

NATIONAL LEGAL FRAMEWORK TO PROTECT THE RIGHT TO HEALTH AND RIGHT TO PROVIDE HEALTH CARE DURING THE COVID EMERGENCY SITUATION IN LATVIA

Accepted
31. 08. 2021

Revised
18. 09. 2021

Published
29. 10. 2021

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Abstract Global public health emergency due to the spread of Covid-19 required the government of Latvia to implement necessary measures to control the virus. Numerous measures were introduced as novel legal requirements for the general public as well as for users and providers of health care. Numerous legal provisions established restrictions on the rights of patients and health care institutions. Our study aimed to explore how a human rights-based approach might be and is integrated into national responses to the Covid pandemic in health care in Latvia during the first emergency situation lasting from 12 March to 9 June 2020. Our research showed that restrictions on the right of patients to receive and the right of health care institutions to provide health care services were introduced broadly. We established that the legal requirements for restricting human rights in health required by the Constitution of Latvia were not observed.

Keywords
Covid-19,
Human
rights,
Constitution of
Latvia,
right to
health,
right to
provide
health
care
services

1 Introduction

Fundamental rights, including the right to health, are essential values of a democratic state that must be ensured and adequately protected not only in everyday conditions but also during crises. Integrating human rights protections and guarantees into our shared responses is not only a moral imperative; it is essential to successfully address public health concerns.¹ The study presented in this paper is a part of a research project² aimed at exploring the human rights framework as a fundamental structure that can strengthen the effectiveness of efforts addressing the pandemic locally, nationally and globally. In addition, the study performed an analysis of the regulatory framework and sectoral policy documents at the institutional, sectoral and national levels regarding the provision of health care services during the pandemics in Latvia. This study aimed to explore the human rights system as a basic framework capable of enhancing and strengthening pandemic prevention efforts at the local, national and global levels.

The focus of this paper lies in the description and analyses of the Latvian constitutional law for protection and restriction of patients' fundamental rights, which need to be observed during the circumstances of the Covid-19 pandemic. The paper explores, first, the Latvian national constitutional law framework for the protection of the right to health in general and in the course of the Covid-19 pandemic more specifically. Second, it provides legal analysis of emergency legislation concerning the right of health enacted to curb the pandemic, in the period from March to June 2020. In this context, it discusses the legal nature of restrictions the limiting availability, accessibility and quality of health care services. Third, it explores restrictions upon patients' rights observed in Latvian hospitals resulting from the improper implementation of legal regulations.

Legal research methodology: legal research was done using the normative legal research methods. In doctrinal legal research, we reviewed documentary materials such as statutes, regulations, case law and policy documents. Analysis of legislation and its application during the Covid-19 emergency situation in Latvia allowed us to

¹ World Health Organisation. *Addressing Human Rights as Key to the COVID-19 Response*. Retrieved April 21, 2020, from <https://apps.who.int/iris/rest/bitstreams/1275275/retrieve>

² This paper is prepared within the research project "Impact of COVID 19 on the health care system and public health in Latvia, ways in preparing the health sector for future epidemics VPP-COVID-2020/1-0011".

assess the opportunities and challenges of the protection of human rights and ensuring the rights to health and to provide health care services in the context of a pandemic.

The study allows us to conclude that there have been substantial insufficiencies in the protection of the right to health during the Covid-19 pandemic in Latvia. The study provides us with knowledge allowing us to develop recommendations embracing human rights as an integral part of responses to the public health crises in future.

2 Fundamental rights in health care: right to health and the right to provide services

2.1 The Right to health in Latvian Constitutional Law

The protection of the individual's fundamental rights is one of the most important responsibilities of a democratic state governed by the rule of law. Fundamental rights, including the right to health, are important values of a democratic state, that must be ensured and adequately protected both in everyday conditions and during crises. Integrating human rights protections and guarantees into our shared responses is not only a moral imperative, it is essential to successfully address public health concerns.³ International human rights standards stipulate that although human rights may be restricted in an emergency situation, any restrictions must meet the absolute necessity test. It should also be borne in mind that there are some human rights from which no derogation is possible under any circumstances (Ziemele, 2020).

