

Legal Regulations of Healthcare Right in Georgia

Nazi Mgeladze PhD student

Grigol Robakidze University, Tbilisi, Georgia

Abstract

The right to health care is one of the fundamental human rights recognized and protected by the Constitution of Georgia, as well as the international treaties and other national legislative instruments. The right to health care has the meaning of social right and is enshrined in the Article 37 of the Constitution of Georgia. The above-mentioned article is one of the articles with a wide scope and content, covering two most important areas of public life: health care and natural environment. On the one hand, it obliges the State to provide access to medical services and environment protection, and, on the other hand, entitles an individual to benefit from medical insurance and aid, to live in a healthy environment, to obtain full and objective information as to the state of environment, as well as obliges everyone to care for the natural and cultural environment. This right / obligation shall apply to the citizens of Georgia, as well as to foreign citizens and stateless persons. Provision of the right to health care is depended upon the activity of the State, in particular, implementation of the obligations stipulated by the state medical programs in the health care sector, which should be provided by the country's health care system.

Keywords: Health care, human rights, health care system

Introduction

The right to health care is enshrined in the Article 37 of the Constitution of Georgia which is based on the Article 25 of the Universal Declaration of Human Rights (1948) – “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family” (15). For realization of this right, both national legislation, as well as central and local health care programs are available in the country. However, implementation of the right to health care to full extent is related to certain problems. Significant shortcomings are often observed in the terms of the practical application of the rights to health care, due to the level of the country's economic development and political situation, as well as the lack of thorough study and analysis of the legal framework governing this right.

At present, one of the priorities of the State is creation of the proper health care system. Therefore, it is necessary to study how the Article 37 of the Constitution of Georgia guarantees the right to health care, how far the current reality and the approach of the State complies with implementation of the right to health care enshrined in the applicable legislation.

The article hereof aims at determining and analyzing the State's role in implementation of the right to health care guaranteed in the Article 37 of the Constitution of Georgia, general overview of the laws of Georgia governing the right to health care, as well as analysis and impact of the international treaties to the applicable Legislation of Georgia, ratified by the Parliament of Georgia and being legally binding, which could become a certain landmark in the terms of improvement of legislation and practice on the rights to health care in the country.

Since XVII-XVIII centuries the idea of the social state has taken hold in the legal dogmatism, which should be enshrined by the legislation. The State began to consider the recognition of social rights, set strengthening of the rights to labor, health and education as the main goal (5).

The social state must always care for introduction of the social security system in the country. The social is the state, where the government's top priority is to raise the social level of the population, to care for the social rights of people, which should be expressed in implementation of the effective measures by the state and commitment to realization of these rights should not bear only declarative nature.

In one of its decisions, the Constitutional Court of Georgia explains that the goal of the social state is to establish a just social order, to maintain the overall economic balance, to provide sustainable conditions for the population as far as possible, to create maximum equal opportunities for life throughout the country. These goals, due to objective circumstances, are not fully achievable, and therefore are the subject of the constant task and concern for the state. The state has a broad scope of action to this direction (10).

The Constitutional Court also declares that "the state shall be obliged to apply the maximum efforts for protection of the social rights of the population within the scope of the available resources, in order to ensure at least the minimum necessary level for protection of these rights. Otherwise, international - legal commitments of the states lose the sense, which means that the state's actions to this direction should have stable and evolutionary nature and should be distinguished with positive dynamics (11).

In Georgia, the social state's ideas were expressed still in the Constitution of 1921, where a separate chapter was dedicated to the socio-economic rights – "Socio-Economic Rights". According to the Constitution,

one of the most important functions of the state was to care for a decent existence of its citizens (13).

The will of the Georgian nation concerning establishment of the social state is provided for in the preamble of the Constitution of Georgia, which obliges the state to support its citizens in attainment of development of the social rights. Therefore, the Constitution of Georgia strengthens the principle of the social state, as one of the cornerstones of the constitutional order. It includes such important aspects of the legal relations, as social justice, social equality, social security, social protection, etc. (1).

