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BOOK of Abstracts, Global Health and Human Rights

Edited by: André den Exter

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1. Introduction

In a rapidly globalised word, health and human rights are closely related. Violating basic human rights can heavily impact in a negative way the health of individuals and communities. Violating further basic human rights might also lead to inequality and discrimination in access to health-care services.
The realisation of human rights in health care is therefore a key-obligation, both at national and global level. But what is the relationship between human rights and global health about? What are the key elements of that complex relationship, what are the key national and international institutions, and how do they respond to human rights challenges in health? These and other issues will be addressed during a one-day seminar, organised by the Erasmus Health Law Observatory, Erasmus University Rotterdam (the Netherlands) and IDIVAL, University of Cantabria (Spain) and hosted by the Erasmus Law School.

2. Seminar Topics

- Health as a human right

The right to health(care) is one of a set of internationally agreed human rights standards, and is inseparable or 'indivisible' from these other rights. This means achieving the right to health is both central to, and dependent upon, the realisation of other human rights, to food, housing, work, education, information, and participation. In addition, some modern and controversial developments such as genetic enhancement and access to ART technologies might be dealth with in order to discuss minimun common standards in the healthcare field.

- Focus on disadvantaged populations

Disadvantage and marginalization serve to exclude certain populations in societies from enjoying good health. Communicable diseases disproportionately affect the world's poorest populations, and in many cases are compounded and exacerbated by other inequalities and inequities including gender, age, sexual orientation or gender identity and migration status. Conversely the burden of non-communicable diseases – often perceived as affecting high-income countries – is increasing disproportionately among lower-income countries and populations, and is largely associated with lifestyle and behaviour factors as well as environmental determinants, such as safe housing, water and sanitation that are inextricably linked to human rights. This topic will also cover reproductive health, health sector accountability and access to healthcare services for vulnerable groups (women, children, prisoners, etc.).

- Violations of human rights in health

Violations or lack of attention to human rights can have serious health consequences. Overt or implicit discrimination in the delivery of health services – both within the health

workforce and between health workers and service users – acts as a powerful barrier to health services, and contributes to poor quality care.
Violations of human rights not only contribute to and exacerbate poor health, but for many, including people with disabilities, mentally ill, indigenous populations, women living with HIV, sex workers, people who use drugs, transgender and intersex people, the health care setting presents a risk of heightened exposure to human rights abuses – including coercive or forced treatment and procedures

- Human rights-based approaches

A human rights-based approach to health provides a set of clear principles for setting and evaluating health policy and service delivery, targeting discriminatory practices and unjust power relations that are at the heart of inequitable health outcomes. In pursuing a rights-based approach, health policy, strategies and programmes should be designed explicitly to improve the enjoyment of all people to the right to health, with a focus on the furthest behind first.

3. Objectives

This seminar provides the opportunity to participate in one of the state-of-the-art research programmes that the Erasmus Health Law Observatory offers. The Observatory tackles existing and emerging global health concerns by bringing together the many academic disciplines needed to address them. Participants will be exposed to the latest thinking in global health and human rights and will present and discuss their research outcomes related to one of the themes mentioned.

Key objectives of this one-day seminar are to:

- identify healthcare programmes and policies on national, regional and global level
- gain a better understanding of human rights issues in the health care setting
- get insight into the obstacles to the implementation of human rights in health care;
- explore underlying determinants of health as part of a comprehensive approach to health and human rights
- connect students, faculty and thought leaders across the university and beyond who are working in global health and human rights, and facilitate the exchange of ideas across disciplines, as well as new projects and collaborations that address global health and human rights issues
- exchanging ideas on blended learning initiatives and global health teaching activities

4. Target groups

This seminar is open to: i) PhD students involved in global health and human rights issues; ii) PhD supervisors involved in global health and human rights issues; iii) Health law and health-related professionals, and iv) other persons interested in global health and human rights issues.

Registration

Participating the seminar is free of charge. Prior registration is required. Please, contact André den Exter for further details and registration.

