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Equal access to publicly funded health care services: The legal experiences of Finland and Kazakhstan

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ABSTRACT

This article deals with the issue of equality in access to publicly funded health care based on the example of two jurisdictions, Finland and Kazakhstan. Legislative provisions of such access differ significantly in these two states. These differences culminate in the notion of citizenship. If Finland guarantees the right to publicly funded health care to everyone who is legally residing within its territory, Kazakhstan departs from that premise in that only its citizens are entitled with such a right. These and other differences led us to enquire into the fundaments of patient rights in both jurisdictions. We find that both states are facing inequalities of disadvantage regarding access to health care by vulnerable population groups. Both jurisdictions strive towards reducing inequalities in factual distribution of health care services, experiencing the phenomenon of gradual deterioration of public health care. In Finland this deterioration is mostly due to the growth of private actors providing health care services, subsidised partly by the state. In Kazakhstan it is due to the inefficient system of funding medical institutions based on the number of citizens registered within a certain institution.

In our opinion, legal solutions against inequalities in access to publicly funded health care regard, firstly, reconsideration of the status of non-citizens in situations of urgent medical interventions. Secondly, they encourage a shift in official legal doctrine towards fuller recognition of individual patient rights, and the introduction of instances dealing with these rights such as, e.g. a patient ombudsman and independent national authority supervising health care services.

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1. Introduction

1.1. Equality in access to publicly funded health care: general remarks

From the perspective of individual human rights, equality is 'a right to address the fundamental similarity of human beings as well as differences among them, to eventually target discrimination' (Bayer in Rosenfeld and Sajo, 2012, p. 993). If equality is 'the quality or state of being equal', (Black's Law Dictionary, 2007, p. 576) inequality is, hence, a breach of equality. In this article we deal with the legal implications of inequality in access to publicly funded health care in constitutions and legislation in the legal systems of Finland and Kazakhstan. Systematic analysis of 'health inequalities', i.e. differences in health outcomes among individuals, is left out of our research agenda as such studies belong to the area of social sciences (Machenbach et al., 2008).

Methodologically we follow one of the approaches for comparative legal studies proposed by Walter Hug in his famous publication 'The History of Comparative Law', i.e. we provide an overview of those solutions which various systems offer for a given legal problem (Hug, 1932)[6]. Although Hug's work was published in 1932, the methodology proposed by it is still topical for comparative law studies (De Cruz, 2007, p. 7) as are studies of inequalities in health care (Ingleby, Chiarenza, Deville & Kotsioni, 2012; Kronenfeld, 2008; Bakker and Mackenbach, 2002; Raphael, 2012). We conduct our analysis by comparing the essential points of patient rights and their developmental trends in Kazakhstan and Finland. We depart from a premise that inequalities in access to publicly funded health care can reveal themselves in both insufficient substantive guarantees and ineffective procedural guarantees of such access. This distinction overlaps with the *normative* vs. *factual* problems implementing patient rights. It also corresponds with the understanding of equality as a concept 'escalating between *recognition* and *redistribution*' which make the issue of equal access to health care both the entitlement 'to be among equals' and the entitlement 'to an equal share' of health care services (Baer, 2012, p. 983).

1.2. Jurisdictions to be compared

Comparative legal research on reducing health care inequalities in law is especially topical for Kazakhstan, which strives to construct an efficient system of health care based on examination of the experiences of developed states, especially with regard to the focus on the mechanisms of distributing public expenses in this area (Marat, 2011). Doubtless, Finland and Kazakhstan differ in many respects, e.g. they cover different geographical areas, differ in the size of the population, and lack unification through common regional human rights organisation; they are undergoing different stages of societal and economic development; Kazakhstan relies on codification in its legal system whereas Finland does not, etc. Nevertheless, Finland and Kazakhstan are placed within civil law legal families where legislation is the primary source of law (Kembayev, 2012; Husa, 2015), even though it would be more precise to differentiate Finland in a standalone category within the Nordic legal family due to the 'obvious similarity, as well as historical and geographical connections' (Husa, 2015, p. 228–229) between the five Nordic states (Denmark, Finland, Norway, Iceland, and Sweden). Since these two legal systems relate to the civil law family, we concentrate on the analysis of health care legislation in these two jurisdictions.

Placement within one parent legal family is not the only common denominator between these two selected states. In particular, when it comes to access to health care services, Kazakhstan and Finland take a comparable position in the World Health Care Systems ranking, both being considerably behind top-ten nations (which are: France, Italy, San Marino, Andorra, Malta, Singapore, Spain, Oman, Austria, and Japan (World Health Organization, 2000)). In this ranking our two jurisdictions take a middle position, i.e. Finland is number 31, whereas Kazakhstan is number 64. This middle position indicates the comparability of these two jurisdictions with respect to funding and the actual production of medical services, i.e. both states are distinct for the relatively large role of the state in implementing patient rights by virtue of public medical institutions while the private sector is not yet substantively dominating. As for the shared universal legal standards of health care, we can depart from another common premise: Finland and Kazakhstan are members of the United Nations and therefore are committed to the central UN human rights treaties. In particular, they are committed to Article 12 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR), guaranteeing 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. As far as legal obligations arising from Article 12 of the ICESCR relate, at the major extent, to public health care interventions, we concentrate on the provision of *publicly funded health care* services, omitting several legal relationships concerning individual or private medical care.

Our goal is to study legal implications of (in)equalities in access to publicly funded health care services and legal solutions to deal with inequalities under two different societal contexts. We concentrate on the following issues:

1. Mapping inequalities in patient rights with respect to access to publicly funded health care services in Finland and Kazakhstan;

[6] Hug suggested five possible groups of studies: 1. Comparing national and foreign legal systems in order to find similarities and differences; 2. Analysing solutions which various systems offer for a given legal problem; 3. Investigating causal relationships between various legal systems; 4. Comparing several stages of various legal systems, and 5. Examining legal evolution generally, according to periods and systems.

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