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RIGHT TO EQUITABLE ACCESS TO HEALTH CARE AND ESSENTIAL MEDICINES DURING THE COVID-19 PANDEMIC

Introduction

The right to equitable access to health care and essential medicines in international and domestic biomedical law is very extensive and encompasses several issues, primarily at the interface of biomedical sciences, philosophy, economics and psychology. The issue of justice in health care is difficult to define unequivocally[3]; most often, it refers to social justice and its exercise consists in reducing the differences that exist by improving the health condition of the patients[4].

The issues discussed in this paper, both in the international and domestic dimensions, could constitute an object of an extensive monographic study. Bearing the above in mind, despite the complexity and

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3 B. Rutkowski, *Sprawiedliwość w opiece zdrowotnej – cztery opinie*, Gdańsk 2014, pp. 2–3. Furthermore, from a number of other perspectives, cf. M. Juzaszek, *Sprawiedliwość w opiece zdrowotnej z perspktywy różnych koncepcji liberalnego egalitaryzmu,* 'Diametros' 2014, No. 42, pp. 106–123. A very interesting discussion about the theory of equitable distribution, also known as the theory of distributive justice is presented in a monograph by Professor Włodzimierz Galewicz, *Dobro i sprawiedliwość*, Kraków 2018, pp. 127–142.The author (on p. 127) stresses that: 'Within the theory of equitable distribution, its rules and concepts can be distinguished. The rules of distribution in the understanding adopted here merely determine the individual important causes which stipulate that – in case of absence of even more important evidence to the contrary – this and not another mode of distribution should be chosen. In turn, the concepts of distributive justice refer to diverse causes, indicated in the rules, confirming (or challenging) their validity, and primarily determining their comparative weight or rank.'

4 P. Dolan, D. Kahneman, *Interpretations of utility and their implications for the valuation of health*, 'The Economic Journal' 2008, vol. 118, p. 214.

multi-dimensionality of the issue, an attempt was made to provide a synthetic answer to the questions below:

1) how to understand the right to equitable access to health care and essential medicines?
2) what actions were taken at the international and domestic level (in Polish law) to exercise the aforementioned right during the global problem caused by SARS-CoV-2?
3) has the significance of the right in question been modified in relation to the occurrence of the COVID-19 pandemic?

Axiological analysis was used to reconstruct the values. The second method used in this work is the sociological method of law research. Due to the far-reaching relationships between normative solutions and social changes, the hermeneutic method was used.

The right to equitable access to health care and essential medicines is a human right acknowledged in numerous normative acts[5]. Professor Roberto Andorno expresses a view in line with which the aforementioned right is one of the rules of the international biolaw (also known

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[5] The authors of this work purposefully use the term 'acknowledged', believing that the source of human rights is not the positive right, but the natural right. In other words, everybody is vested with such rights on account of mere fact of being a human and the feature of dignity. A number of publications were penned on the subject; among them, the following ones should be noted: Office of the High Commissioner for Human Rights, United Nations Staff College Project, *Human Rights. A Basic Handbook for UN Staff*, United Nations, p. 3. 3. https://www.ohchr.org/sites/default/files/Documents/Publications/HRhandbooken.pdf, (access: 06.01.2023).The authors of the publication put forward a claim that: 'Human rights are inherent entitlements which come to every person as a consequence of being human.' This view is shared quite unanimously by a definite majority of academics. A belief that humans are 'the original and highest value' is also present in the Polish legal doctrine, cf. e.g. B. Gronowska, T. Jasudowicz, M. Balczerzak, M. Lubiszewski, R. Mizerski, *Prawa człowieka i ich ochrona*, Toruń 2010, p. 23. In other words, human rights do not follow from an arbitrary decision of any entity, including an entity establishing the positive law. Four of the above-listed authors clearly stress this by referring to Art. 1 of the Virginia Declaration of Rights of 12 June 1776 which stipulates that 'All men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety' cf. M. Gronowska, T. Jasudowicz, M. Balcerzak, M. Lubiszewski, *Prawa człowieka...*, [2010], p. 42. The volume of this paper does not allow for an extensive discussion on the scientific views on the genesis and idea of human rights, and that is why it should at least be mentioned that already the first year students of legal studies should internalise the knowledge on broadly-understood concepts of natural law, cf. T. Chauvin, T. Stawecki, P. Winczorek, *Wstęp do prawoznawstwa,* Warszawa 2016, pp. 5–8.