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PART I Abstracts

1. IMPACT OF ROBOTICS ON HEALTHCARE: LEGAL ETHICAL DILEMMAS

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SUMMARY:

In recent years we have witnessed a dizzying development of biomedical sciences, thanks to which new possibilities have been opened up in the treatment of the disease. Scientific milestones, such as the complete sequencing of the human genome in 2003, together with the development of new computer tools such as "big data", genomic science, and Artificial Intelligence (AI) have opened up immense possibilities in the field of diagnosis and the design of processes adapted to the particularities of patients.

Although AI dates back to the 1950s, the last few years have shown a dizzying development of this technology, evidenced by increasingly sophisticated and surprising technological inventions. One of its main applications is robotics, which together with the explosion of "Big data", are irreversibly modifying the paradigm of health care.

Certainly, the alliance forged between robots and humans has recently crystallized into powerful advances and benefits in the field of health, improving the quality of life of people with reduced mobility or autonomy. It also allows more accurate diagnosis, more precise surgeries and shortening post-operative periods and hospital stays. This paradigm shift in health care is mainly deployed through three types of robots: surgical robots, care robots and rehabilitation robots.

At the same time, the trend is towards an exponential development of health robotics. In the long term, the development of autonomous robots with the capacity to think autonomously and perform complex tasks. In 2017 the European Parliament even pointed out to the possibility that AI could surpass human intellectual capacity.

In parallel to this potential power of transformation trough robotics, important ethical and legal questions arise, both related to its impact on healthcare. In this regard, this paper will provide a human rights approach.

2. ARE MEDICAL DOCTORS VULNERABLE PATIENTS?

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The health status of medical doctors is gaining special importance in recent years. Welfare, lifestyle and working conditions of professionals have been adressed by many research studies due to their impact on the quality of the health services.
The aim of this paper is to study the role of doctors as patients of the health system. It is a well known fact that medical doctors behave in a different way from the one they recommended to their own patients when suffering diseases. In general, their behavior and attitudes as patients are not consistant with their recommendations as doctors. In fact, the most characteristic reaction is the denial or minimization of their health problems, or even, the concealment, considering health problems as a type of weakness, an impossible vulnerability to be assumed. In addition, when the health problem is mental and / or addictive, concealment is almost systematic, and it is possible that if they continue practising, they may endanger the health of their patients.

The importance of doctors health -both physical psychological- it is essential to provide quality care and to prevent medical errors. At the same time, we would also like to point out the different programmes of health care focused on treating the health problems of this group.

Debating and discussing about vulnerability of doctors may allow us to improve the quality of our health system.

Key words: Health; doctors ; patients

3. Development and Implementation of Mobile Health Strategy in global context-a practical case study from China perspective

Abstract by Lujia Sun

Erasmus University Rotterdam

Proposed research topic: Development and Implementation of Mobile Health Strategy in global context-a practical case study from China perspective
Aim: By identifying and assessing various aspects of changes and undesired outcomes caused by mHealth in China, this research is intended to discuss the most suitable strategy for mobile health scale-up.
Background: Global health is experiencing a revolution due to the changing theory of health care management and the boom of new technology. There is also a shift taking place that transfers power on public health from state to private actors. The rise of mobile health solution enhances significant awareness domestically and internationally as its strong potential on achieving universal health coverage by improving access for individuals to quality, cost-effective, health care services. Its further benefits derive from the possibilities for creating proactive, preventative and predictive approach toward population health management. Emerging markets, particularly China, are predicted to experience the highest growth rates of mHealth in the coming years. Some comment that it is because of the falling cost of smartphone, more affordable mobile broadband, less regulatory opposition and infrastructure barriers there. However, unintentional influences cannot be omitted since individuals' safety and privacy as well as healthcare industry' regulation are also important for mHealth sustainable development.
Methods: A comparative study approach will be adopted by applying laws and regulations in the EU and US. A systematic review will be performed on the related theories, policies, laws and regulations. This research will focus on issues from both conceptual and practical aspects.
Research topics:

