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ABSTRACT

of the dissertation for the degree of Doctor of Philosophy

INFORMED CONSENT RIGHT OF THE PATIENTS: NATIONAL LEGISLATION AND INTERNATIONAL PRACTICE

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Applicant:	**Fidan Aris Rustamova**

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The work was performed at the Institute on Law and Human Rights of the National Academy of Sciences of Azerbaijan.

Scientific supervisor: Doctor of medicine, Professor, Lawyer
Vugar Gurban Mammadov

Official opponents: Doctor of Law, professor
Etibar Ali Aliyev

Ph.D. in Law
Nigar Huseyn Galandarli

Ph.D. in Law
Fatima Etibar Huseynova

Dissertation Council BFD 3.06 of Supreme Attestation Commission under the President of the Republic of Azerbaijan operating at the Institute on Law and Human Rights of the National Academy of Sciences of Azerbaijan

Chairman of the Dissertation council: Doctor of Law, professor
Aytan Inglab Mustafazade

Scientific secretary of the Dissertation council: Ph.D. in Law
Gadir Rovshan Khalilov

Chairman of the scientific seminar: Doctor of Law, professor
Rustam Fakhraddin Mammadov

GENERAL DESCRIPTION OF WORK

The relevance and elaboration level of the topic. The meaning of freedom, respect for human rights are important elements of democracy and the rule of law. In turn, democracy provides a natural environment for the protection and effective enjoyment of human rights. One of the important areas in the field of human rights is the rights of the patient, because potentially everyone is one. Everyone has equal rights to health and life, the right to be examined and treated without any discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This is the basis of a democratic society. Therefore, a detailed study of individual rights of patients and their application in their countries democratizes not only the health care system, but the whole society as a whole. From this point of view, it is very important to mobilize scientific resources, accelerate the pace of research in the field of medical law, which is due to the really aggravated interference of scientific and technological progress in human life, reforms in domestic health care and new social approaches to assessing moral values, which are experiencing a certain decline and expressing ambiguous ideas and interpretations of ethical limits in solving certain problems in ensuring the rights of patients.

One of the most important patient rights in the modern democratic world is the right to informed consent (IC), which is based on the recognition of the personal and physical integrity of a person, the autonomy of the human person. The essence of this right lies in the fact that any medical intervention (MI) in the human body is possible only after obtaining voluntary consent from the patient for this intervention after fully informing the patient in advance, otherwise the actions of a medical worker are regarded as violence against a person. At present, the principle of IC on MI is the cornerstone of the entire system of legal support for medical activities in developed legal states.

Previously, the attention of scientists was focused on providing information to the patient, then on obtaining voluntary consent, today

jurists are interested in achieving consent to MI based on a conscious choice of the patient, based on knowledge. Therefore, from the point of view of medical law, IC for MI should be understood as the voluntary, competent acceptance by the patient of the proposed treatment option, based on the receipt of complete, objective, comprehensive and comprehensive information about the disease, the upcoming treatment, its possible complications and alternative methods of treatment, etc. In the process of obtaining it, two stages can be distinguished: 1) providing the patient with information on the basis of voluntariness and competence; 2) obtaining and proper registration of the patient's IC.

The right to informed consent regarding a medical intervention or clinical trial is intended to ensure:

- respect for citizens acting both as patients and as persons involved in medical research;
- reducing the likelihood of harm to physical and mental health, and even more so the lives of citizens, due to improper performance by medical workers or researchers of their professional duties.

At the same time, it should be noted that the bioethical principle "Consent" pursues the following goals:

1. assertion of patient autonomy
2. supporting the patient's sense of responsibility
3. protecting his status as a human being
4. prevention of coercion and deception
5. assistance to the doctor in the process of making rational decisions
6. an expression of respect for the dignity and rights of every human being.

