Medical care and autonomy of patient
Challenges in Albania

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MEDICAL CARE AND AUTONOMY OF PATIENT

Abstract

The involvement of the medical profession in everyone's lives in achieving good health makes the understanding of the law governing the medical profession extremely important. It is certain that at some point in our lives we are forced to rely upon the medical profession. Whilst is accepted the increasing role of such profession in determining the shape of the law, the role of the patient and his rights in medical care are just as important. In the exercise of their everyday activity doctors often have to choose between their duty to care and the respect for patient's autonomy. But, what does the right of the patient for autonomy implies? Is it a social or individual right? What's a doctor's duty of care? When the two are confronted, which one precedes? How important is patient's dignity? Should a doctor intervene against his patient's wishes? What are the dilemmas doctors are faced with in their everyday work? Are there any state interests involved? What protections should the state offer? How do different countries approach patient's autonomy?

Patient rights are part of human rights. To understand these rights it is important to understand how they became so important in our everyday life and why we need to protect them as fundamental.

By understanding the importance of patient's right to autonomy and the approach of other countries to the problems physicians and judges are faced with while resolving such issues, this paper presents the challenges in Albania where the laws or regulations on the ethical problems physicians are faced with in their everyday activity are inexistent, where there is no jurisprudence on such cases and where the need for such regulations is immediate.

Right to autonomy as part of patient's rights

The test of civilization is freedom, freedom of the spirit and of the mind and of the body. We all agree that rights are essential both to our conception of liberty and to what we have defined as the proper role of government. They have alternately expanded and contracted throughout history and have been the subject of some of the most divisive fights nations have experienced. As Abraham Lincoln, speaking in Baltimore in 1864 said: 'The world has never had a good definition of the word 'liberty', […] (Bara, 2013, 19). At the heart of liberty is the right to define one's own concept of existence, of meaning of the universe, and of the mystery of human life (Washington v. Glucksberg, 521 U.S., 727).

Human rights protect people against abuses of people's dignity and fundamental interests. For the protections of individuals fundamental rights and freedoms states have adopted and ratified many acts, treaties and regulations (European Convention on Human Rights, American Convention on Human Rights, Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights).

Patient right are part of human rights and as such they must be protected. Obviously each and every one of human's rights is very important to mankind and the proper functioning of a democratic society, but the focus point is patient's autonomy in medical care, the legal or ethical dilemmas the doctors and medical staff are faced in their everyday work, while trying to protect the health of their patients.

Patient's rights can be divided in positive and negative rights. A negative right concerns only to those rights which require a duty or duties of non-interference (Childress J.F. (1980); R (Pretty) v DPP, (2002) 1 A.C. 800, 846). In other words, a negative right calls for non-action from others. A positive right, on the other hand, 'is a justified claim to someone's assistance' or calls for performance of certain actions.

In many areas of health care, and especially in such areas as palliative care, in recent years, increasing attention has been paid to patient autonomy and the need to respect it. Autonomy has come to be seen as a very important aspect of the interaction between patients and those looking after them, and forms the basis for many ethical commitments, such as telling the truth to patients, and seeking their consent for health care interventions. The on line Oxford Dictionary defines 'autonomy' as 'the right or condition of self-government, freedom from external control or influence.' In medical care the autonomy of the patient is the right that patients have to know about the nature and the risks of the treatments they are being asked to undergo and to accept or refuse the medical treatment. It entails a positive right of being informed and a negative right of non interference.

Different moral philosophers offer different accounts of autonomy. The common core of all these accounts, though, is the capacity for self-rule. Self-mastery and self-determination are other ways of describing this concept. The central idea is that when someone chooses and acts autonomously, they are in control of their own choices and actions. We express our capacity for autonomy when we make up our own minds about what to do, when we make our own individual decisions about how to act. We ought not to prevent people from doing what they autonomously choose to do, unless it would harm others.

Why is this? How did autonomy become so important that we should respect it in others?

The right to refuse any medical treatment emerged from the doctrines of trespass and battery, which were applied to unauthorized touching by a physician. Each man is considered to be master of his own body, and he may, if he be of sound mind, expressly prohibit the

performance of lifesaving surgery or other medical treatment (Natanson v. Kline, 186 Kan. 393 (1960), 406-407). The inviolability of the person has been held as 'sacred' and 'carefully guarded' as any … right (Union Pacific R. Co. v. Botsford, 141 U.S. 250 (1891), 251-252). Thus, freedom from unwanted medical attention is unquestionably among those principles 'so rooted in the traditions and conscience of … people as to be ranked as fundamental (Snyder v. Massachusetts, 291 U.S. 97 (1934), 105)'.

