

*Dominika Tykwińska-Rutkowska*

University of Gdańsk

dominika.tykwinska@ug.edu.pl

ORCID: <http://orcid.org/0000-0002-2275-4394>

## Collective patients' rights in Polish law. Selected problems\*

<http://dx.doi.org/10.12775/SIT.2023.032>

### 1. Introduction

Over the last decades, the problem of patients' rights – their catalogue and instruments of protection – has remained topical for several reasons. Undoubtedly, these rights play an important role in the development of health systems and the universalisation of access to health services.<sup>1</sup> Based on the fundamental human rights to dignity, life, health, integrity, or self-determination, they are an integral part of these rights and a concretisation growing out of a shared sense of threat to subjective rights.<sup>2</sup> As an expres-

---

\* This publication is the result of research carried out within the framework of Project Miniatura 3 No. DEC-2019/03/X/HS5/02070 entitled: "Legal nature of collective patients' rights" funded by the Narodowe Centrum Nauki (National Science Centre). Its subject is the regulation of patients' rights in the Polish legal system, part of which is a discussion of the legal nature of collective patients' rights.

<sup>1</sup> D. Małecka, *Prawa pacjenta – ważny problem społeczny i prawny*, "Praca i Zabezpieczenie Społeczne" 2002, No. 3, p. 13.

<sup>2</sup> T.K. Hervy, J.V. McHale, *European Union Health Law: Themes and Implications*, 2015, pp. 156–183; H.D.C. Roscam Abbing, *Right of Patients in the European Context, Ten Years and After*, "European Journal of Health Law"

sion of the empowerment of the patient, they are an important mechanism for ensuring his or her safety in relations with health professionals, which are relationships based on the asymmetry of information.<sup>3</sup> They can also be seen as a consequence of the formulation of more and more obligations for health professionals, which are precisely matched by the entitlements of beneficiaries of health services<sup>4</sup> who are more aware of their rights, thanks, *inter alia*, to action taken at national and international levels to protect human rights in general, including patients' rights.<sup>5</sup> The need to guarantee patients' rights and to adapt them to changing realities<sup>6</sup> is also linked to the constant progress in the field of medicine – the development of new medical techniques and technologies, in particular biotechnology and genetic engineering<sup>7</sup> – and the risks associated with it. In this case, the mechanisms defined by law for the protection of patients' rights are specific tools for drawing the boundaries between scientific developments and human dignity.<sup>8</sup>

Given the ongoing evolution of the concept of patients' rights, this publication examines the issue of collective patients' rights. To

---

2004, No. 11, p. 8; H. Sinding Aasen, M. Hartlev, *Human Rights Principles and Patient Rights*, in: *Health and Human Rights. Global and European Perspectives*, B. Toebes, M. Hartlev, A. Hendrics, K. Ó Cathaoir, J. Rothmar Herrmann, H. Sinding Aasen, 2nd ed., Cambridge–Antwerp–Chicago 2022, pp. 65–70; E. Kujawa, *Prawa pacjenta – nowa rzeczywistość, nowe dylematy moralne*, in: *Prawa pacjenta a etyka zawodowa pielęgniarki i położnej*, G. Rogala-Pawełczyk (ed.), Warszawa 1998, p. 27). However, opposing views are presented, according to which there is a correlation between patient rights and human rights, but these sets should not be equated, nor should patient rights be considered as a subset of human rights. See D. Bach-Golecka, L. Bosek, P. Sobolewski, M. Śliwka, *Rozdział 11. Prawa pacjenta*, in: *Instytucje Prawa Medycznego. System Prawa Medycznego, tom 1*, M. Safjan, L. Bosek (ed.), 1st ed., Warszawa 2018, pp. 702, 705–706.

<sup>3</sup> E. Kujawa, *Prawa pacjenta*, p. 27.

<sup>4</sup> M. Boratynska, P. Konieczniak, *Prawa pacjenta*, Warszawa 2001, pp. 14–15; M. Balicki, *Prawa pacjenta – wybrane zagadnienia*, in: *Szkoła praw człowieka. Teksty wykładów*, Helsińska Fundacja Praw Człowieka 1996, p. 315.

<sup>5</sup> D. Karkowska, *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, 2nd ed., Warszawa 2010, pp. 17–18.

<sup>6</sup> H.D.C. Roscam Abbing, *Right of Patients*, p. 11.

<sup>7</sup> J. Bujny, *Prawa pacjenta. Między autonomią a paternalizmem*, Lex 2007.

<sup>8</sup> A. Wołoszyn-Cichočka, *Ochrona praw pacjenta. Studium publicznoprawne*, Lublin 2017, p. 37.

answer the questions concerning the essence of these rights and the legal relation between the protection from violations of these rights and the protection from violations of the individual rights of the patient, it was pointed out that in the current Polish and foreign literature in the field of patient rights, based on the contemporary regulations concerning these rights,<sup>9</sup> firstly, basic individual patient rights were distinguished, which include: the right to informed consent, the right to privacy and dignity, and the right to medical records.

Secondly, social rights, such as access to healthcare, reimbursement, and equal treatment of patients, are included in the catalogue of these rights. At this point, it is worth noting that some of the authors consider the social right “to become a patient,” i.e., linking them to issues of access, entitlement, and scope of health care, as collective rights.<sup>10</sup>

---

<sup>9</sup> Patients' rights are a complex area of legal regulation – many of these rights are based on the Constitution, international agreements, and administrative law. The solutions adopted also vary when it comes to legal form, with some countries enacting laws solely and directly dedicated to the issue, and others regulating patient rights at the level of policy documents – charters. These, as Rui Nunes notes, are seen as “the normative benchmark of the vast array of rights devoted to the patient and other users of the health system.” The first of the countries to introduce a statutory regulation on patient rights was Finland (1992; a revision of this regulation was launched in 2022). In the United Kingdom, on the other hand, the issue of patients' rights was addressed by the Patients' Rights and Responsibilities Charters introduced in 1991, subsequently replaced by the NHS Constitution for England in 2013 and the relevant health policy acts developed by the devolved administrations of Scotland, Wales and Northern Ireland. The Polish Act on Patient's Rights and Patient's Rights Ombudsman was enacted on 6 November 2008. See, *inter alia*: M.E. Rider, C.J. Makela, *A comparative analysis of patients' rights: an international perspective*, “International Journal of Consumer Studies” 2003, No. 27, pp. 302–315; H. Mujovic-Zornic, *Legislation and Patients' Rights: Some Necessary Remarks*, “Medicine and Law” 2007, Vol. 26, No. 4, pp. 709–719; R. Nunes, *Healthcare as a Universal Human Right. Sustainability in Global Health*, London–New York 2022, p. 167; M. Śliwka, *Prawa pacjenta w prawie polskim i na tle porównawczym*, 2nd ed., Toruń 2010, *passim*.

