PATIENT RIGHTS IN THE EU

CYPRUS

EUROPEAN ETHICAL - LEGAL PAPERS N° 10

EuroGentest

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FOREWORD

Within the Centre for Biomedical Ethics and Law of the Catholic University of Leuven - one of the leading bioethical and legal research centres in Europe - we are involved as coordinator, partner or participant in different European research projects. Biomedical ethics and law are rapidly evolving disciplines. Although there exists already a great number of specialized peer reviewed journals and series of books in both disciplines we felt a growing need for a medium through which the results of our research can directly be presented to the research community and the interested community at large. To meet this need we decided to start the *European Ethical-Legal Papers.* Such papers will also contribute to the transparency we owe to society that finances our research efforts. We also hope that it will contribute to the discussion and the exchange of information and ideas among researchers in Europe and elsewhere.

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I. INTRODUCTION

EuroGentest is a five-year EU funded program that aims to develop the necessary infrastructure, tools, resources, guidelines and procedures that will lead to the establishment of harmonized, qualitative genetic testing services in Europe. Within EuroGentest we are dealing with the ethical and legal issues of genetic testing. Harmonization of the technical aspects of genetic services in Europe requires a legal and ethical framework that respects cultural, religious, philosophical and other domestic characteristics of a given country and its population(s), but at the same time conforms to basic and universally accepted human rights. To continuously supervise the legal and ethical developments regarding the promotion and protection of the rights of patients and users of health services and to make the results of our research publicly available, is a permanent challenge. This publication in the European Ethical-Legal Papers aims to contribute to it.

Opened for signature more than 10 years ago (in Oviedo, Spain, on 4 April 1997), the European Convention on Human Rights and Biomedicine is now becoming increasingly important as a standard to evaluate the efforts and the progress made by the Member States of the European Union to promote and protect the rights of patients and users of health services. In this tenth issue we present the results of this evaluation for Cyprus, one of the EU Member States that have ratified the Convention.

The content of this publication is as follows.
In an introductory chapter we briefly describe Cyprus with respect to some of its main features related to its political and legal background and its health care system.
This is followed by an encompassing overview of the rights of patients in Cyprus. In a first paragraph the legal status of the Biomedicine Convention is situated against the background of Cypriot constitutional law. Then we turn to a description of the national legislation on patient rights. Many different enumerations of patient rights exist. Since we are particularly interested in the way the

Biomedicine Convention has been received by the Member States of the European Union, we follow the structure of the Convention. The right to informed consent (articles 5, 6, 8 and 9 of the Convention) comes first, followed by different aspects of the right to private life and the right to information (article 10 of the Convention) such as: patient rights regarding the medical file, the right to medical secrecy/confidentiality and the right to privacy and protection of private life. This part of the analysis ends with the right to complain in case of unlawful infringement of a patient right (article 23 of the Convention) and the right to compensation for undue damage (article 24 of the Convention). In the next chapter we look at the rights of patients as users of genetic services: are the rights of patients complemented by more specific rights for users of genetic services? (articles 11 and 12 of the Convention). With some concluding remarks we finish this paper N° 10 of the Ethical-Legal Papers.

Without the help of Rena Petridou (President of the Cyprus National Bioethics Committee), we could not have accomplished this work. She provided us with valuable information on the status of patient rights in Cyprus and answered our questions accurately and patiently. The possible mistakes and wrong interpretations are our responsibility. We are also aware of the limitations of this endeavor not the least because of differences in languages. Nevertheless we hope that this publication will stimulate the discussion on the promotion and protection of patient rights in Cyprus. Therefore we welcome all reactions on www.cbmer.be.

Leuven, October 2007

The research for this publication was supported by the Eurogentest Network of Excellence of the EU, FP6 – 512148 and its coordinator Prof. Dr. J.J. CASSIMAN

II. BRIEF DESCRIPTION OF CYPRUS

§ 1. Political and legal system

Cyprus's political system is a presidential democracy (Republic of Cyprus) established by the 1960 Constitution that marked the end of the Cypriots' independence fight against British colonial rule.[1]

The Executive power is vested in the President and the Vice-President, who are members of the Greek and Turkish Communities respectively, and are elected by their respective communities to hold office for five years.
The President of the Republic as Head of State represents the Republic in all its official functions; signs the credentials of diplomatic envoys and receives the credentials of foreign diplomatic envoys, treaties, conventions and other agreements; signs the letter in relation to the transmission of the instruments of ratification of any international treaty, convention or agreement; and confers the honours of the Republic.
The Vice-President of the Republic, as Vice-Head of the State, has the right to be present at all official functions.
The President and the Vice-President are invested by the House of Representatives.
The President and the Vice-President of the Republic, in order to ensure the executive power, shall have a Council of Ministers composed of seven Greek Ministers and three Turkish Ministers. The Ministers must be designated respectively by the President and the Vice-President of the Republic, who appoint them by an instrument signed by them both. The President convenes and presides over the meetings of the Council of Ministers, while the Vice-President may

[1] C.GOLNA, P.PASHARDES, et al., *Cyprus*, in S.ALLIN and E.MOSSIALOS (eds.), Health Care Systems in Transition, European Observatory on Health Systems and Policies, 2004, 5.