The right to refuse life sustaining treatment is the right to be free from unwanted intrusion on or invasion of bodily integrity, protected through the legal requirements of informed consent and treatment. This is variously referred to as a right of privacy, self-determination or autonomy, or more concretely as a right to control one's own body, as reflected in the doctrine on informed consent. The right to self-determination has been described as an individual's strong personal interest in directing the course of his own life, 'an individual's right to behave and act as he deems fit, provided that such behavior and activity do not conflict with the percepts of society' (Meisel, A., Cerminara, K. L., (2004), 21-23).

The right to refuse medical treatment is a corollary of the requirement of consent to medical treatment and has always been implicit in it. The right to be free from unwanted medical attention is a right to evaluate the potential benefit of treatment and its possible consequences according to one's own values and to make a personal decision whether to subject oneself to the intrusion. It is 'a well-established rule of general law … that it is the patient, not the physician, who ultimately decides if treatment - any treatment - is to be given at all. The rule has never been qualified in its application by either the nature or purpose of the treatment, or the gravity of the consequences of acceding to or foregoing it (Tune v. Walter Reed Army Medical Hospital, 602 F.Supp. 1452 (DC 1985), 1455).'

Individuals have strong liberty in being free to make their own decisions regarding the course or their medical treatment and in preventing unwanted interference with their bodies. Such liberty intends to protect the patient's status as a human being. No right is held more sacred, or is more carefully guarded … than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law (Union Pac. Ry. v. Botsford, 141 U.S. 250 (1891) 251). This means that 'every human being of adult years and sound mind has the right to determine what shall be done with his own body, and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages (Schleondorff v. New York Hospital, 211 N.Y. 125, 105 N.E. 92 (1914), 129-130).

Any treatment involving physical contact with a competent adult must be expressly authorized by the patient. If a health professional acts without consent (save in emergency), or exceeds the consent given by the patient, he commits a civil battery and a criminal assault. It is no defense that he proves that he acted in what he believed to be the patient's best interests. The patient's right to prohibit treatment extends even to lifesaving treatment. The state has no right or power to intervene to protect patients from themselves.

Patient's interest consists of his right to self-determination, his right to live his own life how he wishes, even if it will damage his health or lead to his premature death (Re C (Adult, refusal of treatment) (1994) 1 All ER 819). Society's interest is in upholding the concept that all human life is sacred and that it should be preserved if at all possible. It is well established that in the ultimate the right of the individual is paramount (Brazier, M., & Harris, J., (1996), 171-172).

There are two main reasons to respect other people's autonomous choices. First, most people know, better than anyone else, what is in their own best interests. Of course, expert

information – say, about the likely progress of a disease, or the possible side-effects of various treatments – is invaluable for helping us to make our decisions. But experts can't tell us what is best for each one of us, because that depends on our individual concerns and values. These vary from one person to another, and normally we know them ourselves better than any outsider can. So our own choices will reflect what is best for us, and if other people, such as health carers, respect these choices, they will be looking after our own best interests. Second, we should respect people's autonomous choices because it is a way of respecting them as individuals.

Although a patient may refuse treatment because, it will reduce his ability to enjoy life, the right to be let alone does not require the patient to have a reason. That one is a person, unique and individual, is enough. In fact, requiring a 'good' reason would be inconsistent with the right of self-determination. A patient would not be autonomous in determining the course of his treatment if others could overrule what they considered to be an 'insufficient' reason for refusing treatment.

The makers of the Constitutions, while protecting individuals' right to the pursuit of happiness, recognized the significance of man's spiritual nature, of his feelings and of his intellect ... They sought to protect their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone the most comprehensive of rights and the right most valued by civilized men (Olmstead v. United States, 277 U.S. 438, 478 (1928), Brandeis, J., dissenting).

Doctor's duty of care and ethical dilemmas

In the exercise of their work doctors have a duty to care about their patient.[1] A doctor's duty of care is to take reasonable steps (as other reasonable doctors would) to improve patient's health, to save or prolong life or to act in the patient's best interests; where, according to the Preamble of the World Health Organization: 'Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.' This duty consists in diagnosing, treating and advising. These obligations are both moral and legal. 'Treatment ordinarily aims to benefit a patient through preserving life, relieving pain and suffering, protecting against disability, and returning maximally effective functioning. While performing their duties doctors need to act in such ways that respect patient's autonomy, by acknowledging the right of a adult patients of sound mind to determine what should be done with their body, to have control over the course of their life, including decisions about how their life should end. They should also respect the principle of beneficence meaning that they should act in a way that benefits the patient.

