

PROTECȚIA DREPTURILOR PACIENTULUI CA ELEMENT AL CULTURII EUROPENE: aspectul criminalistic

Constantin PISARENCO⁴⁰

ORCID: 0000-0001-5548-4653

Reviewer: Golubenco Gheorghe, doctor of Law, Professor, Free International University of Moldova (ULIM), tel. 069185060.

Rezumat: Articolul se concentrează pe analiza teoretică a protecției drepturilor pacienților ca element structural al culturii europene și examinează această problemă dintr-o perspectivă criminalistă. În contextul europeizării sistemelor juridice și al consolidării standardelor supranaționale pentru protecția drepturilor omului, dreptul pacientului la siguranță, consimțământ informat, confidențialitate a informațiilor medicale și îngrijire medicală de calitate dobândește statutul nu doar de reper industrial, ci și de reper bazat pe valori al ordinii juridice europene.

Scopul studiului este de a identifica relația dintre formarea identității europene și dezvoltarea mecanismelor pentru dreptul penal și protecția criminală a drepturilor pacienților. Lucrarea este de natură teoretică și se bazează pe o analiză a surselor doctrinare, a actelor de reglementare ale Uniunii Europene și a statelor membre, precum și pe aplicarea metodelor juridice sistemice, comparative și formale.

Această lucrare susține argumentul, că protecția drepturilor pacienților este un indicator al nivelului culturii juridice din societate și al încrederii în instituțiile publice. Aspectul criminalist al problemei se manifestă prin necesitatea de a dezvolta metode specializate pentru investigarea infracțiunilor în domeniul sănătății, stabilirea standardelor profesionale de comportament pentru lucrătorii medicali, demonstrarea legăturii cauză-efect și distincția între greșelile medicale și actele criminale. Se acordă o atenție

40 Conferențiar universitar, Universitatea Liberă Internațională din Moldova, constantin.pisarenco@gmail.com

deosebită utilizării examinării medicale criminalistice și a dovezilor digitale în contextul digitalizării sistemului de sănătate.

Se concluzionează că protecția criminală eficientă a drepturilor pacienților contribuie la consolidarea culturii europene, la formarea conștientizării juridice și la implementarea principiului statului de drept în Uniunea Europeană.

Cuvinte cheie: drepturile pacienților, cultura europeană, armonizarea dreptului, suport criminalistic, investigarea infracțiunilor medicale, examinare medico-legală, statul de drept.

PROTECTING PATIENT RIGHTS AS PART OF EUROPEAN CULTURE: the criminal aspect

Abstract: *The article is focused on the theoretical analysis of patient rights protection as a structural element of European culture and examines this issue from a criminalistic perspective. In the context of the Europeanization of legal systems and the consolidation of supranational standards for the protection of human rights, the patient's right to safety, informed consent, confidentiality of medical information, and quality medical care is acquiring the status of not only an industry benchmark but also a value-based benchmark of the European legal order.*

The aim of the study is to identify the relationship between the formation of European identity and the development of mechanisms for the criminal law and criminalistic protection of patients' rights. The work is theoretical in nature and is based on an analysis of doctrinal sources, regulatory acts of the European Union and member states, as well as the application of systemic, comparative legal, and formal legal methods.

This paper supports the argument that the protection of patient rights is an indicator of the level of legal culture in society and trust in public institutions. The criminalistic aspect of the problem manifests itself in the need to develop specialized methods for investigating crimes in the healthcare field, establishing professional standards of behavior for medical workers, proving the cause-and-effect connection, and distinguishing between medical errors and criminal acts. Particular attention is paid to the use of forensic medical examination and digital evidence in the context of the digitalization of healthcare.

The conclusion is made that effective criminalistic protection of patient rights contributes to the strengthening of European culture, the formation of legal awareness, and the implementation of the principle of the rule of law in the European Union.

Keywords: patient rights; European culture; harmonization of law; forensic support; investigation of medical crimes; forensic medical examination; rule of law.

Introduction

In the context of strengthening European integration processes, the protection of patient rights has become an integral part of civil culture. Patients, previously perceived primarily as objects of medical care, now demand high-quality services, transparency in the solution-making process, and respect for their dignity. European law is consistently expanding the range of obligations of states in the field of healthcare, establishing standards for access, safety, and confidentiality [3; 7; 8]. At the same time, there is growing criminalistic interest in the medical field: the increase in the number of complaints and lawsuits concerning medical errors, as well as the development of electronic medical records and digital technologies, require new approaches to the investigation of iatrogenic crimes [2; 10].

