

Chapter 2

Public Health Legislation and Patient's Rights: Health2020 Strategy, European Perspective

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ABSTRACT

The right to health care in a contemporary world is widely recognized as one of the fundamental rights included into human rights concept. Despite such general acceptance the meaning and scope of right to healthcare is not universally understood in the same manner. The process of unification has been initiated some years ago and is still being developed. The very first grounds in this regard are: legislation and political documents, like health strategies, programs and plans - both at the common and national levels. The two most important documents influencing and changing the right to health care today in Europe are Health 2020 Strategy and EU Directive on Patient's rights in cross-border care. These documents have important impact on national legislation of EU countries. They change the systemic perspective and create new approach towards patient's rights in this region. Hereby, the main features of the process and analysis of the documents referring to the Polish example are presented.

INTRODUCTION: BACKGROUND - LEGAL, POLITICAL, AND SYSTEMIC CONTEXT OF PATIENT'S RIGHTS IN EUROPE

In Europe, Patient's rights became a very important issue of a common health policy nowadays, specifically concerning the right to health care. Since the adoption of International Covenant on Economics, Social and Cultural Rights in 1966 (*International Covenant on Economics, Social and Cultural Rights* 1966, Art. 12(1) http://www.who.int/hhr/Economic_social_cultural.pdf (access 4.03.2012)), the stated there universal right to the enjoyment of the highest attainable standard of physical and mental health has been debated widely and with no unified result concerning its meaning. The very first discussions

DOI: 10.4018/978-1-5225-3926-1.ch002

focused on the equality of rights, accessibility of treatment for everyone and services fair delivery (Den Exter & Hermans (eds.), 1999). It should be pointed that in discussions concerning right to healthcare concept the risk of „overuse” of the right idea - understood as a kind of a protective umbrella for every health problem and for everybody –finally unavoidably may cause systemic problems. At the end such understanding of a broad, unlimited right would be nothing but formal conditions for claims that could not be practically satisfied. Different groups since late 90-ties raised the question what exactly should be encompassed and understood as a right to health care. Among others there was also quite important conclusion that the discussion on this problem should be changed and focused on defining/ redefining such questions like health services/benefits, health services basket, necessary care and other concerning modern medicine and systems.

Lately the problem analysis are much more complex and include different aspects of the right to health care, very strongly focused on interdisciplinary and multidisciplinary dimensions. Such perspective was initially developed in the late 90ties and some authors described the variety of solution focusing on the comparative analysis of the different countries systemic approaches (Den Exter & Hermans (eds.), 1999)¹. It was the time of intensive systemic reforms, but at that moment the interdisciplinary dimension had no very strong and decisive impact on the understanding of right to health care yet.

At the beginning of XXI c. the concept of change slowly became more and more influential, leading gradually to the development of such approach adopted in one of the most important for public health policy documents - European Health2020 Strategy. The policy expresses the approach based on multi-sectorial and complex activities concerning the issue of right to health care. There was also another important factor accompanying the started and developed process – the economical context of health care systems functioning. At the end of XX c. rationalization of expenses became fundamental in the light of resources shrinkage and systems deterioration. For the above reasons the question how to reconcile the right to health care guarantee requirement with the unavoidable problem of services limitation had to be taken into consideration (Den Exter & Hermans (eds.), 1999). It seems that until today such debate has been continued with no satisfying result so far.

The recent regulation of EU concerning this question has changed the approach towards sovereign decisions of member countries and proved that – from the European regulations point of view - equal access to health care services would not be the exclusively and strictly internal problem ever since the EU Directive on Patient's Rights in a cross border care has been adopted (*Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare*, OJL 88, 04/04/2011, p. 45–65; 10.06.2014, http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=V1QFTwZQJ120QHRGxQDkhQdM60DXL2l2SM0vJGfR3zK5JTRnqGQq!1165330594?uri=CELEX:32011L0024 (access 6.01.2013))

In this context, the citation of the EU statement and approach towards the unquestionable division of competencies has to be cited directly: “being in good health is one of the main concerns of European citizens. The European Union (EU) is therefore striving to attain a higher level of health protection through all European policies and activities, in accordance with Article 168 of the Treaty on the Functioning of the European Union (TFEU). In particular, EU policy on health matters aims to improve public health, prevent diseases and threats to health (including those related to the lifestyles of European citizens), and combat major health scourges by promoting research. Community action complements national policies, and the Union encourages cooperation between Member States in the field of health. However, defining national health policies remains an exclusive competence belonging to Member States. Consequently, EU action shall not include the definition of health policies, nor the organization and provision of health

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