

Round table session

The round table session will focus on patients' rights representatives and how various countries have legislated to represent and protect patients' rights.

The round table will be made up of speakers from five countries — Croatia, Finland, Israel, New Zealand and the USA — who will discuss how their national legislation is dealing with the problem of representing patients' rights. The discussion will hopefully highlight the good and bad sides of each of the legislative regimes. Looking at the different national experiences may also reveal commonalities of practice and problems, and hopefully suggest some solutions. It is hoped that this identification of issues and solutions will extend beyond those of the speakers' environments to the national experiences of all attendees.

Patients' Rights Representing in Croatia

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Abstract:

Problems of democratization in transitional countries include development in protecting the human rights. Progress in protection of patients' rights is important part of democratization. This paper describes authors' vision of the deficiencies of the articles of the very recent Patients' Rights Protection Act in Croatia, dealing with the special body named for representing patients' rights. This paper has intention to share this experience with other legal systems and to learn more about the deficiencies on the representatives of the patients' rights.

Process of democratization brings the recognition of human rights, which means enabling possibilities of legal protection and prevention of the violation of those rights.

With the new Patients' Rights Protection Act¹ (1), despite of numerous deficiencies and questionable solutions, Croatia has done one step more on its road of reaching efficient legal protection of the human rights.

Nowadays, in Croatian legislation there is possibility of protection of patients' rights, beside lawyers, through claims presented to:

health care institution directions/directors;

ethical committee of health care institutions;

ethical committee of medical association;

ethical committee of medical chamber;

ministry of health and welfare;

parliamentary board on human rights;

general ombudsman office;

but it is obvious that all mentioned instances for helping patients are not enough to protect patients from violating their rights, and Committees for the protection of the patients' rights «entered» in legislation in 2004, when Patients' Rights Protection Act was adopted:

- Committee for the protection of the Patients' Rights/ Committee on Patients' Rights Protection in local governmental office for every County (there are 21 in Croatia)

and

- Committee for the protection of the Patients' Rights/ Committee on Patients' Rights Protection in Ministry of Health and Welfare.

¹ Published in Official Croatian Bulletin- Narodne novine, 169/04.

Named committees intend to be a body for representing patients' rights², but long expecting right on claim is more likely denied to Croatian patients by failed definition of Committees on Patients' Rights Protection in Article 32 (further Committees), which are considered to be guarantees of practical implementation of the patients protection as described in the Act³:

Article 32

Committee has five members collected on the base of public call, named by general assembly of local government unit, chosen from patients, members of non-governmental organizations and experts in the field of patients' rights protection.

There is an obligation regards protection of the professional secrets for Members of the Committees according Article 34. In Article 35 the description of procedures that one has to follow before addressing the Committees⁴ is given, addressing patients to act according *Article 22 of the Health Care Act of 2003⁵ (2)*, which denotes person's right to ask the protection of his rights (directly or in a written way) from a **physician or the principal of the health institution. They had an obligation to act upon the person's complaint and to inform him/her about the results within 8 days.**

*If the person wasn't content with the taken measures, he could have asked the protection of his rights with the **Minister of Health, Medical association or the Court**, and nowadays with the Committees too.*

² Patients' Rights Protection Act, Article 30 :

- With purpose of realizing and promoting patients' rights, Committee on Patients' Rights (further Committee) will be established in every local government unit.

³ Translation used here is not an official one.

⁴ In Article 35 is described that any patient has right to claim according the Health Care Code, that claim should be addressed on health care institution director. If the patient didn't get any or satisfactory answer, there is right on claim addressed on the Committee on Patients' Rights.

⁵ Published in Narodne novine, 121/03.

This situation should be taken in context of the patient's fear of possibly negative consequences of his complaint.

The descriptions of the tasks and duties of the Committees are mainly in Article 33, but in Articles 36 and 37, too.

From Article 33, the Committee at local governmental level has tasks:

- Following up the enforcement of the law on patients' interests and patients' rights at regional position,
- Following up of personalized violations of patients' rights at regional position,
- Recommending ways of acting on the protection and the promotion of the patients' rights at regional position,
- To inform the Committee on Patients' Rights Protection of the Ministry of Health and Welfare in case of the sever violations of patients' rights at regional position, that can endangered the life or health of the patient, with no postponement,
- To make annual reports for local government and Ministry of Health and Welfare,
- To inform the public on the violations of patients' rights.

Here I want to draw one's attention to the facts that:

- According to the Patients' Rights Protection Act, members of the Committees are named by political bodies of local government from "patients, nongovernmental organizations and experts on the field of the protection of patients' rights". At the same time, the criteria and procedure for nominations are not defined and no other description of the persons who should be members of said Committees is given.
- It is obvious that an expression "patient" has no meaning in definition of the person. According to Croatian Constitution (3), international Declarations (4) and even the Patients' Rights Protection Act, patient has not to be defined by his age, sex, nationality, mental health, legal competency...etc., and the member of the

Committee on Patients' Rights Protection should have mental and legal competency and should not be minor.