ask the President to convene the Council and may take part in the discussions.
The Council of Ministers directs generally and checks the governing of Cyprus, it coordinates and supervises the public services, and it supervises and allocates the Democracy and processes the budget and the bills before they are deposited in the House of Representatives.
The decisions of the Council of Ministers are taken by an absolute majority and shall, unless the right of final veto or return is exercised by the President or the Vice-President of the Republic or both, be promulgated immediately by them.[2]

The legislative power of the Republic is exercised by the House of Representatives in all matters except those expressly reserved to the Communal Chambers.
The House of Representatives is elected every five years by universal direct suffrage. All citizens over the age of 18 are required to vote.[3]
A constitutional amendment in 1985 changed the number of Members of the House of Representatives from 50 to 80.[4] The President of the House of Representatives is Greek, and is elected by the Representatives elected by the Greek Community, and the Vice-President is a Turk and is elected by the Representatives elected by the Turkish Community.
The Greek and the Turkish Communities respectively are elected from amongst their own members in a Communal Chamber. The Communal Chamber, in relation to their respective communities, has competence to exercise legislative power solely with regards to all religious, educational, cultural and teaching matters, personal status, composition and instances of courts dealing with civil disputes related to personal status and to religious matters and the imposition of personal taxes and fees on members of their respective communities in order to provide for their respective needs.[5]

[2] MEDINA, *Cyprus – Political System*, www.uam.es/otroscentros/medina/cyprus/cyppolpol.htm.
[3] C.GOLNA, P.PASHARDES, et al., *o.c.*, 5.
[4] EPP-ED GROUP, *EPP-ED in the Member States: Cyprus*, www.eep-ed.org/inthememberstates/memberstates/en/cyprus_power.asp.
[5] MEDINA, *o.c.*

Administratively, the country is divided into six districts: Ammochostos, Kyrenia, Larnaca, Limassol, Nicosia and Paphos.[6]

In Cyprus the Supreme Council of Judicature is composed of the President and Judges of the Supreme Court. It is responsible for the appointment, promotion, and transfer of the judges exercising civil and criminal jurisdiction in the District Courts and the Assize Courts.
The Supreme Court is the final appellate court in the Republic and the final adjudicator in matters of constitutional and administrative law, including recourses on conflict of competence between state organs on questions of the constitutionality of laws. It deals with appeals from Assize Courts and District Courts as well as with the decisions of its own judges when exercising original jurisdiction in certain matters such as prerogative orders of habeas corpus, mandamus, certiorari, and in admiralty cases.
A law was passed in 1960 providing for the establishment of jurisdiction and powers of civil and criminal jurisdiction, i.e. of six District Courts and six Assize Courts. In accordance with new legislation, approved in 1991, a permanent Assize Court, with powers of jurisdiction in all districts, was established.[7]

§ 2. Health care system

Cyprus began its dedication to health care back in the early 1960s when it gained independence from the United Kingdom. Since that time a priority has been placed upon health care and preventive medicine in the country. Because of this dedication Cyprus can boast a high quality of health care on the island as well as high life expectancy among the residents. In fact, many people from Middle Eastern countries travel to Cyprus for health services and treatment.[8]

Cyprus is a small country with a highly centralized administration system. Public health services are provided through a network of hospitals, health centers, sub-centers and dispensaries. Most of the system's organizational, administrative and regulatory functions take

[6] C.GOLNA, P.PASHARDES, et al., *o.c.*, 5.
[7] MEDINA, *o.c.*
[8] S.L.NEWMAN, "A Look at Health Care in Cyprus", *Associated Content* 2007, www.associatedconsent.com.

place at state level; the lower administration levels cooperate with the central administration primarily for the implementation of public health and health promotion initiatives.
Yet, following the recommendations made in the reviews of the Ministry of Health and the Ministry of Health hospitals respectively, a reform of the Ministry of Health is to be expected. New departments are being established and the administration of public hospitals decentralized on the basis of modern systems of management and medical audit. Given the particular circumstances of Cyprus this is expected to be a modest, mainly functional, decentralization that should take account of the need for integration of the centre and peripheries.[9]

The medical needs of the Cypriot population are met through three systems of health services: the government health sector (public facilities), the private health sector (private facilities) and a number of schemes covering specific sections of the population.
Governmental healthcare is provided free through government facilities to those who are eligible. The range of services offered through the government health scheme is comprehensive and includes visits to general physicians, specialist consultations, inpatient stays, medical care given abroad in specialties not offered in Cyprus and all drugs prescribed.
Government provision of health care is funded out of general taxation.
Private health care is open to all those who can afford to pay for their treatment. Private medicine is dominated by a large number of physicians in individual practice.
A number of special schemes cover specific sections of the population, such as medical services provided by the Trade Union to employed persons and their dependants.[10]
The governmental and private healthcare facilities operate alongside each other. They complement each other with both types of facilities being in main urban areas and health centers in more rural areas to form a network of facilities to meet the needs of the residents of Cyprus.[11]

[9] C.GOLNA, P.PASHARDES, et al., *o.c.*, 23.
[10] X., "Health Care in Cyprus", *Cyprus properties for you*, http://www.cypruspropertiesforyou.co.uk/healthcare.htm.
[11] S.L.NEWMAN, *l.c.*

III. GENERAL PATIENT RIGHTS

§ 1. Legal status of the Convention on Human Rights and Biomedicine

Cyprus has signed and ratified the Convention on Human Rights and Biomedicine on 20 March 2002. The Convention has entered into force on 1 July 2002. Most of articles 4 to 14 of the Convention are guaranteed by articles 4 to 20 of "the Safeguarding and Protection of the Patients' Rights Law" which has been approved and entered into force as of 7 April 2005.
According to article 3 of this law its provisions are complementary to the rights deriving from international treaties relating to the protection of human rights ratified by the Republic, among which the Convention. Moreover, according to article 169 (2) and (3) of the Constitution of the Republic of Cyprus an international Convention has immediately superior force to any municipal law.