The theoretical significance of the topic is determined by the need for a comprehensive analysis of patient rights as a legal category and as a cultural value. The practical importance is related to the fact that effective protection of these rights contributes to strengthening trust in state institutions and preventing crimes in the medical field. The purpose of the study is to identify the relationship between the formation of European civil identity, the development of mechanisms for protecting patient rights, and the tasks of criminalistics. To achieve this goal, we use systematic and comparative legal analysis of international and national acts, case law of the European Court of Human Rights (ECHR), and a review of scientific literature in the fields of law, medicine, and criminalistics.

Materials and methods. This study is theoretical and legal in nature. The analysis is based on international and European regulations – the Universal Declaration of Human Rights, the Oviedo Convention, the Eu-

ropean Charter of Patients' Rights, Directive 2011/24/EU on cross-border healthcare, the European Health Data Space Regulation, the General Data Protection Regulation, and other documents. For comparison, the national legislation of the Republic of Moldova, which provides for the rights and obligations of patients, was used. In addition to regulatory sources, scientific publications in the field of medical law and criminalistics, statistical data from the World Health Organization, and materials from the European Court of Human Rights were studied.

The methodological basis included a systematic analysis of legal norms, a comparative legal method to identify common and specific features between European and national standards, a formal legal method for interpreting norms, and an analysis of judicial practice. Sources were selected using international databases (PubMed, HeinOnline, Eur-Lex, HUDOC), national registries (legis.md, ibm.idsi.md), open access repositories (CyberLeninka, eLibrary.ru), and the official websites of European institutions. Where necessary, data from reports by international organizations and specialized studies on medical crimes were used.

The criminalistic aspect was studied through the analysis of statistics on medical errors, the classification of types of violations, and the examination of investigation methods. Documents and guidelines on the collection, storage, and analysis of electronic information were used to describe digital evidence. This approach made it possible to trace the relationship between legal norms, cultural aspects, and the possibilities of criminal law protection.

Results and discussion. The concept of “European civic culture” covers a system of values and practices that shape citizens' trust in institutions, their involvement in public processes, and their willingness to defend their rights. Health and the functioning of the healthcare system play a key role in this system. Studies show that deteriorating health or negative experiences with healthcare institutions reduce trust in the state and decrease political activity. At the same time, low-quality medical services and a sense of “betrayal” by society increase support for anti-system forces. In this way, satisfaction with healthcare affects not only physical well-being but also civic identity.

The evolution of ideas about patient rights is an important element of this culture. From a paternalistic model of interaction, in which the doctor came up with solutions without discussion, European practice has moved to a concept of partnership. Patients are no longer perceived as passive objects of medical intervention, but have become active subjects with rights to information, autonomy, and respect [1; 3]. As noted in European literature, patient rights are a prerequisite for building person-centered healthcare systems and are based on human dignity, freedom of choice, and equality. Patient rights also help to raise awareness and build trust, as they regulate not only the behavior of healthcare professionals, but also the interaction between patients and the state [1].

The development of the modern doctrine of patient rights is based on fundamental documents of international law. The Universal Declaration of Human Rights (1948) enshrined the right of every person to a standard of living necessary for health and well-being, as well as the right to medical care. These general provisions were specified in sectoral acts.

One of the key documents is the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Oviedo Convention, 1997), which introduced the principle of free and informed consent. According to Article 5 of the convention, medical intervention may only be carried out after the person has given their free and informed consent; Article 9 obliges respect for the patient's previously expressed wishes, for example in the form of a living will; in addition, the convention requires respect for privacy and establishes the right of individuals to know and not to know information about their own health [3].

The European Charter of Patients' Rights, developed by the Active Citizenship Network in 2002, has made a significant contribution. It enshrines 14 fundamental rights: the right to preventive measures, access to medical services, information, informed consent, free choice of doctor, confidentiality of data, respect for the patient's time, compliance with quality standards, safety of treatment, access to innovation, avoidance of unnecessary suffering, personalized treatment, the right to complain and the right to compensation. The charter also highlights the rights of active citizenship: the right to participate in public and advocacy activities and the right to participate in the formation of health policy. This document was

created in response to the diversity of national health systems: it aims to harmonize patient expectations and promote convergence of standards [1].