The emergence of the concept of IC is associated with three global processes: with the general development of the human rights movement and the protection of human rights, the total informatization of society, and the spread of market relations to the field of medical care. According to Vasilyeva E.E., Mamedov V.K., Pishchita A.N., Klimov A.E., Blue R., Carmi A., Smith JM and many others, ensuring the right of citizens to IC is the cornerstone of

modern development health legislation. Legislative approval of the MI patient IC principle is not only a requirement of modern medicine, but also a sign of the democratic development of society. In developed democracies, IC is now the legal criterion for whether and to what extent care has been exercised by a doctor for the rights of a patient.

Historically, physician disclosures have generally been associated with the need to persuade the patient to do what the doctor wants. Since ancient times, the participation of patients in medical decision making has been discouraged. In fact, the legal doctrine of IC began to take shape in different countries in the middle of the last century after the adoption of court decisions recognizing the patient's right to be directly involved in making medical decisions about himself. Since that time, the patient's right to consent to MI has become not only an ethical, but also a legal category, turning into the core line of medical law.

Medical law is becoming a reality of medical practice, and patients' rights are central to the system of medical law. The right to IC is the most important of them. At the same time, surveys show that more than half of practicing physicians are not clear enough about IP issues, and in the countries of the post-Soviet space, the vast majority of medical workers. In the countries of Western Europe, in the Russian Federation (RF), the Republic of Kazakhstan, the Republic of Belarus (RB) and others, lawsuits for improper treatment have become so frequent that most doctors are prosecuted at one stage or another of their practice, and financial claims to them are steadily growing. According to lawyers, the best protection in such cases is impeccable documentation, a written IC of the patient to perform all medical manipulations, early detection of complications and their rapid elimination.

The legislation of the Republic of Azerbaijan (AR) provides for the right of a patient to voluntarily give written or oral consent to MI among the rights of the patient, but the patient's right to give voluntary consent to MI is not an IC right and could be considered acceptable in the 20th century. At present, our legislation in the field of regulation of these rights is significantly outdated and needs to be

improved, and the medical community continues to dominate from time immemorial the existing paternalistic approach in the relationship between the doctor and the patient, when there is no equality of both parties, and the doctor has a predominant influence over the decision-making process in regarding the life and health, mental and physical condition of the patient.

In this regard, it seems relevant to use the world experience in the field of protecting the rights of patients, and in particular, the right to IC, taking into account the national specifics of Azerbaijan. For several years now, the Parliament of the Republic of Azerbaijan has been working on a draft law on the rights of the patient, based on the experience of European countries. This dissertation work can contribute to the use of positive international experience in the adoption of this Law in the interests of the citizens of the Republic of Azerbaijan, the improvement of domestic legislation in the field of healthcare, democratization and the development of a legal society in our country.

Patients' right to IC received the greatest coverage in international legal documents adopted after the Nuremberg trials and the adoption of the Nuremberg Code of 1947. The main scientific works in this area belong to Western authors. As for the legal science of the post-Soviet countries, here, without exception, all the leading Russian, Ukrainian and Belarusian specialists in the field of medical law now recognize IC as the most important right of the patient, the cornerstone of the development of modern healthcare and building doctor-patient relationships.

Pioneer research in the post-Soviet space on the study of medical, social and philosophical aspects of euthanasia, as one of the most urgent bioethical problems, belongs to the First Vice-President of the Republic of Azerbaijan Mehriban Aliyeva. Further, with the opening of the Azerbaijan Bureau of the UNESCO Chair in Bioethics at the Institute of Human Rights of ANAS under the guidance of Professor V.K. Mammadov, bioethical issues began to be considered in the context of the development of international and national medical law, numerous works were published both in Azerbaijan and abroad, including those on IC rights. But at the same time, the

patient's right to IC, being one of the most important rights of patients, has not yet been deeply and purposefully studied, therefore this dissertation is the first in Azerbaijan in the field of law on this topic.

The object and subject of the research. The subject of the study is the generally recognized principles and norms of medical and international law, bioethics, the provisions of national and foreign legislation in the field of healthcare, in particular, in the field of protecting the patient's right to IC.

The object of study of this research work is public relations in the field of healthcare, which develop in the relationship of a patient with a doctor and a medical institution, as well as the processes of implementing bioethical and international legal principles and norms in legislation.