The preamble of the Constitution (Satversme) of the Republic of Latvia (hereinafter – the Constitution) states that “Latvia as a democratic, socially responsible and national state is based on the rule of law and on respect for human dignity and freedom; it recognises and protects fundamental human rights and respects ethnic minorities”. This principle applies both in normal circumstances and in cases of emergency. The Preamble of the Constitution furthermore states that “Each individual takes care of oneself, one's relatives and the common good of society by

³ World Health Organisation. *Addressing Human Rights as Key to the COVID-19 Response*. Retrieved April 21, 2020, from <https://apps.who.int/iris/rest/bitstreams/1275275/retrieve>

acting responsibly toward other people”. This norm stipulates that in the case of a pandemic, when the spread of the virus threatens both individuals, their relatives and the common goods of society, such as health, well-being and chances of economic development, everyone, including public institutions and individuals, has duties and responsibilities to one another.

The general legal framework for the organization of health care services, in general, is determined both by the norms of the Constitution, including Article 111, and the norms issued by the Parliament of the Republic of Latvia (Saeima) - the Medical Treatment Law, the Law on the Rights of Patients, the Health Care Financing Law and other laws, and the provisions of the Cabinet of Ministers Regulations.

The right to health is a fundamental right. Article 111 of the Constitution stipulates: “The State shall protect human health and guarantee a basic level of medical assistance for everyone” (Constitution of Latvia, Article 111). The Constitutional Court of the Republic of Latvia (hereinafter – the Constitutional Court) has recognised that the State’s obligation to respect, protect and ensure a person’s right to health follows from Article 111 of the Constitution. The obligation to respect the right to health means that the State must refrain from interfering with a person’s rights and freedoms. It must abstain from such activities that restrict a person’s possibilities to take care of his or her health protection. The obligation to protect the right to health means that the State must protect a person from other persons interfering with his or her exercise of fundamental rights. The obligation to ensure the right to health also means that the State must implement concrete measures for exercising this fundamental right.⁴

In a case concerning the State’s obligation to provide medicines, the Constitutional Court has recognised that the obligation of the State to ensure accessibility of medicines follows from Article 111 of the Constitution.

The State cannot refuse to fulfil the economic, social, and cultural rights included in the Constitution, however, the scope of implementation of these rights may depend upon the resources at the disposal of the State. Therefore, the State’s task is to allocate resources and decide, to whom, under what circumstances and what kind of

⁴ Judgment of the Constitutional Court of 9 April, 2013 in Case No. 2012-14-03, para. 12.

treatment shall be paid for. There are no universal criteria for setting priorities in this field; therefore, the State has broad discretion in deciding these issues.⁵

Latvia's international human rights obligations must be taken into account in order to clarify the content of the fundamental rights specified in the Constitution. According to the doctrine of monism, international legal provisions that are binding upon the Republic of Latvia are applied directly in Latvia. In the legal hierarchy, international norms will prevail over hierarchically the same national legal norms. Depending on the content and degree of legitimacy attributed to the international legal norm, these norms can slot into various places within the national legal hierarchy (Rezevska & Ziemele, 2013: 232-233).

Article 89 of the Constitution stipulates that the state recognizes and protects fundamental human rights following the Constitution, laws and international agreements binding on Latvia. It follows from this Article that the legislator aims to achieve harmony of the human rights norms included in the Constitution with the norms of international law. International human rights norms binding on Latvia and the practice of their application at the level of constitutional law also serve as a means of concretization to determine the content and scope of the principles of a democratic state governed by the rule of law, insofar as it does not lead to a reduction in the protection of fundamental rights.⁶

The provisions of international agreements stipulating protection of the right to health are binding on Latvia and must be observed. These agreements include the UN Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights, the European Convention of Human Rights and the Convention on Human Rights and Biomedicine (hereinafter - Biomedical Convention). As a member of the EU, Latvia is obliged to observe EU law protecting the right to health.

⁵ Judgment of the Constitutional Court of 11 December 2006 in Case No. 2006-10-01, para. 14.2 and para 14.3, also Judgment of 29 September 2008 in Case No. 2008-37-03, para. 12.1.2 and para. 12.1.3.

⁶ Judgment of the Constitutional Court of 16 July 2020 in Case No. 2019-25-03, para. 18.

To exercise the right to health protection and health care, the State must ensure access to health protection and health care. The core obligations that each State must fulfil immediately to realize the right to health, regardless of its economic and human resources, are outlined by the Committee on Economic, Social and Cultural Rights in General Comment No. 14.⁷ The right to health includes four equally important components: availability, accessibility, acceptability and quality.⁸ In the context of a pandemic, the right to health means that measures must be taken to protect human health, both in general and concerning the specific threat, in this case, the spread of the Sars-CoV-2 virus.