EU law has enshrined charter-like standards in legal acts. Directive 2011/24/EU on the application of patients' rights in cross-border health-care, confirming the free movement of services, specifies that patients receiving care in another Member State have the same rights to quality and safety as they do at the national level. In 2026, the European Health Data Space (EHDS) Regulation came into force. It introduces rules for the use of medical data for treatment and research purposes and enshrines the right of citizens to access their own electronic medical records and to transfer them between countries. The EHDS requires data providers to exchange data in secure environments and provides for the right of patients to refuse secondary use of their data. However, Member States may override such refusals on grounds of public interest [4].

The EU's General Data Protection Regulation (GDPR) plays an important role, requiring that the processing of medical information be carried out on legal grounds and in accordance with the principles of minimization, accuracy, and confidentiality. Although informed consent remains an ethical requirement, the GDPR emphasizes that it is not always an adequate legal basis for data processing, especially when there is an imbalance of power, such as in the doctor-patient relationship [8].

The World Health Organization (WHO) Global Action Plan for Patient Safety 2021–2030 complements these provisions. The document emphasizes that the transition from paper-based systems to digital infrastructures opens up opportunities for research and improved patient safety by enabling the use of electronic health record analysis and artificial intelligence technologies to predict risks. However, the WHO warns of the risks of algorithmic bias and data leaks and recommends developing methods to protect digital information and creating databases of potential digital threats [12].

In most European countries, patients' rights are enshrined in specific laws. In the Republic of Moldova, these rights are established by Law No. 263-XVI (2005) on the rights and responsibilities of patients and subordinate legislation. According to the law, every citizen is guaranteed the right to information about their health and medical services; medical professionals are required to provide explanations in a form that is understandable to the

patient and to facilitate obtaining a second opinion; patients may refuse treatment or request that the dissemination of information about their condition be restricted, except in cases provided for by law. The regulations establish the voluntary and informed nature of consent: any intervention must be based on free will, and patient data is subject to strict confidentiality and may only be disclosed with the patient's consent or by court order [9].

Within the framework of national practice, the role of forensic medical examinations and patient guardianship authorities is of particular importance. There are problems with access to justice, in particular due to a lack of funding and a shortage of specialists. Nevertheless, compliance with national standards and their harmonization with European standards is an important factor in strengthening citizens' trust in the healthcare system and the rule of law.

Medical crimes (iatrogenic crimes) represent unlawful acts committed by medical professionals that result in harm to the health or death of a patient. They differ from medical errors, which may be the result of objective difficulties and do not always have criminal law consequences [2]. According to World Health Organization estimates, one in ten patients is harmed each year while receiving medical care; such cases lead to more than three million deaths and are the fourteenth leading cause of global mortality [12]. Diagnostic errors represent a particular danger: in the United States, nearly 800,000 patients die or become disabled each year due to diagnostic mistakes, and 12 million people experience diagnostic mistakes, a third of which result in injury.

An analysis of patient complaints shows that complaints most often concern the actions of doctors, and among the factors contributing to errors, fatigue, stress, and violations of sterility standards stand out. Forensic medical practice identifies three groups of violations: tactical (failure to check for allergic reactions, failure to comply with injection and transfusion rules, untimely interventions), organizational (lack of continuity between departments, incorrect hospitalization, breaches of aseptic technique) and deontological (failure to obtain informed consent, insufficient consultation with the patient or their family, restriction of choice of doctor). A single adverse event is often caused by a combination of several violations, which complicates investigation and proof [2].

Despite the prevalence of medical violations, the level of detection and investigation of iatrogenic crimes remains low. For example, according to the Prosecutor General's Office of Ukraine, in 2016–2021, 4,042 criminal proceedings were registered under Article 140 of the Criminal Code (“improper performance of professional duties by medical workers”), but only 13 cases (0.32%) resulted in a notice of suspicion being served, and only 0.22% of cases were sent to court; almost 39% of proceedings were closed due to lack of evidence. This demonstrates the difficulty of proving guilt and the need to improve investigative techniques [2].

Criminal science distinguishes between different models of criminal liability for medical offenses. In most countries of Western and Central Europe, general offenses such as negligent homicide or bodily harm are applied. In the countries of the former Yugoslavia and some Eastern European states, special criminal offenses have been introduced, such as “negligent treatment of a patient,” which, according to critics, leads to excessive criminalization and encourages defensive medicine. Italy has adopted the “Gelli-Bianco” model: doctors are criminally liable for gross negligence but are exempt from punishment if they acted in accordance with clinical protocols; this is intended to reduce the number of criminal cases, improve the quality of medical care, and increase liability insurance [11].