The purpose and objectives of the research.

The purpose of this study is to study the patient's right to IC, reflected in international legal documents, in the legislation of foreign countries and the AR in order to develop recommendations for improving national legislation in this area.

Research objectives - to achieve the above goal, the following research objectives were set:

- to study the role and place of IC in the system of basic bioethical principles;
- study and analyze the essence and significance of the right to IC, identify its place and importance among the rights of the patient;
- to analyze international legal documents in the field of bioethics and medical law, the protection of human rights in the field of health care and identify the importance of IC in the MI;
- to study the legislation of certain foreign states regarding the provision of the patient's right to IC, including for certain groups of patients (minors, unconscious patients, psychiatric patients, etc.);
- to analyze the domestic healthcare legislation and the implementation of the right to IC in it, to characterize the

various forms and methods of obtaining it, as well as registration of IC on examples from medical and legal practice;
- to identify gaps and shortcomings in the issues of obtaining IC on MI, to show their consequences in order to demonstrate the importance of further improvement of legislation in this area;
- to develop on the basis of the study, theoretical provisions and practical recommendations for improving the legislation of the Republic of Azerbaijan in the field of ensuring the patient's right to IC.

Research methods. The methodological basis of the dissertation is the general scientific dialectical method of cognition, as well as special methods, such as: historical-legal, dialectical, formal-logical, comparative-legal, system-structural, structural-functional and prognostic.

The use of historical-legal and dialectical methods made it possible to determine the main stages in the development of bioethics and medical law in the world and in Azerbaijan, to trace the historical connection of the basic bioethical principles with the protection of human rights, the historical stages in the development of international and national legislation in the field of protecting the rights of patients.

The system-structural and formal-logical methods made it possible to identify common tasks and patterns in the protection of patients' rights and the application of bioethical principles in the field of healthcare, the features of their implementation under the current legislation of the Republic of Azerbaijan, the potential threats of existing gaps and shortcomings in national medical law.

The comparative legal method provided the formation of the methodological basis of the entire dissertation work and was used to solve most of the research tasks, since the national legislation was studied in a comparative aspect with similar legislations of foreign countries and international legal documents.

The structural-functional method was applied to describe in detail the role, functions and features of bioethical principles, human rights, bioethical and legal features of the patient's right to IC.

The predictive method was used to determine the prospects for the implementation of international bioethical norms in national

legislation, improve the methods and forms of obtaining, as well as issuing IC for MI in order to most effectively protect the rights and interests of patients and medical workers in the field of healthcare.

The main provisions for the defense. The following main provisions of the dissertation work are submitted for public defense:

1) The use of bioethical principles in national legislation in the field of life and health protection is recommended by international law, including with the participation and support of the Republic of Azerbaijan, and takes place in the domestic legal framework of many democratic states of the world.

2) The doctrine of informed consent is recognized by international law as an essential bioethical and legal principle of modern healthcare. The principle of informed consent is openly and unequivocally proclaimed as a fundamental doctrine of the protection of human rights and dignity in all model laws of the CIS and documents of the European Community in the field of life and health protection. Among the fundamental principles of these documents, the ethical values on which modern health systems should be based - informed consent, upholding human dignity, justice, solidarity and professional ethics - are brought to the fore.

3) Informed consent is one of the basic and important bioethical principles, is the cornerstone in the proper development of modern medical law and national health systems, especially in the context of the commercialization of medicine. Informed consent of the patient (or legal representative) - prior, free, voluntary written consent to any medical intervention performed for preventive, diagnostic, therapeutic, scientific and research purposes, based on the provision of complete, objective, comprehensive and comprehensive information about the state of health, including medical facts, diagnosis, prognosis, plan and stages of medical, scientific measures, data on the expected effect, possible risks, complications and their likelihood, the benefits of the proposed and alternative methods of intervention, the rehabilitation period, the cost of treatment and payment terms, information about the possible consequences of refusal from treatment, obligations and rights of the patient, about ways to protect them, etc.

