



PROTECTION OF PATIENTS' RIGHTS DURING A PANDEMIC

GAFUROVA NOZIMAKHON¹, YUSUPOVA FARINGIZ², YUSUPOV NODIRBEK³

¹ PhD, Associate Professor, Head of the Department International law and human rights of Tashkent State University of Law, E-mail: gafurovanozimakhon.tsul@gmail.com

n.gafurova@tsul.uz

² Lecturer at the Department International law and human rights of Tashkent State University of Law. E-mail: faringiz002@gmail.com

³ Lecturer at the Department of Labor Law Tashkent State University of Law. E-mail: nadir.3341426@gmail.com

Abstract

The coronavirus has brought the world unprecedented quarantine measures, border closures, air traffic closures, and restrictions on certain human rights as a result of which patient safety has become a major global health issue. Pursuant to international standards, there are inherent human rights that cannot be restricted under any circumstances.

In the research, special attention is paid to the basic principles that must be adhered to when introducing temporary measures to restrict constitutional rights of human rights: the rule of law and the principle of proportionality

The paper uses the following scientific methods of cognition: general dialectical method of cognition, systematization, problem-oriented, comparative-legal, special-legal, historical-legal, formal-legal analytical and scientific knowledge.

On the basis of these, it can be deduced that as a result of scrutinizing this hitch, the article developed proposals in the field of protecting the rights of patients during a pandemic, as well as proposals for enriching the theoretical apparatus.

Keywords: *human rights, patient rights, coronavirus pandemic, restrictive measures, the rule of law, the principle of proportionality, international standards, national legislation, foreign experience, best practice.*

INTRODUCTION

The COVID-19 pandemic is a global health threat that has brought about an economic, social, and political crisis that has resulted in a human rights crisis. Of course, we cannot say that this is an unprecedented case since in the history of human evolution this is not the maiden pandemic that has induced irreparable losses to humanity. As time goes by, the values of human rights, ensuring the rule of law in all spheres of life are becoming paramount. Accordingly, it is time to radically transform the approach to human rights during the adoption of restrictive measures.

The COVID-19 pandemic is, now, a pressing global health peril with 14 348 858 cases and 603 691 deaths confirmed worldwide as of July 20th, 2020 [1]. In Uzbekistan, from March 16, 2019 to 3:37 pm CEST, 20 July 2020, there have been 16,966 confirmed cases of COVID-19 with 88 casualties [2]. This pandemic has invoked an unprecedented challenge for healthcare systems spanning the globe. Undoubtedly, in this pandemic, there is a risk for the entire population of the planet, including the risk for medical workers, who are one of the biggest vulnerabilities of this system worldwide. A sample of medical workers cannot work remotely, so strategies, including early introduction of virus testing for asymptomatic and/or advanced medical personnel, are mandatory [3].

Others may depend on the circumstances that have occurred and are expected. Fundamental principles that are based on reverence for human dignity and human rights should guide medical verdicts and practices during the current crisis. Restrictions must have a specific time period (for example, 30 days). They must clearly state what is prohibited (for example, mass events with a limited number of participants), and be fixed by a specific regulatory act.



Research objective. The target of this study is a comprehensive scrutiny of the problem of protecting the rights of patients during the pandemic and the development of appropriate proposals for solutions to this problem. In order to procure this goal, we have set such tasks defining the concept of patients' rights, determining the relationship between patients' rights and human rights in general; determining the contingency edge of restricting human rights during a pandemic; studying the interpretation of the concept of the right to health and restrictive measures; investigating international mechanisms for ensuring patients' rights during a pandemic; normative expression of the most outstanding expertise of foreign countries. As a result of a comprehensive study, theoretical and practical proposals were developed.

MATERIAL AND METHODS

Research material. The work examines and uses materials in three areas: scientific controversy, official publications of international organizations, as well as the regulatory apparatus which is stratified into the international regulatory framework, foreign legislation and national regulatory framework.