<sup>10</sup> See. H. Nys, T. Goffin, *Mapping national practices and strategies relating to patients' rights*, in: *Cross-border health care in the European Union: mapping and analysing practices and policies*, M. Wismar, W. Palm, J. Figueras, K. Ernst, & E. van Ginneken (ed.), 2011, p. 159. See also the remarks of Henk Leenen on the differences between the legal nature of individual patient rights and so-called social patient rights. H. Leenen, S. Gevers, G. Pinet, *Patients'*

Thirdly, as a consequence of the changes taking place in the healthcare sectors and the desire to provide care of a certain quality and safety, patient rights, referred to as consumer rights, have been recognised – in part, these are seen as inspired by the implementation of Directive 2011/24/EU on the application of patient's rights in cross-border healthcare.<sup>11</sup> These include: the right to choose a healthcare provider, the right to a second opinion, and the right to safe and timely treatment (not to be understood as the right to services corresponding to current medical knowledge).

Fourthly, the catalogue of patient rights also identifies a patient's informational rights, such as the right to information about one's health, treatment options, rights and entitlements, and the basket of guaranteed health services and providers. Fifthly, procedural rights were also recognised, such as the right to complain, redress, and participate in decision-making. In the context of the last of these rights, it is important to note the trend to guarantee patients or patient organisations<sup>12</sup> greater participation in the shaping of health policy at different levels – local, regional, or national.

Concerning patients rights' protection mechanisms, the literature points to their diversity, although at the same time, it is emphasised that legislators seek to ensure that patients have access to a broad catalogue of mechanisms for investigating and responding to their complaints.<sup>13</sup> Civil, criminal, but also administrative litigation, accountability to patient ombudsmen, and even media-

---

*Rights*, in: *The Rights of Patients in Europe. A Comparative Study*, H. Leenen, S. Gevers, G. Pinet (ed.), Deventer–Boston 1997, pp. 1–6.

<sup>11</sup> OJ UE L 88/45 4.4.2011.

<sup>12</sup> See comments in the literature about the patient movement and its role – combining patient support with an attempt to influence the way or standards of healthcare delivery. Ch. Williamson, *Toward the Emancipation of Patients: Patients' Experiences and the Patient Movement*, Bristol 2010, passim. In addition, see remarks on collective movements “attempting to create a new spirit of community in contemporary biomedicine”, particularly in a situation of observed “communal deprivation” as a consequence of economic collapse. D. Dickenson, *Me Medicine vs We Medicine. Reclaiming Biotechnology for the Common Good*, 2013, pp. 202, 184.

<sup>13</sup> H. Leenen, S. Gevers, G. Pinet, *Enforcement of Patients' Rights in Formal Proceedings*, in: *The Rights of Patients in Europe. A Comparative Study*, H. Leenen, S. Gevers, G. Pinet (ed.), Deventer–Boston 1997, pp. 151–182.

tion are allowed. However, it should be stressed that even though the same mechanisms are found in different jurisdictions, they differ in detail, e.g., in terms of time limits and methods of filing complaints, the legal position of ombudsmen for patients, the circumstances in which compensation can be awarded (very often alternative dispute resolution mechanisms do not lead to compensation or redress for the harm caused to the patient), and the possibility or obligation to provide legal assistance to patients who file complaints.<sup>14</sup>

## 2. The concept and nature of collective patients' rights

On the background of the comments made about the catalogue of patient rights, it is important to note the specificity of Polish solutions in this area. When drafting appropriate legal regulation on the protection of patient rights, the Polish legislator distinguished between individual and collective rights.<sup>15</sup> The problem is, however, that while making this distinction, the Polish legislator did not introduce a legal definition of both notions, although this was raised in the course of the legislative work,<sup>16</sup> nor did it define their mutual relationship<sup>17</sup>.

---

<sup>14</sup> Ibidem.

<sup>15</sup> See: Uzasadnienie do projektu ustawy o ochronie indywidualnych i zbiorowych praw pacjenta oraz o Rzeczniku Praw Pacjenta druk Nr 238, Sejm RP VI Kadencji.

<sup>16</sup> Compare: U. Drozdowska, *Opinia dotycząca projektu ustawy o ochronie indywidualnych i zbiorowych praw pacjenta oraz o Rzeczniku Praw Pacjenta (w części dotyczącej praw pacjenta)*, in: *Przed pierwszym czytaniem, Zmiany w systemie ochrony zdrowia, druki sejmowe Nr 283, 284, 286, 287, 293, 294, 311*, Warszawa 2008, No. 2, pp. 22, 33–34; A. Ostrowska, *Prawa pacjenta*, "Antidotum" 1996, No. 6–8, pp. 89–90; M. Śliwka, *Prawa pacjenta w prawie polskim i na tle porównawczym*, 2nd ed., Toruń 2010, pp. 68–69; E. Bagińska, *Postępowanie w sprawach praktyk naruszających zbiorowe prawa pacjentów*, in: *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, M. Nesterowicz (ed.), Toruń 2009, p. 291.

<sup>17</sup> L. Wengler, *Praktyki naruszające zbiorowe praw pacjentów Wprowadzenie do problematyki*, "Gdańskie Studia Prawnicze. Studia prawnoadministracyjne"

In connection with the above, relevant attempts at definition have been made in the literature, although it is difficult to find a consensus among scientific representatives in this respect. The authors only unanimously emphasise that Article 59(1) of the Act of 6 November 2008 on Patient Rights and Patient Rights Ombudsman (hereinafter referred to as the A.P.R.<sup>18</sup>) implies only “a certain negative element” of this definition<sup>19</sup>, as the legislator explicitly states that the collective patients’ rights are not the sum of individual rights.