No specific articles in Cypriot Law pertain to articles 12 to 14 of the Convention (Predictive Genetic Tests, Interventions on the Human Genome and Non-selection of sex).

Cyprus has made no restrictions on the exercise of rights and provisions contained in the Convention (on the basis of article 26 of the Convention).[12]

§ 2. National legislation on patient rights

In 2001 the NGO Patients' Rights Movement (KIDDA) produced "the Charter on the Rights of Patients". This charter aimed at filling a big gap in the effort to promote and protect the rights of patient-citizens.
The Charter was compiled by a working group of distinguished citizens who had experience and had an in depth knowledge of human

[12] Personal Communication of R. PETRIDOU.

rights and social problems and who were sensitive to the rights of patients.
The Charter was drafted on the basis of relevant international documentation and in particular the "Declaration for the Promotion of the Rights of Patients in Europe" of the World Health Organisation (March 1994). The main objectives of this Charter were:

a) to make the citizens, the state, the doctors and in general all those offering health services more sensitive to the rights of the patients and;
b) to safeguard by legislation the rights contained in the Charter and to set up a mechanism to monitor respect for these rights.

The Charter is a code of conduct for the state and all those who are involved one way or another in providing health services to a patient.

Also in 2001 the World Health Organisation on the World Health Day published a report on Mental Health in Cyprus. The Report stated that "the legislation is in accord with the regulations proposed by WHO. The rights of people are fully covered. A supervising multidisciplinary team that includes lawyers, psychiatrists, psychologists, social workers, and so forth, has been appointed by the Ministerial Council. It will secure the rights of patients as well as the quality of the services offered. […]".[13]

A bill safeguarding patient rights was tabled to the House of Representatives in 2004, entitled 'the Law on the Protection of the Rights of Patients". It was drafted on the basis of international conventions in the area of health and patient rights and on the basis of the "Charter of Patients' Rights" of 2001.[14]
The Law on the Protection of the Rights of Patients and Related Issues eventually passed on 7 January 2005.[15] The preamble of the said law states: "[…] whereas human rights in the area of health and more specifically, the right to life, the right to the integrity of the person, both physical and mental, and the right to the security of the person,

[13] Charter of Patient Rights of 2001.
[14] A.DEMETRIADES, L.CARIOLOU and T.CHRISTODOULIDOU, *Report on the situation of Fundamental Rights in Cyprus*, in E.U.NETWORK OF INDEPENDENT EXPERTS OF FUNDAMENTAL RIGHTS (ed.), 2004, 19.
[15] Law N° 1(I)/2005 The Safeguarding and Protection of the Patients' Rights of 7 April 2005.

the respect of the private life and dignified treatment in providing health services are not regulated by law […]". This Act came into force on 7 April 2005.[16]

The Act among others safeguards (a) the good quality and continuous care of health; (b) the choice of doctors and institutions; (c) treatment that does not violate the integrity of the person.
It also provides for mechanisms monitoring the protection and respect of patient rights. These mechanisms include (a) the establishment in every state hospital of an independent official who would be in charge of receiving complaints by patients and their families and of providing advice to patients concerning their rights; and (b) the establishment of a Patients' Complaint Committee which will look at patients' complaints after a referral by the official for the protection of patient rights. The Patients Complaint Committee will also deal with complaints on appellate level.[17]
Pursuant to the implementation of the Act on Patient Rights, Cyprus's five main hospitals have obtained their first Patients' Rights Counselors to examine complaints against the system and to give advice. According to the Patients' Rights Movement which produced the Charter on Patient Rights, the implementation of the Act on the rights of patients faces plenty of shortcomings, especially due to the maladministration at various hospitals.[18]

[16] A.DEMETRIADES, *Report on the situation of fundamental rights in Cyprus*, in EU NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS (ed.), 15 December 2005, 11.
[17] A.DEMETRIADES, L.CARIOLOU and T.CHRISTODOULIDOU, *o.c. 2004*, 19.
[18] A.DEMETRIADES, *Report on the situation of fundamental rights in Cyprus*, in EU NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS (ed.), 15 December 2005, 11; X., *Politis Newspaper*, 13 July 2005.

§ 3. Right to informed consent

Article 5 of the Biomedicine Convention:

An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.
This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.
The person concerned may freely withdraw consent at any time.

A. Right to informed consent as a basic requirement

According to article 11 (1) of the Patient Rights Act of 2005 "a prerequisite for the provision of health care is the patient's consent given after complete medical information, which is provided by the health care services provider to the patient, in due time, and in a comprehensible manner, so that the latter may understand the information provided and can make a free and independent choice".

