THE EXPRESS WILL OF A PATIENT: TYPOLOGY BY NATURE OF ITS ORIGIN

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Abstract. *The patient's express will, in accordance with the nature of its origin, could be categorized into initial and derivative express will. However, the regulatory framework is insufficient in Latvia, considering the significance of these institutes in the civil-law protection of the patient's express will and their specificity of different legal nature.*
The aim of the research is to carry out an analysis of the patient's express will types according to the nature of origin, to determine regulatory gaps and propose certain solutions for the elimination of the identified gaps. In order to achieve the aim, the following research tasks are set: 1) to analyse the patient's express will classification according to various classification criteria; 2) to study the legal nature of the patient's consent; 3) to assess the patient's refusal of a medical treatment and its legal consequences; 4) to analyse withdrawal by the patient as a derivative express will. The following research methods were applied in the paper: the semantic method; the grammatical method; the historical method; the comparative method; the systemic method; the teleological method. Research hypothesis: if all the patient's express will types based on the nature of origin are regulated in detail, the legal status of a patient in medical treatment legal relations will be improved and stabilized. Literature, regulatory acts and legal practice materials were applied in the research as information resources.
The author has developed the principles regarding the patient's express will types based on the nature of origin, which are in accordance with the legal system of Latvia and should be implemented in the regulatory framework, thus improving the civil law protection of the patient's express will.

Keywords: *derivative express will, initial express will, patient.*
JEL code: *K32 Environmental, Health and Safety Law.*

Introduction

Nowadays the express will of a patient is to be considered as a core of legal relations between a patient and a medical practitioner/ healthcare establishment. Further mutual legal relations of the above mentioned parties are directly and indirectly subordinated to express the will of a patient. An analysis has to be carried out to determine in what way the patient can express his will regarding his medical treatment. The types of classification of the express will of a patient, their peculiarities will be reviewed. It should be determined if the legal regulation ensures sufficient choice of types of expression and implementation of the express will by a patient.

One of the most significant classification criteria to categorize types of the express will of a patient is a nature of its origin. In accordance with a nature of its origin the express will could be categorized as follows:

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(1) Initial, i.e., a patient expresses his will to particular medical treatment first and foremost (a consent to a medical treatment or refusal of it as a prime and simple express will);
(2) Derivative, i.e., a patient has the right to change his will by a withdrawal of the former express will (withdrawal). Thereby the withdrawal of the will of a patient should be distinguished specifically taking into account peculiarities of its legal nature.

In accordance with its form of establishment, the express will of a patient could be categorized as follows:

(1) The will of a patient could be expressed directly, including in particular:
    (a) the will that is expressed in the current moment and is characterized by the following: (i) the will comes directly from the patient; (ii) the will is expressed in the current particular moment; (iii) the will is established (fixed); (iv) the will is not presumed; (v) the patient is present and is able to express his will; (vi) only the patient himself has the right to withdraw this express will;
    (b) the will of a patient could be established depending on the declaration that has been expressed earlier, i.e., the former express will of a patient;
(2) the will of a patient could also derive from legal presumption, i.e., the presumed will of a patient – (a) in what way the patient would be willing to act in accordance with his interests, and (b) the presumption of the will of a patient.

Another criterion to categorize the express will of a patient is independence of the express will in a legal meaning of the term. In accordance with this criterion, the express will could be classified as follows:

(1) an express will that could be qualified as an unilateral deal (for instance, a formerly declared express will of a patient regarding handling his own body after his death);
(2) an express will that constitutes bilateral (multilateral) composition of a deal, i.e., that is directed towards establishment, amendment, or termination of legal relations (for instance, the consent of a patient to medical treatment).

Another way to classify the express will of a patient is to do that in accordance with a way the will has been established, as well as in accordance with independence of the express will in the legal meaning of the term. The above mentioned classifications and their legal nature will be investigated in further research studies.

The patient's express will, in accordance with the nature of its origin, could be categorized into an initial and a derivative express will. However, the regulatory framework is insufficient in Latvia, considering the

significance of these institutes in the civil-law protection of the patient's express will and their specificity of different legal nature.