According to Dorota Karkowska, collective patients’ rights should be understood as rights that relate to patients as a collective and are violated when the behaviour affects a predetermined, larger number of patients.<sup>20</sup> In the opinion of Marcin Śliwka, collective patients’ rights are those whose existence depends on the existence of an analogous right enjoyed by another patient.<sup>21</sup> In turn, as Antonina Ostrowska notes, collective patients’ rights “refer to social commitments undertaken by the government or other public or private organisations to sufficiently ensure health care for the entire population, as well as equal access to such care for all residents of a given country and the elimination of discriminatory barriers in this respect.”<sup>22</sup> This standpoint is also shared by Marek Balicki.<sup>23</sup> For Robert Bryzek, on the other hand, “[...] collective patients’ rights can be defined as the totality of patients’ rights relating to healthcare services, to which a specific group of patients or an unlimited number of patients in similar factu-

---

cyjne. Księga Jubileuszowa Profesora Eugeniusza Bojanowskiego”, T. Bąkowski, K. Żukowski (ed.), Vol. 28, 2012, p. 371.

<sup>18</sup> Consolidated text. Journal of Laws 2023, item 1545 as amended.

<sup>19</sup> See: L. Wengler, *Praktyki naruszające*, p. 371. Compare: M. Syska, Art. 59, in: *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, Legalis 2020.

<sup>20</sup> D. Karkowska, Art. 59, in: *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, 3rd. ed., Lex 2016.

<sup>21</sup> M. Śliwka, *Prawa pacjenta*, pp. 68–69.

<sup>22</sup> A. Ostrowska, *Prawa pacjenta*, pp. 89–90.

<sup>23</sup> M. Balicki, *Prawa pacjenta – wybrane zagadnienia*, in: *Szkola Praw Człowieka. Teksty wykładów*, Warszawa 1996, p. 319.

al and legal circumstances are entitled.”<sup>24</sup> Also, according to Piotr Zieliński, the concept of collective patients' rights should be referred to as the totality of the rights of a collective subject related to healthcare services.<sup>25</sup> Meanwhile, under Maciej Syska, collective patients' rights and individual rights are identical in terms of content, but in the case of collective patients' rights, the object of protection is the collective interest.<sup>26</sup> Furthermore, it is assumed in the literature that the essence of collective patients' rights can be known through the description of illegal practices that violate these rights.<sup>27</sup> Thus, as Ewa Bagińska notes, practices that violate the collective patients' rights are behaviours that affect an individual but could potentially affect any patient in similar circumstances.<sup>28</sup> As, in turn, Maciej Syska points out, the violation of these rights differs from the violation of the sum of individual rights precisely by the potential to affect non-individualised addressees in advance.<sup>29</sup>

Also helpful in formulating a definition of collective patients' rights is the case law of administrative courts reviewing the legality of the Patient Rights Ombudsman's (hereinafter referred to as the PRO) decisions made in proceedings on practices that violate these rights, regulated in Chapter 13 of the A.P.R.<sup>30</sup>

---

<sup>24</sup> R. Bryzek, *Art. 59*, in: *Prawa pacjenta i Rzecznik Praw Pacjenta. Komentarz*, D. Karkowska (ed.), Lex 2021.

<sup>25</sup> P. Zieliński, *Ochrona zbiorowych praw pacjentów*, “*Studia z Zakresu Prawa, Administracji i Zarządzania UKW*” 2013, Vol. 4, p. 343.

<sup>26</sup> M. Syska, *Art. 59*, in: *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, ed. L. Bosek, Legalis 2020. Compare also: D. Tykwińska-Rutkowska, *Przegląd orzecznictwa sądów administracyjnych w zakresie ochrony zbiorowych praw pacjentów do dokumentacji medycznej*, “*Gdańskie Studia Prawnicze. Przegląd Orzecznictwa*” 2018, No. 2, p. 14.

<sup>27</sup> P. Zieliński, *Ochrona zbiorowych*, p. 341.

<sup>28</sup> E. Bagińska, *Postępowanie w sprawach*, p. 281.

<sup>29</sup> M. Syska, *Art. 59*....

<sup>30</sup> D. Tykwińska-Rutkowska, *Odpowiedzialność prawna z tytułu naruszenia zbiorowych praw pacjentów w świetle orzecznictwa sądów administracyjnych*, in: *Odpowiedzialność w ochronie zdrowia*, E. Kruk, A. Wołoszyn-Cichocka, M. Zdyb (ed.), Warszawa 2018, pp. 128–129.

Thus, as is accepted in judicial-administrative case law,<sup>31</sup> the material scope of patients' rights derives from Article 1 of the A.P.R.,<sup>32</sup> and "collective" patients' rights refer to those rights provided for in the Act as well as in special provisions (see judgment of the Voivodship Administrative Court<sup>33</sup> in Warsaw of 1 July 2016, VII SA/Wa 692/16). According to the Supreme Administrative Court<sup>34</sup> (see judgment of 12 May 2016, I OSK 116/16), the use of the term "collective patients' rights" by the legislator had the effect of extending administrative-legal protection to the rights of actual and potential patients treated as a collective, i.e., a group that deserves special protection.<sup>35</sup> In this way, in the opinion of the adjudicating Supreme Administrative Court, the legislator has established a separate object of protection, which remains independent of the protection of individual patient rights.<sup>36</sup> In this case, as emphasised by the administrative courts, the object of protection is the collective interest.<sup>37</sup> Therefore, according to the view adopted in the administrative court jurisprudence, "the collective patients' rights are those that can be violated when the effects of the actions or omissions of the medical entities may threaten or realise themselves in the sphere of any potential patient in similar circumstances."<sup>38</sup> It is therefore assumed that to establish

---

<sup>31</sup> The administrative court judgments referred to are taken from the Central Administrative Court Case Law Database (Centralna Baza Orzecznictwa Sądów Administracyjnych).