4) International law, recognizing informed consent as one of the important bioethical and legal principles before medical intervention, in order to maximize the protection of human rights and fundamental freedoms in the fields of health and science, recommends that all countries implement and implement this principle in national legislation. Limitations and exceptions to this principle should only be made for compelling reasons, in accordance with ethical and legal norms of domestic law that are not inconsistent with the principles and provisions of international human rights law.

5) Ensuring the right of the patient to informed consent is one of the main tasks of the national legislations of democratic countries on health care. The legislative approval of the patient's right to informed consent to medical intervention is not only a requirement of modern medicine, but also a sign of the democratic development of society, the protection of human rights and the development of medical law. In the laws of many countries of the world, the experience of which is interesting for the Azerbaijani legislator (USA, European countries, Russia, Turkey, Belarus), the right to informed consent is implemented as the most important tool for protecting human rights in the healthcare system.

6) The patient's right to informed consent is an inalienable right of the patient and a necessary condition before any medical intervention, as it expresses respect for the dignity and personal integrity of the patient, recognition of his personal freedom, the right to self-determination, the right to make an independent and competent decision about life and health, participate in their own treatment and be responsible for their own decisions. Informed consent to medical intervention is central to the system of legal support for medical activities in democratic countries, since the patient's free informed consent, based on awareness, is one of the ways to exercise human rights and freedoms.

7) In the legislation of the Republic of Azerbaijan, the patient's right to informed consent to medical intervention is not fixed. Currently, according to domestic laws in the field of healthcare, a necessary condition for the provision of medical care to a patient is the voluntary consent of the patient (legal representative), which is

not an informed consent. Enshrining in laws the patient's right to informed consent to medical intervention is an objective necessity. The implementation of this right, along with the basic bioethical principles, into national legislation will be an important step in improving and democratizing the health care system in our country.

8) The doctrine of informed consent should be considered not only as a patient's right, but also as a professional duty of a medical professional performing a medical intervention to inform the patient (legal representative) in detail in order to obtain consent and the moral right to carry out this intervention. It must be obtained for any type of medical intervention.

9) The recommendations set out in the conclusions of this dissertation on the legal implementation of the doctrine of informed consent in the Azerbaijani legislation can be implemented by adopting the Law "On the Rights of Patients" or by introducing additions and amendments to the Basic Law "On the Protection of Public Health" of 1997.

Novelty of the research. This work represents the first scientific study in the AR of one of the most important patient rights in modern healthcare systems - the patient's right to IP. For the first time in Azerbaijani legal science, an analysis of the IP doctrine will be carried out with the recommendation of a comprehensive legal definition of IP for national legislation, the importance of ensuring this right in the context of ensuring human rights and human dignity, protecting the rights of the patient and medical workers, developing and improving the healthcare system will be substantiated. In the legal science of Azerbaijan this problem is considered for the first time. The lack of a standard for informing the patient and a unified mechanism for regulating issues related to its receipt and registration hinders both the full realization of human and patient rights granted to him by the Constitution of the Republic of Azerbaijan and the basic law in the field of healthcare, and the protection of health workers in case of conflict situations. Ensuring proper protection of the rights and legitimate interests of both patients and medical workers without the widespread practical application of the IP principle in the activities of medical institutions in modern conditions is impossible.

From this point of view, this dissertation work is considered the first study, not only in resolving this issue, but also in terms of developing recommendations for resolving issues related to the patient's right to informed consent. In the health care systems of democratic states, special attention is paid to the rights of patients. Although our national law provides for the patient's right to voluntary consent, the right to informed consent is not exercised. This leads to a paternalistic approach to the relationship between medicine and health, which, from the point of view of modern law and human rights, can and does lead to numerous violations of human rights in the healthcare sector, which has become commercial. Real-life examples of the bitter consequences of ignoring the principle of informed consent show how relevant the issue is. Each person one or more times in his life becomes sick, the patient acts as a relative. That is, this issue is not an abstract issue, it is a problem that concerns each of us, each member of society. The greatest blessing given to man is the protection of life and health, and of the decisions he can make about his body and destiny. From this point of view, this dissertation should be especially noted as a work that touches on a new topic in Azerbaijani jurisprudence and is capable of producing concrete results.

