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UNIVERSAL AND REGIONAL MECHANISMS FOR THE PROTECTION OF THE RIGHT TO HEALTH IN THE CONTEXT OF A PANDEMIC

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Abstract: *this article explores international and regional mechanisms for protecting the right to health, focusing on challenges revealed during the COVID-19 pandemic. It reviews the roles of the United Nations, the European Court of Human Rights, and regional human rights systems, highlighting the interaction between international obligations and national legal frameworks. The importance of "soft law" and interstate cooperation in ensuring equitable access to healthcare and protecting vulnerable populations is emphasized.*

Keywords: *right to health; international law; international human rights mechanisms; COVID-19 pandemic; European Court of Human Rights; Inter–American human rights system; African Charter on Human and Peoples' Rights; international obligations; soft law; national healthcare systems; human rights; health security.*

INTRODUCTION

The right to health is recognized as a fundamental human right and is enshrined in numerous international and regional legal instruments, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. In the context of a pandemic, such as COVID-19, the importance of effective protection mechanisms for this right becomes especially evident. Universal and regional mechanisms–including UN bodies, the World Health Organization (WHO), the European Court of Human

Rights, the Inter-American Commission on Human Rights, and others–play a crucial role in ensuring access to healthcare, monitoring human rights compliance, and addressing violations. Their coordination and effectiveness are vital in responding to global health emergencies while safeguarding the dignity and rights of every individual.

The following methods were employed in this study:

- **Normative legal analysis** of international and regional treaties on the right to health, including documents from the UN, WHO, and regional human rights systems.

- **Comparative method** to examine differences and similarities between European, Inter-American, and African approaches to health rights protection during the COVID-19 pandemic.

- **Scientific analysis** of academic literature, expert opinions, and official reports on human rights and health law.

- **Case study** of key legal precedents, such as decisions of the European Court of Human Rights.

- **Institutional analysis** of the activities of UN bodies and regional mechanisms during the pandemic.

RESEARCH RESULTS

In modern international law, the human right to health is recognized as a set of natural and legally defined provisions that ensure an individual's well-being in both personal and family life. Fundamentally, this right reflects the responsibility of the state to guarantee access to quality healthcare and other essential determinants of health.

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It is codified in numerous international treaties, both universal and regional in scope. The realization of this right depends on a range of factors, including an individual's state of health, levels of social and economic protection, environmental quality, access to medical and sanitary services, and the overall development of the national healthcare system. Particular attention must be given to vulnerable populations who require additional support [1].

The 2030 Agenda for Sustainable Development (UN General Assembly Resolution 70/1) emphasizes that the right to health encompasses a broad range of dimensions. These include the eradication of poverty and hunger, ensuring access to clean water and sanitation, promoting healthy lifestyles, protecting the environment, and strengthening public systems for responding to threats to population health.

According to the United Nations High Commissioner for Human Rights and the World Health Organization (WHO), a wide range of factors influence human health, including individual biological characteristics, income level, and living conditions. These circumstances are not always directly under the control of the state. Nevertheless, the right to health implies that everyone should have genuine access to services, resources, and conditions that support the maintenance of good health.

It is important to emphasize that in Western legal doctrine, particular attention is given to the obligation of the state to address the health needs of the population. As contemporary scholars note, there has been a shift from a narrow duty to provide access to medical services towards a broader understanding of the right to reproductive health and to dignified, economically accessible healthcare [2].

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Moreover, scholarly literature emphasizes that environmental protection and sustainable development are inextricably linked to human rights. In this context, sustainable development is understood as the obligation of states to ensure a balanced interaction between economic growth, social justice, and environmental protection [3].

In European practice, the Aarhus Convention of 1998 plays a significant role by establishing rules on access to information, public participation in decision-making processes, and access to justice in environmental matters. Research shows that such measures contribute to the more effective protection of the fundamental human right to a clean and safe environment.

A. M. Solntsev, considering social and economic rights as rights that ensure a dignified life, notes that the right to health is also connected to the state of the environment [4]. According to him, this right should be understood in a broader sense–as the obligation of the state to create environmental conditions conducive to the physical and mental well-being of individuals.

Thus, at present, the right to health is considered both in its individual and collective dimensions. Increasingly, it is linked to environmental rights, as human health directly depends on the state of the environment.