Consent is only valid when it is retrieved after the necessary information was given to the patient. Without a valid consent, no medical treatment may be started.

When the patient is in a position where he/she is not able to express his/her will, due to his/her mental or physical state, and immediate medical care is urgently necessary, the consent of the patient may be presumed, unless it is obvious, from previously expressed wishes that he/she would have refused.

B. Contents of information preceding informed consent

According to article 12 of the Patient Rights Act "medical information" mentioned in article 11 (1) includes:
(a) the diagnosis of the patient's medical condition and, if possible, its prognosis;

(b) a description of the purpose, anticipated benefit and likelihood of success of the proposed treatment;
(c) the risks entailed in the proposed treatment, including side-effects, pain and discomfort;
(d) the likelihood of success and the risks of various forms of treatment or non-treatment.

The information preceding the consent has to be given in writing, as the consent itself. Only in emergency situations exceptionally, oral information is acceptable, but it should be put in writing as soon as possible.[19]

The information provided to the patient preceding the consent, should be given in a comprehensible manner so that the patient may understand the information (article 11 (1)). This includes refraining from using as far as possible technical terminology (article 10 (6)).

The patient has the right, if he/she wishes so, to receive a second medical opinion, in which case he/she has the right, subject to the provisions of article 18 of the Patient Rights Act, to be supplied with a copy of his/her medical record and biological substances and to be given all possible assistance to this effect (article 10 (7)).

According to article 10 (8) of the Patient Rights Act "when the patient is admitted to a medical institution, he shall be informed of the identity and professional position of every person providing health care to him/her, as well as the regulations regarding the conditions and procedures of stay and provisions of health care in the said institution".

Article 10 (9) of the Patient Rights Act provides for the patient at his/her discharge from a medical institution in the right to request and receive, a written report of the diagnosis, treatment and condition of his/her health, subject to the provisions of article 18.

Article 10 (10) stipulates further that "the patient shall have the right to request and receive a reasonable analytical estimate of charges, if any, at any stage of the health care".

[19] Personal Communication of R. PETRIDOU.

There is no specific provision in the Act on Patient Rights on who has the burden of proof that information preceding consent was (not) given. However, given that the consent should be in writing, it should be part of the patient's medical file and therefore the physician would normally have the burden of proof.[20]

As will be seen later, the patient may refuse to get the information preceding the consent. This can be deduced *a contrario* from article 10 (4), which states: "the patient is not considered to have disclaimed the right to information, unless he/she has requested in writing".
The same right of refusal can also be deduced from article 10(5), in which case the patient may choose whether another person should be informed in his/her behalf.

C. Form of informed consent

The consent of the patient may be given in writing or orally, provided that such consent is put in writing as soon as possible (article 11 (2)).
Oral consent is only acceptable in emergency situations, but also in these circumstances, it should be put in writing as soon as possible.[21]

D. Exceptions to the requirement of informed consent

Article 8 Biomedicine Convention

When because of an emergency situation the appropriate consent cannot be obtained, any medically necessary intervention may be carried out immediately for the benefit of the health of the individual concerned.

Article 13 (1) of the Patient Rights Act stipulates that "Where the patient is in no position, due to his/her mental or physical state, to express his/her will and the provision of medical care is urgently

[20] Personal Communication of R. PETRIDOU.
[21] *Ibid.;* A.SAOULLI, "New rules: no surgery without written consent", *Cyprus Mail* 1 November 2001, http://www.hri.org/news/cyprus/cmnews/2002/02-11-01.cmnews.html#01.

needed, the consent of the patient may be presumed, unless it is obvious, from previously expressed wishes that he would have refused".

In any case where proper consent is impossible to be obtained

a) any health care imposed as urgent may only be provided if the health care services provider deems it to be to the benefit of the patient's health or conducive to the patient's best interest.
b) any previously expressed wishes of the patient concerning health care shall be taken into consideration (article 13 (5).

E. Refusal and withdrawal of consent

There are no formal prescriptions to the refusal or withdrawal of consent in Cypriot Law, although refusal of consent in previously expressed wishes is accepted (article 13 (1)).

Although there is no explicit right to refusal, the physician is obliged to inform the patient preceding the (non-)consent on the risks of non-treatment, according to article 12 (d). A right of refusal can, thus, be deduced from this article. It can also be deduced from article 11 (1) that states that "a prerequisite for the provision of health care is the patient's consent".

F. Previously expressed wishes

Article 9 Biomedicine Convention

The previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account.

Article 13 (1) clearly refers to previously expressed wishes, when stipulating that when a patient is mentally or physically not capable of giving consent and medical care is urgent, the physician may presume the consent of the patient unless it is obvious from previously

expressed wishes that the patient would have refused consent for a certain treatment.
In any case where proper consent is impossible to be obtained, any previously expressed wishes of the patient concerning health care shall be taken into consideration (article 13 (5)).

There is a marked difference between the binding previously expressed will of a patient of the first paragraph and the previously expressed will of a patient that only needs to be taken into consideration of the fifth paragraph. It is difficult to explain this difference but the reason could be found in the fact that in the first paragraph, medical care is urgent, whereas this is not the case in the fifth paragraph.