<sup>32</sup> Judgment of the Supreme Administrative Court of 17 January 2017, II OSK 2505/16.

<sup>33</sup> Hereinafter referred to as VAC.

<sup>34</sup> Hereinafter referred to as SAC.

<sup>35</sup> Compare also judgments: Judgment of the SAC of 23 April 2014, II OSK 2826/12; judgment of the VAC in Warsaw of 1 July 2016, VII SA/Wa 692/16; judgment of the SAC of 22 July 2016, OSK 855/16; judgment of the SAC of 11 February 2016, II OSK 3047/15; judgment of the SAC of 23 April 2014, II OSK 2862/12; judgment of the VAC in Warsaw of 10 May 2017, VII SA/Wa 443/17; judgment of the VAC in Warsaw of 22 January 2013, VIII SA/Wa 764/12.

<sup>36</sup> Judgment of the SAC of 12 May 2016, I OSK 116/16.

<sup>37</sup> Compare, i.e.: judgment of the SAC of 11 February 2016, II OSK 3047/15; judgment of the SAC of 23 April 2014, II OSK 2862/12; judgment of the VAC in Warsaw of 10 May 2017, VII SA/Wa 443/17; judgment of the VAC in Warsaw of 22 January 2013, VIII SA/Wa 764/12.

<sup>38</sup> See: D. Tykwińska-Rutkowska, *Odpowiedzialność prawna*, p. 130. Cf. also: judgment of the VAC in Warsaw of 17 November 2015, VII SA/Wa



a violation of collective patients' rights, it is important to determine whether a specific action of a healthcare provider is directed at a predetermined circle of subjects. In this regard, it is not the number of actual, confirmed violations that determines whether collective patients' rights have been violated, but rather the nature of the violation – and thus even only the potential for negative effects on a specific group,<sup>39</sup> and thereby on individual patients of that group – that is crucial.

The legislator has therefore not created a new catalogue of rights specific to patients as a group but has pointed to a new context for the protection of patients' rights, which has led to the establishment of an additional mode of protection, in which the object of protection is a collective interest. Thus, by protecting the rights of patients as collective rights, the legislator, in essence, protects the patient in two ways – as an individual *per se* and as a member of the collective – present and future patients. It could therefore be assumed that there is a “collectivising moment”<sup>40</sup> of the patient's rights as human rights, in which the individual is protected as part of the whole. At this moment, patient rights are considered in a different approach.

Indeed, this construction protects the interests of actual as well as potential patients when the negative effects of a practice that violates the collective patients' rights have arisen, as well as when there is only the potential for them to arise, even if the patients are not aware of the violation of their rights. Thus, the protection of patients as a collective, guaranteed by the A.P.R., is an example of the “collectivising moment” concerning healthcare entitlements, which does not mean, however, that collective empowerment has been achieved in this way, but at most the establish-

---

1861/15; judgment of the SAC of 11 February 2016, II OSK 3047/15; judgment of the SAC of 23 April 2014, II OSK 2862/12; judgment of the VAC in Warsaw of 10 May 2017, VII SA/Wa 443/17; judgment of the VAC in Warsaw of 9 October 2015, VII SA 1438/15, judgment of the VAC in Warsaw of 22 January 2013, VIII SA/Wa 764/12.

<sup>39</sup> See judgments of the VAC in Warsaw of 1 July 2016, VII SA/Wa 692/16; 31 January 2018, VII SA/Wa 2720/17; 29 January 2018, VII SA/Wa 2558/17.

<sup>40</sup> See comments on collectivizing and individualizing moments in the literature: N. Rose, *The Politics of Life Itself*, Oxford 2007, pp. 131–154.

ment of a different context for the protection of already known patient rights. In this concept, the emphasis should not be on how the rights of individuals are exercised but on their protection. Indeed, the interference of the state through the Patient Rights Ombudsman in the activities of healthcare providers who have committed prohibited practices that violate the collective patients' rights is undoubtedly an expression of the publicisation of the protection of patients' rights and an emphasis on the role of the state in maintaining the legally defined conditions of healthcare. It is therefore possible to consider whether the term collective patients' rights is not a technical term<sup>41</sup> used by the legislator to ensure better, more complete protection of patients' rights.

### 3. Legal protection for violation of collective patients' rights and its relation to legal protection for violation of individual patient rights

The Act on Patient's Rights and Patient's Rights Ombudsman entrusted their protection to the PRO, which is a central governmental administrative body equipped with powers to control the actions of entities obliged to realise and comply with patients' rights.<sup>42</sup> Following the provisions of the aforementioned Act, the basic activities of the PRO to protect patients' rights include conducting proceedings: 1) in cases of practices violating patients' collective rights, 2) in cases of violations of individual patient rights.<sup>43</sup>

As regards proceedings in cases of practices violating the collective patients' rights, this is covered by the provisions of Chapter 13 of the A.P.R., which regulates the public law protection of pa-

---

<sup>41</sup> Compare remarks: C. Mik, *Zbiorowe prawa człowieka. Analiza krytyczna koncepcji*, Toruń 1992, p. 225.

<sup>42</sup> It is worth noting that the protection of patients' rights is further served by actions taken by the Ombudsman, the Ombudsman for Children, or the President of the Office of Competition and Consumer Protection.

<sup>43</sup> In addition, the PRO acts by requesting the initiation of civil proceedings for violations of patients' rights and participating in these proceedings on the rights of the public prosecutor.

tients' rights as a consequence of the introduction of the institution of practices violating collective patients' rights, the absolute prohibition of their use, and the establishment of rules of specific administrative proceedings sanctioning these practices.<sup>44</sup> The Act sets out the manner of initiating proceedings, the prerequisites for mandatory and optional refusal to initiate proceedings, the powers of the PRO and the manner of terminating the proceedings, as well as legal means against the PRO's decision. To the extent not regulated, the provisions of the Act of 14 June 1960 (The Code of Administrative Procedure)<sup>45</sup> apply directly to these proceedings. The protection of collective patients' rights guaranteed by the above-mentioned Act does not exclude protection under other Acts, in particular those concerning combating unfair competition, the protection of competition and consumers, or counteracting unfair market practices.