Among the publications of scientific researchers, we have looked through articles of scholars such as Tanne J.H., Hayasaki E., Zastrow M., Pulla P., Smith P., Rada A.G. *BMJ*; Jessica B. Kramer, MD, Douglas E. Brown, PhD, and Pirooska K. Kopar; Chrysikos D, Zografos CG, Zografos GC; Bajanov A.A.; Gretsova E.; Adeli, S., Heidari, M., & Heidari, A.; Klaus Kerwat, Martin Just, Hinnerk Wulf.; Maria Nicola, a,* Catrin Sohrabi, b Ginimol Mathew, c Ahmed Kerwan, d Ahmed Al-Jabir, d Michelle Griffin, e Maliha Agha, f and Riaz Aghag, *Int J Surg* and others.

From the official publications of international organizations, the article refers to materials from the United Nations and its specialized agencies (WHO) and treaty bodies (Committee on Economic, Social, and Cultural Rights), the European Committee on Social Rights.

The paper examines the regulatory framework of the United Kingdom, Italy, Germany, France, Iran, Russia, the Republic of Uzbekistan and other countries.

DEFINITION

Quarantine, which restricts a number of basic human rights and freedom, such as freedom of movement right, may be justified in such circumstances. Concerning international law, measures restricting freedom of movement and other rights must be proportionate, limited in time, taken for legitimate purposes, strictly necessary and non-discriminatory. The quarantine should be implemented on the basis of safe and respectful actions, and, if possible, should be voluntary.

Low income people, isolated rural populations, people with current illnesses, disabilities, people without a fixed place of residence, elderly people living alone or in social institutions, migrants with limited access to health services, asylum seekers, children, people who use drugs and others are the ones who are amongst most vulnerable. We must not forget that they may be disproportionately affected by the virus and/or the state's response to it. This means that additional efforts must be made to protect the health, well-being and rights of vulnerable groups.

Indeed, all this entails early legislative consolidation in the national laws of the States. In order to address this challenge with an optimum, it is necessary to develop the paramount international instruments and mechanisms that will serve as an international standard for protecting the rights of patients in the span of the pandemic.

The COVID-19 pandemic, due to its unpredictability, has dramatically affected medical approaches and changed socio-legal priorities [4]. Nevertheless, there are some ethical and legal obligations that in any case remain unchanged. Our commitment to the rule of law, which implies transparency, open access to information and respect for human life and other human rights, remains deeply rooted. Therefore, the issues of human rights protection in relation to the protection of patients' rights, when solving public health problems, require special attention and competence.



LEGAL FRAMEWORK

International framework. There is also a large gap in international law in the field of legal regulation of pandemics like coronavirus, in this connection, the UN General Assembly adopted a Resolution entitled “Global Solidarity in the Fight Against Coronavirus Disease 2019” where the goal is to “intensify international cooperation to contain the pandemic”. Among the few international documents that define the legal principles for medical emergencies and how to respond to them is the Convention on the protection of human rights and dignity in connection with the application of biology and medicine; a number of recommendations in the field of the right to health and treatment of patients with coronavirus (who standards, protocols and clinical guidelines for COVID-19, developed in March 2020); the Set of principles and rules of the Council of Europe in the context of the coronavirus pandemic (COVID-19). In addition, the International Covenant on economic, social, and cultural rights is an international standard that defines the right to human health as the conceptual framework for protecting human health.

The COVID-19 crisis has played a role in revealing how broad the scope of provision is and how imperfect the mechanisms for ensuring sustainable progress in the implementation of social rights are. At the same time, it was revealed that one of the effective ways to ensure them is the development of universal public health services. The pandemic has proved in practical terms the importance of the inviolability of fundamental human rights. It is important that the European Social Charter, also known as the Social Constitution of Europe, is used to develop human rights-appropriate responses to the COVID-19 pandemic and to summarize the results after the end of the crisis. The Charter, together with its monitoring mechanisms - reporting and collective complaints - are excellent tools for the recovery efforts that will follow [5].