The Article 31 of the applicable Constitution of Georgia defines the general principles of the social state, according to which the state shall take care for equal socio-economic development of the entire territory of the country. This article points out the important mission of the state - to ensure implementation of the socio-economic programs for its own territorial units and the citizens living there. What is meant by the areas of social security? What actions should the Government take to minimize social problems of the citizens? According to the Convention №102 “On Minimum Standards for Social Security” of 1952, primarily the areas of social security include medical care, illness allowance, assistance during unemployment, pension in case of old-age and vocational injury, assistance during childbirth, disability and loss of the breadwinner (9). The social security system enshrined by the Convention may be added with other rights, which belong to the social sector and are no less concerned by the majority of the population. For provision of these areas, first of all, the state should have the special financial resources and the appropriate program, in order to avoid only declarative nature of the Article 31 of the Constitution of Georgia. The part of the authors (8) believes that citizens cannot be dependent on the state only and should not wait for the Government’s assistance idly in order to meet their own subjective needs. They should use their efforts to ensure social stability. Such opinion of the author is quite justified, because the individual must take responsibility himself, first of all, while the Government will need to ensure equal conditions for socio-economic development.

The Constitutional Court of Georgia finds that the subjective rights, need for certain social regulation and specific responsibilities are not provided from separate principle of the social state for the legislator. That is why the first sentence of the Article 31 is aimed at creation of equal conditions of life for the entire population of the country concerning the less pretentious state. Here we are talking about “care” by the state and not about “obligation”, which is imposed to the state. Accordingly, the first sentence of the Article 31 is the standard establishing the goal of the state, which is not the obligation; however, at the same time it is not only declarative and program provision. Accordingly, the first sentence of the Article 31 of the

Constitution of Georgia does not establish the basic rights, their content and scope. Here we are talking about the future actions of the state, rather than actually existing, recognized and guaranteed fundamental rights (10). We cannot agree with the above definition of the Constitutional Court, since the state's primary commitment should be creation of equal social conditions in the entire territory of the country and it should continuously take care for development of socio-economic level of the population.

Social rights are one of the most important branches of the fundamental human right, among which the right to health care is on the fundamental place.

The most widely used and comprehensive definition of the right to health care is provided for in the International Covenant of Economic, Social and Cultural Rights. The Article 12 of the Covenant provides that “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (19).

The General Comment №14 of the UN Committee on Economic, Social and Cultural Rights states that “the right to health care embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life and extends to the underlying determinants of health”.

Many countries lay out the right to health care in the basic law - the Constitution, as well as for realization of this right, they have ratified an international treaty or convention, have taken internal national legal acts, which are directly governing the issues related to right to health care.

The right to health care in Georgia is enshrined in the Article 37 of the Constitution of Georgia. This Article is closely linked to the Article 15 of the Constitution, according to which life is inviolable human right and imposes an obligation to the state to create such conditions in which human life and health will not be endangered.

Realization of the right to health as one of the main branches of the social rights, are highly dependent on the state, primary commitment of which should be care for development of socio-economic level of the country and the population.

The Article 37 of the Constitution of Georgia establishes the commitment of the state to make the medical services affordable and to ensure protection of the environment, on the one hand, and to give the right to an individual to benefit from medical insurance and aid, to live in a healthy environment, to obtain full and objective information about the state of environment, on the other hand, also binds everyone to protect the natural and cultural environment. Above right / obligation shall apply to the citizens of Georgia, as well as foreign citizens and stateless persons. In the

Constitution such categories of subjects are mentioned as: “Everyone has the right”. According to the Article 37 of the Constitution, everyone has the right to health insurance, to live in a healthy environment. The principle of the social state obliges the state, even in the terms of the highest moral ideals, the render medical aid to individuals who are not citizens of Georgia, but are temporarily or permanently residing in Georgia (8).