The aim of the research is to carry out the analysis of the patient's express will types according to the nature of origin, to determine regulatory gaps and propose certain solutions for the elimination of the identified gaps. In order to achieve the aim, the following research tasks are set: 1) to analyse the patient's express will classification according to various classification criteria; 2) to study the legal nature of the patient's consent; 3) to assess the patient's refusal of a medical treatment and its legal consequences; 4) to analyse withdrawal by the patient as a derivative express will. The following research methods were applied in the paper: the semantic method; the grammatical method; the historical method; the comparative method; the systemic method; the teleological method. Research hypothesis: if all the patient's express will types based on the nature of origin are regulated in detail, the legal status of a patient in medical treatment legal relations will be improved and stabilized. Literature, regulatory acts and legal practice materials were applied in the research as information resources.

The author has developed the principles regarding the patient's express will types based on the nature of origin, which are in accordance with the legal system of Latvia and should be implemented in the regulatory framework, thus improving the civil law protection of the patient's express will.

Consent of a patient to medical treatment and its legal nature

Content boundaries of consent of a patient to a medical treatment could be floating. A patient expresses his consent regarding his medical treatment. However the range of the express consent could be influenced, in the first place, by a patient himself in three ways: (1) a patient can expand boundaries of the express consent (for instance: a patient can accept the presence of other persons during a treatment or can invite other persons provided that the treatment is not interfered; a patient has the right to receive a mental care; a patient has the right to have the support of own family and other persons during a treatment (Pacientu tiesību likums- 5.p.7.d., 3.p.5.d., 5.p.3.d.); (2) a patient can narrow them down (for instance: a patient has the right to receive a medical treatment that is carried out only in the presence of the persons directly involved in a medical treatment (differentiation of persons involved in a medical treatment by narrowing down their number); a patient has the right to make a decision regarding particular methods of a medical treatment if the treatment process could be divided; a patient has the right to refuse or to terminate the participation in the process of clinical training (Pacientu tiesību likums - 5.p.7.d.; indirectly approved – 6.p.4.d.,

7.d.; 7.p.1.d.; 12.p.2.d.); (3) a patient has the right to declare his consent conditionally that would be considered as a new proposal (Civillikums, 1537.p.; Kalniņš, 2005, 175; Barak-Erez D., Correa R., Elliott M.a.o., 2008, 317-330). For instance, in the case Evans v. the United Kingdom the plaintiff was diagnosed an ovary tumour in 2000, as a result the surgery was required to remove her ovaries. However an opportunity to freeze the plaintiff's fertilized ova (freezing of unfertilized ova was not carried out in the particular healthcare establishment) was offered before the surgery. The decision had to be made fast, thus the plaintiff and her partner consented to the above mentioned freezing by signing a consent form and indicating names of each other. The relationship ended in 2002, and the plaintiff's former partner required destroying embryos, the plaintiff objected to his request. That resulted in the conflict of interests: the possibility to become a genetic parent versus the enforcement to become a parent. The Court had pointed out that the plaintiff's former partner had limited his consent with a condition that the embryos should be used only by both partners together, therefore the plaintiff's protest was declined (Evans v. the United Kingdom). However the opinion of particular judges was that the solitary possibility to become a genetic parent is more significant than a person's desire not to become a parent. Though the law had not ensured sufficient defence of the mentioned interests in this case (Joint dissenting opinion of judges Türmen, Tsatsa-Nikolovska, Spielmann and Ziemele).

Second, objective criteria that are taken into account by a patient while expressing his consent could limit the range of the consent. As an example, the following criteria could be mentioned: (1) the rights and legal interests of third parties, for instance, a principle of minimal risk to the donor - a patient as a recipient can receive only regenerative tissues and organs (except one kidney) from a living donor to be transplanted (Likums "Par miruša cilvēka ķemreņa aizsardzību un cilvēka audu un orgānu izmantošanu medicīnā" – 13.p.), not any tissues/ organs that are needed by a patient and that the patient would like to receive; (2) boundaries that are permitted by the legal system; those in some cases could be opposite to the law or, in the case where the legislative regulation does not exist, the state institution or the court have to fulfil the permitted boundaries of a conduct of a patient with a related content (for instance, the express consent of a patient to perform an active euthanasia is opposed to the law in Latvia and some other countries, yet there exists an opinion that it will be decriminalised in the future (See: Rodriguez v. British Columbia (Attorney General), point 17, 170 - the Court has dismissed the appeal of a terminally ill patient to perform euthanasia because it is not allowed by the law; Wakeford v. Canada (Attorney General) - the Court has dismissed the action of the patient terminally ill by HIV/ AIDS to permit performing euthanasia, as it was