To comply with Article 11 of the Charter, States Parties must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases and by taking all the necessary emergency measures in case of epidemics. The latter would encompass adequate implementation of the measures applied in the current crisis: measures to limit the rampancy of the virus in the population (physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.) and measures to treat the ill (sufficient number of hospital beds, including intensive care units and equipment and rapid deployment of sufficient numbers of medical personnel while ensuring that their working conditions are healthy and safe) [6].

And when implementing these measures, the question again arises of compliance with such principles that would prevent discrimination, violation of fundamental human rights, violation of ethical principles.

Major ethical challenges are raised and tricky decisions are being taken in the COVID-19 crisis. It is essential that human dignity and human rights are upheld. The Oviedo Convention provides a unique international legal framework for states to use when making requisite verdicts in this context, which includes the principle of equitable access to health care (Article 3), guided by medical criteria, to stave increased vulnerabilities off and to evade discrimination. Together with consent, protection of privacy, and the other principles of the Convention, it reaffirms the fundamental link between human rights, solidarity, and responsibility, essential in addressing the current crisis [7]. Moreover, noteworthy in this convention is the priority of a person, that is, to be more precise, the interests and welfare of an individual prevail over the interests of society or science. Unfortunately, during the pandemic, these two most important principles were violated everywhere, due to the time restrictions imposed.

National framework. In order to ensure the sanitary and epidemiological well-being and security of the population in the Republic of Uzbekistan and prevent the spread of coronavirus infection, the following documents were adopted [8]: Decree of the President of the Republic of Uzbekistan dated March 19, 2020, no.-5969 “On priority measures to mitigate the negative impact of the coronavirus pandemic and global crisis phenomena on economic sectors”, resolution of the President of the Republic of Uzbekistan dated 26.03.2020 no. PP-4649 “On additional measures to prevent the widespread of coronavirus infection in the Republic of Uzbekistan”, resolution of the



President of the Republic of Uzbekistan dated 26.03.2020 no. PR-4652 “On additional measures to support medical workers and employees of the sanitary and epidemiological service involved in countering the spread of coronavirus infection”, the decree of the President of the Republic of Uzbekistan No. P-5537 of January 29, 2020 “On the formation of a Special Republican Commission on the preparation of a Program of measures to prevent the import and spread of a new type of coronavirus in the Republic of Uzbekistan”, resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 176 of March 23, 2020 “On additional measures against the spread of coronavirus infection”.

Additionally, in order to prevent the spread of the pandemic coronavirus was introduced amendments to the legislation on strengthening sanctions against violators of norms of quarantine regulations such as the Law of the Republic of Uzbekistan from March 26, 2020 № ZRU-613 “About modification and additions in criminal, Criminal-procedural codes of the Republic of Uzbekistan and Code of Uzbekistan on administrative responsibility”.

DISCUSSION

Current expertise delineates that neither international law within the framework of global health, nor national legislation and, consequently, health systems were configured for the coronavirus pandemic and other similar epidemiological threats.

According to E. Gretsova, a restriction of human rights and freedoms is the interference in human rights and freedoms permissible by international law and/or national domestic law, provided they meet the requirements of legality, necessity, expediency, and proportionality [9].

Generally, the doctrine of international human rights law establishes basic principles governing restrictions on the exercise of human rights and freedoms, for example, the principle of proportionality, legality, law, order, respect for honor and dignity, the principle of justice, and the right to access justice in such cases.

In modern public law, based on the principle of proportionality, the limits of the powers of state bodies and the admissibility of restrictions on human rights, including the adequacy of measures of legal responsibility for the offense committed, are determined. Private law as a whole is based on the principle of proportionality, since it can be represented as rules of equivalent social exchange between individuals.

In fact, the principle of proportionality is one of the oldest principles of law, rediscovered in the modern era. “In a general sense, it expresses a requirement in relationships, equality of mutual giving and receiving, a balance of interests” [10]. Bazhanov notes that in modern public law, based on the principle of proportionality, the limits of the powers of state bodies and the admissibility of restrictions on human rights, including the adequacy of measures of legal responsibility for the offense committed, are determined.