For realization of the right to health care, the Constitution of Georgia determines two important elements of medical aid: health insurance and free medical aid in the conditions determined by the law. In the legal instruments governing health care, the term “medical aid” is rarely used; “medical service” is used mainly. The part of the authors [8] considers that the aid is a one-time action, rather than a service. “Service” more adequately reflects the medicine targets, according to which, a medical facility or a physician is required to not only assist, but also to render qualified service to the patient and talks about amendment to the first paragraph of the Article 37 of the Constitution of Georgia, through which “service” will be recorded instead of “aid”. Such an argument of the author is somehow convincing, because the patient is any person who, regardless of his/her state of health, benefits needs or intends to apply to the healthcare system services (23). Service is carried out in return for a certain fee, i.e. the independent physician will receive appropriate compensation for service rendered, which can be paid by an individual, or the insurance company and/or the state. Aid, based on its nature, is perceived as a gratuitous, one-time action.

In addition to analyzing the constitutional content of the right to health care, it is necessary to define the term – “health”. The Constitution of Georgia does not define the concept of health. It is not explained in other legislative instruments as well. It should be noted that there is no unequivocal definition of the term. Definition of the World Health Organization is used mainly, according to which “health is a complete physical, mental and social well-being, and not just absence of disease and incapability” (7). The part of the authors believe [8], that above definition of the concept of health is consistent with the Article 37 of the Constitution of Georgia and explanatory analysis of this provision shows that health care requires a lot of the actions from the state. Such care is necessary not only when a person has some problems with regard to health status, but also even when he/she is healthy. The Article 37 of the Constitution provides for the preventive measures, such as health insurance, medical aid, drug control, living in healthy environment, the rational use of natural resources. Through implementation of these actions, the state will achieve full physical, mental and social well-being of human. The part of the authors believe that “such a definition of the concept of health care cannot be considered as complete, in so far as it is almost impossible to find a person who may be considered as

healthy according to the available definition, if we say nothing about a group of people or the entire population. Therefore, we should probably accept the available formulation of the concept of health as definition of the ideal model, to which any society should strive” (3.17).

Analysis of the definition of health care by the World Health Organization clearly shows that being healthy means the highest possible standard of physical, mental and social conditions, which, in turn, depends upon the state’s discretion. The legislative base of Georgia gives the possibility that the relevant legal provisions applicable in the country conform to the above definition, however, realization of the right to health care requires from the state not only strengthening of the legal standards, but also implementation of certain effective measures.

The first subparagraph of the Article 37 of the Constitution of Georgia refers to “affordable medical aid”, which implies three different components. These are:

- Information availability - the state should provide access to all information about medical aid for the patient (posting of information on visible place in the medical institutions, provision of information through the media, allocation of explanatory booklets, posters and other visual means on visible places, etc.).

- Geographic availability – means placement of ambulatory medical institutions within a certain radius in order to allow the citizens to receive medical aid in timely manner.

- Financial availability - means provision of health care for all citizens from the state, through universal and equal access to the state medical programs, as well as medical insurance (7).

Equal access to medical service in Georgia is carried out through the state medical programs. The main goal of the health care system is to raise the level of health of the population. The efficient health care system must provide quality medical services to the population in every possible way. The state medical programs serve the principle of affordability (7).

Implementation of all three components is very much depended upon the health care system, which aims to raise the level of health of the population. Efficient health care system must provide the population with quality medical services. In addition, the state shall provide access to medical services. Equal access to medical services is provided through the state medical programs, which means that the patient will receive the service identified by the state, within the scope of the respective programs. In some cases the state may finance medical services fully, while in other cases, co-payment by the patient may be required (6).

Despite of the commitment declared in the Constitution, free medical service in Georgia has not fully been implemented. Since 2009, the program

funding of certain groups of people has began. The government has provided development / implementation of the state programs of “medical insurance of population below poverty line”, “health insurance of public artists, public painters and winners of Rustaveli Prize”, “medical insurance of internally displaced persons in compact settlements”, “medical insurance of homeless children” (20).

By the initiative of the Government of Georgia, since 2012, the state has carried out medical insurance of children of 0-5 years of age (inclusive), women of 60 years of age and above and men of 65 years of age and above (population of retirement age), students, children with disabilities and people with evident disabilities within the scope of the state health insurance programs (21).