opposed to the law). For instance, the gender reassignment surgery was performed to a person without a legal regulation providing for such a case criteria on how a gender reassignment is to be certified and on the procedure on certification of a gender reassignment. The Court has ruled that the state institution or the court have to fulfil the term „gender reassignment" with the content, as the state has an obligation to perform a legal recognition of a gender reassignment by careful verification (LR Augstākās tiesas Administratīvo lietu departaments, 2008). The boundaries of the express consent of a patient could be influenced by other conditions, for instance, the faith in countries with stronger influence of religion (for instance, in accordance with Islam a person cannot freely deal with own body since a human body is considered to be a gift of the God (Brauer, Wiesemann, Biller-Andorno, 2008, 168; Bulow, Sprung, Reinhart, 2008, 423-430). Thus, when a patient consents to a medical treatment he can in a subjective way to define content boundaries of the express consent (to expand them, to narrow them down, or to establish conditions) however – within the objectively eligible framework of legal system.

Consent of a patient should be received by a medical practitioner before a medical treatment is started, taking into account its specific character (Pacientu tiesību likums, 6.p.1.d., 3.p.6.d.; Ārstniecības likums, 1937, 71.p.; Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, 5.p.1.d.; Law of Obligations Act, Estonia, P.759, 766 p.3.; Patienten-Charta, Switzerland, a.6; Law on the Rights of Patients and Compensation of the Damage to their Health, Lithuania, a.8.1; Patient's Rights Act, Israel, a.13(A); Act on Health, Hungary, s.15 p.2; Law on the Rights of a Patient, Georgia, a.22 p.1; McHale, Fox, Murphy, 1997, 319). This approach is based on the fact that the physician is in touch with the own body of a patient, which should be controlled by a patient in accordance with his rights (Mason, 1994, 73; case: Malette v. Shulman ((1990) 67 DLR (4th) 321 (Ont CA)) (Canada), case: Schloendorff v. Society of New York Hospital ((1914) 211 NY) (ASV) - Kennedy, Grubb, 1994, 87). There are no strict rules regarding the time when the consent of a patient should be received – how long before the medical treatment is started. On the one hand, the minimal time boundary should be defined, i.e., the consent could be declared even shortly before the start of providing a medical service, given that a patient has had enough time to consider and to make a decision. On the other hand, the maximal acceptable time boundary should not be defined (indirectly confirmed – see: Белоусова), unless an incident occurs within the mentioned period of time that ceases the express consent of a patient that had been declared beforehand.

Two types of endorsements are defined in private law. The first is an endorsement before a deal/ an agreement; the second – a consent that is an endorsement by starting an action or even afterwards, thus it has a retroactive effect. Later endorsement could provide clarity on the subject of judicial character of the action, thus eliminating ambiguities in legal relations (Civillikums, 1434., 1435.p.; Torgāns, Grūtups, Višņakova, 1998, 41, 42). In medicine, solely consent of a patient is acceptable, not later endorsement. Although, there exists another opinion: if the consent to action in accordance with the law has been a precondition for validity of the legal act, then the act is not valid until its endorsement (Balodis, 2007, 155), subsequently it could be concluded that later endorsement by the patient is acceptable. Though this principle cannot function in medicine at all, since, for instance, performance of illegal surgery with receiving endorsement of a patient afterwards is unacceptable. A more rigorous approach is necessary in medicine, taking into account the character of medical intervention. In addition, it has been indicated that the legal act without necessary consent will not be considered as invalid in all cases; that would be done in order to protect the trust of third parties in validity of the legal act. In this case, the legal act will remain valid; nevertheless, civil sanctions could be imposed against the person that has concluded a deal without consent if the deal is not endorsed afterwards (Balodis, 2007, 155). The above mentioned argument is not applicable in medicine since the patient is protected to a larger extent than the third parties in this field. Therefore an action that has led to an illegal medical treatment and consequently has resulted in respective legal consequences to a medical practitioner/ healthcare establishment is to be considered illegal. Therefore, the application of different types of consent is limited in medicine, excluding the consent of a patient to medical treatment that is an endorsement by starting an action or even afterwards.