The state must ensure effective protection to all persons, whose rights or lawful interests have been infringed.⁹ This means that the State should ensure that public health and health care institutions, goods and services, as well as public health care programs, are sufficiently available to the population.¹⁰ The State, through its competent authorities, must organize the health protection measures, including health care, necessary to ensure the rights of the society and individuals. This obligation includes the provision of adequate health care facilities, such as hospitals, laboratories and outpatient facilities, and the provision of educated and professional medical staff. In a pandemic situation, but also in general, this means that the State must ensure the existence and effective functioning of professional epidemiological safety services. During a pandemic, availability is the responsibility of the State to ensure that the country has adequate means to protect public health against the virus, such as virus and disease testing, an effective epidemiological investigation system, and appropriate medical facilities for treatment of patients suffering from Covid-19.

The right to health is also seen as the right of society, various groups in the society and also individuals to equal access to health care. To exercise this right, the State must guarantee that health care facilities and health care services are accessible to everyone without discrimination. The Constitutional Court has recognized that the implementation of the right to health must comply with the principle of equality enshrined in the first sentence of Article 91 of the Constitution, which provides “All

⁷ Committee on Economic, Social and Cultural Rights (2000, see note 7), paras. 43–44.

⁸ Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural rights: General Comment No. 14 (2000). Committee on Economic, Social and Cultural rights, 22nd session, Geneva, 2000.

⁹ Judgment of the Constitutional Court of 20 April 2012 in Case No. 2011-16-01.

¹⁰ Judgment of the Constitutional Court of 20 April 2012 in Case No. 2011-16-01.

human beings in Latvia shall be equal before the law and the courts” as well as the principle of prohibition of discrimination contained in the second sentence “Human rights shall be realised without discrimination of any kind”. It is essential to ensure fair and affordable healthcare for all. The Court has emphasized the importance of the principle of equality in the fair distribution of health care funds and stated that the implementation of human rights in the field of health care allows for positive discrimination: the State is entitled to grant more rights to particularly vulnerable groups such as children, the disabled and for the older people.¹¹

In addition, this includes the right to receive healthcare in an emergency, regardless of whether the patient has been diagnosed with Covid-19 or any other illness. In the event of a pandemic, not only Covid-19 patients, but every patient has the right to receive timely and high-quality healthcare. The prohibition of discrimination protects all patients from discrimination and prohibits healthcare professionals from refusing to provide health services based on a patient's state of health, including prohibiting discrimination against patients based on religion, ethnic origin, gender, or other grounds.

Physically accessible healthcare services must be provided to all citizens, but especially to vulnerable groups that are widely varying, such as people with reduced mobility, hearing or visual impairments, etc. In the case of a pandemic, the ability of different groups in society to access health care services in the normal way needs to be reassessed, and the risks of spreading the virus associated with access to health care services also needs to be assessed. If restrictive measures, that disrupt or restrict certain groups from accessing the necessary health care, are identified, new and appropriate support measures must be provided, for example, assessing whether the availability of services remotely is appropriate for a specific group.

Economic (financial) affordability means that the State must ensure that the necessary health care services and goods are financially accessible to all. In cases where the State sets fees for health care services, the principle of fairness must be observed, namely, the fee must be such that it does not create financial barriers, especially for vulnerable groups.

¹¹ Judgment of the Constitutional Court of 29 December 2008 in Case No. 2008-37-03.

Access to information ensures that individuals can exercise the right to health. The State must ensure that citizens can request and receive both general and pandemic-specified information on health care issues. The information must be scientifically well-based, easily accessible, well-understood and up to date. Access to the information must not be affected by the right to the processing of confidential personal health data, for example, about the medical status of specific patients.¹²

Equally important is the exercise of the right to health care measures that ensure acceptability. Acceptability requires that health facilities, goods, services and programmes are people-centred and cater for the specific needs of diverse population groups and following international standards of medical ethics for confidentiality and informed consent.¹³ For example, patients in the intensive care unit were banned from using mobile phones, as a result of which the patient's most important right to communicate with relatives and receive their support was denied. In addition, video communication tools help to involve close relatives in the treatment of the patient, for example, to obtain the informed consent of the patient's representative if the patient's decision-making capacity is limited.

