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Patient's right to pastoral care

Abstract

The right of the patient to pastoral care is to attain freedom of conscience. And although it is a legal concept, that to date there is no specific scope of that law. Doubts also raises the catalog of entities that law should be respected. The article presents the most important issues related to the functioning of the patient's right to pastoral care, attention was drawn to some shortcomings of the legal system while indicating those areas which require urgent changes.

Keywords

patient, patient's rights, pastoral care, churches and religious associations, freedom of conscience and religion

Prawo pacjenta do opieki duszpasterza

Streszczenie

Prawo pacjenta do opieki duszpasterskiej ma na celu realizację swobody sumienia. I chociaż jest to pojęcie ustawowe, to do tej pory nie ma określonego zakresu przedmiotowego tego prawa. Wątpliwości budzi również katalog podmiotów, w których prawo to powinno być przestrzegane. W artykule przedstawiono najważniejsze problemy związane z funkcjonowaniem prawa pacjenta do opieki duszpasterskiej, zwrócono uwagę na pewne niedociągnięcia systemu prawnego jednocześnie wskazując te obszary, które wymagają pilnych zmian.

Słowa kluczowe

pacjent, prawa pacjenta, opieka duszpasterska, kościoły i związki wyznaniowe, wolność sumienia i religii

According to the wording of Art. 53 paragraph 1 of the Polish Constitution of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483 with later). Guarantees everyone freedom of conscience and religion.

These freedoms are the right of a personal nature closely related to the personality of the man and his worldview, perception of the world and can mean freedom to adopt any religion but also advocate a worldview atheistic, agnostic or deistic. Freedom of conscience and religion is also espousing religious pluralism, religious tolerance. It should be emphasized that both these freedoms are entitled to "every" man residing on Polish territory, and not just "citizen". The use, by the body of this freedom is not

limited to “territorial”, does not depend on staying e.g. In a particular province, region, although execute the tasks filler content of those rights may be subject to specific legal regime in force at the place where the person resides. In such a situation, most often it happens that freedom of religion afforded the unit corresponds to the obligation to provide for operations of filling this law, the obligation for managing such a facility. A classic case of such relations are in jail, detention or hospitals where managers have a duty to ensure the implementation of “freedom of religion”.

The consequence of this constitutional guarantee is contained in Art. 36 of the Act of 6 November 2008. On patients’ rights and the Patient Ombudsman (Journal of Laws of 2012, item 119, as amended; hereinafter referred to interchangeably: “u.o.p.p.”) patient’s right to pastoral care.

Laconic sounding u.o.p.p. article 36, which states that the “patient living in a therapeutic entity carrying out medical activities in the stationary kind has body health benefits (...) has the right to pastoral care” raises many doubts and needs a wider analysis.

Interpretation problems are already appearing when trying to determine the exact catalog of therapeutic entities which aim at ensuring the patient the right to pastoral care. The Act contains no explicit, clearly and precisely defined catalog of such entities and shall return to the subject of the action. Indeed, only on entities engaged in “a kind of therapeutic activity has body stationary health benefits”, rests the obligation in question. In Article 2, paragraph 2, item 2 of the Act of 15 April 2011. On medical activity (Journal of Laws of 2015, item 618 with later; hereinafter interchangeably: “u.o.d.l.”) an attempt to define the type of medical activity has body stationary health benefits without a detailed definition (kind of benefits referred to in Art. 36 o.u.p.p.). The legislator said that this type of benefits includes “medical activities in the kind of hospital services, as well as the kind of stationary activity has body health services other than hospital”. It is therefore necessary to consider the catalog of such benefits and therefore should better define those offering such benefits, in order to be able to create a list of entities, in which you must provide the patient with the right to pastoral care.

Least doubts rise “hospital services” which are defined as comprehensive health care services performed by the entire day involving the diagnosis, treatment, care and rehabilitation that cannot be exercised within the framework of other ambulatory health care services or health services — Art. 2, paragraph 1, item 11 u.o.d.l. The second group of benefits — a kind of therapeutic activity has body stationary medical services other than hospital — is much more ambiguous. It can create items such as: the provision of care, nursing, palliative, hospice, with long-term care, rehabilitation, substance abuse treatment, mental health care, spa treatment. In addition, these benefits may be granted only for patients whose health condition requires the award of clock or day health services in fixed properly furnished rooms — Art. 2, paragraph 1, item 12 u.o.d.l. One would assume that the legislature created as readable — closed list — “health services other than hospital”. Unfortunately, the analysis of the subsequent articles of the law on medical activity, shows how this bill is inconsistent, as much includes the deficiencies errors. An example of such “shortcomings” of the legislative is Art. 9, paragraph 1, item 1 to 4, containing another attempt precise definition of “fixed and round the clock

health care services other than hospital”. In contrast to the Art. 2, paragraph 1, item 12, this article contains a catalog of open health care services other than hospital. In particular, such benefits are included, among others: health benefits, which include its range of care and rehabilitation of patients not requiring hospitalization — Art. 9, paragraph 1, item 1 (section); health benefits consisting of improvement actions which serve to preserve, restore and improve health — Art. 9, paragraph 1, item 3; health, psychological and social care of patients located in terminally ill and care for the families of these patients — Art. 9, paragraph 1 item 4.

Thus, it is clear that the provisions of these articles do not correspond with each other, they are not consistent. Regulations Art. 9, paragraph 1 u.o.d.l., affect expand the catalog of entities involved in healing, in which the patient is entitled to pastoral care and limited to name some of them.

Analysis in the articles and the content of Art. 12 section 1 item 1–4 u.o.d.l. allows to summon that therapeutic entities in which the patient has a right to pastoral include, among others:

- a) hospitals,
- b) establishments care — medical,
- c) nursing homes — care,
- d) bet rehabilitation,
- e) hospices.