In determination of the priorities of further reforms in the health care system, special focus should be made on definition of social, medical and economic efficiency of the expected results, priority shall be given to selection of the strategies, realization of which will concern not only the individual groups, but the entire population of the country.

From February 21, 2013, the Decree №36 of the Government of Georgia “On Certain Measures to be taken for Movement to Universal Health Care“ came into legal force (22). The above Decree approved the state universal healthcare program, which was aimed at increase of geographic and financial affordability of the population to primary health care, outpatient, emergency and scheduled hospital services, provision of financial accessibility of health care services. In 2014, the people with the state health insurance program were incorporated in the state universal health care program. It was assumed that implementation of this program would worsen the actual situation of the appropriate users provided for by the Decree №165 of the Government of Georgia, dated May 7, 2012 and Decree №218 of the Government of Georgia, dated December 9, 2009. In 2014, through the amendments made to the Decree №36 of the Government of Georgia, the conditions of medical service would be reserved for the beneficiaries enjoying various state medical programs, which they used within the scope of the state insurance program (12).

In terms of increase of access to health care, the most important achievement in 2013 was introduction of the universal health care program, which has provided the basic package of medical services to all citizens of Georgia. In 2014, according to the survey carried out by the United States Agency for International Development (USAID), 80.3% of the interviewed beneficiaries were satisfied with the outpatient services obtained through universal health care program, while 96.4% expressed satisfaction with the emergency medical services obtained on the level of hospital. At the same time, according to the survey data, the population indicates that

implementation of the universal health care program increased their financial access to outpatient (77% of respondents) and stationary (88% of respondents) services (23).

The part of the society considers the universal health care program as successful, as there is the highest rate of satisfaction to this program in the population, while the others believe that the universal health care program is ineffective, which has significantly increased the state costs, put the citizens belonging to different social strata in the even position and created a number of problems for the private insurance sector, which is losing the clients.

Despite of the difference of opinion, this program might be seen as the guarantor of the Article 37 of the Constitution of Georgia, however it is also important that both the state and individuals personally care for human health. The state should encourage the development of the insurance system, and the humans should take more responsibility for their own health and should not be dependent only on the state.

An important challenge in the health care sector is the Decree №724 of the Government of Georgia, dated December 26, 2014, which approved the state concept of the health care system of Georgia of 2014-2020, “Universal health care and quality control for protection of patients’ rights”. This document presents a vision of development of the health care system, which includes the fundamentals for development of the sector according to the principles and values of international and national level. The document also stipulates the main aspects of the strategic reforms and action plans to be taken in the terms of efficient prevention and management of the main characteristics of the healthcare sector and priority disease (29).

Despite of the fact, that the country has a solid legal base concerning the human rights in the health care area and the Government is implementing various important programs, a number of problems still exists for full realization of this right, including low public awareness, financially inaccessibility of the population to medicines, high prices of medicines, incomplete package of medical service, etc. For elimination of this problem, it is necessary to provide information to the population through media and to post such information on a visible place, to develop appropriate program for medical treatment, as well as it would be recommended for the state to regulate prices of the medicines, which can be regulated through the state procurement, to review the existing programs for effectiveness and to develop the programs more focused on interests of the population.

The right to health care is closely linked to and dependent upon the realization of other human rights. This includes the rights to life, human dignity and honor, education, non-discrimination, equality, prohibition against torture, access to information and freedom of assembly, association

and freedom of movement, which are integral components of the right to health care.

The majority of the articles provided for in the Chapter II of the Constitution of Georgia protect the individual's health. According to the Article 15, life is inviolable human right and is protected by the law; the Article 17 says that a person's dignity and honor are inviolable. Torture, inhuman, cruel or degrading treatment or punishment is inadmissible. Physical or mental coercion of a person detained or otherwise deprived of freedom is inadmissible (14).

The human right to health care is recognized by many international treaties.

The right to health care and liability of the state to health care is concentrated in the international legislation in a variety of ways. The right to the highest attainable standard of health is differently interpreted in most of the international instruments. The right to health care can be included in other rights and directly or indirectly refer to it.