Doctor's duty is not only to give the patient the choice of which treatment to pursue. He must advise the patient of the risks of the various options the patient is considering. But the physician must honor the patient's choice, even when that conflicts with the advice or values of the medical profession as a whole. By respecting the patient's choice, a physician will never be forced to act contrary to his ethical standards. He simply will be required not to interfere with the patient's choice. If a hospital is unwilling to permit the necessary steps to stop treatment, a

[1] The first one to introduce the concept of 'duty' was Immanuel Kant in his works *Groundwork of the Metaphysic of Morals* (1785), *Critique of Practical Reason* (1788), and *Metaphysics of Morals* (1797). He laid down the importance of good will, moral and duty in every man. Kant believed that if an action was not done with the motive of duty, then it was without moral value. He thought that every action should have pure intention behind it, otherwise it was meaningless. He did not necessarily believe that the final result was the most important aspect of an action, but how the person felt while carrying out the action.

patient should be able to switch to another facility (Steinberg, D. R. (1998), 137). Doctors, who fail to provide full information about these risks, and to ensure that their patients have understood the information, should be liable to prosecution. The exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation (R.R. v. Poland, ECtHR, (2011), pp. 206).

Doctor's duty of care reflects state's unqualified interest in preservation of life. There are four recognized state interests to be weighed against the patient's interest in self-determination: the preservation of the lives of the patient and others; the prevention of suicide as a public health problem; the protection of innocent third parties, those suffering from depression and pain, vulnerable groups (the poor, the elderly, the disabled) from abuse, neglect, and mistakes, as well as from prejudice, stereotypes, and societal indifference, avoiding a possible slide toward voluntary and perhaps even involuntary euthanasia; and fourth, the protection of the integrity and ethics of the medical profession. The interest in the preservation of life generally is considered the most significant (Steinberg, D. R. (1998), 133).

Obviously a legitimate and, perhaps, primary responsibility of a government is to protect the lives of its citizens, but when courts have been forced to consider cases concerning the right to refuse medical treatment, they have almost universally identified the preservation and protection of human life as one of the legitimate state interests weighing against that right. The difficulty has not been in recognizing that the protection of life is a valid state goal. Rather, the challenge has been, and continues to be, precisely how to 'weigh' that interest against the right to refuse medical treatment (Allen, M. (2004), 988).

While deciding for general health problems of the populations it is easy for the doctors to respect the right for autonomy of their patients, but when confronted with life and death issues many ethical questions arise: When life, and therefore the right to protection of life by law, begins or ends? Is the fetus a person? At what stage in its development does it becomes a person? Should the doctor intervene to save a fetus' life against the dying mother's wishes? Should a woman be forced to sustain the life of another human being? May, or must, the state protect the right to life even of a person who does not want to live any longer, against that person's own wishes? Can or should a doctor turn of the ventilator on a dying patient? Can he remove the feeding tube? Can or should the doctor end the life of his patient? Do people have, not just a right to life and to live but also a right to die as and when they choose? What effect will have on the medical profession asking a physician to turn his back on a dying patient?

Limitations to patient's autonomy

Patient autonomy has more commonly been analyzed by lawyers and philosophers in the context of diseases and conditions which affect that individual patient alone. A woman has a suspicious lump in her breast. A Jehovah's Witness traumatically injured in a road accident refuses blood. A person afflicted by multiple disabilities seeks to have all treatment, even feeding, discontinued. The consequences of each potential choice predominantly affect that patient alone. No other person's physical health is endangered by a choice to reject treatment (Brazier, M., & Harris, J., (1996), 171-172).

Exceptions to the rights of patients are usually anticipated in law. The guiding rule in such exceptions is always that patients can be subjected only to such limitations that are compatible with human rights instruments and in accordance with a procedure prescribed by law.

In practice, this means limitations which apply for reasons of public order, public health and other persons' human rights.

