

Informed Consent of Patient

8 Summary

Informed consent of patient is as a legal concept exercised in health service on daily basis. Its importance for consumers of medical services oscillates from trivial act that does not require any special attention to crucial decisions, that shall determine further period of patient's life. Significance of consent is given by nature of medical situation with which particular patient comes across.

Current legal framework is based on both-international and national rules of law. The first are represented by International Convention²¹⁸ that stipulates fundamental principles, the latter more specifically elaborates further details of the whole concept.

Consent on patient with medical intervention historically went through several stages. In the course of own development was closely related to providing the patient with information. In ancient and medieval times was not usual that physician informed his patient comprehensively. Means of treatment and their efficiency were rather limited and many diseases and injuries that recent medicine considers as curable lead often to fatal consequences. Maintenance of faith and resolution of patient to fight with adversity seemed to be crucial within such conditions. As a condition of medical intervention was consent introduced by judicial decisions in 19th century. Comprehensive information about the nature, risks, alternatives and other features became an integral part of the concept during subsequent one hundred years.

Evolution in Czech Republic has been delayed by 40 years of subjugation by totalitarian regime after the WWII. Progress in relationship between the patient and physician stagnated in paternalistic manner. Right to be provided with information about health condition and prospective curative methods were confined. Leading idea of such system is principle of

²¹⁸ 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, concluded in Oviedo on 4. April 1997. The Convention entered in force in Czech Republic in 2001.

beneficence²¹⁹. On the contrary, purpose of current legal framework is to strengthen the autonomy of patient whereas principle of beneficence remains inferior and subsidiary. There is a presumption of active participation on decision making process from patient's side. Such approach expects that patient is able to carry the burden of responsibility for own destiny and medical personnel provides support and expert recommendation thereto. Patient's right to delegate all important decisions and refrain from being informed remains unaffected.

Current application of informed consent can be characterised by diversity between law in books and law in action. There are several areas where day to day practice is rather different from formal regulation. Such discrepancy is done by complexity of medical issues that are difficult to be regulated in its entirety. For instance information about risks is hardly any complete. Firstly due to diversity of possible options that is very often unconfined. Secondly because enumeration of the most serious latent complications would rather discourage the patient from undergoing the intervention. I tried to describe also some other examples of difficulties regarding application of the consent.

I came to conclusion that reaching of state where all provisions stipulated by law in all relevant situations would be performed without doubts and in full extent remains unfeasible. The role of rules governing the informed consent is rather to provide sufficient protection to patient's autonomy on one hand and not being an formal obstacle for health care on the other. Continuous finding of balance between these two values should be the main goal of doctrinal and judicial legal interpretation.

²¹⁹ All treatment is provided in the light of best interest from the perspective of somatic medicine. What is the best interest is assessed objectively, whereas patient's will and right to seek even for „irrational“ outcome shall remain secondary.