

Wrocław, 23.12.2021
Pella Anna

Implementation of Patient's Rights in Healthcare

The main research problem of the dissertation entitled *Implementation of Patient's Rights in Healthcare* is to determine the nature of rights applicable for patients. In this regard, it's necessary to consider whether patient's rights can be considered as subjective rights – and if so, whether these rights are public or private subjective rights.

The research analysis was conducted from perspective of the patient as a beneficiary of healthcare system. The basic research assumptions included examining if patient realizing his rights has the possibility of actively presenting his claims, determining the range of entities to whom these claims may be presented, as well as their nature – public or private law.

The dissertation consists of six chapters, preceded by an Introduction and followed by Conclusion chapter with synthetic presentation of doctrine's findings and applicable legal provisions regarding patient's rights. Dissertation also includes the lists of literature and Internet sources, normative acts and case laws. The structure of the thesis enables reference to the posed research hypotheses.

In the first chapter, entitled *Patient's Rights as a Legal Category*, considerations were carried out to determine the meaning of basic concepts, such as "patient", "patient's rights" and to indicate the structural elements of the patient's status. This chapter also covers the issue of the sources of laws and the range of patient's rights. According to categories specified in the act, in this chapter there are distinguished specific categories of patients, that – due to their scope and related rights – are important to the findings of this dissertation. In first chapter nature of patient's rights is also examined, to determine whether patient's rights are public or private subjective rights.

Considerations included in the second chapter, entitled *Implementation of Patient's Rights in View of the Principle of Democratic State of Law*, are characterized by an indication of principles of a Democratic State of Law and a comparison of these principles with commonly applicable legal regulations related to patient's rights. Additionally, there's also included analysis of mentioned solutions, in terms of determining whether these- adopted in the act - are implementing the principles derived from art. 2 of the Constitution. Reference of issues related to the implementation of patients' rights to the principles contained in art. 2 of the Constitution allows to determine to what extent the solutions adopted by the legislator resonate with the constitutional standard of protection of patients' rights.

In the third chapter, entitled *Implementation of Patient's Rights in the View of International Law, European Union Law and National Law*, there were discussed international and EU standards related to the implementation of patient's rights, based on

applicable legal regulations and case laws of European Court of Human Rights (ECHR) and Court of Justice of the European Union (CJEU). Issues related to the implementation of patient's rights are present in international law and in the law of the European Union. The norms of international law contained in declarations and conventions, specified as a result of the interpretation of the meaning of these norms by the ECHR, impose certain obligations on states regarding healthcare, like the positive obligation of states to protect the life of an individual who benefits from broadly understood medical care; the obligation to protect private life in the context of access to medical care; the obligation of the state to provide patients with effective measures to protect their rights. On the other hand, actions of European Union, related to healthcare, are respecting responsibilities of member states in the definition of their healthcare policy, as well as in the organization and delivery of health services and medical care. Responsibilities discussed here include the management of health services, medical care, and resource allocation. However EU law states that everyone has the right to access preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. EU performs its competences in the field of health protection by adopting legal acts affecting the safety of patients and the protection of their rights. The third chapter also discusses the issues related to the implementation of patient's rights in national law, taking into account the principles of access to cross-border health services.

In the fourth chapter, dealing with *Organizational System for the Implementation of Patient Rights* considerations on the structure of the system were presented, with particular emphasis on entities realizing their competences in the organization of the system for the implementation of patient's rights and in the implementation of patient's rights at the level of practicing these rights. The considerations contained in this chapter were aimed at determining whether the regulations of the activities of the entities of the healthcare system discussed here (established in order to implement and protect the rights guaranteed to the beneficiaries of the health care system) were shaped in a way enabling their reliable and efficient operation. The question whether the health care system, from the point of view of the requirements of axiology and praxeology, enables the implementation of patient's subjective rights is also answered in this chapter. There is also a space for issues concerning the patients' participation in the implementation of their rights and the issue of the patient's situation in relation to the organizational and technical standards of healthcare.

Fifth chapter, entitled *Autonomy of the Patient and the Providing Entity in the Context of Patient's Rights*, presents current legal status concerning following issues: the right of

conscientious objection of persons practicing medical profession, with particular emphasis on the medical profession, the patient's autonomy and the patient's lack of consent to treatment. It was highlighted that the amendments to the Act on the Professions of Physicians and Dentists, concerning the right to conscientious objection, are inaccurate and cause real difficulties for patients in accessing services, thus they are directionally incomprehensible and weakening the standard of protection of patient's rights in relation to the previous regulation.

The last, sixth, chapter of the dissertation is related to *Means of Legal Protection of the Patient Against Violation of the Rights*. This chapter deals with the issue of the hybrid dimension of the patient's rights protection system and the activities of the Commissioner for Patients' Rights - this activity constitutes an administrative and legal mechanism for the protection of patient's rights. The judicial protection of patient's rights, disciplinary measures to protect patient's rights and alternative methods of disputes resolution were also discussed - as measures to protect patient's rights. The analysis presented in this chapter, largely based on the analysis of the case laws of administrative courts, is a kind of clamp for the considerations in the preceding chapters. Based on findings contained in previous chapters, it was possible to present statements according to which patient's rights - defined by the provisions of public law - are using legal protection that includes both - measures governed by public law and measures governed by private law.