The theoretical and practical significance of the dissertation research. The theoretical significance of this dissertation lies in the fact that the provisions formulated in it can be used in the development of theoretical and practical problems of health law, as well as bioethics. This work will be useful for further research on various aspects of the protection of human rights in the field of healthcare, with a focus on the relationship of the patient with the doctor and medical institution in modern conditions. In general, the development of this topic is an independent promising scientific direction with the possibility of involving extensive practical material. The proposals and conclusions made in the dissertation are intended to indicate its relevance and to assist in the further development of the problem under study.

The practical significance of this study lies in the fact that the conclusions obtained in the course of the work and the proposals

formulated on their basis will be useful for improving the legal framework governing legal relations around the patient in the healthcare system with maximum protection of his interests. The materials of the dissertation can be used in interdisciplinary research in the field of bioethics and medical law, as well as in the educational process in the preparation of future lawyers and doctors (when teaching general courses in bioethics, medical law, international law, human rights; developing relevant programs and teaching aids based on data disciplines). The provisions of this dissertation research can be used in the process of current lawmaking, in particular, in further work on the draft Law on the Rights of the Patient in the AR, changing the norms of national legislation in connection with the implementation of international bioethical norms and principles.

Approbation and implementation of research results. The dissertation was prepared at the Institute of Law and Human Rights of ANAS, where it was discussed and reviewed. Part of the research was carried out on the basis of the department of the Medical Faculty of Harvard University in Harvard and Boston, Massachusetts, USA in 2015.

The thesis statements were reported and published in the materials of the 53rd Annual Conference of the American Medical Law Association "Law, Medicine and Professional Practice" in Las Vegas, Nevada, USA (February 2013); 9th and 11th UNESCO World Bioethics Conferences "Bioethics, Medical Ethics and Medical Law" in Naples, Italy (November 2013 and October 2015); 2nd International Bioethics Education Conference at Ankara University, Ankara, Turkey (May 2014); 23rd World Congress of Medical Law "Medical Law, Bioethics and Multiculturalism", Baku, Azerbaijan (July 2017).

The dissertation materials were used in the educational process - during seminars on bioethics and medical law, human rights and international law at the Faculty of Law of the Belarusian State University.

On the topic of the dissertation, the author published 12 scientific papers, 6 of them in the foreign press.

The name of the organization in which the dissertation

work was carried out. The dissertation was completed at the Institute on Law and Human Rights of the National Academy of Sciences of Azerbaijan. This topic was approved at a meeting of the Council on Legal Issues of the Council for Organization and Coordination of Scientific Research of the Republic of Azerbaijan.

The structure of the dissertation corresponds to the logic chosen by the author for solving the stated goals and objectives of the study, reflects its subject and specifics. The applicant comprehensively seeks to reveal the problematics. The dissertation consists of an introduction, three chapters, including 8 paragraphs, a conclusion, a list of references and applications. The dissertation consists of an introduction (28887), I chapter (60329), II chapter (70345), III chapter (95944), conclusion (11430), appendices and bibliography (280 sources), total volume 309092 characters, 170 pages.

MAIN CONTENT OF THE DISSERTATION

In the introduction of the dissertation work, the relevance of the research topic is substantiated, the degree of scientific development of the problem is analyzed, the subject, goals and objectives, as well as research methods are determined, the scientific novelty of the research, theoretical and practical significance, the main provisions submitted for public defense are shown.