The following significant legal aspects of consent of a patient are being indicated when analysing its legal nature: (1) the consent of a patient relativises validity of a medical treatment, except the treatment of a patient without his consent or against his consent (legal function of a consent of a patient); it points out an imperative nature of consent of a patient; (2) the consent of a patient is conditional; three criteria are set for this case: (a) an ability of a patient to express his consent; (b) possession of an information by a patient; (c) voluntariness of a patient in expression of his consent; (3) the consent of a patient is not a sufficient condition to start a medical treatment (Kennedy, Grubb, 1998, 110-112; Montgomery, 1997, 227; Pattinson, 2006, 100,101; Mason, 1994, 75; Justickis) (for instance, the medical treatment is not to be performed barely in compliance with the subjective will of a patient; in the case of limited resources).

If a medical intervention is performed without the consent of a patient, that is considered to be infringement of the rights that leads to a civil liability. For instance, a five years old patient injured her hand at the garden gate in 2002. She was hospitalized; primary surgical manipulations of the injury were performed; during those the attending physician disconnected two fingertips of a patient that were initially amputated during injury; though he didn't provide this information to the mother of the patient as a legal substitute of the patient and didn't obtain her consent. The claim to the court was made, indicating that the physical mutilation was caused to the child in a result of illegal actions of the attending physician, therefore compensation to cover moral harm and losses due to the case should be collected. The Court with good reason ruled to decline the claim that was raised in this way, indicating that primary surgical manipulations of injury by the attending physician are not in a causal relation with a harm caused to health in a result of the trauma (LR Augstākā tiesa, 4.pk. 5.d., 6.d., 7.d.). The Court of Appeal also indicated that the bodily harm of the patient was not caused in a result of not providing information and of not obtaining the consent (LR Augstākās tiesas Civillietu departments). Nonetheless, in this case the attending physician had performed medical intervention to the patient without providing information to the substitute of the patient and without obtaining the consent; in this way the attending physician had illegally interfered integrity of the body of the patient thus infringing the rights of the patient (Ārstniecības likums, 41.p. (article is not in force); Pacientu tiesību likums, 3.p. 6.d., 6.p.1.d.; LR Satversme, 94., 95.p.). These arguments were not indicated in the claim. The attending physician would be discharged from his liability if it could be proved that his actions were justifiable, i.e., legal, or that the consequences of the harm were not causal to tolerated infringements. In cases where harm has occurred during a medical treatment, a medical practitioner has to prove that he has performed all duties in accordance with the professional requirements, or that the consequences of the harm to health are not casual to the tolerated infringements (Bitāns, 2009, 1.pk. 1.d.). In this particular case there exist a casual relation and actions of the attending physician are not justifiable, since the substitute of the patient was accessible and the life of the patient was not endangered (Ārstniecības likums, 49.p. (article is not in force); Pacientu tiesību likums, 7.p.8.d.). And the Health Inspectorate had applied administrative sanctions to the attending physician in this case (LR Augstākā tiesa, 4.pk. 6.d.). Therefore the above mentioned infringement of the attending physician has to be considered as a tort in the contractual relations between a patient and a medical practitioner/ healthcare establishment (Principles of European Tort Law, a.2:101, a.2:102 p.2; Civil Code, Germany, 1896, P.823 p.1. See also: Bar, Drobning, 2004, 25, 26. The cases where there is an ambiguity which civil

liability – a contractual or a tort liability – should be applied, are called a competition of contractual and tort liability. The preference is given to tort liability in Latvia (Bitāns, 1997, 96). In juridical literature a term „medical tort" is used as well. (See: Виноградов, 2003, 37)); in this case civil liability has to be applied to the medical practitioner/ healthcare establishment in accordance with Article 1635 of the Civil Law (as well as with Article 92 of the Constitution of the Republic of Latvia (See: LR Satversmes tiesa. Legal liability arises from the actions that are opposed to the rights, not from the legal, moral or other inconsistency of the actions. In the Constitution the term „adequate reimbursement" is used. The term should be interpreted as a compensation adequate to the infringement of the rights, including both material damage and immaterial harm; a compensation for immaterial harm is feasible in any case of the infringement of the rights (Butāns, 1999, 110,113)) (in the case described that is a liability to compensate moral harm).

There are cases in the Latvian case law where due attention is not paid to the condition to obtain the consent of a patient to a medical treatment. For instance, an under-age patient was hospitalized at night. A physician on duty haven't fulfilled his duties in an appropriate way. After the morning checkups of the patient it was recognized that the patient's medical condition was very bad. The patient was transferred to the intensive care, where she died in the evening. Evaluating the attending physician's negligence, it was indicated that he hadn't secured all the necessary examinations, hadn't observed the patient, hadn't provided the information to the patient's parents. The issue of not receiving consent of the substitute of the patient was not considered, although that demonstrates the quality of carrying out the professional duties by the attending physician and influences the physician's liability (See: LR Rēzeknes tiesa; LR Latgales apgabaltiesa; LR Augstākās tiesas Krimināllietu departaments).

