NEWS AND VIEWS

Changes in the Lithuanian Health Law and the Influence of the Netherlands Civil Code

TOMA BIRMONTIENE

Introduction

The new Civil Code of Lithuania was adopted in 2000 and came into effect as of July 1, 2001. It was drafted in the light of not only Lithuania’s legal experience, determined by unfavourable historical circumstances and therefore meagre, but also traditions of modern civil law as well as various aspects of the EU integration. The Netherlands Civil Code may be viewed as one of the most modern civil law codification in western Europe affecting the traditions of civil law—both re-emerging as well as those under development in eastern and central Europe. Together with the Civil Code of Quebec, Canada, it has become one of the key sources for the re-codification of the Lithuanian civil law. However, differently from some other states, Lithuania has adopted relevant provisions along with the regulation of the patients’ rights as one of the elements of a contract for reimbursable services, which can be regarded as one of the most distinct elements of the reception of the Netherlands’ civil law.

Lithuania’s new Civil Code has considerably enlarged the previous circle of objects subject to civil law by penetrating into the area of health law as well as that of constitutional law, and this code also regulates family law that was previously regulated by a separate code.

The re-codification of civil law encountered a number of problems because the concept of civil law had to be completely changed. The working group that was drawing up the draft was not always sufficiently consulting with the specialists from other kindred areas of law, and in some cases we may assume that the presence of a certain legal institute in other major codes determined its inclusion into the new Civil Code of Lithuania. Health law in the Netherlands is undoubtedly one of the most developed, and following its
Options for legislating patients’ rights

Two options are open for legislating on the patients’ rights - within civil law or using administrative law methods. “The choice of a main road for the legislation of general patients’ rights depends on factors such as political and social conditions, the legal system and the legislative style in a country”.

Separate laws or other types of legal acts (charters) aimed at establishing patients’ rights have been passed in such states as Finland (Law on the Status and Rights of Patients promulgated in 1992), Iceland (Bill on the Rights of Patients promulgated in 1997), and France (Revised Hospital Patient’s Charter issued in 1995), etc. Still the Netherlands stands out among European states because patients’ rights have been incorporated into their civil code under the Act on Medical Contract (1994). The Dutch government has chosen to incorporate the legislation on the principal rights of patients in the framework of civil contract law, and the medical contract now is treated as a “special contract”.

While codifying civil law in Lithuania, they did not take into account the fact that there was some experience in the area of health law, particularly in regard to the regulation of patients’ rights, and that there already existed a tradition to regulate these issues not as a part of civil law but rather by separate legislation by means of the administrative legal regulation method. The Law on the Rights and Injuries of Patients was adopted by the Seimas (Parliament) in 1996 and it has not faced any major changes.

The Law on the Rights and Injuries of Patients provides the basic principles of the rights of patients. It covers a wide spectrum of patients’ rights including informed consent to treatment, information, access to medical records, confidentiality, etc. It pays due consideration to the patients that are minors rights and stresses the importance of the minors’ opinion in making decisions for treatment. The Law on the Rights of Patients’ does not cover all the specific fields such as transplantation, artificial procreation, biomedical research, mental health issues and others.

The Law on the Rights and Injuries of Patients’ has been influenced by the WHO Declaration on the Promotion of Patients’ Rights in Europe (1994) and the legislation of Finland. The law elaborated on the non-fault liability system for patients’ injuries and was based on Finnish legislation. It should be mentioned that the enforcement of this part of the Patients’ Rights Law was postponed a number of times for different reasons. These include changes in the provisions pertaining to insurance law and financial problems with the