Chapter I, titled “The patient's right to IC as one of the basic principles of bioethics and medical law”, consists of two paragraphs. The first paragraph "Bioethics and basic bioethical principles" reveals the concept of bioethics and analyzes the historical events that led to the adoption in 2005 by the international community of 15 basic bioethical principles:

1) Human Dignity and Human Rights, 2) Benefit and Harm, 3) Autonomy and Individual Responsibility, 4) Consent (IC), 5) Persons without the Capacity to Consent, 6) Recognition of Human Vulnerability and Respect for the Integrity of the Individual, 7) Privacy and Confidentiality, 8) Equality, Fairness and Equity, 9) Non-Discrimination and Stigmatization, 10) Respect for Cultural

Diversity and Pluralism, 11) Solidarity and Cooperation, 12) Social Responsibility and Health, 13) Benefit Sharing, 14) Protection of future generations, 15) Protection of the environment, biosphere and biodiversity. The importance of preliminary, free and IC in any scientific research related to human life and health, as well as in the CF, is indicated in the "UNESCO Universal Declaration on Bioethics and Human Rights", adopted in 2005 by 193 UNESCO member countries, including the AR.

In the second paragraph "Formation of medical law and the IC principle" the background and historical stages of the formation of legal concepts in the field of medicine, both by international organizations, in the Western world, and in our country during the Soviet era, are studied. Here it is noted that the voluntary consent of an informed patient is a necessary prerequisite for any MI, and the right to IC is the most important and fundamental right of the patient, the cornerstone of modern medical law. The success of future treatment, the realization of patients' rights and the protection of professional responsibility of medical workers largely depend on how legally and organizationally the procedure for obtaining IC will be carried out.

In the second chapter "The Patient's Right to IC in International Law and Foreign Legislation", the author of the dissertation studied the right to IC in the universal, regional international legal documents of the European Community and the CIS, as well as the national legislations of the USA, Turkey, the Russian Federation and the Republic of Belarus. In the first paragraph "Patient's right to IC in universal international legal documents", the provisions of the Nuremberg Code, the International Code of Medical Ethics, the Declaration of Helsinki and the Lisbon Declaration on the Rights of the Patient of the World Medical Association, the Declaration on Human Organ Transplantation, the Universal Declaration "On the Human Genome and Human Rights", the International Declaration on Human Genetic Data and the UNESCO Universal Declaration on Bioethics and Human Rights.

Due to the geographical location, political landmarks and the common historical past, the international legal documents of the

European Community and the Commonwealth of Independent States (CIS) in the field of medical law were highlighted by the authors of the study as significant for the AR and studied in detail in the second paragraph of this chapter “The patient's right to IC in regional international legal documents”. Many provisions of international declarations and conventions were adopted by the UN as a logical consequence of the terrible consequences of the Second World War, the barbarism and crimes of Nazi Germany against humanity and the verdict of the military tribunal in Nuremberg in 1947. In subsequent years, the WMA adopts two important declarations - the 1964 Declaration of Helsinki and the 1981 Lisbon Declaration on the Rights of the Patient. In the introduction of the Declaration of Helsinki, it is stated that “in the current medical practice, most diagnostic, therapeutic and prophylactic manipulations are associated with a certain risk. This is especially true for biomedical research.” At the same time, it is noted that "medical progress is impossible without research, which in the final stage includes experiments with the participation of people." For the first time, this declaration also emphasizes that physicians are not exempt from legal liability and may be subject to criminal, civil and ethical liability in accordance with the laws of their country. Here, the Declaration on the policy of ensuring the rights of the patient in Europe, “Fundamentals of the concept of patient rights in Europe: general provisions”, the Ljubljana Charter on Health Reform, the Convention for the Protection of the Rights and Dignity of the Human in Connection with the Application of Biology and Medicine (Convention on Human Rights and Biomedicine), European Charter of Patients' Rights, Model Laws of the Interparliamentary Assembly of the CIS Member States “On the Protection of Human Rights and Dignity in Biomedical Research in the CIS Member States”, etc. on the subject of IC. The principle of IC is explicitly and unequivocally proclaimed as a fundamental doctrine for the protection of human rights and dignity in all these model laws and European regulations.