All healthcare institutions and providers must ensure that medical ethics and cultural standards are observed during a pandemic, as is normally the case. This means that the control of the virus must respect the culture of individuals, minorities, communities and society, respect the needs of the gender and the life cycle, and ensure confidentiality while improving the health of the person concerned.¹⁴

Quality is an integral part of the right to health. As in normal circumstances, the scientific and medical suitability and high quality of healthcare facilities, goods and services must be ensured in the event of a pandemic. Quality assurance requires the professionalism of medical practitioners, and physicians need to know and apply the scientific knowledge available about the control of the virus and the treatment of those who are ill. During the Covid-19 pandemic, research is particularly dynamic and extensive. The scientific knowledge obtained as a result of the research on the

¹² Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural rights: General Comment No. 14 (2000). Committee on Economic, Social and Cultural rights, 22nd session, Geneva, 2000.

¹³ World Health Organisation. *Human rights and health*. Retrieved 29 December, 2017, from <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>

¹⁴ World Health Organisation. *Human rights and health*. Retrieved 29 December, 2017, from <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>

nature, spread, risks and control of the virus is summarized and published in authoritative scientific sources relatively quickly. Thanks to the globalized and fast exchange of information, scientific data is available in Latvia immediately. Although the availability of scientific data is effective, the implementation of scientific knowledge in Latvia, for example regarding the transmission of the virus as aerosols, has been slow and seriously delayed.

Every citizen has the right to receive and enjoy health protection measures of high quality. Patients have to receive quality health care services in case of illness. In normal circumstances, as well as during a pandemic, the patient has the right to a respectful attitude and qualitative medical treatment regardless of the nature and severity of his or her disease.¹⁵

The right to health protection and healthcare requires that the State ensures the use of scientifically tested medicines and hospital equipment. Quality also means that medical institutions must have a safe environment, and in the event of a pandemic, special attention must be paid to limiting the spread of the virus during the treatment process, while protecting patients and health care workers.

2.2 Right to provide health care services in Latvian Constitutional Law

To secure the provision of the right to health the right to provide health care services should be secured. The right to provide health care services is exercised by health care institutions which are legal entities and by health care professionals as individuals.

The right of a medical practitioner to freely provide his or her professional services and thus assist people in case of illness is established in Article 106 of the Constitution: “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications” (Constitution of Latvia, Article 106).

¹⁵ Law On the Rights of Patients, Latvijas Vēstnesis, 205, 30.12.2009, Article 5(2).

The Constitutional Court has repeatedly acknowledged that the first sentence of Article 106 of the Constitution does not directly guarantee the right to work, but the right to freely choose an employment and a place of work, including the right to maintain the existing employment and a place of work. Thus, the right to freely choose employment includes such an essential element as the right to maintain existing employment, which in turn includes the right to continue that employment in the future.¹⁶

The right to "freely choose" requires that an individual is provided with an opportunity to choose, but does not require that everyone is provided with an opportunity to work, moreover, to work exactly the job he or she wishes.¹⁷ Although the first sentence of Article 106 protects the fundamental rights of a person against all State activities that restrict a person's freedom to choose employment, this norm does not prevent the State from determining the requirements that a person must meet to be able to pursue particular employment.¹⁸

The right of health care institutions¹⁹ to provide medical treatment services and thus perform commercial activities is one of the ways of the right to property, specified in the first sentence of Article 105 of the Constitution, is realized. Article 105 states, in part: "Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law." Therefore, the right to perform a certain type of commercial activity, including the provision of health care services, falls within the scope of Article 105 of the Constitution. As indicated by the Constitutional Court in its judgment of 11 December 2020 in case no. 2020-26-0106: "The first sentence of Article 105 of the Constitution protects the lawfully acquired property of a person, however, the second and third sentences allow the state to restrict property rights in the public interest by law."²⁰

¹⁶ Judgment of the Constitutional Court of 7 June 2019 in Case No. 2018-15-01.

¹⁷ Judgment of the Constitutional Court of 4 June 2002 in Case No. 2001-16-01, para. 2 of the conclusion part.

¹⁸ Judgment of the Constitutional Court of 23 April 2003 in Case No. 2002-20-0103, para. 3 of the conclusion part and Judgment of the Constitutional Court of 21 December 2015 in Case No. 2015-03-01, para. 14.2.

¹⁹ There are legally various types of health care institutions operational in Latvia, such as individual mechanics, partnerships or capital companies (limited liability company or a stock company).

²⁰ See: Judgment of the Constitutional Court of 8 April 2015 in Case No. 2014- 34-01, para. 12.3.