The role of civil society in the formation and protection of this right is increasing, especially in matters of privacy preservation, protection of personal health data, and ensuring the confidentiality of medical information. The right to health is regarded as an important part of the overall right to development, enshrined in the United Nations Millennium Declaration of 2000 (Resolution 55/2). Specifically, paragraph 24 emphasizes that states should work together to

uphold all recognized international human rights, including the right to development [5].

First of all, it should be noted that the Human Rights Council is the main intergovernmental body of the United Nations responsible for the protection and promotion of human rights worldwide. It is important to emphasize that this body was established in 2006 by General Assembly Resolution A/RES/60/251, replacing the former UN Commission on Human Rights. Currently, the Council consists of 47 member states elected for a three-year term.

In addition to universal treaties and regional agreements, mechanisms within the United Nations system play an important role in protecting the right to health. In particular, the Human Rights Council monitors the observance of human rights in all member states through the Universal Periodic Review: the situation in each of the 193 countries is assessed every 4.5 years. Moreover, the Council may convene special sessions in cases of serious human rights violations. It adopts resolutions, establishes commissions of inquiry, and considers complaints concerning systematic human rights abuses [6].

Another important component of the United Nations human rights protection system is the treaty bodies-committees of independent experts established under international human rights treaties to monitor the implementation of these treaties by state parties.

Among the main treaty bodies, the Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, consists of 18 experts. The Committee on Economic, Social and Cultural Rights, responsible for overseeing the corresponding Covenant, also includes 18 experts. In addition, the following committees operate: the Committee Against

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Torture (10 experts), the Committee on the Elimination of Racial Discrimination (18 experts), the Committee on the Elimination of Discrimination against Women (23 experts), the Committee on the Rights of the Child (18 experts), the Committee on the Rights of Persons with Disabilities (18 experts), the Committee on the Protection of the Rights of All Migrant Workers (14 experts), and the Committee on Enforced Disappearances (10 experts) [7].

The main functions of the treaty bodies are as follows: first, they review periodic reports submitted by states on the implementation of their obligations and provide recommendations. If a country has ratified optional protocols, the committees may also consider individual complaints, conduct investigations into serious human rights violations, and issue general comments clarifying how international treaties should be implemented.

The third key component of the United Nations system is the group of independent experts appointed by the Human Rights Council. Their mandate is to study the human rights situation, conduct monitoring, provide recommendations, and inform the public about the state of affairs in individual countries and on various thematic issues.

The Special Procedures of the Human Rights Council are divided into two types: thematic and country mandates.

Thematic mandates cover specific areas of human rights such as the right to health, education, housing, freedom of religion, freedom of expression, and the prohibition of torture. Within the framework of the Special Procedures, there are also working groups, for example, on issues of arbitrary detention and enforced disappearances.

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Country mandates concern specific states where serious and systematic human rights violations have been documented, such as Myanmar, Iran, and the Democratic People's Republic of Korea [8].

The Special Procedures perform a number of important functions. They conduct country visits to gather facts, send urgent appeals and official letters to governments, and prepare reports on specific themes or situations for the Human Rights Council and the United Nations General Assembly. Additionally, they engage with representatives of civil society and other stakeholders, as well as provide advisory and technical assistance to states in the field of human rights.

Finally, it is important to mention other mechanisms within the United Nations human rights system. One of the key components is the Office of the United Nations High Commissioner for Human Rights (OHCHR), which is responsible for coordinating the Organization's overall work in this field. The High Commissioner provides advisory and technical assistance to states and submits reports on the global human rights situation. Additionally, the Human Rights Advisory Committee operates as a subsidiary body of the Human Rights Council, conducting research and formulating recommendations.

It is also important to note that the goals set out in the 2030 Agenda for Sustainable Development (UN General Assembly Resolution 70/1, 2015) are largely connected to the realization of the right to health. Particular significance is attached to Goals 1-3, 6, and 15, which aim to eradicate poverty and hunger, ensure access to clean water and food, improve public health, and protect natural ecosystems [9].

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Special attention is given to strengthening national health systems so that states can promptly identify threats and effectively reduce both domestic and cross-border risks to public health.

To achieve Sustainable Development Goal 3, key measures include the implementation of the World Health Organization Framework Convention on Tobacco Control (2003), the advancement of scientific research, ensuring access to affordable and quality vaccines and medicines, increased investment in healthcare, and the training of qualified medical personnel, particularly in low-income countries. Enhancing early warning systems for global health threats also remains a crucial priority [10].