The extent to which the state assumes coercive powers to curtail individual liberty in order to control disease raises deep questions about the extent of personal responsibility and the nature of our harmful contact one with another. The principle of patient's autonomy is put into question and even not applied on matters that concern the general public health. The relationship between patients' rights and patients' responsibilities are weighted particularly when dealing with infectious diseases. The highly contagious diseases threaten numbers that even the most notorious serial killer could not dream of. Failure by the state to intervene in the face of an epidemic can trigger public disorder.

Infectious diseases, those which threatened not only the afflicted patient but the community as a whole are considered criminal offences in cases where individuals are aware of their disease. A person knowing that he is suffering from a certain disease, or being responsible for a person so suffering, commits a criminal offence if he exposes others to infection in a public place, or if he continues with a trade, business or occupation where he risks exposing others to infection.

An individual infected with a communicable disease, specified either under statutes or regulations, loses any effective choice in relation to treatment, and, potentially, his/her liberty and his/her privacy. It may well be the case that once detained in hospital he/she can in theory 'choose' not to comply with therapeutic treatment, but that is a pretty empty, futile choice. Failure to protect others from the risk of infection he/she poses exposes him/her to criminal liability.

As soon as any part of a person's conduct affects prejudicially the interests of others, society has a jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion (Mill, J. S., Bentham, J., Austin, J., (1972), 187-188). The interests of others are prejudicially affected by disease to a greater extent than is the case with much of the overt violence which is the everyday business of the criminal law (Donnelly, M., (2010), 74).

Patient autonomy is also impaired in cases of very young or very ill, mentally impaired, demented or unconscious, or merely frail or confused. Often people cannot give informed consent to emergency treatment. Even in the maturity of our faculties we may find it quite taxing to give informed consent to complex medical treatment when feeling lousy (O'Neil, O., (2003), 4).

Another almost universal exception to the doctrine of autonomy of patient applies when the patient is unconscious and the probability of harm because of failure to treat is great and surpasses any threatened harm from the treatment itself. The premise of this exception is that, when the patient is unconscious and in immediate need of emergency medical attention, the duties of disclosure imposed by the doctrine of informed consent are excused because irreparable harm and even death may result from the physician's hesitation to provide treatment (Hartman, K. M., & Liang, B.A., (1999), 53). The doctrine of bodily self-determination guarantees that even in an emergency situation, '[a] physician must respect the refusal of treatment by a patient who is capable of providing consent (Miller v. Rhode Island Hosp., 625 A.2d 778 (1993)).'

Another disputed limitation on patient's autonomy is if the patient is conscious but incapable of accurately comprehending his or her own medical condition. In these cases, the physician must assess whether the patient is medically incompetent and thus incapable of expressly providing informed consent. If the physician determines that the patient is medically

incompetent, the physician should attempt to obtain consent from a relative of the patient when feasible (*Canterbury v. Spence*, 464 F.2d 772, 150 U.S. App. D.C., *cert. denied,* 409 U.S. 1064, 93 S. Ct. 560 (1972)).

For minors in an emergency care situation, the commonly accepted rule is similar to that of legal adults: physicians generally are not held liable for treating a minor without parental consent when an emergency exists and immediate injury or death could result from the delay associated with attempting to obtain parental consent. However, courts are split on the issue of informed consent when a minor patient's condition is life-threatening yet does not require immediate medical attention. Some courts have held that the emergency exception does not apply and therefore parental consent or consent from another legally authorized individual must be obtained. Other courts apply the mature minor exception, which allows the minor to give informed consent if the patient has the ability to understand and comprehend the nature of the proposed treatment as well as the associated risks and potential results in view of the surrounding circumstances (Hartman, K. M., & Liang, B.A., (1999), 53).

The principle of patient autonomy is very important in medical care. The respect for autonomy is the tool used to govern the relationship between physicians and patients. Its framework relies on rights and duties that mark these relationships and its main purpose is to promote human rights and dignity. However, there are limitations to this principle. An important requirement to these limitations is that they do no conflict human rights, that they are prescribed by law and that they interest society as a whole.

Different approaches of different countries and the challenges in Albania

Different countries have different approaches regarding patient's autonomy this depending on the cultural, ethnical, political backgrounds, religious beliefs, the moral values of each society, etc. The most discussed ethical issues are abortion and euthanasia. Abortion is illegal in many countries, such as Ireland, Malta, Vatican City, Egypt, Iran, Lebanon, Kenya, Madagascar, Brazil, Colombia. This means that to these countries right to life outweighs the right of the mother for autonomy. Same thing can be said about euthanasia. The majority of countries worldwide ban any form of euthanasia or assisted suicide. In these countries the concept of preservation of life advanced as a tenet of theology, in the doctrine that a man's life is entrusted to him by God and so cannot legitimately be taken away by anyone else, life is not ours to dispose as we please. Nevertheless countries such as Belgium, Netherlands, Switzerland, Luxemburg allow or have legalized assisted suicide or passive euthanasia.