2.3 General Requirements for restriction of the right to health and right to provide services

Providing permission to restrict the right to health is stated also in Article 26 of the Biomedical Convention. It provides for some exceptions to the exercise of the rights and protective provisions guaranteed thereunder; these may be restricted provided that such restrictions are laid down by law and are necessary for a democratic society in the interest of public safety, for the prevention of crime, for the protection of public health or the protection of the rights and freedoms of others.²¹

A pandemic is a relatively slow process compared to other possible emergencies, especially those that could be caused by a natural disaster. Therefore, it is possible to act thoughtfully but dynamically to precisely issue special legal norms and apply them in practice. The State ought to be operational, even in emergency situations, while human rights must be protected within the means and discretion available to the State.

It is well-known that when determining a restriction of fundamental rights, it is necessary to assess 1) whether the restriction of fundamental rights has been established by law; 2) whether the restriction has a legitimate aim; 3) whether the restriction is proportionate to the legitimate aim.²²

The case law of the Constitutional Court has unequivocally confirmed that the mechanism of restriction of fundamental rights specified in Article 116 of the Constitution allows restriction of fundamental rights only with duly issued legal regulation. Restrictions on fundamental rights must be established in a legislative process that complies with the principle of good legislation.²³

When assessing whether a restriction has been established by law, the following factors shall be assessed: 1) whether the law has been adopted in compliance with the procedures provided for in regulatory enactments; 2) whether the law has been promulgated and is publicly available in accordance with the requirements of

²¹ Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Article 26.

²² See, for example, Judgment of the Constitutional Court of 6 April 2021 in Case No. 2020-31-01, para. 14.

²³ See Judgment of the Constitutional Court of 20 March 2020 in Case No. 2019-10-0103, para. 25.

regulatory enactments; 3) whether the law is formulated clearly enough so that any person can understand the content of the law and obligations arising therefrom and envisage the consequences of its application.²⁴ However, if the restriction of fundamental rights is not established by law, then it does not comply with the Constitution.²⁵

Restrictions must be justified by the need to protect public health or any other important right. It is necessary to provide appropriate and proportionate control measures to achieve the stated objective. In addition, restrictions of rights imposed for reasons of epidemiological safety should be as scientific and data-based as possible at that moment (Pastars, 2020).²⁶

For a restriction to be considered legally permissible, it must pursue an important aim. The aim is usually specified in the legal norms that determine the restrictions of rights. However, it is possible that the aim of the legal norm is not included in the legal norm itself, but instead is indicated in the annotation of the regulatory enactment, which is recognized as a mandatory document of the process of issuing the regulatory enactment. In a pandemic situation, the restrictions are intended to protect public health and the health of others.

The third criterion, which must be assessed when assessing the restriction of fundamental rights, is whether it is proportionate to the legitimate aim. Namely, whether the chosen means is suitable for achieving the goal and whether it is the least restrictive means possible. Therefore, when imposing restrictions, the possible means of restriction, their suitability for the purpose and their proportionality must always be considered.

²⁴ See, for example, Judgment of the Constitutional Court of 25 March 2021 in Case No. 2020-36-01, para. 14.

²⁵ See: Judgment of the Constitutional Court of 12 December 2014 in Case No. 2013-21-03, para. 12.6.

²⁶ Judgment of the Constitutional Court of 6 March 2019 in Case No. 2018-11-01, para. 18.1.

3 Legal regulations governing an emergency situation and rights in health care during the Covid-19 pandemic

The first emergency situation²⁷ due to the Covid-19 pandemic was declared on 12 March 2020, by the Cabinet of Ministers of Latvia by issuing Cabinet order No. 103 'Regarding Declaration of the Emergency Situation'²⁸, extended two times and lasting until 9 June 2020. During the first (wave) emergency situation, the incidence of Covid-19 infection in Latvia in comparison to other EU countries was low.

The declaration of the emergency situation was based on general legislation concerning the state of emergency, natural disaster and epidemiological safety. Article 62 of the Constitution states that the Cabinet has the right to proclaim a state of emergency if the State is threatened by an external enemy, or if an internal insurrection endangers the State. The emergency state due to public health endangerment is not mentioned in the Constitution but is stated by the Law on Emergency Situation and the State of Exception (Law on Emergency Situation and State of Exception, Article 4(2)). This Law provides that the Cabinet can declare an emergency situation as a special legal regime when the health and life of human beings are significantly endangered (Law on Emergency Situation and State of Exception, Article 8). In declaring an emergency situation, the Law allows the Cabinet to limit rights of natural persons and legal persons, impose special duties, stipulate movement and gathering restrictions and special procedures for access to goods and services, and other measures necessary in the particular situation (Law on Emergency Situation and State of Exception, Article 8). Additionally, the 'Civil Protection and Disaster Management Law' determines principles and rules of civil protection and disaster management (Civil Protection and Disaster Management Law, Article 2). The Epidemiological Safety Law authorizes the Cabinet to determine the epidemiological safety measures to limit the spread of individual infectious diseases (Epidemiological Safety Law, Article 3(2)).