Refusal of a medical treatment by a patient and its legal consequences

A patient has the right to refuse a medical treatment (Pacientu tiesību likums, 6.p. 4.d.) - that is one of the ways to express his will. These rights are derivative from the rights to life, including three components:

(1) the integrity of life: first, inviolability of life against instant danger to life or against the actions that are considered to be life threatening (a war, a homicide, terrorist activity, and others); second, against criminal actions that are not directly aimed at the death of a person but could or lead to it (criminal actions against the environment, criminal actions concerning negligence to work safety issues, and others);

(2) the rights to handle a life, i.e., voluntarily to create threats to life that are not aimed at occurrence of the death; those could be manifested as: first, refusal of a medical treatment when the life is endangered because of medical indications; second, removing of tissues/ organs for transplantation; third, medical trials; fourth, some professional activities; fifth, saving of life when it is not within professional duties of a person;

(3) the rights to life saving: to request assistance from qualified professionals when a person is not able to save his life himself (Капинус, 2006, 103,118,119).

Refusal of a medical treatment derives from the rights over one's own body. A patient has the self-determination rights to consent to or to refuse a medical treatment. The rights of a patient to refuse a medical treatment are not restricted even in the case if that endangers the health or life of the patient, without prejudice to a public interest (See also: Pole v. Region 2 hospital Corporation; A.C. v. Manitoba (Director of Child and Family Services)). In the case a patient refuses a medical treatment it is provided that a medical practitioner has only two obligations: (1) to inform about possible negative consequences of the refusal; (2) to encourage visiting another physician (Pacientu tiesību likums, 6.p. 5.d.). In this case the patient has to take a responsibility over the possible harm to his health or life. Consequently, a patient has the right to refuse a medical treatment even regardless possible harm to health and danger to life since it is manifestation of his self-determination rights.

It is essential to recognize when the rights of a patient to refuse a medical treatment arise. On the one hand, a patient of age 14 – 18 has the rights of the express consent, though, on the other hand, these rights are limited since the express consent to refuse a medical treatment is defined as a more relative in comparison with another – consent to a medical treatment – in this case (Pacientu tiesību likums, 13.p. 2., 3.d.). The express consent (including a refusal of a medical treatment) by a person of a majority age, having legal capacity to act is the one with the strongest force provided that there are no shortcomings of the express consent.

There are cases where a current refusal of a medical treatment by a patient of a majority age, having legal capacity to act is limited for the reason of debatable provisions. First, in Hungary a patient can refuse a medical life support treatment only in the case where in accordance with a conclusion by the council of doctors the death of a patient is imminent in a short time due to his terminal illness and regardless relevant medical treatment (Act on Health, Hungary, s.20 p.3, 4). On the one hand, refusal of a life supporting medical treatment denotes possible imminent death of a patient. It has to be admitted that "the right of unassisted decision over own death is one of the utmost boundaries of the self-determination rights of a patient" (Kovaļevska,

2008, 15). On the other hand, the Supreme Court of the United Kingdom in the case McKay v. Berystedt ruled that any adult and well informed patient, not only a terminally ill patient, has the right to refuse life support (Kennedy, Grubb, 1994, 1276). The approach that would extend rights of a patient in the case of particular health conditions even with negative consequences for the patient is not supported within a current model of legal relations between a medical practitioner and the patient, although refusal of a life supporting medical treatment is the most endangering to the health and life of the patient.

Second, in Hungary a pregnant patient cannot refuse life supporting medical treatment if there is a chance of successful pregnancy (Act on Health, Hungary, s.20 p.3, 4). Subsequently the following issue arises: what is more relevant in the situation when refusal of medical treatment (especially life supporting treatment) by a patient affects rights and legitimate interests of third (thus far – potential) parties. There was the following case in Germany in 1992. A pregnant woman was injured in a car accident. The injuries resulted in brain death. Though an unborn person (foetus) was unharmed, the life functions of the patient were supported by the medical equipment. The legal substitutes of the decedent person filed a petition to the Court, requesting to terminate the life support of the patient. The Court didn't have time to rule the case, because the possibility to support the life functions of the patient expired and the unborn person (foetus) died. Though an opinion of the legal science in this case tended to favour the rights to life of the unborn person (foetus) (Baumgarten, 2000, 296-301). There are cases recorded in the USA where the Court rules to proceed with the medical treatment against the will of a pregnant patient in order to save the life of the unborn child (foetus) (Miller, Hutton, 2004, 470). Thus, there exists occasions when refusal of a medical treatment by a patient affects the rights of third parties. The predominance of the rights should be assessed in a case of interference of rights.