According to the Office of the United Nations High Commissioner’s Guidelines on Restrictions on Human Rights in an Emergency (COVID-19) [11], if we consider the issue of human rights restrictions caused by emergency measures. There is a possibility that some rights, such as the right to freedom of movement, expression, and peaceful assembly, could be restricted without the imposition of a state of emergency in order to protect public health.

At the same time, restrictions must comply with the following conditions: legality, necessity, proportionality, non-discrimination. The authorities are obliged to justify the restrictions on rights. Thus, the restriction of human rights and freedoms should not be carried out arbitrarily or be of an unlawful nature. Accordingly, it can also be argued that for a legal democratic state, this provision is an axiom. Therefore, many scholars believe that it is necessary to clearly state in constitutions “the issue of deprivation, restriction and suspension of human and civil rights” [12].

Therefore, in order to prevent their illegality and uncontrollability, it is necessary that constitutions and other special laws strictly regulate the conditions and criteria for the adoption of these restrictive measures.

The Imperial College COVID-19 Response Team explores different epidemiological triggers (deaths per 100,000 population) for the implementation of wide-scale intensive social distancing (modelled as a 75% reduction in interpersonal contact rates) with the aim to rapidly suppress transmission and minimize near-term cases and deaths. For these scenarios, they do not produce final size estimates but illustrate their impact in representative settings [13].



Societies and governments have to respond effectively to the global threat of COVID-19 pandemic, however, we must not let it overshadow everything and overlook the needs, the personalized therapy and follow up of the non-infected patients who have the right to continue to have access to the services of the public health system [14].

At present, the principle of proportionality is one of the most paramount elements of the constitutional system of most modern democratic States. This principle is applied in countries such as Argentina, Austria, Belgium, Brazil, Canada, Chile, Colombia, Denmark, France, Germany, Greece, Israel, India, Ireland, Italy, Luxembourg, Mexico, the Netherlands, Peru, Portugal, Russia, South Africa, South Korea, Spain, Switzerland, the United Kingdom, and the United States [15].

To determine the proportionality of certain restrictive measures, Bazhanov proposes to conduct the so-called “proportionality test”, which involves the consistent solution of the following issues:

- (1) whether the authorities, by implementing certain restrictive measures, pursued a legitimate aim,
- (2) whether these measures were relevant to the given purpose,
- (3) whether these measures were necessary to achieve it,
- (4) whether there is a fair balance between the need to achieve this goal and the burdens that the individual was forced to endure [16].

As the WHO points out, in its updated COVID-19 strategy of April 14, 2020, the main principles for us should be speed, scale, and equality [17].

Experience analysis of foreign countries has illustrated that no state had special legal levers that comprehensively regulate health during the pandemic and in all countries, depending on the scale, temporary measures were taken that restrict human rights such as freedom of movement and protection of personal data.

The legitimacy of the goal of restricting human rights during a pandemic is reflected in the Siracusa principles adopted by the UN Economic and Social Council on human rights, the General Comments on freedom of movement and States of emergency adopted by the UN human rights Commissioner and General Comment No. 14 of the Committee on economic, social and cultural rights. Each of these international instruments contains recommendations and provisions on measures taken by the state that restrict human rights and freedoms in the interests of protecting public health or in a state of emergency [18]. This is also confirmed in the principle reflected in the recently adopted 2030 agenda for sustainable development and in the concept of universal health coverage which states: “A human rights-based approach to health requires that health policies and programs prioritize the needs of those at the end of the road to greater equity” [19].

The right to health is a fundamental part of our human rights and our perception of a decent life. This right was reaffirmed as a fundamental human right in the International Covenant on economic, social, and cultural rights of 1966 (Article 12) and defined in General Comment No. 14 of the Committee on economic, social, and cultural rights [20].