Under Article 59 of the A.P.R., a practice violating the collective patients' rights is an unlawful, organised action or behaviour of entities providing healthcare services, as well as the organisation of a protest action or strike by an organiser of a strike, as confirmed by a final court decision, contrary to the provisions on the resolution of collective disputes, which is aimed at depriving or limiting an unspecified group of persons using or requesting healthcare services of their rights, in particular, undertaken for financial benefit. The use of such practices is strictly prohibited and threatened with administrative sanctions.

The PRO initiates the proceedings on the application of practices violating collective patients' rights through a decision, of which he notifies the parties, i.e. the applicant for a decision on the practice violating collective patients' rights or the one against whom the proceedings on the application of such a practice have been initiated. On the other hand, it concludes the proceedings by issuing a decision by which it refuses to initiate the proceedings or

---

<sup>44</sup> M. Syska, Art. 59...; K. Mełgieś, *Postępowanie w sprawach praktyk naruszających zbiorowe prawa pacjentów*, in: *Prawna ochrona zdrowia pacjenta*, J. Pacian (ed.), Warszawa 2017, p. 128.

<sup>45</sup> Consolidated text: Journal of Laws of 2023, item 775.

by a decision declaring the practice to violate the collective rights of patients. The former decision is issued if the action or omission fails to meet the prerequisites set out in Article 59(1) of the A.P.R. or if the applicant for a decision to recognise the practice as violating collective patients' rights has not substantiated the deprivation of patients' rights or the limitation of these rights. In addition, the PRO may refuse to initiate proceedings if he or she considers it justified; the PRO is thus left with very wide discretion. Proceedings are also not initiated if one year has elapsed since the end of the year of cessation.

The second decision – declaring a practice to violate collective patients' rights – shall contain an order to desist or an indication of the action necessary to remedy the effects of the violation of collective patients' rights and time limits for taking such action. This decision is made immediately enforceable *ex officio*. The Ombudsman may impose an obligation on the entity providing health care services or the organiser of a strike to submit, within a specified time limit, information on the degree of implementation of actions necessary to abandon the practice infringing collective patients' rights or to remove the effects of the violation of collective patients' rights. If such actions are not taken, the Ombudsman may impose, by way of a decision, a fine of up to PLN 500,000. If the entity providing healthcare services or organiser of the strike has ceased the practice, the PRO is entitled to issue a decision declaring the practice to violate collective patients' rights and stating that the practice has been discontinued. What needs to be emphasised, the PRO's decisions are final and subject to appeal to the administrative court, as follows from Article 65 considered in conjunction with Article 66(1) of the A.P.R.

Turning to proceedings in cases of violations of individual patient rights, it should be noted that their fragmentary regulation was introduced in Articles 50–53 of the A.P.R., in the chapter concerning the office of the Patient Rights Ombudsman, and to the extent not regulated, the provisions of the Code of Administrative Procedure apply to these proceedings accordingly.

According to Article 50 of the A.P.R., investigation proceedings may be initiated upon request as well as *ex officio*, i.e. based on information obtained by the PRO and at least plausible indications of a violation of patient rights, i.e. indicating a high probability of the violation occurring but not its certainty.<sup>46</sup> Under the application procedure, proceedings before the PRO may be initiated by the patient acting either personally or through another person, social organisation, or institution – the so-called applicant. The legislator does not impose formal requirements on the application – it may be submitted in writing, electronically, or even orally; it does not have to be drawn up by a professional representative; nor does it require justification or exhaustion of the legal remedies available to the applicant; and it is free of charge.<sup>47</sup> As to the scope of the subject matter of the application – it can cover the violation of patient rights as defined by the provisions of the A.P.R.<sup>48</sup>

After examining the application, the PRO may take one of several unjustified decisions on the subject of the application: take up the case (and investigate the case himself; alternatively, he may ask the competent authorities to examine the case or part of it, e.g., the supervisory authorities, the public prosecutor's office, the state, professional or social control authorities, according to their competence), limit himself to indicating the legal remedies available to the applicant, refer the case to the competent authorities, or not take up the case, of which he will inform the applicant and the patient concerned.

The investigation by the PRO shall be carried out in several stages, starting with the initiation and notification of the party to the proceedings and/or the applicant, through the taking of evidence and informing the party to the proceedings of the opportunity to comment on the evidence gathered before the decision is taken, and finally issuing the decision.<sup>49</sup> In the course of the in-

---

<sup>46</sup> Compare: D. Karkowska, G. Błażewicz, *Art. 50*, in: *Prawa pacjenta i Rzecznik Praw Pacjenta. Komentarz*, D. Karkowska (ed.), Lex 2021.

<sup>47</sup> *Ibidem*.

<sup>48</sup> D. Karkowska, G. Błażewicz, *Art. 53*, in: *Prawa pacjenta i Rzecznik Praw Pacjenta. Komentarz*, D. Karkowska (ed.), Lex 2021.

<sup>49</sup> *Ibidem*.

vestigation, the PRO may examine more than one right of the patient and cover all the irregularities alleged by the applicant in a single procedure; in making his decision, he does not assess the degree of the violation of the patient's right, but the fact of its occurrence.<sup>50</sup>

If, as a result of an investigation, the PRO finds that a patient's rights have been violated, he may make use of two powers set out in the Act. Firstly, he may address a request to the entity providing healthcare services, body, organisation, or institution whose activities he has found to have violated the patient's rights or, secondly, he may request the body superior to the entity violating the patient's rights to apply the measures prescribed by law. If, on the other hand, it finds no violation, it shall explain this to the applicant and the patient concerned.

At this point, it should be emphasised that although the provisions of the Code of Administrative Procedure apply to proceedings in cases of violation of individual patient rights, to the extent not regulated by the Act, these proceedings do not end with the issuance of an administrative decision that can be appealed against or any other act or action of public administration authoritatively determining patient rights; the case law and literature indicate that these actions are of an opinion-application<sup>51</sup> or postulatory nature – they do not automatically result in the implementation of the relevant procedures but may accelerate them.<sup>52</sup> Nevertheless, if the PRO does not establish a violation of the patient's rights, a party to the proceedings is entitled to a motion for reconsideration of the case, to which Article 127 § 3 of the Code of Administrative Procedure applies accordingly, and then a com-

---

<sup>50</sup> Ibidem.