Refusal of medical treatment by a patient is not limited regarding the time when the will of a patient should be expressed, i.e., the patient could express his will to refuse medical treatment before it is started as well as during the treatment (Pacientu tiesību likums, 6.p.4.d.). The only differences concern a legal nature of the refusal of medical treatment by a patient. The refusal of a medical treatment by a patient during the treatment should be considered as a withdrawal of the patient with its particular features since the consent of a patient to medical treatment had been received initially. On the one hand, „*pacta sunt servanda*" principle exists in the private law; on the other hand, there are particular cases where unilateral deviation of the contract is acceptable (Civillikums, 1587., 1589.p.). It could be concluded that the moment when the refusal of medical treatment is expressed by a patient

affects merely legal nature of the express will of a patient: that is either a refusal or a withdrawal.

Substantiation of the decision of a patient to refuse a medical treatment is not required notwithstanding that the refusal of the treatment could lead to negative consequences for a patient. It is not substantial if the reason for the decision is a rational, an irrational, unknown, or even non-existing, providing that a patient is of a majority age and having legal capacity to act (Kennedy, Grubb, 1998, 113). In accordance with the principle of private autonomy the justification of the refusal of a medical treatment by a patient or lack of its justification does not affect legal validity of the express will whereas there are no shortcomings in the express will itself.

It is necessary to specify the extent of a medical treatment the patient has the right to refuse. First, a patient has the right to refuse a particular method of medical treatment if it is possible to divide the process of medical treatment in separate stages without refusing a treatment in general (Pacientu tiesību likums, 6.p.4.d.). Second, a patient can refuse a medical treatment overall (Pacientu tiesību likums, 6.p.4.d.). Therefore refusal of a medical treatment by a patient could be absolute or partial in accordance with the extent of the refusal.

Withdrawal by a patient as a derivative express will

The right of a patient to change own decision is retained, while expressing the will regarding the medical treatment, i.e., consenting to a medical treatment or refusing it. Thus the self-determination right of a patient is not restrained after the will regarding the treatment is made. Withdrawal of the express will of a patient could mean one of the following: (1) either it is a withdrawal of the express will without expressing a new will (since withdrawal is not presumption of an opposite decision); (2) or it means a consent to a medical treatment (in case the refusal of medical treatment had been expressed initially, but currently the patient expresses consent to the treatment); (3) or it is a refusal of a medical treatment (if initially it was a consent to it). Nevertheless, there are certain features of a withdrawal as the express will of a patient. These features differentiate the withdrawal from mere consent to a medical treatment or a refusal of it. First, a withdrawal is performed in the case of the will that have been already expressed; that reflects the derivative legal nature of a withdrawal. Second, in the case of withdrawal, the former express will is being cancelled and a new express will can be formulated; that points out a composite nature of a withdrawal. Third, in the case of a withdrawal of the existed express will the opposite express will could be provided; that illustrates a turning nature of a withdrawal. It could be concluded that the consent to a medical treatment or

the refusal of it are not considered as the objective and final express will of a patient, while the patient is envisaged to have subjective rights to change the decision by withdrawing it, i.e., by the express will of derivative, possibly composite, and turning nature.

There are no limits on how often a patient can withdraw the express will. However a patient should act reasonably while withdrawing the express will, i.e., to avoid subjective action without objective justification that could result in losses to a medical practitioner/ healthcare establishment. For instance, in Hungary, a patient has to cover expenses that have occurred to the provider of medical services if the will of a patient has been withdrawn without a valid justification (Act on Health, Hungary, s.15 p.6). The occurrence of losses constitutes obligation of a patient to objective justification of the withdrawal. The objective change of circumstances or obtaining information about the circumstances unknown before that would've been resulted in another decision by a patient if known in advance could be admitted as the proper reasons for an objective justification. The patient shouldn't be determined to negative consequences just because he objectively changes his decision withdrawing the former express will. Only indirect references to this principle could be found in the legal regulatory framework in Latvia - for instance: (1) the refusal to participate or termination of participation in the clinical training process shall not adversely affect the attitude of the medical practitioner towards further medical treatment of the patient (Pacientu tiesību likums, 12.p. 2.d.); (2) it is prohibited to punish a patient or otherwise directly or indirectly cause him unfavourable circumstances, if the patient is protecting his rights (Pacientu tiesību likums, 3.p.4.d.). In the third part of Article five of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine it is defined that a patient has rights "(...) freely withdraw (...)" (Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, a.5 p.3) will at any time, thus indirectly indicating inadmissibility of negative consequences. Hence it could be concluded that an objective withdrawal of the express will of a patient cannot result in negative consequences to the patient.