Investigating iatrogenic crimes requires in-depth medical knowledge and a combination of various types of expertise. The investigation officer must collect medical documentation, including outpatient records, medical histories, surgical reports, conclusions of internal commissions and external experts, and assess the quality of care provided. In practice, this is complicated by the volume of information and limited investigation time. Authoritative researchers propose an investigation algorithm that includes: accepting the statement, initiating proceedings, and questioning the applicant; analyzing the internal audit of the healthcare institution; studying medical documents; appointing a forensic medical examination; analysis of electronic medical records; questioning of witnesses; conducting computer-technical, pharmaceutical, and handwriting examinations; reviewing audio and video recordings; notifying the medical worker of the suspicion [2].

Alongside traditional forensic science, digital evidence is beginning to play an important role. The US National Institute of Justice defines digital evidence as any information transmitted or stored electronically: emails,

mobile phone files, images, audio and video recordings, GPS data, etc. These materials are used in the investigation of all types of crimes, not just cybercrimes, and can confirm the intentions of suspects, their location, and sequence of actions. In the field of medicine, digital evidence includes electronic medical records, laboratory test results, photographs, video recordings of operations, and metadata. It is important to ensure their integrity and protect them from falsification [10]. Researchers note that blockchain technology can provide secure storage and verifiability of digital evidence, preserving the immutability of records and preventing unauthorized access.

Establishing a cause-and-effect connection between the doctor's actions and the harm caused requires the involvement of forensic medical experts. They analyze medical records, perform autopsies, including virtual ones, test for allergic reactions, verify compliance with treatment standards, and assess the professional qualities of the doctor [2]. The use of virtual autopsies and 3D printing allows for high-precision imaging and injury modeling, making the procedure less invasive and more visual.

The ECHR has played a significant role in developing standards of informed consent and the state's obligations to investigate medical malpractice. In the case of *Glass vs the United Kingdom* (2004), the court found that administering morphine to a child without the consent of his mother, despite her objections, violated the right to respect for private life, and that such interventions must be supported by judicial authorization or other safeguards [5].

In the case of *V.K. v. Slovakia* (2011), the ECHR considered the forced sterilization of a woman of Roma origin. The court ruled that sterilization without her voluntary and informed consent was a serious interference with her personal integrity, violating her right to respect for private and family life. The state is obliged to ensure an effective investigation and provide victims with effective legal remedies [6]. These cases, along with other solutions, have established the standard that informed consent must be free, specific, and based on adequate information; the absence of such consent may lead to liability for both the doctor and the state [5; 6].

The digitization of healthcare creates new opportunities for the realization of patients' rights and, at the same time, gives rise to risks. The European Health Data Space is intended to harmonize the exchange of

medical data, but it is the subject of debate. Citizens have access to their electronic records and can transfer them between countries, but secondary use of the data (for research, statistics, etc.) is permitted with the patient's consent or on the basis of the right to refuse. The initial draft of the regulation did not include the right to refuse at all, which drew criticism because the inability to refuse research could undermine trust in the system; the final text introduced the right to opt out and provided additional safeguards for sensitive categories of data (genetic, reproductive, etc.) [4].

Data on biomedical research is protected by the GDPR, which requires explicit and informed consent for the processing of personal data, minimization of the information collected, and the use of adequate technical and organizational security measures [8]. However, even with strict rules in place, major privacy breaches remain a reality: attacks such as Wanna-Cry on the UK's National Health Service and data leaks in the US and Singapore have shown that digital infrastructure is vulnerable. Therefore, researchers are calling for legal standards to be combined with the introduction of modern technologies, such as blockchain and artificial intelligence, which can ensure transparency, consent tracking, and risk prediction [12].

Digitalization also affects forensic practice: the volume of electronic data available to investigators is increasing, allowing them to reconstruct events more accurately [10]. At the same time, the right to privacy requires a balance: investigative authorities must have legal grounds for accessing medical records, and patients must be confident that their data will not be used against them [8; 10].