1) Why is mHealth strategy necessary? From health law perspective, how to develop a mHealth strategy which is in line with equity of access to health care?
2) In terms of regulations on medical services, healthcare professions and medical liability, would current legal framework in China fit mHealth well?
3) The regulation model which can be applied to mHealth is fragmented in China and other countries, which mode of governance is more effective in which situation?
4) How to address medical confidentiality and data privacy in mHealth domain?
5) How to justify mHealth sellers' activities for the purpose of balancing business interests and complying with anti-corruption policy?
6) Currently, mHealth apps are mostly invested by private companies in China. For sustainable implementation purpose, would reimbursement of mHealth be a good idea and how?

1) The understanding of mHealth concept vary in forms, purposes, stakeholders etc. Current implementation status of mHealth is diversified from country to country as well. In the context of China health care system, why is a mHealth strategy necessary? From health law perspective, how to develop a mHealth strategy which is in line with equity of access to health care, particularly, when undesired consequences exist?
2) In terms of regulations on medical services, healthcare professions and medical liability, would current legal framework in China fit mHealth well? In case of any differentiations, would the law need to comply with mHealth and services provided by mHealth need to be regulated under the law?
3) The regulation model which can be applied to mHealth is fragmented in China, and same situation applied if we look into other countries/region globally. Which mode of governance is more effective in which situation?

4. The protection of foreigners health with special reference to unaccompanied minors

Francesco Giulio Cuttaia
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Abstract:
The European legislation on the protection of the health of non-EU migrant citizens is disorganized and provides rules for coordinating the provisions of the Member States, which have exclusive competence in defining health policies and the organization and provision of health services.

The provisions of European law distinguish between regular migrants, for whom forms of insurance are provided for illnesses and intervention modalities similar to those in favor of EU citizens, and irregular migrants for whom the level of health protection appears very reduced and referable to the emergency and essential care services.

The art. 32 of the Italian Constitution establishes that the Republic protects health as a fundamental right of the individual and as a collective interest, guaranteeing free medical care to the indigent.

The constitutional provision therefore concerns all individuals and not just citizens.

The current legislation on immigration sets a clear distinction between regular foreigners and irregular foreigners.

Foreigners who regularly stay on the national territory and who are workers, have equal rights, as regards the protection of the health of Italian citizens and can be registered on the lists of the National Health Service.

Irregular foreigners cannot enroll in the National Health Service and, to them, only urgent and essential treatments are guaranteed.

However, differentiated treatment is not available for unaccompanied minor foreigners.

They are those who find themselves for any reason in the territory of the State, without assistance and representation from parents or other legally responsible adults.

The l. April 7th 2017, no. 47 introduced a regulation which, in providing more protection than in the past, established full health assistance for unaccompanied foreigner minors.

Regarding them, mandatory registration is required for the National Health Service.

The discipline introduced by l. no. 47/2017 appears to be aimed to overcome the gap between the foreigners legally residing in Italy and the irregular foreigners.

