Health Legislation in Eastern European Countries: the Baltic States

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1. Introduction

The East European region is quite large and varied, not only in a geographical, but also in a socio-political and legal sense. The aim of this article is to have a close look at health legislation developments in Estonia, Latvia and Lithuania, countries having a similar geographical, political and historical situation. Before starting a health legislation analysis of these countries, it is worth pointing out that far too often they are treated as if there were no difference between them. However, they differ from each other when it comes to language (Estonian is a Finno-Ugric language while Latvian and Lithuanian belong to the Baltic languages), religion (Estonia and Latvia are Lutheran, and Lithuania is Catholic), and historical developments (Lithuania was founded as an independent State as early as the 13th century and in the Middle Ages played an important role in Eastern and Central Europe, though at the very end of the 18th century it lost its independence; Estonia and Latvia had been under foreign rule for a very long time). The three countries became independent at the beginning of the 20th century, were occupied by the Soviet Union in the middle of that century, and regained their independence at the end of the 20th century.

With some reservations, it is still possible to use the term “Baltic” for practical reasons when considering the Soviet experience and its impact on the development of the countries, their health-care systems and health legislation (as well as other socio-legal fields). There is also a commonality when it comes to the means of integration into international community and membership of the European Union. All three countries expect to become members of the EU in May 2004.

This survey is an attempt to analyze health legislation developments, bearing in mind some international obligations, constitutional provisions, court practice, and the impact of the reforms of health sector on the promotion of health legislation.
2. International Obligations

Health legislation is a complex subject, covering a wide field of health law subjects. The main point – a right to health care – can be viewed from the perspectives of social values and as a fundamental human right. The States’ responsibilities are combined with individual rights. Patients’ rights in all different aspects make up the core issue.

As long as a right to health care is taken as an important social and individual right, international obligations play a significant role. For practical purposes, the most significant of these are European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (ECHR), the European Social Charter (and the Revised European Social Charter) and European Convention on Human Rights and Biomedicine (1997). Estonia and Lithuania are bound by these international obligations, Latvia still has not yet ratified (only signed) the Convention on Human Rights and Biomedicine. Patients’ rights can also be examined in the light of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987). The Declaration on the Promotion of Patients’ Rights in Europe of the Regional Office for Europe of WHO (adopted in 1994) is also of great importance.

The Constitutions of the Baltic States provide that binding international treaties take precedence in some cases over domestic law and should be respected by courts, being important sources of law. While social rights that are declared in the international instruments are mostly of a weaker legal nature than individual rights due to the fact that they are vulnerable to scarcity of resources, individual rights are also legally stronger. However, in their actual functioning, the difference between the two types of rights is less marked than one may think, and the two complement each other. The interdependence of social, civil and political rights is enshrined in the Charter of Fundamental Rights of the European Union (2000), the importance of the human rights in the field of medicine is enshrined in Article 3 of the Charter – “The Right to the Integrity of the Person”. The Charter will in future become a very important part of the European Constitution.

The provisions of the European Social Charter dealing with rights to health care as social rights are linked to the constitutional right to health care, as entrenched in the Estonian, Latvian and Lithuanian Constitutions. All three Constitutions consider social rights as a part of bill of rights.

One of the most important international documents remains the ECHR. Provisions of the Charter of Fundamental Rights and the Convention on Human Rights and Biomedicine must be interpreted in the spirit of this Convention. Different aspects of patients’ rights are present in the case law of the Convention. The jurisprudence of the European Convention on Human Rights creates a unified legal environment of patients’ rights, a number of articles – such as Articles 2, 3, 5,