A.A. Belousova notes that as early as Article 23 of the 1919 Covenant of the League of Nations, issues related to health protection were addressed, in particular, the need for humane treatment of labor and the adoption of measures to prevent diseases. She also emphasizes that the recognition of the right to health in international law contributes to strengthening the role of the individual in the decision-making process and enhances their legal status [11].

One can agree with the author's view that the role of the state in protecting citizens' health is strengthened under the influence of international obligations, particularly in the field of economic and social rights. In this context, Article 35 of the Charter of Fundamental Rights of the European Union (part of the Lisbon Treaty, 2007) deserves special attention, as it guarantees everyone the right to access preventive measures and medical care within the legislation of EU countries. This confirms that the right to health encompasses a range of social, economic, and medical conditions that ensure the protection and well-being of the individual based on international standards.

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It is worth noting that, according to the International Committee of the Red Cross (ICRC), states' international obligations regarding the right to health may be supplemented by non-legally binding instruments that nevertheless play an important role. These are referred to as "soft law". Although such instruments lack binding legal force, they contribute to the formation of guiding principles and more specific standards in the field of human rights [12].

According to the positive approach to human rights, the right to health means that the state is obliged to ensure the population's access to medical services, sanitary conditions, a safe environment, quality food, decent working conditions, and information on disease prevention. As I.A. Kolotsey notes, health is not only a personal benefit but also a public value of great importance to everyone; therefore, both the state and society must continuously strive to preserve it. According to the author, the right to health protection is enshrined in the Constitution as a personal right of the citizen, while the provision of medical care is considered the primary mechanism for its implementation [13].

The COVID-19 pandemic became a critical test for regional human rights systems, revealing both their adaptive capacities and structural limitations in ensuring the right to health during an emergency. It demonstrated the significant differences in legal, institutional, and social approaches across various parts of the world.

In these circumstances, regional mechanisms were compelled to seek a balance between the urgent need to respond to public health threats and the preservation of human rights standards, including the prohibition of discrimination and guarantees of access to medical care. Different regional systems showed varying degrees of success in attempts to simultaneously protect public health and

uphold fundamental human rights. This issue has become the subject of extensive discussion among scholars and human rights advocates [14].

During the COVID-19 pandemic, the European Court of Human Rights (ECtHR) played a particularly important role by establishing key legal standards for the protection of the right to health and related rights. The Court not only adapted its activities to the new realities associated with the introduction of restrictive measures but also developed important legal precedents regarding the permissibility of state interference with individual freedoms in the context of public health threats.

In its judgment in the case of Vavřička and Others v. Czech Republic, the European Court of Human Rights (ECtHR) confirmed that mandatory vaccination, as established by the national legislation of the Czech Republic, complies with the European Convention on Human Rights. The Court noted that such a measure pursues a legitimate aim–the protection of public health–and may be considered "necessary in a democratic society". This precedent has served as a reference for other states implementing similar measures and underscored the priority of public interest over individual refusal in the context of health protection.

Furthermore, in November 2021, the ECtHR ruled that temporary restrictions on freedom of movement (lockdowns), introduced to contain the spread of the coronavirus infection, do not violate Article 5 of the European Convention on Human Rights, provided that such measures are lawful, proportionate, and necessary in the specific epidemiological context. This decision established an important legal standard affirming that states may impose strict restrictions if they pursue a legitimate aim–the protection of life and public health–and are accompanied by adequate legal safeguards against arbitrariness.

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Furthermore, the European Committee of Social Rights, operating within the Council of Europe, intensified its activities during the COVID-19 pandemic, placing particular emphasis on the implementation of Article 11 of the Revised European Social Charter. This article obliges States Parties to take measures to eliminate the causes of ill-health, promote sanitary education, and ensure access to medical care for the entire population. In its statements, the Committee highlighted the necessity of expanding preventive programs, increasing vaccination coverage, and providing special protection for healthcare workers on the front lines of the pandemic. Particular attention was given to preventing discrimination in access to vaccination among socially vulnerable groups, including the elderly, persons with disabilities, migrants, and ethnic minorities. The Committee also issued recommendations to ensure fair working conditions, the provision of personal protective equipment, and compliance with health protection standards in social care institutions and medical facilities [15].

The Inter-American human rights system, based on the 1988 San Salvador Protocol, is characterized by a high degree of normative clarity regarding the implementation of the right to health. During the COVID-19 pandemic, it demonstrated flexibility and proactivity in protecting the rights of vulnerable populations. The Inter-American Commission on Human Rights issued a series of recommendations aimed at preventing discrimination in access to healthcare, safeguarding the rights of individuals at heightened risk, and ensuring adherence to ethical standards in health governance.