5. Prisoners' health-related rights

Francesca Gardini
Roma 3 University

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Abstract:
«*La prisiòn solo recibe al hombre. El delito queda en la puerta*» is the phrase that was inscribed in 1836, at the behest of the director Manuela Montesinos, in the entrance door of the San Augustin prison in Valencia and which seems to have inspired, in its strong humanitarian meaning, the Italian judges in the note Judgment "Dell'Utri"; Judgment of the Italian Supreme Court of Cassation which, although it cannot sanction the turning point in the jurisprudence of legitimacy, testifies to the entry of constitutional principles in penitentiary recognizing prevalence to the protection of health as a fundamental right of the prisoner. The time of the penal execution, in fact, should be inspired by the constitutional principle according to which the penalties cannot consist in treatments contrary to the sense of humanity (article 13, paragraph 4, and 27, paragraph 3 of the Italian Constitution) and to the one according to which health is a fundamental right of the individual (article 32 of the Italian Constitution). On the contrary, it is still a matter of constitutionally guaranteed rights which delay to find effective recognition in our legal system due to the constant balancing with the need to guarantee public security, recognized by the doctrine as a «super-primitive value» and that the jurisprudence has, in some way, downsized establishing that, in any case, it can never and in any case exceed the limit of the fundamental rights of the prisoner.
Human dignity is the true and unique «super-primitive value» capable of guaranteeing the equal social dignity of the prisoner. So much so that the Italian Legislator has recognized it in the article 1 of the law 354 of 1975.
However, the Italian penitentiary system, despite the aforementioned, finds it hard to know the full implementation of constitutional values and consequently, due to the inhuman and degrading treatment suffered by some prisoners due to the lack of care and health services adequate to their condition, has led the condemnation of Italy by the European Court of Human Rights for violating article 3 of the European Convention on Human Rights (ECHR). The European Court of Human Rights, in fact, despite having been raised by several parties the exception of incompetence *ratione materiae* based on the co-presence of the European Social Chart (ESC), has also decided on the subject of social rights, through an evolutionary interpretation of the provisions of the European Convention on Human Rights that allowed it to bring back to the rights positively recognized by these also legal positions with a social content. The right to health, in particular, was thus brought back, within the framework of guaranteed rights, as a corollary of the right to life (article 2 ECHR), of the prohibition of inhuman or degrading treatment and punishment (article 3 ECHR), of the law respect for private and family life and domicile (article 8 ECHR), without however being able to recognize direct protection. The right to health of prisoners, in other words, is not protected in itself, but only if, and in what way, its injury results in the violation of rights expressly recognized by the European Convention on Human Rights.

6. Interactions between right to healthcare and right to information in the human rights system

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Abstract:
The right to health(care), as a human right, is dependent upon the realization of other fundamental rights among which the right to information (or to be informed) plays a central role.
In fact, only if the patient is adequately informed by persons in charge, he or her can provide an appropriate consent to carry out activities that improve his or her health.
The information in issue could have a double contents: a) the characteristics – benefits and side effects – of the medical treatment; b) the characteristics – ways and purposes – of the processing of personal data concerning health.
Although the treatment aims at curing the patient, it carries certain risks, therefore a duty to make people aware before they agree to it must be established. At the same time, although the processing of personal data concerning health aims for many reasons to improve the health services provided to the patient in addition to the scientific research, it involves a potential breach of confidence, therefore the right to privacy of the person concerned must be protected through a prior information allowing the latter to provide informed consent to the health data processing.
Consequently, medical treatment can't be lawfully provided if the patient refuses his or her consent. At the same time, processing of such data is unlawful if it is carried out without the consent of the person concerned or the other waivers strictly allowed occur.
Many statutes, laws and regulations go in this direction. On one hand, EU Regulations; on the other hand, member States Constitutions and Laws. For example, the Charter of Fundamental Rights of European Union, Art. 3, requires that "in the fields of medicine and biology, the following must be respected in particular: a) the free and informed consent of the person concerned, according to the procedures laid down by law". While, regarding the sensitive data protection, the GDPR, Art. 9, calls for written and informed consent in order to be health personal data lawfully processed.
In other words, a good information is the prerequisite for giving a free and useful consent related to a lawful and successful medical treatment.
The intersection of such two rights – right to health and right to information – reveals itself in the freedom of self-determination, meaning a right of personality that is a wide concept and covers many important and delicate aspects of one's personal life. In reverse order, one of the main tools for implementing the principle of self-determination, both with regard to freedom of care and control over personal data, is informed consent indeed.
The most important examples of informed consent are essentially the following two types: a) consent to medical treatment and health care, in addition to participation in clinical trials for scientific research projects; b) consent to the processing of personal data related to the provision of health services.

Definitively, it is possible to identify two symmetrical kinds of self-determination: medical self-determination and informative self-determination.
The ultimate aim of my presentation is to verify the theory of the so-called circular harmonization of fundamental rights with particular reference to the relationship between the right to self-determination (medical and informative) and the health protection.