as the biomedical law) and follows from Art. 12(a) of the Universal Declaration on the Human Genome and Human Rights, Art. 10 and Art. 14 of the Universal Declaration on Bioethics and Human Rights, Art. 3 of the 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 Bioethics), Art. 25(1) of the Universal Declaration on Human Rights, Art. 12(1) of the International Covenant on Economic, Social and Cultural Rights, the Constitution of the World Health Organisation and Art. 24 of the Convention on the Rights of the Child[6].It seems that the above catalogue of normative sources pertaining to the discussed rule should also include Art. 19(a)(ii)-(iv) of the International Declaration on Genetic Data[7] and Art. 2(f) of the aforementioned Universal Declaration on Bioethics and Human Rights[8].

Trying to determine the significance of the right to equitable access to health care and essential medications[9], following the views of

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[6] R. Andorno, *Principles of International Biolaw: Seeking Common Ground at the Intersection of Bioethics and Human Rights*, Brussels 2013, pp. 23-24. The content of the aforementioned provisions was quoted by the above-mentioned author in the monographic study.

[7] 'In accordance with domestic law or policy and international agreements, benefits resulting from the use of human genetic data, human proteomic data or biological samples collected for medical and scientific research should be shared with the society as a whole and the international community. In giving effect to this principle, benefits may take any of the following forms: access to medical care; (iii) provision of new diagnostics, facilities for new treatments or drugs stemming from the research; (iv) support for health services.

[8] 'The aims of this Declaration are: (...) (f) to promote equitable access to medical, scientific and technological developments, as well as the greatest possible flow and the rapid sharing of knowledge concerning those developments and the sharing of benefits, with particular attention to the needs of developing countries.'

[9] In this paper, the terms 'right to equitable access to health care and essential medicines' and the 'rule of law to equitable access to health care and essential medicines' will be used interchangeably. Furthermore, the discussion on the status of bioethics principles was omitted. These principles may be considered as resulting from diverse normative sources, which are both international agreements [cf. the 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 Bio-Medicine)], customary law resulting from *usus* and *opinio iuris* (and even resulting from unanimously made declarations, cf. B.L. Sohn, *The Shaping of International Law,* 'Georgia of International and Comparative Law', 8, pp. 1–25.The author above stated: 'Unanimous declarations are a new method of creating customary international law.' Quoted according to: I.R. Pavone, *The role of soft law in bioethics*, (in:)

Professor Roberto Andorno, it is stated that its essence consists in the equitable division of goods in the society and thus in the fact of providing all individuals with at least a minimum standard of health care. Without a doubt, the described rule of justice is one of the most important economic, social and cultural rights (known as second-generation human rights). This right is called the right of progressive realisation. The above means that a country joining the International Covenant on Economic, Social and Cultural Rights, in line with Art. 2(1) of the act, 'undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'[10]. It is also worth emphasising that even though the international law does not indicate the type of health care that should be provided, the Committee for Economic, Social and Cultural Rights listed the elements that in fact constitute the criteria determining the rule in question which are: availability and accessibility of such care (understood as non-discrimination), acceptability (understood as respect for ethical and cultural values) and quality[11].

C. Caporale, I.R. Pavone, *International Biolaw and Shared Ethical Principles. The Universal Declaration on Bioethics and Human Rights*, Oxford 2018, pp. 215-216 (*Google books view*).Finally, it is an issue open for discussion whether the bio-ethical principles are not simply the general principles of law referred to in Art. 38 of the Statute of the International Court of Justice. Extensively about the general principles of law, cf. e.g. J. Symonides, *Czy ogólne zasady prawa uznane przez narody cywilizowane"są* źródłem *prawa międzynarodowego,* 'Gdańskie Studia Prawnicze' 2019, No. 2, pp. 45–55.

[10] Cf. R. Andorno, *Principles of international biolaw...*, [2010], p. 24 and International Covenant on Economic, Social and Cultural Rights, https://amnesty.org.pl/wpcontent/uploads/2016/04/Miedzynarodowy-Pakt-Praw-gosp-spol-kult.pdf, (access: 06.01.2023).