- There is no definition from which non-governmental organisation should come a person who is going to be named a member of the Committee on Patients' Rights Protection. That means that even very "misappropriate" nongovernmental organisations could propose their members, and they could be nominated, and decide about patients' rights even if having no formal knowledge on the matter.
- Croatia had not much experience on patients claims, not much experience in protection of human rights, there are no medical schools, not even law schools, teaching on patients' rights, there is no defined approaches to the legal protection, promotion or recognition of patients' rights. It means that there are no experts on the field on the protection of patients' rights in Croatia, and according to Patients' Rights Protection Act in this very moment Croatia should have at least 21 of them, as there are 21 local governments.

According above mentioned facts it is obvious that Committees can not resolve problems either of paternalistic relations in health system because both obvious reasons, of non competent and non independent members of that body.

I consider this an inadequate legal regulation with the main consequence - impossibility of practical implementation of legal solutions. The further consequence is unfortunately a complete denial of patient's basic rights and legal protection.

In Croatia, nowadays, there is only few court decisions based on the violation of patient's rights against the health institutions or physicians⁶ (5), (6).

The deficiencies of the new legislation on the patients' rights in Croatia could be viewed from different aspects. For this review I shall pointed out that according the law, patients

⁶ Examples of judicial decisions in medical law, mainly damages from medical malpractice

have Committees to help them in protection of their rights, so now complaints can be done with knowledge or even suggestions of named committees, but there is no legal guarantees that members of the Committees are independent, and we all know that Croatia is one of the most corrupted countries, not only in Europe.

The implementation of the patients' protection by the members of the Committees is not guaranteed even because:

- There is no systematic education on patients' rights at medical or law schools. There are only a couple of persons who show an active academic approach to this topic.
- Correlated with bad experiences from communistic days, there is a very low sense for asking the legal protection of human rights in Croatia. *As an example, there is the formal answer on question, from The Public Attorney Office ⁷ (7).*

CONCLUSION

During several recent years we can note a big progress of recognition and protection of patients' rights in Croatia. Civil non-governmental organizations and civil initiatives give their contribution to it, as those one resulted with Patients' Rights Protection Act adopted by parliamentary procedure in December of 2004. Despite many deficiencies and doubts, we are sure that adoption of the separate legal act on patients' rights is going to improve the

⁷ Public Attorney's Office official response No. A-365/04, September 7th, 2004 - the formal answer that there was only 1 (one) case of charging with the accusation of treating patients without due consent in Croatia for period from 1st January 1998 to 31st December 2003, according to the article 241 of Croatian Criminal Code (obstinate medical treatment). That answer should be discussed in consideration of results of pilot study (7), where 61.7% patients who were operated in general anaesthesia denied that gave their consent on operative treatment, which is obligatory by Croatian legislation.

protection of human rights to health care consumers from day to day. This should be considered an important condition for protection and prevention of the violation of the human rights in general. Existing model of the Committees on Patients' Rights Protection is not well defined and there is no even a model for the education on health, law and ethics which could help the members of the Committees in their main task: protection of human rights. In consideration of repressive legal system, still recorded by Croatian people, and paternalistic relations in health care system, some of the articles of the patients' Rights Protection Act still encourage patients not to ask for their rights and proposed ways of the protection are still not efficient one.

REFERENCES:

- (1) *The Patient's Rights Protection Act, Republic of Croatia, Narodne novine, 169/04 (1)*
- (2) *The Health Care Code, Republic of Croatia, Narodne novine, 1/97, 121/03 (3)*
- (3) *The Croatian Constitution, Narodne novine, 56/90, 8/98, 124/00, 41/01*
- (4) *Declaration on the Promotion of Patients' Rights in Europe, WHO Regional Office for Europe, Amsterdam, 1994*
- (5) *The Criminal Code, Republic of Croatia, Narodne novine 110/97, 27/98, 50/00, 129/00, 11/03, 190/03, 105/04.*
- (5) *Klaric P.,-" Odstetno pravo", Zagreb, 2003.*
- (6) *Crnic I.,- "Odstetno pravo"- zbirka sudskih rjesidbi odgovornosti za stetnu i popravljajnu stetu s napomenama i propisima, Zagreb, 2004.*
- (7) *Rusinovic - Sunara D., M.A. M.D.; Lugovic G., M.A.; prof. Belicza B., Ph.D., M.D.; Liovic J., nurse; Radovancevic Lj., Ph.D.,M.D; Croatian Association for Patients' Rights, Split, Croatia: The Respond of Patients and Health Care Workers to the Proposed Law on Patients' Rights, Obligations and Responsibilities in Croatia - Pilot Study, Congress Proceedings, 15th World Congress on Medical Law, Sydney, Australia, page 934.-940., 1-5 August 2004.*