

THE CONCEPT AND TYPES OF IMPLEMENTATION OF THE INTERNATIONAL LAW NORMS ON HEALTHCARE IN THE NATIONAL LEGISLATION

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Abstract. In modern doctrine, there is no single approach to defining the concept and identifying ways to implement international legal norms in domestic legislation. However, many legal scholars agree that by signing international treaties, agreements, and conventions, the states thereby take measures to implement such norms into the domestic legislation. The article defines the concept of implementation and characterizes the main ways of implementing international legal norms into national legislation by transformation and incorporation. The author provides examples of implementing international legal norms into the legislation of the Republic of Azerbaijan. Moreover, the author considers the opinions of legal scholars on the essence of certain methods of implementation and the possibility of their application in relation to the law of the Republic of Azerbaijan. The author also draws attention to the fact that the main implemented elements are procedures, institutions, normative legal acts, principles, values, and legal ideas. In addition, the implementation of international law in the field of healthcare is also one of the important requirements for integration into the globalized world. The implementation of these norms in the field of healthcare is the main form of fulfilling the international obligations of states. Therefore, it is established that the implementation of healthcare legal norms into national legislation is the adaptation of national legal and organizational means to national legislation on healthcare.

Keywords: implementation of international legal norms, incorporation, transformation, reference, reception, law enforcement practice, legislation of the Republic of Azerbaijan.

1. Introduction

The term “implementation” comes from the Latin word “impleo”, which means to carry out and refers to the execution and fulfilment of a task. Proper implementation of international law requires the involvement of domestic legal systems. In particular, the implementation of international law governing human rights, extradition, economic relations, and regional integration is possible only with the participation of the national legislator and the national court (Huseynov, 2002).

The forms and methods of this participation vary, depending on the state because there is no single norm in international law on this issue. States must comply with international law and fulfill their international obligations at the national level while addressing the interaction between international and national law. In fact, it is an imperative requirement of international law that states comply with the norms of international law and ensure domestic authority.

2. Materials and methods

While analysing healthcare legislation, the latest doctrinal developments made by scientists, like L.H. Huseynov, Fenny A, Yates R, Thompson R, Martens P, McMichael AJ and others, were used. In addition, a set of general and special research methods were taken into account: systematic and theoretical analysis, comparative legal, historical analytical, structural logical, technical methods, etc.

3. Results and discussion

Globalization stipulates the reforms of the national health system, including updates of national laws, mandates and capacities to strengthen broader public health systems. In the field of healthcare, there are many projects designed for implementation of the norms of international law into the national legislation. However, these projects are not being implemented slowly or are not implemented at all also due to the lack of necessary conditions caused by economic and political reasons. In this regard, the problem of reforming the national legislation on healthcare requires solution.

Implementation is the actual fulfilment of international obligations at the domestic level, as well as a special method of incorporating international legal norms into the national legal system. Thus, there are two main methods of implementing the international law norms into the legislation of the Republic of Azerbaijan as follows:

1. Incorporation means that the norms of international law are directly incorporated into national law without any internal act after their binding nature is duly recognized by the state and are applied as norms of national law. Incorporation is formulated as follows: "international law is part of national law".

2. Transformation means that international law is not ipso facto part of national law. Therefore, international law is incorporated into national law through separate legislative acts (i.e., international law is "transformed" into national legislation). Consequently, unless a law was recognized as an international norm in the system of national law, the national court cannot apply this norm. In the UK, the Scandinavian countries, Thailand and a number of other countries, the transformation method is taken as a basis. I would like to note that the incorporation of an international treaty into national law does not mean its direct application. This means that the court cannot directly apply an international treaty to which a state is a party to resolve any case.

In the case law of all countries where international law is declared part of domestic law, the question usually arises whether the relevant international treaty is self-executing or non-self-executing. It provides for clear legal obligations that automatically regulate relations with subjects of national law, as well as creates rights and obligations that can be directly implemented by the courts. In other words, since the norms of self-executing contracts are exhaustive and specific, they can regulate public relations without additional, concretizing norms. For the first time, the criterion of the independence of the execution of international legal norms was formulated by the Supreme Court of the United States in 1829. The decision on judicial execution reflected its essence: an international treaty "is always valid by itself, without resorting to legislative measures".

Clear and complete provisions are essential for international treaties to become self-fulfilling norms. This enables direct implementation within national legislation, without requiring intervention by the national legislator. By delegating the provisions to public authorities, legal entities, and individuals who are parties to the treaty, the implementation process becomes more efficient and effective. According to the Belgian professor David, "the fact that an international norm can be subjected to a procedure for adoption into domestic law does not mean that there is no direct effect". Contracts that are not self-executing require the adoption of certain legislative acts. Thus, treaties that are not self-executing are treaties that require specifying domestic rulemaking in order to be implemented, despite the fact that the state authorizes the application of its rules within the country.