[11] R. Andorno, *Principles of international biolaw...*, [2010], p. 24. Justice in health care has been studied by many researchers, from diverse, often greatly differing, perspectives.Cf. a.o.: B. Szymańska, *Zasada sprawiedliwości a dostęp do opieki zdrowotnej*, 'Państwo i Społeczeństwo' 2012, vol. XII, No. 1, pp. 159–178; M. Goddard, P. Smith, *Equity of access to healthcare services*, 'Social Science & Medicine' 2001, vol. 53, No. 9, p. 1149–1162; J-F. Levescue, M.F. Harris, G. Russell, *Patient access to healthcare: conceptualising access at the interface of health systems and populations,* 'International Journal for Equity in Health' 2013, 12:18, http://www.equityhealthj.com/content/12/1/18, (access: 06.01.2023). In this place, it is impossible to overlook a brief reference to the normative acts that, *de iure*, are not law (in the strict sense). The Belmont Report also needs to be mentioned, where one of three rules (apart from the rule of respect

I. Actions Taken on the International Level

The information received from the World Health Organisation was subject to studies and its results are presented in this paper. On 11 March 2020, the World Health Organisation announced the pandemic of the coronavirus SARS-CoV-2 that causes COVID-19[12]. Severe effects of the pandemic were observed in the healthcare systems. The above referred to all countries, both developed and under-developed[13]. As part of its efforts to curb the COVID-19 pandemic, the World Health Organisation launched the European programme of work resulting from the citizens' expectations and focusing on universal access to high-quality health care without the necessity of incurring excessive financial burdens, protection from sudden health threats and ensuring better health condition and well-being at every age[14]. The World Health Organisation conceded that the COVID-19 pandemic has had a great effect on the world economy, an effect which nowadays forms a serious impediment for the health protection and social assistance systems. Healthcare and social assistance systems are struggling with the front-line personnel's state of exhaustion, reduced budgets and backlogs related to the large numbers of persons expecting treatment[15].

for persons and the rule of beneficence), was the rule of 'justice'. The last of the aforementioned rules was expressed in the following way: 'Who ought to receive the benefits of research and bear its burdens? This is a question of justice, in the sense of "fairness in distribution" or "what is deserved".' Cf. the Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research [in Polish]: https://nil.org.pl/uploaded_files/art_1585733514_raport-z-belmont-etyczne-zasady-i-wytyczne-dotyczace-badan.pdf, (access: 06.01.2023). More about this issue, as well as the bio-ethical principles cf. the doctoral thesis of P. Zieliński, *Deklaracje bioetyczne UNESCO jako* źródło *uniwersalnych standardów bioetycznych*, https://bip.kul.lublin.pl/files/1588/bip/awanse/Zielinski_Piotr_Rozprawa_doktorska.pdf, (access: 06.01.2023).

[12] World Health Organization, *Strategy and planning*, 2020 https://www.who.int/emergencies/diseases/novel-coronavirus-2019/strategies-and-plans.

[13] World Health Organization, *September update: an urgent call to fund the emergency response*, 2021, pp. 5–7.

[14] World Health Organization, *WHO COVID-19 Preparedness and Response Progress Report – 1 February to 30 June 2020*, 2020 https://www.who.int/publications/m/item/who-covid-19-preparedness-and-response-progress-report---1-february-to-30-june-2020.

[15] World Health Organization, *COVID-19 Strategy update*, 2021, https://www.who.int/publications/m/item/covid-19-strategy-update.

To ensure equitable (and equal) access to health care and essential medicines, the World Health Organisation guaranteed to take all actions necessary to rebuild the system on the national and international level. These activities should adopt a specific dimension so that the patients are at the centre of any given country's policy. This entailed performance of a programme of work which constitutes a package offering the necessary basis for treating patients with non-infectious and infectious diseases, and for addressing the social and economic health determinants that affected the health condition and inequalities in the health care system. In this way, the World Health Organisation focused on support for actions taken by individual states[16].