This explanation seems not very convincing, because in urgent cases there will probably be no time to look for previously expressed wishes and the extent of these wishes, whereas there is enough time to investigate the previously expressed wishes when there is no urgency.

Article 13 (1) does not require that the previously expressed wishes are made up in writing. One may wonder whether he/she may deduce from the rule that consent always (except for a limited amount of cases) has to be given in writing, that this is also the case for previously expressed wishes.

G. Informed consent in case of minor patients[22]

Article 6 Biomedicine Convention

1. Subject to Articles 17 and 20 below, an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.
2. Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only becarried out with the authorisation of his or her representative or an authority or a person or body provided for by law.
The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.

Cypriot law does not contain any provisions on a fixed age limit for medical majority.
According to article 13 (3) of the Patient Rights Act "where, according to the law, a minor does not have the capacity to consent to his/her receiving health care, health care may only be provided with the authorization of his/her parents or another person, who according to the law provide such authorization.
Provided that the opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion of his/her age and degree of maturity".
There seems to be no possibility for a minor to decide on his/her own, at least not under article 13 as this article is entitled "Health care without the consent of the patient".

Consent of a parent of a minor is required, according to article 13 (3) of the Patient Rights Act. This paragraph refers to article 13 (2) which allows a physician to provide health care which is urgently needed if it

[22] L.STULTIËNS, T.GOFFIN, et al., "Minors and Informed Consent: A Comparative Approach", *European Journal of Health Law* 2007, vol. 1, N° 14, 23-24.

is not possible to obtain in time such consent, unless it is obvious that, in the circumstances the parent would have refused. This is a possibility, not an obligation.

Further article 13 (4) of the Patient Rights Act states that "if, in the case of a minor, his/her parent or another person refuses to consent and the health care provider believes that health care is in the interest of the patient, the matter, if time allows, is referred to a court or to another body, as may be, from time to time, prescribed by law, provided that, in case of a medical emergency,[23] the health care provider shall act in his/her judgment to the patient's best interest".

The fact that "shall act" is used in this paragraph seems to imply an obligation to deviate from the refusal of the parent in an emergency situation if according to the opinion of the physician the treatment is in the best interest of the minor.

There is no regulation in Cyprus for cases in which the minor and the parents differ in views. In this case the general rule will be applied and the parents will have the right to consent or not, without the approval of the minor.

H. Informed consent in case of incapacitated adults

Article 6 Biomedicine Convention

1. Subject to Articles 17 and 20 below, an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.
3. Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law. The individual concerned shall as far as possible take part in the authorisation procedure.

[23] See for a definition article 2 Patient Rights Act.

According to article 10 (5) of the Patient Rights Act the patient has the right to choose whether another person should be informed in his/her behalf. Article 11(1), section 2 provides that if the patient has exercised the right pursuant to article 10 (5) the provisions of article 11 (1) shall apply, *mutatis mutandis*, in relation to the person the patient has chosen to be informed on his/her behalf, who shall decide on behalf of the patient.
Article 13 (2) of the Patient Rights Act provides in the possibility of "a person appointed by law, whose consent is required". In cases where another person than the incapacitated adult gives the consent, the patient shall be involved in the process to the extent that his/her capacity and circumstances allow (article 13 (2), section 2).

If the person appointed by law refuses to give consent and the health care provider believes that health care is in the best interest of the patient, the matter, if time allows, is referred to a court or to another body, as may be, from time to time, prescribed by the law.
In case of a medical emergency, the health care provider shall act in his/her own judgment to the patient's best interest (article 13 (4)).

According to article 21 (4) of the Patient Rights Act "if the patient cannot him/herself exercise the rights mentioned in this part, such rights shall be exercised by his/her legal representative or the person whom the patient has appointed to this effect. In the absence of such representative, other reasonable measures shall be taken for the effective exercise of the patients' rights".

§ 4. Right to information about his or her health

Article 10 Biomedicine Convention

2. Everyone is entitled to know any information collected about his or her health. However, the wishes of individuals not to be so informed shall be observed.
3. In exceptional cases, restrictions may be placed by law on the exercise of the rights contained in paragraph 2 in the interests of the patient.

A. Right to information about his or her health as a basic requirement

The patient shall have the right to complete medical information (article 10 (2)). According to article 12 (a) 'medical information' includes "the diagnosis of the patient's medical condition and, if possible, its prognosis".
The information shall be given to the patient or the person he has chosen to be informed on his/her behalf, in a comprehensible manner, refraining from using as far as possible technical terminology.

B. Right not to know

According to article 10 (4) of the Patient Rights Act "the patient is not considered to have disclaimed the right to information, unless he has requested so in writing". As stated above, the right not to know can be deduced from this article.

C. Therapeutic exception

The physician is entitled to withhold information from the patient, but only in exceptional cases, when there is a valid reason to believe that this information may cause serious harm to the patient's mental or physical health (article 10 (3)).

The same right of the physician can be read in article 11 (1) section 3, in which it is stated that "the health care services provider, may, in exceptional cases, withhold certain information from the patient concerning his/her medical condition, if he deems that the provision of such information may cause serious harm to the patient's mental or physical health. In such a case information not provided to the patient, shall be provided to the spouse, father, mother and descendants thereof or to whoever of the above is reasonable under the circumstances, who shall act accordingly in their discretion."