According to the Act on Restoration of State Independence of the Republic of Georgia, dated April 9, 1991, priority of the provision of the international legislation towards the laws of the Republic of Georgia and direct effect of its provisions in the territory of Georgia was declared as one of the core principles of the Republic of Georgia. Georgia has joined a number of human rights treaties and has taken the commitment of alignment of the national law with the provisions of the international law (2). The applicable Constitution of Georgia (Article 6, paragraph 2) recognizes the primacy of the internationally recognized provisions and principles over the applicable Legislation of Georgia.

The basic instruments of the international law, declaring the right to health care - include the Universal Declaration of Human Rights, to which Georgia joined in 1991 and the International Covenant on Economic, Social and Cultural Rights. However, it should be noted that some provisions of the International Covenant on Civil and Political Rights are linked to the right to health care to some extent, in the terms of indivisibility and unity of the rights. In particular, the Articles 6 and 7 of the Covenant are directly related to the right to health care. This Covenant is in force in Georgia since 1994. The right to health care is protected by the Article 25 of the Universal Declaration of Human Rights (1948), the Article 11 of the European Social Charter (1961), the Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966), the Article 12 of the Convention on the Elimination of all Forms of Discrimination against Women (1979), the Article 24 of the Convention for Protection of the Rights of the Child (1989). The provisions provided for in the above international instruments indicate not only to the right to human health, but also to such preconditions of

health, as safe water, proper nutrition and health provided by environment protection.

It should be noted that the process of implementation of the European Social Charter began by the Decree №1876 of the Parliament of Georgia, dated July 1, 2005. Georgia recognizes only the certain articles from this Charter as binding, including the Article 11, which for effective realization of the right to health care, imposes the obligation to the parties through cooperation with the state or private organizations, to take measures aimed at: maximum elimination of the causes of illness; provision of advisory and educational means for strengthening of health and establishment of individual liability in the health care issues, as well as to eliminate epidemic, endemic and other diseases, also accidents on maximum level (17).

The Article 12 of the International Covenant on Economic, Social and Cultural Rights contains the important recognition of the right to health care which relates not only to the right in general, but also to the steps that must be taken for implementation of this right. This article obliges the States Parties of the Covenant to take such measures which are necessary for reduction of stillbirth and child mortality and provision of healthy development; for improvement of all aspects of environmental and industrial labour hygiene; prevention and combat against epidemic, endemic, occupational and other diseases (18). Georgia joined this important instrument in 1994.

Since 1994, Georgia joined the Convention “On Rights of the Child”, according to the Article 24 of which, the States Parties recognize the right of the child to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health. This Article covers the measures to be taken, *inter alia* to reduce infant and child mortality, to ensure the provision of necessary medical aid and health care for all children with emphasis on the development of primary health care, to combat disease and malnutrition, to ensure appropriate pre-natal and post-natal health care for mothers, to ensure that all segments of society are informed about child health, nutrition and advantage of breastfeeding, to develop preventive health care and to abolish traditional practices prejudicial to the health of children (19).

According to the Article 7 of the Constitution of Georgia, “the State shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the state shall be bound by these rights and freedoms as directly applicable law”, correspondingly, the human rights and freedoms provided for in the Chapter two of the Constitution of Georgia are mainly derived from the principles of universally recognized human rights and freedoms.

According to the content of the Article 39 of the Constitution of Georgia, “The Constitution of Georgia does not deny other universally recognized rights, freedoms and guarantees of an individual and a citizen, which are not referred to herein, but stem inherently from the principles of the Constitution” (13). This mainly applies to the universally recognized provisions of international-legal customary law (principles). As for international treaties, they do not fall in the above formula and their action in the territory of the country is excluded without a special instrument (1). Therefore, the international-legal instruments enter into force in case of their ratification by Georgia, after which it becomes the state participating in relevant international instrument, which is obliged to review the national legislation in order to align it with the international acts and to facilitate its implementation.