The World Health Organisation also set up the Division of Country Health Policies and Systems, the goal of which is to assist the states in the preparation and implementation of policies and health care systems to promote access to health care[17]. These actions focused on the reinforcement of a health policy relying on data and evidence, and adjustment of the policy to a given context, as well as the implementation of the policy on the national, regional and local levels. The Country Health Policies and Systems was also meant to promote leadership with respect to justice, human rights and inclusion of gender issues in the mainstream of health policy, focusing on building an innovative potential in health care systems[18]. Such actions consist of facilitating access to health care and in improvement of the situation of the patients and the health care workforce and increasing access to medications and technologies at accessible prices.

The work of the Regional World Health Organisation Office for Europe on universal access to health care focuses on five areas. These five areas are presented in the table below.

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[16] World Health Organization, *Monitoring and evaluation framework.COVID-19 Strategic Preparedness and Response*, 2020, https://www.who.int/publications/i/item/monitoring-and-evaluation-framework.

[17] World Health Organisation, *European Programme of Work for 2020-2025.United Action for Better Health, 2020*, p. 16.

[18] World Health Organisation, [2020]., note 15, pp. 16–17.

Table No. 1. Action areas of the Regional World Health Organisation Office for Europe on universal access to health care.

Area	Activities
Support Member State efforts to put people at the centre of services	Level the divisions between health protection systems to ensure a people-centred approach at all stages of care, encompassing infectious diseases, non-infectious diseases and mental disorders. Level the division between primary health care and public health services by integration of basic functions of health care systems. Promote care continuity in order to satisfy the needs of persons affected by infectious and non-infectious diseases.
Support Member State efforts to ensure and enhance financial protection	Support changes in governmental budgets and separation of public expenses on health and social care, which are a consequence of the COVID-19 crisis.
Support Member State efforts to face post-COVID-19 recovery health workforce challenges	Support the development of stable healthcare personnel by building a consensus in regional initiatives, which are aimed at guaranteeing a more equitable management of healthcare employees. This is also related to the creation of an international understanding of academic and vocational organisations to support the vocational development of healthcare personnel.
Support Member State efforts to ensure access for all to medicines, vaccines and health products	Invite the interested entities to work on a new social agreement thanks to which the patients, the health care system and the government will have the opportunity to procure at good prices medicines which fulfil their needs, while the pharmaceutical industry will be sufficiently capable of preparing and producing such medicines.

Source: author's own study based on: World Health Organisation, 'Maintaining essential health services: operational guidance for the COVID-19 context' (2020) 5–17.

II. Actions Taken in Poland

A. Ministry of Health

In Poland, the rule of equitable access to health care and essential medicines has not been expressed straightforwardly in any normative act, including any legal act. One of the provisions that may be considered a certain source of the aforementioned rule is Art. 68(2) of

the Constitution of the Republic of Poland which is worded as follows: 'Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation. The conditions for, and scope of, the provision of services shall be established by statute'[19]. This means that the realisation of justice means striving for a balance in social relations, as well as guaranteeing standards that are equal for all citizens[20]. It may thus be assumed that the rule of equality is a certain kind of reference to the rule of justice[21]. However, these rules are not equal. The terms in question (equality, justice) are deemed some of the most important social values[22], as discussed by Hobbes, Hume, J.J. Rousseau, as well as Hegel or even Marx[23]. The standard reconstructed from Art. 68(2) of the Constitution of the Republic of Poland is a normative guarantee of providing all citizens with equal access to health care services[24].

The Ministry of Health considers the term 'justice' ambiguous and multi-dimensional, with significant historical diversity. From the axiological perspective, the closest term related to equitable access to health services is the concept of 'equal access to health services' guaranteed in the Constitution of the Republic of Poland. The above entails that the Ministry of Health identifies the concept of justice with the concept of equality[25].

The Ministry of Health informed the authors of this paper that fighting the COVID-19 pandemic required the public authorities to

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[19] Act of 2 April 1997, *Constitution of the Republic of Poland*, 'Polish Journal of Laws' 1997, No. 78, item 483 as amended).

[20] A Szalkowski, *Nierówności społeczne i sprawiedliwość a rozwój kapitału ludzkiego. Wstęp, czyli problem wciąż otwarty*, 2006 in MG Woźniak (eds.), *Nierówności społeczne a wzrost gospodarczy.Kapitał ludzki i intelektualny*, Rzeszów 2005, p. 365.