7. Patient Safety as a Human Right. Is Tort Law the Right Remedy?

Mariya Sharkova, Bulgaria

Patient safety is a worldwide concern as 134 million adverse events occur each year in hospitals in LMICs, contributing to 2.6 million deaths annually due to unsafe care. Data from different countries (USA, Canada, UK, Australia) reveals that the problem is not limited to the LMICs and demonstrates similar deficiencies.

The article discusses the human right aspects of patient safety through the practice of the ECHR and argues about the responsibilities of the states to provide safe care and resolve systemic healthcare issues. It shows the collision between different initiatives, aimed to improve patient safety and the existing Tort Law system and litigations. The presentation will draw a line between personal responsibility of a medical professional and the responsibilities of the state to provide safe healthcare as a part of its positive obligations within the scope of the ECHR.

As the Tort law is the only option for redress of patients, suffering from preventable adverse events in Bulgaria, specific examples of case law research on medical malpractice will be provided.

As a conclusion, the author will discuss alternatives to Tort Law as a way to resolve patient safety systemic issues and fulfil substantive positive obligations of the state.

8. Shifts in healthcare: healthcare as a software industry?

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Abstract

Originally, the legal regulations in regard to health law provide protection for patients in their dependence on the care provider and, more generally, these legal regulations provide restrictions when it comes to positions of power. A position that in the provision of care originated, lies on the side of the care provider.
However, developments in the care sector are moving fast, partly due to developments in medical technology. As a result of these developments, new forms of care services can be offered which, in view of the speed of the developments, are also becoming immediately more readily available to patients (/care-consumers) without the intervention of a traditional doctor or hospital. Examples of this are: Genetic testing direct-to-consumer, decision support based on AI and services with regard to bionic prosthesis (related to human enhancement services).

It is primarily the question whether these new types of care services can fit within the scope of the current legal frameworks as offered by Dutch health law and the set of requirements that should be met when it comes to safeguarding the quality of care. The new care providers (as mentioned above) are by their nature different from the 'traditional' care providers, now they are a technology company, IT company, or a laboratory. Because of this different nature these healthcare providers may not only fall outside the scope the existing legal framework, but also outside the scope of the applicable protocols and / or guidelines. So questions arise whether these new healthcare providers can fall within the scope of existing legislation and regulations, or not. And if they do, how can they meet with the existing standards? In addition not only does this shift raise questions at national level, this also raises questions at international and European law level. After all, the existing protection in the traditional care relationships through Dutch law cannot be viewed separately from various fundamental and human rights that, in their turn, form the basis of national legislation. Thereby, it is obvious that the new healthcare providers will operate across borders and have a multinational character. In short, the research questions will not only require to provide insight at national level, but also from an international and European law perspective.
The medical technological innovations as offered by these companies can be of huge value for the patient, but in regard to the protection of human rights it is questionable if the patient finds itself protected in these services at the same level when he would have visited a traditional hospital or doctor.

Part II. Blended learning teaching activities: Lessons learned

This session was aimed to exchange ideas on blended learning initiatives and its potential relevance to global health teaching activities.
First, the Jean Monnet chair introduced the project's blended learning teaching activities 2017-2020.

Topics for discussion were:

- online teaching modalities were discussed,
- future ideas on improving the effectiveness of online learning tools (zoom, adobe connect, teams);
- multidisciplinary synergies (inviting multidisciplinary guest speakers on global health issues
- how to disseminate course materials;
- how to assess course achievements
- how to increase education capacity in EU global health law issues

Outcomes
The added value of this session was first of all to explain the concept of blended learning and to exchange ideas on how to apply blended learning modalities in different training courses. Participants also discussed potential barriers and opportunities of blended learning techniques in EU (global) health programmes.
Participants agreed to:

- support continue this discussion,
- to apply the blended learning concept in regular training activities;
- to exchange the training curricula
- support each other in organizing blended learning activities and to participate as guest speakers in local training courses.

List of Participants

available at editor