The therapeutic exception thus can only be used in the patient's health best interest.

§ 5. Patient rights regarding the medical file

Article 10 Biomedicine Convention

1. *Everyone has the right to respect for private life in relation to information about his or her health.*
2. *Everyone is entitled to know any information collected about his or her health. However, the wishes of individuals not to be so informed shall be observed.*

A. Right to a medical file

The competent health care services provider has a duty to keep medical records showing the course of the treatment of the patient (article 17 (1)).
According to article 17 (2) "the administration of a medical institution or the health care services provider, as the case may be, shall have responsibility to keep and safeguard regular and updated medical records, in accordance with the Processing of Personal Data (Protection of Individuals) Law, 2001 and 2003".

B. Contents of the medical file

Also in article 17 (1) it is stated that "these records shall include detailed data identifying the patient and the competent health care services provider, as well as medical information on the treatment received by the patient, his/her previous medical records, as far as known, the diagnosis of his/her current medical condition and the treatment currently provided."

C. Right to access and copy the medical file

i. Right to access the medical file

The patient shall have the right, according to article 18 (1), to have access to data relating to him/her, which is contained in the medical records. In the exercise of these rights, the provisions of sections 11 to

14 of the Processing of Personal Data (Protection of Individuals) Laws, 2001 and 2003 and the Processing of Personal Data (Licenses and Fees) Regulations, 2002, shall apply *mutatis mutandis*.
Without prejudice to the provisions of article 18 (1), the patient's right of access to his/her medical records shall enable him/her, directly or indirectly through his/her legal representative, to receive information contained in these records, or a copy or extract thereof.
Personal notes of the health care services provider shall not be part of the medical record. Consequently, patients do not have a right to access the personal notes of the health care services provider.

The right of access may be limited, rejected or suspended by the person for the time being responsible for keeping the medical records if

a) this information is likely to cause harm to the patient's health, in which case the provisions of the second section of article 11 (1) shall apply *mutatis mutandis;*
b) information on third parties may be disclosed and it is impossible to prevent access to such information;[24]
c) in case of genetic data, this information is likely to cause serious harm to consanguine or uterine kin or to a person who has a direct link with this genetic line. (article 18 (2))

Consequently, the physician cannot refuse access to the medical file by the patient for reasons other than those cited in this article. Access cannot be denied for privacy reasons.

Minors and incapacitated adults do not have a right to direct access of the medical file. This can be deduced from article 13 of the Patient Rights Act. In these cases, the right to access is guaranteed through a legal representative without any specification.[25]

According to article 12 (6) of the Processing of Personal Data Act, this right has to be fulfilled through a physician. But, because of the

[24] In other words, the patient has no right of access to data on third parties and even access to his own data may be restricted if his medical record contains data related to a third party that may be disclosed without being it possible to prevent this disclosure. (Personal Communication of R. PETRIDOU).
[25] Personal Communication of R. PETRIDOU.

fact that the Patient Rights Act is more recent and more specific, it can be argued that the latter has priority over the Personal Data Act.[26]

ii. Right to copy the medical file

The right to copy the medical file is included in article 18 (2) which states that "the patient's rights of access to his/her medical records shall enable him/her, directly or indirectly through his/her legal representative, to receive […] a copy or extract thereof".

iii. Post mortem access by relatives

No regulations in Cypriot law were found on the post mortem access to the medical file by relatives.

D. Right to correction, erasure and/ or demolition

Article 18 (2) stipulates that this right also includes the rectification of this information, their erasure and the blocking of the records by reason of inaccuracies and shortages.
In this line also article 12 (2), b of the Processing of Personal Data Act can be noticed. The data subject has the right to ask for and receive from the controller without excessive delay and expense the rectification, erasure or blocking of the data, the processing of which has not been performed in accordance with the provisions of this Act, especially due to inaccuracies or shortage.

The right to correction, erasure and/or demolition is once more repeated in article 13 (1) of the Processing of Personal Data Act.

§ 6. Right to medical secrecy/ confidentiality

Article 10 Biomedicine Convention

1. Everyone has the right to respect for private life in relation to information about his or her health.

[26] Law N° 138 (I) 2001 The Processing of Personal Data of 2001.

A. Right to medical secrecy and confidentiality as a basic requirement

The right to medical secrecy and confidentiality is guaranteed through article 15 of the Patient Rights Act.
Article 15 stipulates: "(1)(a) Subject to the provisions of subsection (2), all information about the patient's medical condition, diagnosis, prognosis and treatment, as well as any other personal data shall be kept confidential even after the death of the patient and shall not be disclosed to any person or authority.
(b) The competent health care services provider or any person working in a medical institution shall not disclose any information regarding a patient which comes to his/her knowledge in the course of his/her duties or his/her work.
(c) The administration of a medical institution or the competent health care services provider shall make the necessary arrangements to ensure that persons working under their direction shall not disclose such information.
[…] (3) All information and data that may possibly reveal the identity of the patient should be protected."