<sup>51</sup> See the decisions of the SAC of 24 May 2018, II OSK 1258/18; 4 February 2015, II OSK 166/15; 16 July 2014, II OSK 1832/14; 24 June 2014, II OSK 1635/14; 5 December 2013, I OSK 1161/12; and judgments of the SAC of 7 December 2021, II GSK 224/21; 19 September 2013, II OSK 1469/13; compare in the literature: A. Augustynowicz, A. Budziszewska-Makulska, *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, Warszawa 2010, p. 216; E. Bagińska, *Postępowanie w sprawach*, p. 271.

<sup>52</sup> D. Karkowska, G. Błażewicz, *Art. 53...*

plaint to the administrative court.<sup>53</sup> The action of not establishing a violation is subject to judicial and administrative control. Concerning the above, it should be noted that “the PRO’s finding of no violation of patient’s rights is an administrative court case only in the formal sense, not in the substantive sense. The role of the administrative court is limited to assessing whether, in a given state of facts, the patient’s rights have been violated and, therefore, whether the PRO had grounds to use the measure set out in Article 53(1)(1) of A.P.R. [...]”<sup>54</sup>

There is no doubt that the establishment of the Office of the Patient’s Rights Ombudsman was intended to strengthen the position of patients in the process of providing healthcare services, as evidenced by the PRO’s competence to conduct proceedings to protect and improve the fulfilment of their rights. It should, however, be emphasised that it is the power to conduct proceedings for violations of collective patients’ rights, which are procedural instruments for the protection of patients’ rights,<sup>55</sup> that influences the state of compliance with these rights by the entities providing healthcare services.<sup>56</sup> Indeed, in the matter of cases related to violations of individual rights, the competencies of the PRO are shaped analogously to those of the Ombudsman.<sup>57</sup> As it is accepted in the literature, collective patients’ rights are related to the system conditions allowing the realisation of individual rights, while the practices violating them undermine the principles ac-

---

<sup>53</sup> See the VAC in Warsaw in its judgment of 11 January 2017, VII SA/Wa 251/16, and of 6 February 2015, VII SA/Wa 1710/14. Under the amendments to the Code of Administrative Procedure and the Act of August 30 2002 – The Law on Proceedings before Administrative Courts (hereinafter referred to as L.P.A.C.; Consolidated text Journal of Laws 2023, item 1634 as amended), which entered into force on 1 June 2017, under Article 52 § 3 of the L.P.A.C., it is possible for a party to file a complaint to an administrative court without a motion for reconsideration.

<sup>54</sup> J. Roszkiewicz, *Art. 53*, in: *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, L. Bosek (ed.), Legalis 2020.

<sup>55</sup> K. Mełgieś, *Postępowanie w sprawach*, pp. 119–120.

<sup>56</sup> M. Śliwka, *Zbiorowe prawa pacjentów w decyzjach Rzecznika Praw Pacjenta oraz orzecznictwie sądów administracyjnych*, Lex 2018.

<sup>57</sup> See: U. Drozdowska, *Patients’ rights protection model in the Patients’ rights and Patients’ Rights Ombudsman Act of 6.11.2008*, “Białostockie Studia Prawnicze” 2010, Vol. 8, p. 249.

ording to which the health system is supposed to operate.<sup>58</sup> Thus, the object of the proceedings on practices violating the collective patients' rights is determined by a specific allegation relating to a particular form of practice violating the collective patients' rights of an entity capable of committing this administrative tort, and the purpose of these proceedings is to verify it and to determine the sanction to be applied to the perpetrator of the tort.<sup>59</sup>

The PRO thus intervenes when violations are of an abstract or universal nature and are therefore undertaken in the collective (general) interest.<sup>60</sup> Public law protection is justified based on the scale of the threat to patients; this protection must go beyond the individual interest or well-being of a specific patient and serve to strengthen private law protection measures for patients' rights, serving the collective interest.<sup>61</sup>

However, the importance of proceedings for violations of individual patient rights – their educational and informational value – cannot be completely undermined. Particularly if one considers that the PRO has no legal means of enforcing obligations to remedy violations of individual patient rights.<sup>62</sup> Indeed, the PRO's role is limited to signaling problems, even if he demands at the same time the initiation of disciplinary proceedings or the application of official sanctions. Nevertheless, it is worth emphasising, following Grzegorz Błażewicz and Dorota Karkowska, that the submissions addressed to the entities in whose activities the PRO has found violations of patients' rights give rise to a range of informa-

---

<sup>58</sup> M. Romańska, *Odpowiedzialność administracyjna za naruszenie zbiorowych praw pacjenta*, in: *Odpowiedzialność publicznoprawna. System Prawa Medycznego Tom VI*, A. Barczak-Oplustil, T. Sroka (ed.), Legis 2023.

<sup>59</sup> Ibidem.

<sup>60</sup> See judgment of the VAC in Warsaw of 6 December 2021, VSA/WA 500/21. Compare in the literature: M. Syska, op.cit.; D. Tykwińska-Rutkowska, *Przegląd orzecznictwa*, p. 14.

<sup>61</sup> M. Syska, op.cit.

<sup>62</sup> The PRO himself considered his competence in this respect insufficient and proposed to amend the provisions of the Act on Patient's Rights by introducing legal solutions guaranteeing him the possibility of imposing financial penalties on entities evading the application of the PRO's conclusions formulated after an investigation. See the annual reports of the PRO on the website: [www.bpp.gov.pl/sprawozdania-roczne](http://www.bpp.gov.pl/sprawozdania-roczne).



tion of importance both for the activities of these entities and for the PRO himself.