[21] A Szalkowski, [2005], p. 365.

[22] M Iga, K Szczygielski, *Ocena możliwości poprawy działania polskiego system ochrony zdrowia.Współpłacenie i prywatne ubezpieczenia zdrowotne*, 'Ernst & Young' 2011, pp. 9–11.

[23] B Szymańska, *Zasada sprawiedliwości a dostęp do opieki zdrowotnej*, 'Państwo i Społeczeństwo' 2012, No. 1 (XII), p. 160.

[24] DE Lach, *Zasada równego dostępu do* świadczeń *opieki zdrowotnej*, 2011, p. 19. About equality in a broader perspective, cf. also Gutman, A., *For and Against Equal Access to Health Care,* 'Milbank Memorial Fund Quarterly/ Health and Society' 1981, vol. 59, No. 4, pp. 542–560.

[25] Ministry of Health, letter of 14 December 2002 in Warsaw, No. DLR.7008.66.2022.

temporarily limit medical activities and to introduce precautions related to safety during their provision[26]. Given these limitations, the provision of some of the services was suspended. However, at no time were life-saving services interrupted. The aforementioned ministry during the COVID-19 pandemic took no action that could hinder access to essential medicines. Their availability was monitored on an ongoing basis by the Ministry of Health and subordinate units. This means that the risk of systemic absence of medicines in Poland did not then and does not now exist. Along with its subordinate units, the Ministry of Health takes a number of actions related to access to medicines, placing patients' health and lives at the forefront of its attention[27].

The primary purpose of the public health care system is to provide all authorised persons with access to the necessary health services that correspond to the current medical knowledge[28]. Dynamic progress in the area of medicine, pharmacology and medical technologies forces the Ministry of Health to take a number of actions to adjust the healthcare system to current needs. Any system measures of normative nature taken by the Ministry of Health during the epidemic were assessed positively by the authors of this paper. These activities guaranteed a proper balance between the epidemiological threat and the costs of fighting it. In particular, the situation related to the pandemic affected the forms of exercise of patient rights[29]. It ought to be remembered that in line with Art. 5 of the Act on Patient's Rights and Patient's Ombudsman, the 'head of an entity providing health services or a physician authorised by him/her may limit the exercise of patient's rights in case of an epidemiological threat or on account of

[26] Ministry of Health, letter of 14 December 2022 in Warsaw No. DLR.7008.66.2022; *Act on preventing and combating human infectious diseases and infections*, 'Polish Journal of Laws [Dz.U.]' 2021, item 2069 as amended).

[27] Ministry of Health, letter of 14 December 2002 in Warsaw, No. DLR.7008.66.2022.

[28] Ministry of Health, letter of 14 December 2022 in Warsaw No. DLR.7008.66.2022; Act on Patient's Rights and Patient's Ombudsman (Polish Journal of Laws [Dz.U.] 2009, No. 52, item 417 as amended).

[29] See also: K.M. Zoń, *Cywilnoprawne uwarunkowania udzielania przez lekarza* świadczeń *zdrowotnych w modelu telemedycyny w prawie polskim*, 2022.

health safety of the patients'[30], while in reference to the rights (of patients – PZ and KM) to personal contact, telephone or correspondence contact with other persons (...) also on account of the organisational capacity of the entity'[31].

B. Patient's Ombudsman

The analyses whose results are presented in this paper also included information received from the Patient's Ombudsman. This is a central authority of governmental administration, competent for handling patient rights issues; it primarily protects the rights of patients who make use of health services in Poland[32]. In 2020, the Patient's Ombudsman accepted and presented a long-term strategy for the years 2020–2023[33]. The document sets out the major goals of the Ombudsman pertaining to the safety, support and education of patients. The vision presented in the document assumes the efficient protection of patient's rights with maximum use of the statutory tools, a proactive stance in contact with patients, opinion-forming activities of the Ombudsman in the public debate in the area of health protection, and the high quality of service provided to persons applying to the Ombudsman for help, advice or support[34]. The strategy forms an essential document that sets out the strategic and priority objectives, as well as the direction of the Ombudsman's actions in a long-term perspective. The above is meant to help accomplish sustainable development and to increase the degree of protection of patient rights in Poland[35]. Patient rights also have material social significance, as

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[30] Art. 5 of the *Act on Patient's Rights and Patient's Ombudsman of 6 November 2008*, 'Polish Journal of Laws [Dz.U.]' 2009, No. 52, item 417).