In the third paragraph of the second chapter "The right of patients to IC in the legislation of certain foreign countries" the legislation of the USA, Turkey, the Russian Federation and the

Republic of Belarus is analyzed in detail. In the conclusion of the second chapter of the dissertation, it is emphasized that the doctrine of IC on MI is indicated in all the bases studied as a prerequisite for working with a patient in a medical institution at the present time. International law, recognizing IC as one of the important bioethical and legal principles before the MI, recommends that all countries introduce and implement this principle in their national legislation. Taking into account the commitment of our country to the democratization of national legislation and taking into account the Decree of the President of the Republic of Azerbaijan Ilham Aliyev dated December 27, 2011 "On the approval of the National Action Program to improve the effectiveness of the protection of human rights and freedoms in the Republic of Azerbaijan", it seems necessary to conduct a detailed analysis of the Azerbaijani healthcare legislation in order to implementation of IC doctrine.

In the third chapter, "The Patient's Right to IC in National Legislation", which consists of three paragraphs, the analysis of the domestic regulatory framework on the subject of IC is carried out for the first time. In paragraph 3.1. “Health Legislation of Azerbaijan and the Patient's Right to IC” provides a detailed analysis of the provisions of our legislation and, first of all, the Basic Law “On the Protection of the Health of the Population of the Republic of Azerbaijan” of 1997 in the field of protecting the rights of the patient. It argues that the principle of voluntary consent of the patient and the right to information are key elements in the national system of patient rights, but even in symbiosis, they are not able to ensure the right to IC on MI. Although progressive for the 90s, these provisions are now outdated and form the essence of the doctoral-centric approach to the process of providing medical care.

In paragraph 3.2. “IC as the main mechanism for protecting the rights of a patient and a doctor: the importance of its implementation in Azerbaijan” studied in detail the existing mechanisms for obtaining and processing a patient’s voluntary written consent to MI, and using real examples from clinical and forensic practice, they demonstrated their insufficiency and inferiority in ensuring the right IC patient with MI. It is concluded that the introduction,

implementation and consolidation of the IC principle in Azerbaijani legislation is an objective necessity for the successful legal regulation of today's unregulated situations in practical healthcare, the protection of the rights of the patient and the medical worker in the legal process, the improvement and democratization of the healthcare of our country.

In paragraph 3.3. “Recommendations on fixing the patient’s right to IC in domestic legislation” states that the lack of a standard for informing the patient and a unified mechanism for regulating issues related to its receipt and execution hinders both the full realization of human and patient rights granted to him by the Constitution and the Basic Law, and protection of health workers in case of conflict situations. The right to IC in MI, being the cornerstone of modern healthcare in a democratic world, should be seriously studied by the domestic legislator and implemented in national law. On the basis of the research work carried out, the authors of the thesis developed and proposed a draft of a new form of the requested IC of the patient for MI, and in the form of the conclusions of the research work, specific recommendations were given to the legislator. The adoption by the domestic legislator of these recommendations with their subsequent implementation in the national legislation of Azerbaijan can become an epoch-making milestone for domestic healthcare and the development of Azerbaijani medical law.

The final part of the dissertation contains a summary of the study, which once again emphasizes that the modern form of medical ethics is bioethics, the principles of which were adopted by the world community under the auspices of UNESCO, are reflected in the Universal Declaration on Bioethics and Human Rights and have a clearly defined legal essence. International experience has shown that the most optimal in science and practice today is the legal model for solving bioethical problems, which puts the observance of the patient's rights at the forefront. As a result, bioethics and medical law should be considered in a single bundle: both as a science, and as a mandatory subject of study at the undergraduate and postgraduate stages of education of physicians and lawyers, and as a tool for

public, public control to protect human rights in the healthcare system, medicine and biology.

Thus, the main organizational and legal principles of informed consent are:

1. Informed consent is the right of the patient and the duty of the medical worker performing the medical intervention;
2. Informed consent must be obtained for any type of medical intervention, from measuring blood pressure, including a hypnosis session, to many hours of complex surgery;
3. obtaining informed consent indicates respect for the rights and legitimate interests of the patient;
4. informed consent determines the active participation of the patient himself in the treatment process;
5. thanks to informed consent, the degree of responsibility of the doctor in the provision of medical care increases.