Soon after the announcement of the emergency situation, on 23 March 2020, the President of Latvia called for a joint session of the Speaker of the Parliament, the Prime Minister, the President of the Supreme Court, and the President of the Constitutional Court. The session determined the basic principles of State action

²⁷ In Latvian law two different terms are used – the state of emergency and an emergency situation.

²⁸ One day later than WHO declared the pandemic globally.

during the emergency. The first of these states: "The exceptional situation of 12 March 2020 has been announced, affecting the daily lives of the country, society and every human being. The Constitution states that the existence and sustainability of a state, society and every person within the framework of a democratic state must be protected in any exceptional circumstances." The President of Latvia Egils Levits, in his publication in the journal "Jurista vards", stressed: "The basic principles of the Constitution, the powers of constitutional organs and the fundamental rights of the person must be equally effective and applicable, in everyday circumstances and exceptional circumstances." Therefore, there is no doubt that, in the event of an emergency, it is not possible to override the legal principles and the fundamental rights of individuals when determining the activities of the health system as a whole and the rights of patients, medical practitioners and medical treatment institutions, but it is necessary to ensure that they are adequately protected both when they are issued and when applied.

Two new general laws for the management of the emergency situation were drafted and enacted soon after the declaration of the emergency situation. The law 'On Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of COVID-19'²⁹ was submitted to the Parliament on 20 March 2020, and adopted on the same day. The draft law 'On the Operation of State Authorities During the Emergency Situation Related to the Spread of COVID-19'³⁰ was submitted to the Parliament on 1 April and adopted on 3 April 2020. These legal acts provided regulations in respect to the operation of State authorities during the pandemic, stated rights and obligations of public and private persons. These laws did not regulate the provision of health care. These two laws were in force until 9 June 2020.

More detailed regulations were enacted by the Cabinet by amending Order No. 103 23 times. Various existing regulations of the Cabinet were amended in light of Covid-19 needs.

²⁹ The law 'On Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of COVID-19'.

³⁰ The law on the operation of state authorities during the emergency situation related to the spread of Covid-19.

During the first emergency situation, health care services were regulated by the general laws as well as by Cabinet Order No 103. On March 25, the Minister for Health issued Order No. 59 'Regarding the Restriction of the Provision of Health Care Services during the Emergency Situation'³¹ that was in force to 09 June 2020. Restrictions on right to health posed by this Order are further described in part 4 of this paper.

To secure regulation of further suppression measures and the stability of economics after the first emergency situation was ending, the Latvian government drafted and submitted to the Parliament two new laws. The Law on the Management of the Spread of Covid-19³², as well as the Law on the Suppression of Consequences of the Spread of Covid-19 Infection³³ were enacted by the Parliament on 5 June and entered into force on 10 June 2020. Covid-19 specific epidemiological safety rules were prepared as a draft of Cabinet Regulations for epidemiological safety. Based on delegation provided by the Parliament, the Cabinet issued Regulation No. 360 'Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection'.³⁴ These three legal acts are governing Covid-19 suppression and economic matters.

4 Legal regulations limiting the right to health during the Covid-19 pandemic

At the very beginning of the emergency situation, some limitations in respect of the health organisation were determined by the provisions of Cabinet Order 103. The Cabinet limited visits of third parties to medical and social care institutions. This rule was implemented in a way prohibiting visits to patients in hospitals. Some hospitals restricted the presence and visits of a support person before, during and after births.

³¹ Order of the Minister of Health No. 59 'Regarding the Restriction of the Provision of Health Care Services during the Emergency Situation'.

³² Law on the Management of the Spread of COVID-19.

³³ Law on the Suppression of Consequences of the Spread of COVID-19 Infection.

³⁴ Cabinet Regulation No. 360 'Epidemiological Safety Measures for the Containment of the Spread of COVID-19 Infection'.

Several rights issues, including the limitation of fundamental rights and the rules for the payment of the work of medical practitioners, were determined by issuing orders from the Minister for Health. On 25 March 2020, the Minister for Health issued Order No 59 on the limitation of the provision of healthcare services in the event of an emergency (Order No. 59).