The stress that is put on the importance of human rights is of recent years. Many states have made necessary legislative changes to protect the fundamental rights and freedoms. The starting point to such legislative changes came as a result of the cases presented in the courts regarding such issues.

In American jurisprudence there are many cases related to patient autonomy. American courts have decided on issues such as abortion, euthanasia and treatment refusal; granting women the constitutional right to terminate their pregnancies (Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973)); stating that the Bill of Rights and Constitution's 14th Amendment guarantee the right to liberty in areas of society such as marriage, contraception, family relationships and child-rearing (Doe v. Bolton, 410 U.S. 179 (1973)); striking down anti-contraception law on the ground that it intruded on the right to marital privacy (Griswold v. Connecticut, 381 U.S. 479 (1965)); making assisted suicide a crime (Washington v. Glucksberg, 521 U.S. 702 (1997)); stating that everyone, regardless of physical condition, is entitled, if

competent, to refuse unwanted life-saving medical treatment and that no one is permitted to assist a suicide (Vacco v. Quill, 521 U.S. 793 (1997)); that if a state law permits prescriptions of lethal drug overdoses upon the request of terminally ill patients, this could not be prohibited (Gonzales v. Oregon, 546 U.S. 243 (2006)); that when nontreatment is in the ward's best interests, the guardian has not only the authority but a duty to consent to the withholding or withdrawal of treatment (In Re Guardianship of L.W., 167 Wis.2d 53 (1992)); that life-sustaining medical treatments may be discontinued in appropriate circumstances, even if the patient is unable or incompetent to make the decision (In Re Quinlan, 70 N.J. 10, 355 A.2d 647 (1976)); stating that every human being of adult years and sound mind has a right to determine what shall be done with his own body (Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92, (1914)); that a competent adult patient's decision to forgo medical treatment must be respected even if that decision will result in a person's death (DeGrella v. Elston, 858 S.W.2d 698 (Ky. 1993)); that a competent adult has a common law, statutory and constitutional right to decline or accept medical treatment (Conroy, 486 A.2d 1209, 1223 (NJ 1985); Cruzan v. Director, Missouri Department of Health, 497 US 261, 262 (1990)); that before medical treatment can be administered, a patient is entitled to an explanation of the proposed treatment, alternative therapies, the nature and degree of risks and benefits from receiving or abstaining from the proposed treatment and the right to consent (In re A.C., 573 A.2d 1235 (D.C. 1990), 1243); and that administration of medical treatment without a patient's consent, despite the fact that the treatment may be beneficial or even necessary to preserve a patient's life, may result in civil liability (Osborne, 294 A.2d 372 (DC 1972); Canterbury v. Spence, 464 F.2d 772 (DC Cir 1972)).

The European Court of Human Rights (The Court), in its jurisprudence regarding cases of abortion and euthanasia has always stated that such cases fall within the margin of appreciation that the Court grants national authorities in fulfilling their obligations under the European Convention on Human Rights (Handyside v. The United Kingdom, ECtHR, (1976), pp 48). The Court has expressed that there can be no doubt as to the acute sensitivity of the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake (A, B and C v. Ireland, ECtHR, (2010), pp 233). The European Court has stated that: the issue of when the right to life begins is a question to be decided at national level firstly, because the issue has not been decided within the majority of the States which have ratified the European Convention of Human Rights (The Convention) and, secondly, because there is no European consensus on the scientific and legal definition of the beginning of life (Vo v. France, ECtHR, (2004), pp. 82); that failing to get patient's informed consent calls for serious criticism (V.C. v. Slovakia, ECtHR, (2012)); that the effective exercise of the right of access to information about her or his health is often decisive for the possibility of exercising personal autonomy, …, by deciding, on the basis of such information, on the future course of events relevant for the individual's quality of life (e.g. by refusing consent to medical treatment or by requesting a given form of treatment) (R.R. v. Poland, ECtHR, (2011), pp. 197); and that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees (Pretty v. The United Kingdom, ECtHR, (2002), pp. 61).