Despite the measures taken in different countries, infection and death rates are still maintaining its high rates. One of the reasons is the delay in taking measures due to gaps in legislation as well as the lack of a sufficient legal framework that meets international standards, and the lack of special medical equipment.

In the fight against the pandemic, respect for the rule of law will be critical. A variety of appropriate measures have been taken and will continue to be taken by states to contain the spread of the disease and mitigate its effects since the beginning of the pandemic.

The experience of most countries shows that an effective rule of law helps reduce corruption, fight poverty and disease, and protect people from injustice.

The rule of law underpins not only global development but also national development, promotes government accountability and respect for fundamental human rights, and is the foundation for justice, opportunity and peace in the international community.

The rule of law ensures sustainable economic growth for society, promotes accountable government in all countries of the world, and encourages respect for fundamental human rights. The principle of the rule of law has already become fundamental and backbone in the system of principles of law of the Republic of Uzbekistan.

Article 3. “Basic principles of health protection of citizens” contains provisions that do not sufficiently disclose the necessary modern principles of the right to health of citizens. This norm must also contain a conceptual apparatus that is not present in the law. Accordingly, it is proposed to change the title of Article 3: “Basic principles of public health protection” to “Basic concepts and principles of the right to health of citizens in ensuring public health protection”. It is also proposed to implement such concepts as “right to health”, “determinants of health”, “global health”, “epidemic”, “pandemic”, “special regime”, “quarantine”, “emergency”, “curfew”.

“The right to health is a fundamental and inalienable human right to equal access to conditions created by the state in which everyone can enjoy the best possible health, consisting of such components as availability, accessibility, acceptability.”

The right to health contains the following rights:

- * right to a health system that ensures equal opportunities for everyone to relish the highest attainable standard of health;
- * right to prevention, treatment and control of diseases;
- * access right to essential medicines;
- * right to maternal, child, and reproductive health;
- * equal and opportune access right to basic health services;
- * right to health-related education and information;
- * right to public participation in health-care activities at the national and local levels.

The right to health includes certain freedoms: freedom from inconsistent medical treatment, such as medical experiments and research or forced sterilization, and freedom from torture and other cruel, inhumane or degrading treatment or punishment.

CONCLUSION

In conclusion of our research, it should be noted, that it is of grand magnitude to focus on an immediate response to any such crisis and to take into account the scale and depth of consequences that the entire world has underwent in 2020. The whole world, each and every conscious person, must learn from this pandemic in the present and take the necessary measures at the domestic, governmental, intergovernmental, and international levels, as far as possible, in order to achieve a long-term positive result and make our world safer in the future.

Thus, when introducing temporary restrictive measures during a pandemic, it is very important to adhere to the most basic principles on which the entire human rights system is based. First of all, this is a universal principle that should form the basis for the creation and application of all normative legal acts of any level and legal nature - the principle of the rule of law. Also, all temporary measures must meet the requirements of the principle of proportionality. Only then can we talk about a legal democratic society where human rights are a priority and fundamental.

REFERENCES

- [1] [https://covid19.who.int/WHO Coronavirus Disease \(COVID-19\) Dashboard Data last updated: 2020/7/20, 3:37pm CEST](https://covid19.who.int/WHO_Coronavirus_Disease_(COVID-19)_Dashboard_Data_last_updated:2020/7/20,3:37pm_CEST)
- [2] <https://covid19.who.int/region/euro/country/uz>
- [3] Tanne J.H., Hayasaki E., Zastrow M., Pulla P., Smith P., Rada A.G. *BMJ*; 2020 Mar 18. Covid-19: How Doctors and Healthcare Systems Are Tackling Coronavirus Worldwide. <https://www.bmj.com/content/368/bmj.m1090> [Internet] [cited 2020 Mar 20];368. Available from: [PubMed] [Google Scholar]
- [4] Jessica B. Kramer, MD, Douglas E. Brown, PhD, and Piroška K. Kopar, MD* *Ethics in the Time of Coronavirus: Recommendations in the COVID-19 Pandemic. J Am Coll Surg.* 2020 Jun; 230(6): 1114-1118. Published online 2020 Apr 9. doi: 10.1016/j.jamcollsurg.2020.04.004 Elsevier Public Health Emergency Collection. <https://www.ncbi.nlm.nih.gov/pmc/?term=Elsevier%20Public%20Health%20Emergency%20Collection> Available from: [PubMed] [Google Scholar]