In the first case – of those who violate patient rights – this includes information on the applicable legislation, its proper application, as well as on the manner and cause of the violation of the patient's right, in addition to opinions or proposals as to how the case should be handled.<sup>63</sup> In the second case – the PRO – in connection with the implementation of individual protection measures, he obtains the information that should be used in taking measures to influence the health system, *inter alia*, in the annual reports submitted to the Council of Ministers on the status of observance of patient rights.<sup>64</sup> In addition, this information can be used, as emphasised in judicial and administrative case law, as a sufficient signal to meet the probability of practices violating the collective patients' rights.<sup>65</sup> Although in the case of the behaviour of an incidental, one-off nature, one may rather consider the category of an individual violation of individual patient's rights.<sup>66</sup> Under Article 59(1) *in fine*, the application of practices violating the collective patients' rights is not the sum of violations of individual rights; it is necessary to agree with the view presented in the case law referred to above that in specific circumstances, such behaviour may constitute a practice violating collective patients' rights if it refers to an unlimited number of patients. Indeed, as is apparent from more recent judicial and administrative case law, it is wrong to merely interpret the term 'practice' linguistically and to infer that it can refer to a continuous and repeated activity. It is necessary to resort to a functional interpretation; the purpose of the legal solutions adopted in the A.P.R. is to introduce a system of preventive protection of the individual's rights concerning the protection of life and health. Particularly as it would be behaviour that under-

---

<sup>63</sup> D. Karkowska, G. Błażewicz, *Art. 41*, in: *Prawa pacjenta i Rzecznik Praw Pacjenta. Komentarz*, D. Karkowska (ed.), Lex 2021.

<sup>64</sup> *Ibidem*.

<sup>65</sup> See judgment of the SAC of 29 November 2016, II OSK 1908/16; Compare also: judgment of the SAC of 28 May 2019, II OSK 1114/19.

<sup>66</sup> D. Karkowska, *Art. 59*, in: *Ustawa o prawach i Rzeczniku Praw Pacjenta. Komentarz*, Lex 2015.

mines the purpose of the institution of protection against unlawful practice by the entities providing healthcare services and, at the same time, an omission that violates the law if the PRO waited for a multitude of reports of violations of patients' rights.

## 4. Conclusion

Extending the catalogue of patients' rights to include the institution of collective patients' rights and the introduction of new mechanisms for their protection – administrative-legal protection based on the administrative authority and administrative sanctions applied by the PRO in the form of an administrative decision – as Maciej Syska notes, “is an element in the evolution of the protection of these rights as human rights, including their broader institutionalisation and more effective protection.”<sup>67</sup> And while the distinction of patients' collective rights in the Polish legal order deserves a positive assessment, it would also be worth considering guaranteeing the protection of patients' rights as a collective in yet another way – taking inspiration from, *inter alia*, the solutions adopted in some European countries such as the Netherlands or England.<sup>68</sup> Given the specificity of the Polish health system, it would be possible to ensure the collective involvement of patients in the process of determining the catalogue of services financed from public funds through patient's rights organisations. This could give a new dimension to the right to services based on current medical knowledge and the right to guaranteed services. Indeed, as emphasised in the literature, systemic patient involvement can contribute to reducing the gap between theory

---

<sup>67</sup> M. Syska, *op.cit.*

<sup>68</sup> It is worth mentioning that collective patient involvement can take place not only at the level of service provision but also, for instance, in Germany and Sweden, at the level of health policymaking. See: A. Haarmann, *The Evolution and Everyday Practice of Collective Patient Involvement in Europe. An Examination of Policy Processes, Motivations, and Implementations in Four Countries*, 2018, pp. 93–105.

and practice regarding individual rights.<sup>69</sup> Of course, it should be taken into consideration that simply extending the catalogue of patient's rights does not yet guarantee their effective protection. This depends not so much on the protection mechanisms created by law, but on the proper organisation of the health system to meet the health needs of those entitled, as well as on the awareness and knowledge of the rights of the patients themselves.

## SUMMARY

### Collective patients' rights in Polish law. Selected problems

The subject of the analysis in this publication is the problem of patients' collective rights. In an attempt to find an answer to the questions concerning the essence of these rights and the relation between legal protection against violations of these rights and the protection against violations of individual rights of patients, the analysis covers the legal solutions in the field of patients' rights in force in Poland, as well as the related literature and administrative court decisions. In this way, it was established that Polish legislation recognises the collective rights of patients understood as the rights of actual and potential patients treated as a collective, i.e. a group that deserves special protection, and establishes an additional method of their protection by way of administration, in which the object of protection is a collective interest (proceedings on practices violating collective patients' rights before the Patient's Rights Ombudsman), while some legislation recognises the right to collective patient involvement.

**Keywords:** patient rights; collective patients' rights; collective patient involvement; legal protection against violation of collective patients' rights

---

<sup>69</sup> W. Palm, H. Nys, D. Townend, D. Shaw, T. Clemens, H. Brand, *Patients' rights: from recognition to implementation*, in: *Achieving Person-Centred Health Systems*, E. Nolte, S. Merkur, A. Anel (ed.), Cambridge University Press 2020, p. 350.

## STRESZCZENIE

Zbiorowe prawa pacjentów w prawie polskim. Problemy wybrane

Przedmiot analizy niniejszej publikacji stanowi problematyka zbiorowych praw pacjentów. Poszukując odpowiedzi na pytania o istotę tych praw oraz relacje prawnej ochrony z tytułu ich naruszenia do ochrony z tytułu naruszenia indywidualnych praw pacjenta, analizą objęto rozwiązania prawne w zakresie praw pacjenta obowiązujące w Polsce, a także odnoszącą się do tej problematyki literaturę oraz orzecznictwo sądownoadministracyjne. W ten sposób ustalono, że w polskim ustawodawstwie uznano zbiorowe prawa pacjentów rozumiane jako prawa aktualnych i potencjalnych pacjentów traktowanych jako zbiorowość, czyli grupa, która zasługuje na szczególną ochronę, oraz ustanowiono dodatkowy sposób ich ochrony na drodze administracyjnej, w którym przedmiot ochrony stanowi interes zbiorowy (postępowanie w sprawie praktyk naruszających zbiorowe prawa pacjenta przed Rzecznikiem Praw Pacjenta), podczas gdy w niektórych ustawodawstwach uznano prawo do zbiorowego zaangażowania pacjentów.