At the same time, medical law allows cases where the doctrine of informed consent may not apply:

1. When providing emergency care, when any delay threatens the life or health of the patient.
2. If the risks are negligible and well known to all citizens.
3. If the patient deliberately refuses to listen to data on the likelihood of death or severe disability (such refusal should be documented with an appropriate record and signatures).

If the doctor believes that the patient may not be psychologically able to bear the informational trauma from being informed of a discovered disease or condition. This doesn't happen often, but it can happen. In this case, the doctor should ask the patient whom he trusts to discuss his health problems and treatment with the doctor.

Any medical intervention is accompanied by the risk of complications and other consequences for which it is not known whether they will occur or not. For every health impact, such consequences are not always preventable, but predictable. Since they are predictable, measures are taken in the provision of medical care to prevent them. Informed consent is one of the most important medico-legal and ethical tools in the event of such undesirable

complications, which is designed to serve as the maximum protection of the rights of both the patient and the doctor. Legally, today it may sound like this: an encroachment on a patient's health is medical care covered by informed consent, provided with deviations from medical technologies and standards, and any medical care that is not covered by informed consent. Medical care covered by informed consent and provided without deviations from medical technologies and standards is not an encroachment.

The main provisions of the dissertation are set out in the following scientific publications:

1. Rustamova F.A., Mammadov V.Q., Mustafayeva A.I., Aliyeva F.E., Galandarli N.H., Agayev E.H. Legal responsibility for violations of law by medical workers in Azerbaijan // Program and Abstracts Book of the 53rd Annual Meeting of ACLM (American College of Legal Medicine) "Law, Medicine and Your Professional Practice", Las Vegas, Nevada, USA, 21-24 February 2013, p.66-67.
2. Rustamova F.A., Rustamov A.A., Mammadov V.Q. Patients rights as an indicator of health system development // Program and Book of Abstracts of the 9th World Conference of UNESCO Chair in Bioethics "Bioethics, Medical Ethics and Health Law". Naples, Italy, November 19-21, 2013, p.109.
3. Rustamova F.A. Informed consent as one of the main principles of bioethics // Abstracts Book of 2nd International Conference on Ethics Education. Ankara University (Turkey), May 21-23, 2014, p.67-68.
4. Rüstəmova F.A. Bioetikanın əsas prinsipləri və insan hüquqları kontekstində pasiyentin hüquqları: Məlumatlı razılıq // Dirçəliş, 2013, №180.
5. Rustamova F.A., Rustamov A.A., Mammadov V.Q. İnformed consent: cases when it can be omitted in Azerbaijan // Program and Book of Abstracts of the 11th World Conference of UNESCO Chair in Bioethics "Bioethics, Medical Ethics and Health Law". Naples, Italy, October 20-22, 2015, p.80.
6. Rustamova F.A., Mammadov V.Q., Munir K.K. Realization of informed consent as one patient's rights: current situation in Azerbaijan // Федеральный научно-практический журнал Российской Федерации «Биоэтика», Волгоград, ВолгГМУ, 1(17) 2016 İSSN 2070-1586 (Двухлетний импакт-фактор РИНЦ – 1,008). http:www.journal-bioethics.ru PubMed PMID: 27434222; PubMed Central PMCID: PMC4943755). С.24-29.

7. Rustamova F.A. Informed consent as one of patient rights: current situation in Azerbaijan // «Medicine and Law» (Journal of World Association for Medical Law), William Hein, New York, USA, 2017, Vol.36, Number 2. P. 297
8. Rüstəmova F.A. Azərbaycan Respublikasında pasiyentin hüquqlarının reallaşdırılması // Dirçəliş Jurnalı, 2018, №1.
9. Рустамова Ф.А. Информированное согласие как одно из главных прав пациентов в Азербайджанской Республике // Dirçəliş, iyul, 2018 (в печати).
10. Rüstəmova F.A. Azərbaycan Respublikasında məlumatlandırılmış razılıq üzrə pasiyentin hüquqları və həkimlərin (tibb işçilərinin) məsuliyyəti // Qanun jurnalı, iyul, 2018 (nəşrdə).

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Address: Azerbaijan, Baku H.Javid ave., 115

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