Particular attention was paid to guaranteeing equal access to medical services, transparency of measures taken, and monitoring states' compliance with

international human rights obligations. Thus, the Inter-American mechanism has proven to be a crucial tool for human rights responses to the health crisis [16].

The right to health is enshrined in Article 16 of the African Charter on Human and Peoples' Rights (1981), with particular emphasis placed on collective rights. During the COVID-19 pandemic, the African Commission on Human and Peoples' Rights issued several statements and practical recommendations urging member states to ensure minimum health standards, access to medical and humanitarian assistance, and reliable information, especially in displaced persons camps. Special attention was given to the protection of women, children, the elderly, and other vulnerable groups.

PROPOSED LEGAL MEASURES

To strengthen universal and regional mechanisms for the protection of the right to health in the context of a pandemic, the following normative and legal improvements are recommended:

1. **Expanding the Functional Powers of Authorized Health and Oversight Bodies.** Although institutions responsible for health protection exist, more effective state control should be ensured through:

- Continuous Monitoring: Regular assessment of national legislation's compliance with international standards set by WHO and other relevant organizations.

- Institutionalizing Inspections: Scheduled and unscheduled audits of healthcare facilities and public health systems to verify compliance with anti-epidemic measures.

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- Enhancing Accountability: Introducing stricter sanctions for violations of sanitary regulations, non-compliance with quarantine measures, and concealment of infection spread information.

2. Regulating the Storage of Medical Data and Public Health Information. To ensure the confidentiality and security of medical data during a pandemic:

- Clarifying Data Storage Requirements: Establish legal norms mandating storage of medical data within national territory in compliance with international standards.

- Regulating Cross-Border Data Exchange: Define legal frameworks for the transfer of medical information between countries while protecting privacy and security.

- Developing National Digital Infrastructure: Creating secure local servers and platforms for processing and analyzing medical data.

3. Regulating Legal Aspects of Ensuring Public Access to Healthcare Services During a Pandemic. To protect the right to health in an emergency:

- Transparency and Accessibility of Medical Information: Guarantee public access to up-to-date information about the pandemic, prevention methods, and treatment options.

- Ensuring Equal Access to Treatment: Legal mechanisms preventing discrimination in access to medical services during the pandemic.

- Supporting Vulnerable Groups: Defining special legal measures to protect the rights of the elderly, people with chronic illnesses, and other at-risk populations.

4. Harmonizing National Legislation with International Health Protection Standards. To improve the effectiveness of health rights protection during a pandemic:

- Adapting Legislation: Align national laws with WHO recommendations, European Union standards, and other regional organizations' guidelines.

- Implementing International Protocols: Legislatively enshrine standards for pandemic prevention and response.

- International Cooperation and Reporting: Establish mechanisms for information exchange, joint response, and monitoring compliance with international obligations.

CONCLUSION

The regional system faced several institutional challenges, such as chronic shortages of financial and human resources, a limited mandate of the African Court, and weak implementation of its decisions by member states. These difficulties significantly hindered the effective realization of the right to health, despite the advanced norms of the Charter and the Commission's active work.

In the post-Soviet space, there is no unified supranational body that ensures the protection of the right to health at a level comparable to the international human rights system. Instead, coordination structures operate, such as the CIS Council on Health Cooperation and the EAEU Intergovernmental Council.

During the pandemic, these bodies focused on the exchange of epidemiological information, the development of common sanitary standards, coordination of vaccine supply, and the promotion of initiatives aimed at the mutual recognition of health certificates. However, as noted by B. Karabayev, the absence of binding jurisdiction, judicial review mechanisms, and systems for

monitoring violations significantly limits their effectiveness. In the context of the pandemic, this resulted in an asymmetrical response by states and the lack of a unified human rights practice in the field of health protection across the Eurasian region [17].

The Office of the United Nations High Commissioner for Human Rights (OHCHR) played a significant role in coordinating efforts to protect human rights during the pandemic, providing a platform for sharing experiences and developing recommendations. In its reports, the OHCHR emphasized the need for equal access to treatment, vaccines, and social protection, particularly for vulnerable groups. Special attention was given to the prevention of discrimination, gender inequality, and the protection of the rights of detainees, migrants, and minorities. In April 2020, the Council of Europe Commissioner for Human Rights called for ensuring sanitary safety in places of detention.

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