**Słowa kluczowe:** prawa pacjenta; zbiorowe prawa pacjenta; zbiorowe zaangażowanie pacjentów; ochrona prawna z tytułu naruszenia zbiorowych praw pacjentów

## BIBLIOGRAPHY

- Augustynowicz A., Budziszewska-Makulska A., *Ustawa o prawach pacjenta i Rzeczniku Praw pacjenta*, Warszawa 2010.
- Balicki M., *Prawa pacjenta – wybrane zagadnienia*, in: *Szkoła Praw Człowieka. Teksty wykładów*, Warszawa 1996.
- Boratyńska M., Konieczniak P., *Prawa pacjenta*, Warszawa 2001.
- Bosek L. (ed.), *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, Legalis 2020.
- Bujny J., *Prawa pacjenta. Między autonomią a paternalizmem*, Lex 2007.
- Dickenson D., *Me Medicine vs We Medicine. Reclaiming Biotechnology for the Common Good*, 2013.
- Drozdowska U., *Opinia dotycząca projektu ustawy o ochronie indywidualnych i zbiorowych praw pacjenta oraz o Rzeczniku Praw Pacjenta (w części dotyczącej praw pacjenta)*, in: *Przed pierwszym czytaniem, Zmiany w systemie ochrony zdrowia, druki sejmowe Nr 283, 284, 286, 287, 293, 294, 311*, Warszawa 2008, No. 2.

- Drozdowska U., *Patients' rights protection model in the Patients' rights and Patients' Rights Ombudsman Act of 6.11.2008*, "Białostockie Studia Prawnicze" 2010, Vol. 8.
- Hervy T.K., McHale J.V., *European Union Health Law: Themes and Implications*, 2015.
- Karkowska D. (ed.), *Prawa pacjenta i Rzecznik Praw Pacjenta. Komentarz*, Warszawa 2021.
- Karkowska D., *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, 3rd ed., Warszawa 2015.
- Karkowska D., *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, 2nd ed., Warszawa 2010.
- Kujawa E., *Prawa pacjenta – nowa rzeczywistość, nowe dylematy moralne*, w: *Prawa pacjenta a etyka zawodowa pielęgniarki i położnej*, ed. G. Rogala-Pawełczyk, Warszawa 1998.
- Leenen H., Gevers S., Pinet G. (ed.), *The Rights of Patients in Europe. A Comparative Study*, Deventer–Boston 1997.
- Małecka D., *Prawa pacjenta – ważny problem społeczny i prawny*, „Praca i Zabezpieczenie Społeczne” 2002, No. 3.
- Mełgieś K., *Postępowanie w sprawach praktyk naruszających zbiorowe prawa pacjentów*, in: *Prawna ochrona zdrowia pacjenta*, ed. J. Pacian, Warszawa 2017.
- Mik C., *Zbiorowe prawa człowieka. Analiza krytyczna koncepcji*, Toruń 1992.
- Mujovic-Zornic H., *Legislation and Patients' Rights: Some Necessary Remarks*, "Medicine and Law" 2007, Vol. 26, No. 4.
- Nesterowicz M. (ed.), *Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz*, Toruń 2009.
- Nunes R., *Healthcare as a Universal Human Right. Sustainability in Global Health*, London–New York 2022.
- Nys H., Goffin T., *Mapping national practices and strategies relating to patients' rights*, in: *Cross-border health care in the European Union: mapping and analysing practices and policies*, M. Wismar, W. Palm, J. Figueras, K. Ernst, & E. van Ginneken (ed.), 2011.
- Ostrowska A., *Prawa pacjenta*, "Antidotum" 1996, No. 6–8.
- Romańska M., *Odpowiedzialność administracyjna za naruszenie zbiorowych praw pacjenta*, in: *Odpowiedzialność publicznoprawna. System Prawa Medycznego Tom VI*, ed. A. Barczak-Oplustil, T. Sroka, Legalis 2023.

- Rider M.E., Makela C.J., *A comparative analysis of patients' rights: an international perspective*, "International Journal of Consumer Studies" 2003.
- Roscam Abbing H.D.C., *Right of Patients in the European Context, Ten Years and After*, "European Journal of Health Law" 2004, No. 11.
- Rose N., *The Politics of Life Itself*, Oxford 2007.
- Sinding Aasen H., Hartlev M., *Human Rights Principles and patient Rights*, in: *Health and Human Rights. Global and European Perspectives*, B. Tobebes, M. Hartlev, A. Hendrics, K. Ó Cathaoir, J. Rothmar Herrmann, H. Sinding Aasen, 2nd ed., Cambridge–Antwerp–Chicago 2022.
- Śliwka M., *Prawa pacjenta w prawie polskim i na tle porównawczym*, 2nd ed., Toruń 2010.
- Śliwka M., *Zbiorowe prawa pacjentów w decyzjach Rzecznika Praw Pacjenta oraz orzecznictwie sądów administracyjnych*, Lex 2018.
- Tykwińska-Rutkowska D., *Odpowiedzialność prawna z tytułu naruszenia zbiorowych praw pacjentów w świetle orzecznictwa sądów administracyjnych*, in: *Odpowiedzialność w ochronie zdrowia*, ed. E. Kruk, A. Wołoszyn-Cichocka, M. Zdyb, Warszawa 2018.
- Tykwińska-Rutkowska D., *Przegląd orzecznictwa sądów administracyjnych w zakresie ochrony zbiorowych praw pacjentów do dokumentacji medycznej*, "Gdańskie Studia Prawnicze. Przegląd Orzecznictwa" 2018, No. 2.
- Wengler L., *Praktyki naruszające zbiorowe prawa pacjentów. Wprowadzenie do problematyki*, "Gdańskie Studia Prawnicze. Studia prawnoadministracyjne. Księga Jubileuszowa Profesora Eugeniusza Bojanowskiego", T. Bąkowski, K. Żukowski (ed.), 2012, Vol. 28.
- Williamson Ch., *Toward the Emancipation of Patients: Patients' Experiences and the Patient Movement*, Bristol 2010.
- Zieliński P., *Ochrona zbiorowych praw pacjentów*, "Studia z Zakresu Prawa, Administracji i Zarządzania UKW" 2013, Vol. 4.