The most important sources of law in the Albanian system regarding health care is Albania's Constitution, which provides that citizens have equal right to the health care services provided by the state (The Constitution of the Republic of Albania, art 55). According to the Constitution, ratified international agreements are also part of the Albanian legal system (The Constitution of the Republic of Albania, art 116/1/b). As such, the European Convention of

Human Rights is part of our legal system and Albanian citizens and institutions shall obey to this Convention and to the decisions given by the European Court of Human Rights.

The Albanian Criminal Code provides two special sections on medical negligence and on actions that risk the life or health of a pregnant woman from termination of pregnancy or failure to help (Albanian Criminal Code, Scs IV, V). There are no articles in this Code that provide for acts committed by the physicians, in the exercise of their duty, against patients' autonomy, dignity and integrity; or no articles that can be interpreted in such light.

The law on abortion provides that a pregnant woman can terminate her pregnancy up to the 12th week. The termination of pregnancy can be performed up to the 22^{d} week only for medical conditions that risk the life and health of woman's life (Law No 8045, dated 7.12.1995 'On abortion', art. 9-10).

Albanian law on health care provides that all citizens have the right to be informed by their healthcare providers on the characteristics of health services and how to use them, on their rights as citizens and patients, on patient's rights charter, medical errors, as well as their implementation; and that, for the protection of ethical rules and medical deontology, Professional Orders are created (Law no 10107, dated 30.3.2009 'On health care in the Republic of Albania', arts 6/2/c, 32/1). The Medical Order, through its organs, adopts its Code of Ethics and Medical Deontology.

The Albanian Code of Ethics and Medical Deontology, approved by decision no 9, dated 11.11.2011 of the National Council of the Albanian Order of Physicians, provides that any physician must obtain approval of the patient before any intervention, examination or treatment proposed; after informing the patient in details and that he/the physician must be convinced that the patient has understood. When the competent patient rejects the proposed intervention, the physician must accept patient's will after having informed him about the consequences expected. If the patient is less than 16 years old or incompetent, the physician can not intervene without informing patient's relatives or his guardian, except in cases of emergency or inability to get in touch with such persons. The fact that the patient has been informed and his consent or refusal to treatment are expressed in writing in patient's clinical card and must be signed by the patient or his guardian (The Albanian Code of Ethics and Medical Deontology, art 28).

In the Albanian jurisprudence there are many cases of medical negligence, but there are no cases regarding violation of the right to autonomy, where the health care providers intervened without the consent of the patient. But, what are the reasons to such an outcome? Is it that Albanian patients consent to all doctor's actions because they believe that physicians act in their best interest and fully trust them? Is it that Albanian physicians respect the integrity of their profession and obey Hippocrates's Oath always acting in patient's best interest and, is it really patient's best interest? Is it that Albanian physicians are afraid of the moral or ethical consequences of unauthorized touching or acting or is it that there are no legal provisions where patient can base their claims? The Constitution of Albania and the Criminal Code provide for acts against humiliating and degrading treatment in the articles that provide for torture, but when doctors treat the patients against their wishes, do they intend to 'torture' them? Can these articles apply to medical treatment or do we need proper legislative regulations in medical care?

Conclusions

The cases of refusal of treatment by the patient bring up many ethical and legal issues that need considering by the Albanian legislative power. What should a doctor do in cases of refusal of treatment clearly suicidal? According to Albanian law whose life is more important,

that of a dying mother or of the unborn child?[2] Can the Albanian doctors ease the pain of a dying patient by terminal sedation? Do they have the right to present a case to the court? Can a doctor remove the plug on a persistent vegetative state patient? Can he remove the feeding tube or turn off the respirator? What are the legal consequences if he does? Should he get the relatives' consent? Does this consent need to be written or can also be oral?

The jurisprudence of the Albanian courts regarding such cases is almost inexistent and such is the law on health care. The need for the proper changes in Albanian law calls also for the need to frame and organize proper programs that promote patient's rights. Another important step is the training of the physician, nurses and everybody involved in medical care on the understanding of the laws in force, the recent European Court of Human Rights and other international courts jurisprudence on the medical care and health issues.

Such measures will not only promote the health care and the rights of patients in Albania but also will help to improve the quality of the health care provided by everyone involved in medical care.

[2] When discussed the case *In Re AC., 573 A.2d 1235* (D.C. App. 1990) of Angela Carder with Albanian nursing students, even though students were taught on the importance of private life and autonomy of patient, most of them answered against such autonomy.

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