[31] Art. 5 of the *Act on Patient's Rights and Patient's Ombudsman of 6 November 2008*, 'Polish Journal of Laws [Dz.U.]' 2009, No. 52, item 417).

[32] J Pacian, (eds.) 'Prawna ochrona.Zdrowie pacjenta', (Wydawnictwo Lekarskie PZWL2017) 11.

[33] Patient Ombudsman, *Koronawirus a Prawa Pacjenta*, 2020 https://www.gov.pl/web/rpp/koronawirus-a-prawa-pacjenta

[34] Patient Ombudsman, *Do Rzeczy: Rzecznik Praw Pacjenta:Prawa pacjenta w okresie COVID-19 zostały ograniczone*, 2020 https://www.gov.pl/web/rpp/do-rzeczy-rzecznik-praw-pacjenta-prawa-pacjenta-w-okresie-covid-19-zostaly-ograniczone.

[35] Patient Ombudsman, *Problemy pacjentów w obliczu epidemii choroby COVID-19*, 2020, pp. 10–12.

they entail legislative care for the citizens and realise the directions of development of the health care system, desired by the legislator, reinforcing the rights of patients and their position at the forefront.

The pandemic considerably affected the situation of the entire healthcare system in Poland. Given the above, the actions related to the violation of patient's rights taken by the Ombudsman were of great importance. Table No. 2 presents applications submitted to the Ministry of Health and the National Health Fund.

Table No. 2. Sample initiatives and system applications of the Patient's Ombudsman in 2020 with specification of their addressees and sample indication of areas.

Applications addressed to the Ministry of Health	Applications addressed to the National Health Fund
Application to set up a system of information about the accessibility of services in medical entities in relation to the new organisation of health services during the pandemic.	Application to the National Health Fund and Ministry of Health with respect to securing access to kidney-replacement therapy for patients infected with SARS-CoV-2.
Application with respect to the place of hospitalisation of patients infected with COVID-19.	Application to the Ministry of Health and National Health Fund on coordination and information about the possibility of access to health services by patients with other disease classifications than by patients suffering from confirmed or suspected infection with COVID-19.
Application of the Patient's Ombudsman via Head of the Chancellery of the President of the Council of Ministers with a proposal of a solution pertaining to the possibility of archiving the tele-consultation charts for 30 days.	Application with respect to the problems with the availability of diagnostic tests for the SARS-CoV-2 virus for medical personnel and patients.
Application with respect to the availability and refunds for specific medicinal and medical products.	Application to the National Health Fund with respect to access to health services and medical care in the situation of COVID-19 risk.

Source: author's own study based on: Patient Ombudsman, 'Koronawirus a prawa pacjenta.Poradnik Rzecznika Praw Pacjenta (2020) https://www.gov.pl/web/rpp/koronawirus-a-prawa-pacjenta

The information received from the National Health Fund was also used to assess the status of the realisation of the right to equitable access to health care and essential medicines. The Pomerania Voivode issued an instruction for the medical entities pertaining to guaranteeing beds for patients who may be infected with SARS-CoV-2 and preparation and operation of isolation units[36]. At the request of the Pomerania Voivode, the Minister of Health decided to issue an instruction for the COPERNICUS Hospital Podmiot Leczniczy Sp. z o.o. and SPZOZ MSWiA in Gdańsk to organise provisional hospitals. The NHF division monitored the temporary limitations and suspension of operation of other medical entities on an ongoing basis, which may have resulted from infection hot spots among patients and medical personnel.

Conclusion

The volume of this paper does not allow for an extensive discussion on actions taken within a strictly defined region, namely the Pomerania Province. Given the above, it was only signalled that initiatives aimed at the realisation of the right to health protection were also launched locally, including equitable access to health care and essential medicines. The issue in question will be addressed in a separate paper. Nevertheless, it seems necessary to draw attention to the fact that the efforts aimed at levelling the effects of the COVID-19 pandemic were realised on the international, national and local dimensions.