On March 25, 2020, the Cabinet of Ministers made amendments to Order No. 103, inserting the norm of paragraph 2(1):

According to the development of the epidemiological situation in the State, the Minister for Health has the right:

2.(1) 1. upon assessing epidemiological risks and by reaching an agreement with the representatives of the health sector, to restrict the provision of health care services (preserving those health care services which are life-saving and which require continuity of treatment), including to restrict the right of a medical practitioner to provide health care services in several medical treatment institutions.

In the annotation of this regulatory enactment, which, as can be seen in the document submitted to the Cabinet of Ministers, was prepared on March 23³⁵, a different version of the draft amendment can be found: “According to the development of the epidemiological situation in the country, the Minister of Health has the right to: 2.(1) 1. to restrict the provision of health care services, including restricting the right of a medical practitioner to provide health care services in several medical treatment institutions.”

Several significant features have been added to the norm after the submission of the draft amendment to the Cabinet of Ministers on March 23, 2020. These features require the assessment of epidemiological risks, the ability to agree with healthcare professionals, and the maintenance of life-saving healthcare services that require continuity of care. No justification for adopting such a norm can be found in the annotation or any other published documents. It is self-evident that the Cabinet of

³⁵ Cabinet of Ministers Order No. 103 “Regarding Declaration of the Emergency Situation” (annotation), from <http://tap.mk.gov.lv/lv/mk/tap/?pid=40485395>

Ministers has determined that life-saving measures may not be restricted. It is rightly stated that epidemiological risks need to be assessed.

The norm that the Minister of Health must agree with the representatives of the medical field is not understandable. It is not even possible to ascertain the meaning of phrase "representatives of the health sector" in the legislation. In addition, it is not clear from the norm when, with whom, and what agreement would be needed to restrict health care services.

The draft amendments to the Order of the Cabinet of Ministers fail to mention anything regarding the fact that the Cabinet of Ministers has delegated to the Minister of Health the obligation to restrict the fundamental right of patients to receive necessary services. It contains no reference on the restriction of the fundamental right of medical practitioners and institutions to provide services, which is also a restriction of the fundamental rights. Moreover, no justification can be found to justify a restriction on the right of a medical practitioner to provide healthcare in several medical institutions.

On the same day, March 25, 2020, following the Cabinet Order – the Minister of Health issued Order No. 59 'Regarding the Restriction of the Provision of Health Care Services during the Emergency Situation'³⁶ (hereinafter – Order No. 59) Paragraph 1 provided in part:

"The provisions of health care services shall be suspended, except for... [..]";

Along with the adopted Order, the Minister introduced significant restrictions on the receipt and provision of health care services during the emergency situation. A determination was made to suspend the provision of health care services. Exceptions were made however, listing those services which were not suspended. Exceptions included matters such as emergency medical assistance, health care services at home, services to ensure the continuity of treatment, care for pregnant woman, the health

³⁶ Order of the Minister for Health No. 59 'Regarding the Restriction of the Provision of Health Care Services during the Emergency Situation', 27.03.2020.

care services provided by a general practitioner, vaccination and acute dental services and a few more.³⁷

Ironically, given that many serious Covid-19 related symptoms involve the respiratory system, the Order also stipulated that the provision of most health care services for patients with respiratory symptoms was particularly restricted, providing that only emergency medical assistance, health care services provided by a general practitioner and a few more can be obtained. The Order did not prescribe what to do if a patient needed, for example, chemotherapy or oncology surgery, or suffered from a respiratory disorder or illness, such as an acute respiratory infection. In such cases, measures should be taken to limit the possibility of a Covid-19 infection and not delay the provision of the necessary treatment to the patient. In addition, the Order of the Minister for Health stipulated that patients with chronic diseases should be provided with health care remotely as far as possible.³⁸ Thus, remote care was permissible only in the case of chronic diseases and otherwise when remote medical care was possible.

It is not clear why remote services, as a possible method to provide health care services, were not defined in general. The norm governing the provision of remote services is insufficient. Nothing is indicated about the types of provision of remote services, the quality of these services, the methods of resolving situations when, during a remote service, it becomes apparent that the patient's situation is critical (thus requiring in-hospital care), patient protection measures during remote consultation and documentation of such services.

Later, Order No. 59 was amended four times, extending the scope of the health care services available.