The concept of implementation is firmly rooted in the practice of international law. It can be found in numerous resolutions of the UN General Assembly, decisions of other international organizations in the humanitarian field. If the national legislation contains more advanced positions of legal protection than international norms, they should abandon their national standards with reservations. On the contrary, if national legislation is insufficient in improving accepted international norms, the state must change these norms, improve them, raise the standard of national freedom, and protect

human and civil rights. Despite the fact that this is a new institution of international law, the implementation of international legal norms in the field of healthcare is one of the important requirements for integration into the globalized world. In addition, this is the main form of fulfilling international obligations of states in the field of healthcare.

In a globalized world, health is increasingly viewed as a complex result of environmental, socio-cultural, economic, and institutional determinants. Therefore, it can be considered an important indicator of high-level integration, reflecting the state of the natural and socio-economic environment and its sustainability in the long term (Martens, 2000). International cooperation between various countries of the world is very important for the development of global health policy and corresponding institutions. This will lead to the effective development of global health management to reduce morbidity and promote health because ongoing globalization has a serious impact not only on the global economy, but also on the health of the world population (Pang & Guindon, 2004). This poses a number of important challenges for the healthcare sector that require both national and international responses (Gostin & Taylor, 2008). Traditionally, such international responses have focused on limiting the spread of infectious diseases.

Health research shows that inequalities in access to healthcare are growing both within and between countries. In a globalized world, the development of international and national strategies for public health protection, as well as the application of international standards in the field of public health protection to national legislation is of great importance. As we have already noted, implementation is the actual fulfilment of international obligations in the field of health at the domestic level and the incorporation of international law into the national legal system. At the same time, the implementation of international standards through incorporation presupposes their reflection in national legislation and actual application. In the context of the globalization process, issues of international cooperation and the development of international and national strategies in the field of public health and the application of international standards to national legislation on health protection are of great importance. In these conditions, a comprehensive analysis of the problems associated with the interaction of international documents and national legislation in the field of health protection is quite significant.

The implementation of legal norms of health care into national legislation is a set of national legal and organizational instruments applied by states parties to existing international conventions in the field of health care. Legal norms of healthcare are implemented in the form of international and national legal mechanisms. In order to implement the norms of international law, the international implementation mechanism consists of actions carried out by universal, regional international organizations, specialized agencies and their subsidiary bodies in the relevant field by organizing a certain set of legal and organizational instruments used by subjects of international law at the international and national levels.

The domestic implementation mechanism, on the other hand, is a set of national legal means used to implement the norms of international law and public authorities authorized to fulfil the international obligations of the state. National legal means are the legal mechanism within the domestic legislation used by public authorities to implement obligations arising from international law. It is possible to single out the following national mechanisms that ensure the fulfilment of international obligations:

- normative legal acts of a general nature regulating the relationship between international and domestic law, the execution and termination of international treaties, as well as defining the authorities of government bodies in the implementation of international law;
- national legal acts adopted to ensure the implementation of international obligations arising from specific international agreements;
- law enforcement activities of state bodies related to the implementation of

instructions determined by the norms of international law at the domestic level;

- national law enforcement experience.

The implementation of legal norms of healthcare includes international and national systems with their own structural elements. In many countries of the world, the transformation of the healthcare system is carried out in three directions.

The Alma-Ata Declaration of 1978 played an important role in the development of primary healthcare. The Declaration became a key milestone of the twentieth century in the field of public health and identified primary health care as the key to achieving the goal of “Health for all”. The Declaration transformed primary healthcare into the official health policy of all member countries. In addition, it was declared that health is a human right based on the principles of equality and public participation. Other provisions of the Alma-Ata Declaration are as follows:

- involvement of the public in healthcare management;
- integration of several sectors such as education, agriculture, transport, trade, religion, housing, trade and health;
- incorporation of health promotion, disease prevention, and primary healthcare into the domestic legislation.

The introduction of the Alma-Ata Declaration and other international norms related to primary healthcare into the national legislation of states was very relevant as one of the priority issues. For this reason, states must ensure that international standards on primary health care are incorporated into their national legislation and that the obligations are fulfilled. The result of fulfilling these obligations should be beneficial for all spheres of society. Therefore, all state authorities and citizens should cooperate and contribute to the development of primary healthcare as a social movement. This means that the whole society understands the importance of primary healthcare and, by participating in reforming it, improves the health care services. This should be done in the following form:

- the health sector should be accessible to all citizens as provided for by national legislation;
- states should provide necessary primary healthcare facilities, affordable medicines, etc.;
- since healthcare and health promotion are considered important conditional prevention, the state should support citizens in prevention and hygiene issues.
- the government should cooperate with all states in preventing epidemics and observe the rules of health and hygiene in society;
- the government should develop programs that waive the cost of healthcare for lower-income families;
- the state should guarantee equal access to medical services for all people;
- the government should provide access to medical services in remote regions where ethnic minorities groups live.

1) Implementation of the healthcare financing reform

Efficient healthcare financing is crucial for achieving universal health coverage by providing financial protection and equal access to medical services. However, due to the high cost of healthcare services, it is essential to make them accessible to everyone.