The national courts rarely use the international-legal provisions in practice because of their general nature. The courts basically apply these standards in the cases, when they are already reflected in the national legislation (1). Such an opinion of the author is correct, as the international-legal acts are seldom used in the judicial system of Georgia, however, it should be noted that in Georgia the legal instruments regulating the right to health care are adopted after the ratification of the international-legal instruments by the state, therefore, it is assumed that the basic principles provided for in them are in line with the rights protected under the international instruments.

Existence of various special laws in the national legislation may be considered as a direct impact of international instruments, including the content of the Article 12 of the International Covenant on Economic, Cultural and Social Rights. For example, the Laws of Georgia “On Psychiatric Care”, “On HIV/AIDS” and “On TB Control” regulate the legal status of the marginalized / vulnerable groups with above diseases, and the Law of Georgia “On Health Care” contains the declarative provisions for overall and equal access of the population to medical aid, however this Law does not adequately protect the rights of the marginalized / vulnerable groups, despite of the fact that there is more danger of violation of their rights. Since the Law of Georgia “On Health Care” is the basic legal instrument regulating the right to health care, it would be appropriate to include the standards governing the protection of rights of marginalized groups in the law.

Convention on the Rights of the Child is one of the important documents among the international legal instruments, and it is considered to be one of the most widely recognized documents, to which Georgia is joined as the State Party. Georgia joined this document in 1994, which means that the country has taken responsibility for implementation of the commitments

provided for in the Convention. However, there is no law on protection of the rights of children in Georgia yet, as it is in other countries, while plenty of facts of violation of the children's rights are observed in the daily life. It is recommended to adopt a law, which will specify the rights of children, including in the health sector, in details.

Conclusion

As the present analysis reveals, the right to health care is one of the fundamental human rights and its full realization depends upon the effort of the state.

Subjective protection of the human right to health care is closely linked to the institutional guarantee, by which the Constitution obliges the state to create the proper structure for health care, as an institution. Modern constitutional law reviews the human right to health care together with the objective guarantees provided by the state. That is why the Article 37 of the Constitution is considered in two dimensions. First, it obliges the state to create the health care system, as an institution, and the other, the state is obliged to ensure the individual's subjective right to health care.

In recent years, Georgia's health care system was significantly reformed. The main priority of the state became health care and implementation of such policy, which is focused on the geographic and financial affordability of health services for the population.

The country has a solid legal base about human rights in the health care sector, which is mainly due to those international treaties and conventions to which Georgia has joined as the State Party. The government is implementing various important programs. However, a number of problems are still observed for full realization of this right, including low population awareness, financial inaccessibility of the population to medicines, the high prices of medicines, incomplete package of medical services, etc. For elimination of these problems it is recommended for the government to care for both the right to health care guarantees, as well as completion of the citizens' information mechanisms, in particular, to provide the society with information through media and to post information on a visible place, to develop the relevant program for drug therapy. It is also important for the government to regulate the price of medicines, which can be regulated through the state procurement, to review the existing programs for effectiveness and to develop the programs more focused on the interests of the population.

The citizens' responsibility for their own health still represents the significant issue, which should be expressed by health insurance. The state should encourage the development of private insurance system.

Along with rapid development of the medicine, disputes and complaints of citizens were abruptly increased in the area. Therefore, it is recommended for the state to ensure detection of the facts of violation of human rights and determination the ways of combat against such violations. Constitutional recognition of the right to health care will not automatically provide its practical and effective protection. Realization of the right depends upon the political will, level of economic development of the country, effectiveness of the judiciary and efforts of the various civil societies.

The Law of Georgia “On Health Care” contains declarative provisions for universal and equal access to medical aid for the population; however the rights of marginalized / vulnerable groups are not properly protected in the law. Inclusion of the regulatory provisions for protection of the rights of marginalized groups to the law would be recommended.

Georgia is the State Party of the Convention on the Rights of the Child since 1994. The country has taken responsibility for implementation of the commitments provided for in the Convention. However, there is no law on protection of the rights of children in Georgia yet. It is recommended to adopt a relevant legislative instrument, which will specify the rights of children, including in the health sector, in details.

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