The right of equitable access to health care and essential medicines is, without doubt, a *sui generis* guarantee for non-discrimination of individuals who are seeking health care services. However, it is necessary to stress the ambiguity of the term 'justice' and, in consequence, the problems with assessing whether the discussed access during the COVID-19 pandemic was 'equitable' as well as 'equal.' These rules are often applied interchangeably, yet their meaning is not identical. The subjective scope of the rule of equality in the legal sphere refers to the system of law applicable

[36] Patient ombudsman, [2020], note 33, p. 14.

in a given country[37]. The rule of equality does not affect the observance of the rule of justice by the public authorities, as both the former and the latter instruct them to adhere to the rule of equal and equitable treatment of citizens[38]. It seems that in this place the most proper would be to refer to the concept of distributive justice. In line with this theory, justice consists of the allocation of rewards and costs among the group members. As stressed by Professor Grzegorz Maroń, the aforementioned concept (*iustitia distributiva*) in the Aristotelian approach 'refers to the distribution of benefits or money or other items which may be the object of distribution among members of a community (...)'[39]. The above may, *prima facie,* seem absurd in the context of equitable access to health care and essential medications, as from the axiological point of view, such services should not constitute a form of any reward or – in case of their absence – cost. Thus, the discussion needs to be made more specific. In line with the aforementioned concept, the 'most frequently listed formulas of justice include members' outcomes regardless of their inputs, members' outcomes based on their needs, members' outcomes based on their inputs, members' outcomes based on their contributions, members' outcomes based on their position/birth, members' outcomes based on what the law assigns to them'[40].

St. Thomas Aquinas claimed: 'Justice is a habit whereby a human person renders to each one what is due by a constant and perpetual will'[41]. It is impossible to state unequivocally whether in a global and domestic dimension (e.g., the Polish law) the access to health care and essential medicines could be assessed as equitable. Even if a specific mode of comprehending justice is adopted, for example relying on the concept of distributive justice and the formula based on needs, it may undoubtedly be concluded that not all needs were satisfied and thus one has to

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[37] B Kłos, J Szymańczak, (eds.) *Zasada równości i zasada niedyskryminacji*, 2011, p. 33.

[38] B Kłos, J Szymańczak, (eds.), [2011], p. 33.

[39] Aristotle, *Nicomachean Ethics,* Warszawa 1982, p. 168. Quotation according to G. Maroń, *Formuły sprawiedliwości dystrybutywnej,* 'Resovia Sacra R.' 2010, 17, p. 195.

[40] Maroń, [2010]., note 37, p. 196.

[41] T Chauvin, T Stawecki, P Winczorek, [2016], note 3, p. 50.

concede without hesitation that the COVID-19 pandemic rendered the access to health care and basic medications unjust. However, wouldn't this conclusion be too alarmist?

Can it be claimed with certainty that before the pandemic the rule described in this paper was realised in a mode that did not prompt any reservations? Obviously, this was not the case. Bearing in mind the above and all the data referred to in the course of prior arguments, it must be concluded that the period of the COVID-19 pandemic was a time of intense work of international organisations and state authorities, institutions and other entities (including natural persons), which allows for surmising that the right to equitable access to health care and essential medicines has not become a phrase of little significance which was merely an object of academic studies but has remained one of the fundamental rights of human beings. It is the right whose exercise has been dependent on the efforts of countless individuals. The scale of the problem that we had to face during the pandemic exceeded the boldest forecasts expressed on the day when the first case of SARS-CoV-2 was diagnosed.

This manuscript may be the beginning of in-depth research on case studies regarding restrictions in health care during the COVID-19 pandemic in Poland. However, given the issue of delays in proper and equitable access to health care during the pandemic, it would result in the creation of a new manuscript, which is not permitted by the limited framework of this manuscript.

Summary

The manuscript was devoted to the problem of the right to equitable access to healthcare and essential medicines during the COVID-19 pandemic, which is related to international and domestic law. The above was done in reference to the view expressed by Professor Roberto Andorno. The work analyses in detail the biomedical law, patient rights, and the principle of justice and equality to which each person is entitled. The

paper compares international and domestic law of opposing positions and presents the results of the analyses.

Keywords: the right to equitable access to health care, the right to access to essential medicines, human rights, biomedicine, pandemic COVID-19

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