- [5] *Social Rights in times of pandemic*. Giuseppe Palmisano, President of the European Committee of Social Rights. <https://www.coe.int/en/web/european-social-charter/social-rights-in-times-of-pandemic>
- [6] *The right to protection of health*. <https://www.coe.int/en/web/european-social-charter/article-11>
- [7] *COVID-19: Human rights principles must guide health decisions*. Human rights and biomedicine. <https://www.coe.int/en/web/bioethics/-/covid-19-human-rights-principles-must-guide-health-decisio-1>
- [8] <https://lex.uz/>
- [9] Е.Грецова. *Правомерные ограничения прав и свобод человека в международном праве*. Автореферат диссертации на соискание учёной степени кандидата юридических наук по специальности 12.00.10 - Международное право. Европейское право. М., 2009.
- [10] Бажанов А.А. *Проблемы реализации принципа соразмерности в судебной практике // Труды Института государства и права РАН / Proceeding of the Institute of State and Law of the RAS*. 2018. Т.13.№ 6. С.126.
- [11] *Чрезвычайные меры и COVID-19: РУКОВОДСТВО*. Управление Верховного Комиссара по правам человека ООН. 27 апреля, 2020 г.
- [12] Khabrieva T.Ya., Chirkin V.E. *Teoriya sovremennoy Konstitutsii*. - М.: Norma, 2005. С. 146.
- [13] *The Global Impact of COVID-19 and Strategies for Mitigation and Suppression*. Imperial College COVID-19 Response Team. On behalf of the Imperial College COVID-19 Response Team WHO Collaborating Centre for Infectious Disease Modelling MRC Centre for Global Infectious Disease Analysis Abdul Latif Jameel Institute for Disease and Emergency Analytics Imperial College London. 26 March 2020. P.7. <file:///C:/Users/User/Desktop/для%20ДИСС%20ТРИПС%20у%20УЧ/Imperial-College-COVID19-Global-Impact-26-03-2020.pdf> DOI: <https://doi.org/10.25561/77735>
- [14] Chrysikos D, Zografos CG, Zografos GC. *Thoughts about “other” patients’ rights during covid-19 pandemic*. *J Med Ethics Hist Med*. 2020; 13: 11. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7602046/> Available from: [PubMed] [Google Scholar]
- [15] Бажанов А.А. *Соразмерность как принцип права*. Автореферат диссертации на соискание ученой степени кандидата юридических наук. Специальность 12.00.01. Москва, РУДН, 2019. <https://www.dissercat.com/content/sorazmernost-kak-printsip-prava>
- [16] Бажанов А.А. *Проблемы реализации принципа соразмерности в судебной практике // Труды Института государства и права РАН / Proceedings of the Institute of State and Law of the RAS*. 2018. Т. 13. № 6. С. 129-130.
- [17] *Обновленная стратегия борьбы с COVID-19*. Всемирная организация здравоохранения, 14 апреля 2020 г.
- [18] *Сиракузские принципы о положениях, касающиеся ограничения и умаления прав в Международном пакте о гражданских и политических правах*. E/CN.4/1985/4 Annex page 1. <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4933d0b22>
- [19] *Transforming our World: The 2030 Agenda for Sustainable Development*. UN General Assembly. 2015. 21 October. UN Doc. A/RES/70/1.
- [20] (CESCR General Comment No. 14: *The Right to the Highest Attainable Standard of Health* (Art. 12) CESCR (Committee on Economic, Social, and Cultural Rights). 2000). 11 August. Doc. E/C.12/2000/4).