Attempting to clarify, specify the entities in which the patient must be able to benefit from the pastoral ministry was, among others, the subject¹ of the Ombudsman to the Minister of Health — Letter ROP — 746061-I/13/KJ of 23.VIII.2013. In reply to the Ombudsman, the Minister of Health (letter dated 18.IX.2013) has confirmed that hospices They belong to the group of entities on which rests a statutory duty to provide patients with the right to pastoral care².

It should be noted that according to Art. 17 of the Concordat between the Holy See and the Polish Republic on July 28, 1993 r. (Journal of Laws of 1998, No. 51, item 315), “The Republic of Poland guarantees the conditions for the exercise of religious practices and use religious persons residing in institutions (...) health and social care, as well as in other establishments and institutions of this kind.” So we have here another entity (or rather a closer vague entities), in which, to the occupants in, and not only patients, should ensure the right to perform religious practices.

In light of these considerations, we should consider defining exactly naming facilities where the patient has a right to pastoral care. Another solution might be to change regulations involving to simplify and clarify the scope of medical benefits decisive for completing specific therapeutic entity, a group of those in which discussed the patient’s right is to be realized.

Another problem of interpretation is the same meaning and scope “pastoral care”. It is not a legal term, and how to adopt the Ombudsman, “within the framework of that law is primarily about allowing the patient to contact the pastor, as well as

¹ The content of speech of the Polish Ombudsman, on: www.rpo.gov.pl; retrieved: 18 December 2014.

² Commentary on the response of the Minister of Health, on: www.ekai.pl; retrieved: 18 December 2014.

providing him with a place of prayer”³. It is therefore clear that it is therefore another attempt to generalize the notion that the concept should, however, be strict.

Analysis of statutory regulations shows that the scope of “pastoral care,” the legislator has used a very wide scope, which in many cases is inconsistent.

Only in two laws regulating the relation of the state to churches and religious associations in question is to ensure to persons residing in “therapeutic entities”, “the right to exercise religious practices and use of pastoral care”⁴. One of the law recognizes only “the right to religious services”⁵ and other laws regulating relations the state with particular churches and religious associations, as a rule, combine the “right to exercise religious practices” from “religious ministries”, “catechesis”, “participation in religious services”⁶.

You may wonder why the legislature has so far not created a single, common for all the churches, the scope of activities forming the subject of “pastoral care”.

Doubts may raise the wording of Art. 36 in conjunction with Art. 37 u.o.p.p. From the literal wording of these articles that the patient has a right to pastoral care — without specifying religion cleric, and “in case of deterioration of health or threat to life entity referred to in Art. 33 paragraph 1, is obliged to allow the patient to contact the priest of his religion” — Art. 37. It is therefore necessary to consider the clarification of those provisions of their clarification.

Also we should pay attention to the two other elements related to the patient’s right to pastoral care. Well, more attention should be paid to two elements.

Firstly — the Act on Patients “Rights and the Ombudsman for Patients” Rights states that the right to pastoral care patients are entitled. On the other hand, the Act

³Report on the implementation of the tasks resulting from the Act of 6 November 2008 on patients’ rights and the commissioner for patients’ rights (Journal of Laws of 2009 No. 52, item 417, as amended) and the observance of patients’ rights in the territory of the Republic of Poland for the period from 21 May 2008 to 31 December 2009, dated 30 July 2010; www.orka.sejm.gov.pl.

⁴There are: Art. 17 of Act of 30 June 1995 on the relationship between the State and the Polish Catholic Church in the Republic of Poland (Journal of Laws of 2014, item 1599) and Art. 12 of Act of 13 May 1994 on the relationship between the State and the Evangelical Reformed Church in the Republic of Poland (Journal of Laws of 2015, item 483).

⁵Art. 16 of Act of 20 February 1997 on the relationship between the State and Jewish Religious Communities in Republic of Poland (Journal of Laws of 2014, item 1798).

⁶Art. 31 of Act of 17 May 1989 on the relationship between the State and the Catholic Church in the Republic of Poland (Journal of Laws of 2013, item 1169); Art. 18 of Act of 30 June 1995 on the relationship between the State and the Seventh Day Adventist Church in the Republic of Poland (Journal of Laws of 2014, item 1889); Art. 19 of Act of 30 June 1995 on the relationship between the State and the Evangelical Methodist Church in the Republic of Poland (Journal of Laws of 2014, item 1712); Art. 21 of Act of 13 May 1994 on the relationship between the State and the Evangelical Church of the Augsburg Confession in the Republic of Poland (Journal of Laws of 2015, item 43); Art. 18 of Act of 30 June 1995 on the relationship between the State and the Baptist Union of Poland in the Republic of Poland (Journal of Laws of 2015, item 169); Art. 15 of Act of 20 February 1997 on the relationship between the State and the Mariavite Church in the Republic of Poland (Journal of Laws of 2015, item 44); Art. 27 of Act of 4 July 1991 on the relationship between the State and the Polish Autocephalous Orthodox Church (Journal of Laws of 2014, item 1726); Art. 16 of Act of 20 February 1997 on the relationship between the State and the Mariavite Old Catholic Church in the Republic of Poland (Journal of Laws of 2015, item 14); Art. 14 of Act of 20 February 1997 on the relationship between the State and the Pentecostal Church in the Republic of Poland (Journal of Laws of 2015, item 13).

governing the relations between the State and the various religious associations apply in principle to the “faithful” or “persons residing” in health care.

Secondly — the status quo violates the principle of equality because only in respect of Christian Churches destination, an obligation to their needs suitable premises for chapels or other facilities available to organize celebrations. Another religious associations legislature created such favorable conditions for realization of the rights of the patient in terms of “pastoral care”.

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