B. Disclosure of medical information to a third party

Under certain conditions the medical institution or the competent health care services provider may disclose medical information to a third party.
According to article 15 (2) this is possible, if
"(a) the patient has given his/her written consent. The patient's consent may be presumed, where disclosure is to a person involved in the patient's treatment;
(b) the disclosure is for the purpose of the patient's treatment by another health care services provider;
(c) the information is disclosed to the medical institution providing health care to the patient or to a member of its staff for the purposes of processing, or filing the information, or for notification required by law;
(d) the disclosure of information is for the purpose of publication in medical journals or for research or teaching purposes, provided that all information identifying the patient is not disclosed;

(e) there is a legal obligation to this effect;
(f) the Board of the Pancyprian Medical Association has decided, after giving both the medical practitioner and the patient an opportunity to express their views, that the non-disclosure of the information could possibly cause serious harm to other persons´ health or physical integrity or have serious impact to the society as a whole."
When information is being disclosed to the extent that the case requires, every effort shall be made to keep the identity of the patient secret.

§ 7. Right to privacy/ protection of private life

Article 10 Biomedicine Convention

1. Everyone has the right to respect for private life in relation to information about his or her health.

"Every person has the right to respect for his/her private and family life. There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person" (article 15 Constitution).[27]

In relation with health matters, article 16 of the Patient Rights Act further stipulates: "(1) there can be no intrusion into a patient's private and family life, unless with the patient's consent and if this is deemed necessary for his/her diagnosis, treatment or care.
(2) Health care shall only be provided with appropriate respect for the patient's private life and shall, as a rule, be given in the presence only of those persons who are necessary for the provision of health care.
(3) A patient admitted to a medical institution shall be entitled to facilities or arrangements which ensure the protection of his/her

[27] The defined restrictions are in line with the restrictions provided for in article 8 of the European Convention on Human Rights.

privacy, particularly when the medical or nursing staff is providing personal care or carrying out medical tests or other treatment."

A. Processing of data concerning health

Data concerning health are in the Processing of Personal Data Act defined as "sensitive data" (article 2).
According to article 6 (1) the collection and processing of sensitive data is prohibited.
The collection and processing of sensitive data, is permitted, only when one or more of the following conditions are fulfilled:

a) the data subject has given his/her explicit consent, unless such consent has been obtained illegally or is contrary to accepted moral values or a specific law provides that consent does not lift the prohibition;
b) the processing is necessary so that the controller may fulfill his/her obligations or carry out his/her duties in the field of employment law;
c) processing is necessary to protect the vital interests of the data subject or of another person when the data subject is physically or legally incapable of giving his/her consent;
d) the processing relates to medical data and is performed by a person providing health services by profession and has a duty to confidentiality or is subject to relevant codes of conduct, on condition that the processing is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or the management of healthcare services.

The controller of the sensitive data must initially notify the Commissioner[28] in writing about the establishment and operation of a filing system or the commencement of processing (article 7 (1)).
Although if the processing of medical data is performed by a physician who is bound by medical confidentiality or other kind of confidentiality required by law or code of conduct and the data are neither transferred nor communicated to third parties, the

[28] The Commissioner for the Protection of Data is the Commissioner appointed by virtue of article 18 of the Processing of Personal Data Act.

physician/controller is discharged of the obligation to notify (article 7 (2), d).[29]

B. Right to access and right to receive a copy

Article 12 (1) of the Processing of Personal Data Act provides in the right for every person to know whether the personal data relating to him/her are or were processed.
No regulations on the right to receive a copy were stipulated in the Processing of Personal Data Act. The patient has only a right to receive a copy of the rectified part, according to article 14 of this act.

C. Right to correction, erasure and/ or demolition

The data subject has the right to ask for and receive from the controller without excessive delay and expense the rectification, erasure or blocking of the data, the processing of which has not been performed in accordance with the provisions of the Processing of Personal Data Act, especially due to inaccuracies or shortages (article 12 (2), b).

§ 8. Right to complain and to compensation

A. Right to complain

Article 23 Biomedicine Convention

The Parties shall provide appropriate judicial protection to prevent or to put a stop to an unlawful infringement of the rights and principles set forth in this Convention at short notice.

[29] Persons who provide health services such as clinics, hospitals, health centers, recovery and detoxication centers, insurance funds and insurance companies as well as the controllers of personal data when the processing is performed in the framework of programs relating to telemedicine operations or provisions of medical services through a network, are not excluded from this provision.

The right to complain is not directly regulated in the Patient Rights Act. Article 22 (1) provides in the installation of a 'Patients' Rights Officer' who has amongst others the task to receive and handle complaints of patients which require his/her judgment, immediate handling, otherwise to refer them to the Complaints Examinations Committee established pursuant to article 23.
The Complaints Examination Committee has the task to examine complaints of patients referred to it by the Patients' Rights Officer and to examine at second instance any complaints of patients, who have not been satisfied by the decision of the Patients' Rights Officer, pursuant to article 22 or by a decision pursuant the first task of the Committee (article 23 (1), a).
The Committee's decision shall be notified to the patient and the affected health care services provider and/or medical institution who shall be obliged to take it seriously into consideration, according to paragraph 6 of article 23.
Also to be mentioned is article 25 of the Act providing for the establishment and function of the National Bioethics Committee.[30] This article stipulates that "(1) Notwithstanding the provisions of any other law regarding the professional discipline of certain scientific, vocational classes, the Committee may hear, investigate and grant consultation on complaints related to the implementation of the laws, rules and codes in relation to the issues that fall into the powers of the ethics committees.
(2) The Committee may refer complaints submitted to it by virtue of section (1) for investigation to an ethics subcommittee or to another competent body for disciplinary control.
(3) For purposes of implementation of this article the Committee draws up Regulations, which are then submitted to the House of Representatives for approval."