To improve the effectiveness of criminal law protection of patients' rights, a preventive approach must be combined with rigorous investigation of violations. In terms of prevention, a culture of safety should be developed: encouraging openness in reporting errors, implementing internal quality control systems, and training medical staff. States should support independent bodies for investigating serious medical incidents and require institutions to publish reports on adverse events [12]. Enhancement of patients' awareness of their rights and civic engagement also helps prevent violations [1; 12].

From a forensic perspective, standardized investigation techniques need to be developed. These should include investigative algorithms describing the sequence of steps in typical situations. It is advisable to create

specialized units in which lawyers, doctors, and criminologists would work together to ensure a comprehensive analysis. Investigation officers must have knowledge in the fields of medicine, digital technology, and evidence law. An important step would be the introduction of educational programs on medical topics for investigation officers, prosecutors, and judges [2].

Finally, international cooperation must be strengthened. The creation of European registries of medical errors and platforms for sharing best practices will enable the timely identification and correction of systemic problems. Joint research projects between legal and healthcare institutions in different countries will help harmonize standards and improve the quality of investigations [12].

Discussion. The results show that protecting patient rights is not only a legal obligation but also a cultural indicator. European civil culture is shaped by the recognition of human dignity and autonomy, and patient rights are an important part of it [1; 3]. International and European norms set high standards for informed consent, access to services, and confidentiality [1; 3; 7; 8]. However, legally enshrined rights need to be effectively enforced: without trust in the healthcare system and effective investigation mechanisms, they remain mere declarations.

An analysis of case law has shown that the ECHR requires states not only to formally recognize rights, but also to ensure their implementation through effective investigations and access to justice [5; 6]. At the national level (for example, in the Republic of Moldova), the legal framework complies with European requirements, but problems arise at the level of law enforcement due to a lack of resources and personnel. The situation is exacerbated by the growing number of medical errors and the low proportion of cases reaching court, which indicates that investigations are not effective enough.

Digitalization simultaneously expands opportunities for patient protection and creates new threats. Electronic medical records, telemedicine and artificial intelligence improve the quality of diagnosis, but require strict compliance with confidentiality and data protection [8; 12]. The EHDS and GDPR regulations reflect the EU's intention to strike a balance between innovation and human rights: citizens gain control over their data,

but the state also has the right to restrict the refusal of secondary use of information for public reasons [4; 8]. This creates tension between the public interest and individual rights, which should be the subject of further discussion.

An important conclusion of the study is the need to integrate forensic methods into the healthcare system. Developing investigation algorithms, training investigation officers in medical specifics, and creating independent expert centers will help overcome existing barriers [2]. Without such an approach, the growth of medical crimes and the decline in trust in institutions will continue, which will negatively affect European civil culture and democratic processes.

Limitations of the study. The study has a number of limitations. First, it is primarily theoretical in nature and based on an analysis of regulatory acts and open data. It did not conduct empirical research, analyze specific criminal cases, or interview professional participants in the process. Second, access to some international databases and scientific publications was limited, which forced us to rely on open access sources and secondary reports. Third, despite an attempt to cover a wide range of national legal systems, the focus was on European and Moldovan practice; individual countries may have different models of liability and degrees of implementation of patient rights. Fourth, the digitalization of healthcare is developing rapidly, and the provisions described in this paper may change; future research should take into account new technological and legal trends.

Conclusions

Protecting patients' rights is central to modern European civic culture. It reflects respect for human dignity, recognition of autonomy, and the intention to build a healthcare system focused on human needs. International legal instruments—from the Universal Declaration of Human Rights to the Oviedo Convention, the European Charter of Patients' Rights, and the GDPR—set high standards for informed consent, confidentiality, and security. National legislation, including that of the Republic of Moldova, embodies these standards but requires continuous improvement and effective enforcement.

The criminal law aspect of protecting patient rights emphasizes that the reliability of healthcare is measured not only by the quality of treatment, but also by society's ability to investigate and prevent violations. The widespread nature of medical errors and the low level of investigation indicate the need to reform investigative techniques and introduce digital technologies. The European Court of Human Rights has established important standards, requiring respect for informed consent and effective investigations.

In the era of digitalization, the protection of patient data is becoming a new frontier of human rights: health information should be used for good, not become a source of risk. The development of blockchain, artificial intelligence, and algorithmic investigations opens up opportunities for more accurate and fair law enforcement. In the long term, strengthening forensic protection of patient rights will contribute to increasing trust in state institutions, developing civic culture, and establishing the rule of law in Europe.

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