As a result, the disease prevention and treatment services required by patients were not available or were significantly limited. Orders imposed significant restrictions both on the right of patients to receive healthcare services and on the right of healthcare institutions and individuals to provide them. Consequently, the patients'

³⁷ Order of the Minister for Health No. 59 'Regarding the Restriction of the Provision of Health Care Services during the Emergency Situation', 27.03.2020, Clause 1.

³⁸ Order of the Minister for Health No. 59 'Regarding the Restriction of the Provision of Health Care Services during the Emergency Situation', 27.03.2020., Clause 2.

right to health, and the rights of health care institutions to provide health care, were restricted.

To assess the justification of the implemented restrictions, it is necessary to look at the scope of the right to provide health care services within the framework of the Constitution. In the Latvian legal system, ministers, including health ministers, are not given the right to issue such external legal acts that prohibit the right of medical institutions or medical practitioners to provide services and deprive patients of the right to receive them.

Therefore, it can be concluded that there was no constitutional basis for the actions of the Cabinet of Ministers and Minister of Health to impose such restrictions of fundamental rights - the right of health of patients, and the right to health care institutions and health care professionals to provide health care (the right to conduct business).

The information provided to patients by Latvian health care institutions regarding various restrictions during the pandemic shows that health care institutions introduced various restrictions on patient rights by issuing internal legal norms. Examples include restrictions on patients to receive and use private property, including phones in intensive care units, a restriction on allowing women support person to attend the birth and other measures.

Critically, health care institutions must comply with their obligations under the legislation, including in the area of patient rights. They are not entitled to issue such *ipse dixit* legal norms that determine or may lead to the restriction and violation of patient rights specified in the Constitution or laws, for example, in the field of human dignity, the right to self-determination or the right to health.

Hospitals, as well as any other health care institutions, must fulfil all the obligations laid down in the rules governing patient rights. Hospitals may apply restrictions only if they are imposed by external legal norms and only in a manner to be prescribed by law.

It is therefore concluded that some of the restrictions imposed by the health care institutions were not legally justified but were arbitrary and capricious. They illegally restricted the right of individuals to obtain quality healthcare services, restricted accessibility and acceptability.

5 Conclusions

As a pandemic is a relatively slow process compared to other possible emergencies, it is possible for the Government and governmental actors, and others, to act thoughtfully, but dynamically, to precisely issue special legal norms and apply them properly in practice.

In a democracy, there is no doubt that a state of emergency is not sufficient justification for the rights of patients, medical practitioners and institutions to be ignored. These rights must always be adequately protected by the State. The State, through its competent authorities, must organize the health protection measures, including health care, necessary to ensure the rights of the society and individuals. During pandemics, the State has an ongoing duty to ensure the implementation of the right to health care and its protection by guaranteeing accessibility, availability, acceptability and quality.

In a state of emergency, state institutions must continue to protect the rights of patients within the limits of the best possible possibilities. Pandemics clearly pose significant challenges, yet the challenges created must be solved using the procedures specified in the Constitution. The quality of regulatory enactments issued in the field of health care for the organisation of a state of emergency and the documents required for its issuance were not satisfactory.

Many restrictions of rights imposed for reasons of epidemiological safety do not have a scientific basis, which is a mandatory requirement for restrictions of rights during pandemics. The legislation studied, and its annotations, only indicate that the restriction of rights is necessary due to the pandemic and epidemiological situation. There is no evidence that the purpose to be achieved and the suitability of the restrictions to achieve their stated purpose, were adequately assessed when they were imposed.

Legal regulations regarding the restrictions upon health care services and patients' rights were not issued following the procedures specified in the Constitution. The Cabinet of Ministers performed a substantial and extensive sub-delegation of the right to restrict fundamental rights to the Minister of Health, contrary to the procedure for restricting fundamental rights established in the Constitution, whereas the Minister of Health set restrictions on the fundamental rights of patients, health care institutions and health professionals by issuing internal regulatory enactments. It can be concluded that there was no constitutional basis for the actions of the Cabinet of Ministers and the Minister of Health to impose restrictions of fundamental rights - the right of health of patients, and the right to health care institutions and health care professionals to provide health care (the right to conduct business). Some of the restrictions imposed by the health care institutions restricting the rights of patients were not legally justified but were instead arbitrary and capricious.

Acknowledgements

This paper is prepared within the research project “Impact of COVID 19 on the health care system and public health in Latvia, ways in preparing the health sector for future epidemics VPP-COVID-2020/1-0011”.

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