[30] Act N° 150 (I) providing for the establishment and function of the National Bioethics Committee of 2001.

B. Right to compensation

Article 24 Biomedicine Convention

The person who has suffered undue damage resulting from an intervention is entitled to fair compensation according to the conditions and procedures prescribed by law.

No explicit regulations on the right to compensation can be found in Cypriot medical law.

IV. RIGHTS OF USERS OF GENETIC SERVICES

§ 1. Introductory remark

In Cyprus, genetic testing is only regulated through the legal framework that applies to health services as a whole. There is no specialized Act in place with regards to genetic testing and patient rights.[31] The Patient Rights Act (Law 1(I)/2005) can be seen as an umbrella law that covers all issues pertaining to treatment, therapeutic schemes, also including genetic testing. According to article 3 of the Patient Rights Act its provisions are complementary to the rights deriving from international treaties relating to the protection of human rights ratified by the Republic, among which the Convention on Human Rights and Biomedicine. Moreover, according to article 169 (2) and (3) of the Constitution of the Republic of Cyprus an international Convention has immediately superior force to any municipal law. In this respect, the provisions of the Convention related to genetic services are applicable.

The regulations on patient rights are *mutatis mutandis* applicable as rights of users of genetic services.

Article 2 of the Patient Rights Act contains a definition of genetic data, i.e. all data, of whatever type, concerning the hereditary characteristics of an individual or concerning the pattern of inheritance of such characteristics within a related group of individuals.

[31] Personal Communication of R. PETRIDOU.

§ 2. Prohibition of discrimination on grounds of genetic heritage

Article 11 Biomedicine Convention

Any form of discrimination against a person on grounds of his or her genetic heritage is prohibited

According to article 28 of the Constitution "all persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his/her community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution."
"Unfavourable discrimination" is also defined in the Patient Rights Act, i.e. a violation of the principle of equal treatment on the basis of, inter alia, sex, sexual orientation, religion, racial or ethnic origin, color, philosophical, political convictions, and religious beliefs, ages, health status, specials needs and social-financial status.

Discrimination on the ground of genetic heritage is not stipulated as such in the Constitution, nor in another Cypriot act, but can be deduced from the definition of unfavourable discrimination, more specifically from the discrimination on grounds of health status.

§ 3. Use of predictive genetic tests

Article 12 Biomedicine Convention

Tests which are predictive of genetic diseases or which serve either to identify the subject as a carrier of a gene responsible for a disease or to detect a genetic predisposition or susceptibility to a disease may be performed only for health purposes or for scientific research linked to health purposes, and subject to appropriate genetic counselling.

Like other provisions in the Biomedicine Convention, article 12 is directly applicable in Cyprus.

V. CONCLUDING REMARKS

1. Cyprus has signed and ratified the *Convention on Human Rights and Biomedicine* on 20 March 2002. The Convention has entered into force on 1 July 2002. According to the Cypriot Constitution the Convention has immediately superior force to any municipal law. Cyprus has not made any restriction on the exercise of rights and provisions contained in the Convention.
2. The *Act on the Protection of the Rights of Patients and Related Issues* was tabled to the House of Representatives in 2004 and passed on 7 January 2005. The Act safeguards among others the good quality and continuous care of health; the choice of physicians and institutions; and treatment that does not violate the integrity of the person. This Act forms a comprehensive regulation of patient rights.
3. The Patient Rights Act is *in conformity* with the Convention on Human Rights and Biomedicine of 1997 and also with the Declaration of Amsterdam of 1994.
4. *Consent* is only valid when it is retrieved after the necessary written information was given to the patient. Without a valid consent, no medical treatment may be started. The consent may be given in writing or orally, but orally given consent has to be put in writing as soon as possible. This is also the case in emergency situations.
5. A *minor* cannot give consent to a treatment him/herself. Consent of a parent is always required. The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion of his/her age and degree of maturity.
6. A physician is allowed to make use of the *therapeutic exception*. He/she is entitled to withhold information from the patient, when there is a valid reason to believe that this information may cause serious harm to the patient's mental or physical health.
7. The reasons for not allowing the patient to have *access to his/her medical file* are strictly stipulated in the Patient Rights Act. Access cannot be denied for privacy reasons. Minors and incapacitated adults do not have a right of direct access. Their right is guaranteed through a legal representative.

8. Under certain strictly stipulated conditions the medical institution or the competent health care services provider may *disclose medical information to a third party*.
9. *Processing and collecting of data concerning health*, so called sensitive data, is prohibited. It is only permitted when one or more conditions stipulated in the Processing of Personal Data Act are fulfilled.
10. A patient has a *right to complain*. This right is not directly stipulated in the Patient Rights Act, but can be deduced from articles in different acts, regulating the committees of complaint.
11. Cyprus has no specific act on *genetic testing and the rights of users of genetic services*. Therefore the Patient Rights Act has to be used as an umbrella act, which covers also treatments such as genetic services. The regulations on patient rights are *mutatis mutandis* applicable as rights of users of genetic services.

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