The following issue arises while analysing the express will of a patient in relation with his medical treatment: are there any restrictions regarding the utmost moment until which a patient has the right to withdraw the express will. It is attempted to strengthen the principle of stability of civil relations in private law; this principle is reflected in much more specific indications rather than merely permission of unilateral deviation (Torgāns, Grūtups, Višņakova, 1998, 41. Article 1432 of the Latvian Civil Law defines: if someone has expressed his consent he has accepted an action with all its

legal consequences and cannot further limit his consent (Civillikums)). However, a patient is envisaged to have the right to withdraw his express will at any time (Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, a.5 p.3; Act on Health, Hungary, s.15 p.6; indirectly – Pacientu tiesību likums, 6.p. 1., 4.d.; „(...) as well during the procedure (...)" – the case: Ciarlariello v. Schacter (Kennedy, Grubb, 1998, 119; Health Care Consent Act, Ontario, Canada, s.14; Patient's Rights Act, Norway, s.4-1 p.2)) regardless the start or a stage of medical treatment taking into account a specific character of a medical treatment and a character of its intervention.

Restrictions to a withdrawal by a patient could be acceptable only in exceptional cases related with actual inability to change the sequence of events due to the irreversible effects. For instance, it is possible to withdraw consent to remove tissues/ organs for transplantation only until the beginning of the procedure. Thus, a derogation of the principle of private law is created since a rather liberal approach to the withdrawal right of a patient is envisaged, restraining the rights exceptionally in the case of the irreversible effects of the sequence of events.

It is necessary to identify boundaries to a withdrawal of the express will of a patient. As distinct from the initial expression of a will where a patient sets its boundaries himself, the question in the case of a withdrawal is about a cancellation of the decision already made. Thus, a withdrawal by a patient already has the boundaries that are set before. In the case the patient expands or narrows down the range of his express will by withdrawing it that will result in a double express will, which will consist of the initial and the derivative express will. Thus, it could be concluded that the withdrawal by a patient has strict (specific, determinate) boundaries as distinct from the relative ones defined in the initial express will.

Conclusions and suggestions

In accordance with the nature of its origin, the express will of a patient could be classified as one of the following:

(1) initial, i.e., a patient expresses his will regarding particular medical treatment first and foremost (a consent to a medical treatment or refusal of it as a prime and simple expression of a will);
(2) derivative, i.e., a patient has the right to change his will by a withdrawal of the former express will (withdrawal). Thereby the withdrawal of the will of a patient should be distinguished specifically taking into account peculiarities of its legal nature.

There are basic general principles regarding the initial express will of a patient defined in the legal regulation in Latvia. Particular legal nuances

should be defined more precisely. However, there are only indirect references to a withdrawal as a derivative express will of a patient in the part where the nature of origin of an express will is analysed. The above mentioned regulation is insufficient, taking into account the significance of the concept with regard to legal defence of private law and peculiarities of its legal nature.

The author proposes to make the following amendments to the Law on the Rights of Patients of the Republic of Latvia by introducing Article 6^1 and defining basic principles of a withdrawal of the express will of a patient:

(1) A patient has the right to withdraw the express will any time except a situation when the irreversible effects of the sequence of events have taken place.
(2) The express will of a patient expires if it is duly withdrawn in an appropriate form by a patient.
(3) A withdrawal of the express will of a patient is not considered to be a presumption of the opposite decision.
(4) A patient withdraws the express will in writing.
(5) In a situation when a patient due to objective circumstances is not able to express a withdrawal in writing, the attending physician invites two witnesses of a major age, having a legal capacity to confirm by their signatures the decision made by a patient.
(6) A withdrawal of the express will of a patient should not cause negative consequences to the patient.

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