ Consequently, the Universal Declaration of Human Rights stipulates that everyone has the right to medical care (assistance, services) for the health of himself and his family.²⁰ Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly on December 16, 1966, recognizes the right of everyone to the highest possible standard of physical and mental health.²¹

Human rights are universal and belong to everyone (the world community recognizes all people as equal), they are indivisible, interdependent and mutually similar. Their strength is reflected not only in legal norms, but rather, it is based on the views of scientists²² who believe that this is a universal moral norm and the moral basis of law

¹⁶ Constitution of the Republic of Uzbekistan. -Tashkent, Uzbekistan. 2020. - 9 pages.

¹⁷ See: Comments on the Constitution of the Republic of Uzbekistan. - Tashkent, "Uzbekistan". 2008. -177 p.

¹⁸ Rastoropov S.V. Criminal legal protection of human health from criminal encroachments: monograph, 2006. - S. 22.

¹⁹ Constitution of the Republic of Uzbekistan. -Tashkent, Uzbekistan. 2020. - 9 pages.

²⁰ International agreements on human rights: collection / Editor-in-Chief of the Uzbek edition A.X. Saidov. - Tashkent: "Adolat", 2004. - 520 p.

²¹ International agreements on human rights: collection / Editor-in-Chief of the Uzbek edition A.X. Saidov. - Tashkent: "Adolat", 2004. - 520 p.

²² Saidov A.X. Development of the Constitution of the Republic of Uzbekistan: national and universal harmony: Uzbek. in French and Russian. - T.: National Center for Human Rights of the Republic of Uzbekistan, 2011, - 96 p.; General Theory of Human Rights: A Textbook for

in general, and it should be noted that the normative regulation of the implementation of the constitutional right to health is carried out on the basis of universal human requirements.

Also, according to legal scholars L.F. Iskhakova and U.Sh. Nurbaev, the right to reside is ensured by several sets of legal acts, which are reflected in the Constitution, which is the fundamental law, in sectoral legislation. In their opinion, the right to health and medical care is part of the right to life.²³

The legislation of foreign countries on the issue under consideration shows that, for example, the fundamental laws of Germany and Great Britain do not contain a direct rule on the right to health care.²⁴

Based on the foregoing, in our opinion, the fact that Article 24 of the Constitution of the Republic of Uzbekistan establishes that the right to life is an inalienable right of every person does not require fixing the right to health at the constitutional level.

Public health legislation is an element of the legal framework for prosecutorial oversight. In turn, these elements represent a special integral, organized system of norms that define the rights of citizens to public health, the exercise and protection of these rights, as well as the goals and objectives of the state, non-governmental non-profit bodies, organizations, public associations, individual entrepreneurs, aimed at preserving, strengthening, supporting and improving the health of the population.

Some scientists propose to classify the rights of citizens to health care as follows:

- 1) depending on the source of legal regulation - the rights established by the legislation (access to qualified medical services, drug provision, reproductive health, etc.);
- 2) according to the status of the subject - general and special rights (disabled people, children, war veterans, etc.);
- 3) depending on the degree of impact on human health - direct (the right to receive various types of medical care, prevention, etc.) and indirect (the right to clean drinking water, the right to the environment)²⁵.

Students and Trainees of Educational Institutions in the MIA System, as well as Law Enforcement Officials. Team of authors // Editor-in-Chief Doctor of Law, Professor A.X. Saidov. - T., 2012. -13 b.

²³ General Theory of Human Rights: A Textbook for Students and Trainees of Educational Institutions in the MIA System, as well as Law Enforcement Officials. Team of authors // Editor-in-Chief Doctor of Law, Professor A.X. Saidov. - T., 2012. - 47 p.

²⁴ Basic Law of the Federal Republic of Germany of May 23, 1949 // URL: <https://www.booksite.ru/fulltext/1/001/004/082/index.htm>; Constitution of the United Kingdom URL: https://legalns.com/download/books/cons/united_kingdom.pdf

²⁵ Aleksandrova O.Yu., A.A. Kryukova, M.V. Gorelov. The mechanism of realization of the rights of citizens in the field of health protection when applying to a medical organization // Vestn. Roszdravnadzor. 2014. No. 3. P. 71 - 77.; Stetsenko S.G. Medical law: textbook: Jurid.

In our opinion, it is inappropriate to classify the rights of citizens in the field of health care in this way. According to our views, the decisive factor in classifying the rights of citizens in the field of health care should be the legal status. In turn, the legal status is characterized by certain features that characterize the rights, freedoms and obligations of a citizen in the field of medical activity. There are the following types of legal status:

1. The general legal status of a citizen in the field of medical activity is the rights, duties and responsibilities inherent in all citizens of Uzbekistan. First of all, it can be shown that Article 24 of the Constitution of the Republic of Uzbekistan states that the right to life is an inalienable right of everyone, and Article 40 states that everyone has the right to qualified medical care. We also demonstrate the rights of everyone, such as health care, health insurance, free medical care.

2. A special legal status of a person in the field of medical activity is the rights, duties and responsibilities in the field of medicine, which are characteristic of certain categories of persons (pregnant women and mothers, minors, military personnel, elderly citizens, disabled people, etc.).

In this regard, one cannot agree with the opinion that the general legal status of a citizen in the field of medical activity, put forward in the legal literature, may include the basic rights of citizens, which are controlled by the prosecutor.²⁶

Because the protection of the rights and freedoms of man and citizen is the essence of all the activities of the prosecutor's office. Only with consistent observance of the rights of citizens to health care will the rule of law be strengthened; the legally protected interests of society and the state will be respected.

Center Press, 2014, pp. 141 – 142; His own. The rights of citizens in the field of health care // Lawyer. 2004. No. 8.; Vorontsova, E.V. Constitutional right to health care and its implementation in the field of state control over the quality of goods and services [Text]: dis. ... cand. legal Sciences. - M., 2014. - 77 p.

²⁶ Shibina A.V. Prosecutor's supervision over observance of citizens' rights to health care // Dissertation for the degree of candidate of legal sciences. -Moscow, 2018.– 30 s.