Removing these financial barriers is key to achieving universal health coverage (World Health Organisation, 2020). Given the unique context of each country and its starting point in terms of the organization of health financing, it is impossible to simply adopt the experience of other countries in health financing reforms. This can be illustrated by the example of Rwanda and Ghana where the experience of Mutuelle de Santé in Rwanda was adopted to the national health insurance system in Ghana, using different mechanisms, targeting different populations, and offering different services (Makaka, 2012). Moreover, developing countries, including sub-Saharan African countries, have recently initiated reforms aimed at increasing access to health care through various

financing mechanisms, especially social health insurance programs (Fenny, 2018).

Furthermore, the World Health Organization performs four main functions related to healthcare financing, which should be implemented by the national governments:

- increased income (sources of funds, including government budgets, mandatory or voluntary prepaid insurance programs, direct payments and foreign aid),
- consolidation of funds (collection of prepaid funds on behalf of the population),
- purchase of services (payment or allocation of resources to health care providers).

It can be said that the fulfilment of the WHO functions is reflected in the national legislation of states although this does not involve their practical implementation. In many countries, these functions are not performed to the highest standards. However, it is necessary to note that this varies depending on the country. When discussing financing, it is essential to consider the unique circumstances of each country, including those experiencing a financial crisis or a high level of corruption.

2) Further development of digital tools in the healthcare sector

Digital transformation is ongoing in healthcare and is highly relevant. These changes in digital technologies benefit both the society and the healthcare sector. Healthcare systems need to take advantage of digital technologies to develop innovative solutions to improve the delivery of medical care and address other medical issues. The digital transformation of healthcare involves integrating internet and digital technologies with new treatments and best practices to improve healthcare management procedures.

Quality control can also help improve patient well-being and reduce the services cost. Digital technologies significantly impact medical education, providing specialists with innovative ways to treat people. Therefore, digital transformation is an ongoing process that, with the necessary infrastructure and training, can create opportunities in the health sector. In accordance with Regulation of the European Parliament and of the Council of April 29, 2021 No. 2021/694 (EU), which establishes the Digital Europe program of 2015/2240 and repeals Regulation (EU) No. 2021/694, digital transformation is defined as the use of digital technologies to transform various aspects of an organization or industry.

The Global Strategy recognizes that each country has a digital health action plan based on the strategy in its national context. On the way to achieve the Health-related Sustainable Development Goals, countries should adopt digital healthcare in a sustainable way, which respects sovereignty and is consistent with cultural values, the vision and goals of national health policy, as well as health and well-being needs. It can be affirmed that these three mentioned areas are reflected in the national legislation of most subjects of international law. The introduction and development of digital tools in healthcare has already received momentum.

It is necessary to distinguish between international and national levels of application of international legal norms on healthcare. At the international level, the norms are applied both by international bodies (courts, arbitrations, etc.) and by the governments. State authority as a feature of norm application is conditional due to the specifics of the mechanism of adopting international law, the nature of relations between its subjects, and the obligation to execute issued acts. The enforcement of these acts by the state and the application of international law at the international level require deliberate action and cannot be automatic. However, the application of international law lacks strict regulation governing the process, which is a notable characteristic (Konno, 2014).

Apart from that, the implementation of sanitary standards in national legislation has contributed to the integration of health systems of states at the international level. For this reason, the WHO supports the efforts of states to implement existing international health standards into national legislation and ensures that they have basic capabilities for monitoring, preparedness and response to threats to public health. The

implementation of these norms into national legislation is a long process, which includes several stages:

- development and strengthening of specific national public health capacities;
- identification of priority areas in healthcare;
- development of national plans for the implementation of international health standards.

National legislation includes a wide range of legal, administrative and other documents that can facilitate the implementation of international norms. Globalisation should support national processes for strengthening health systems, rather than replace them. This requires updating national laws, mandates, and capacities to improve public health systems. This process involves the following components:

- updating the legislation on healthcare to ensure the protection of public health in the Constitution and other national laws and to eliminate new risks and threats;
- establishing a centre for health guidelines, adequate financing of health systems, ensuring public health awareness and allocation of sufficient budget funds to healthcare;
- analysing public health problems, including factors affecting health and preventing negative effects on it, monitoring and developing healthcare programs.

Consequently, in healthcare, states should implement more projects to enforce international legal norms. The slow implementation or lack of such implementation in many states is primarily due to economic and political reasons, as well as insufficient conditions. In this connection, it is essential to resolve this problem in the nearest future.

4. Conclusion

As a result of the analysis, it can be concluded that implementing international legal norms can be divided into two main parts. First, a state can include in its law norms referring to the norms of international law, as a result of which the latter can operate within the country. Secondly, the state can adopt new norms of law, change or cancel existing ones, fulfilling the requirements of international law, adapt them to the specifics of the domestic legal system.

The implementation mechanism consists not only of adopting legal procedures and institutions, but also includes socio-legal phenomena. Thus, during implementation, certain components of another legal culture and legal values are assimilated into the national system. If the implemented norm does not correspond to the values and views existing in the state, then no incorporation, transformation or adaptation will be possible.

Law enforcement practice selects the appropriate legal norm and resolves legal issues through interpretation of international law and national legislation, based on accumulated experience. This is aimed at ensuring the fulfilment of international obligations of the state. The expertise in this area allows to resolve complex legal situations.

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