

is not the case, the Court will forward the appeal to the opposite side for a response and it has eight days to submit its response to the appeal. After that, all the documents are submitted to the competent Court of the second instance. The second instance Court determines the judge who reports to the second instance Judicial panel, then the judicial panel decides whether only one session of the panel should be held, that will decide on the appeal, or, which is less common, the panel will open a new main hearing before the second instance Court. All those who were informed may attend the main hearing, and some of the participants could be asked to provide certain clarifications. The hearing before the second instance Court will take place primarily when in the first instance facts were established incorrectly and incompletely, or some evidence was not presented (Articles 442 to 454).

The second instance Court will issue an appropriate decision on the appeal. This decision may be a decision on rejecting the appeal, if the appeal is unauthorized (filed by those who are not authorized to file an appeal), if the appeal is untimely, or not properly written. It is a formal decision. However, if the Court does not issue such a decision, it can issue a verdict rejecting the appeal, and it will be when he finds that the appeal is unfounded and, in fact, he confirms the first instance verdict. On the other hand, the second instance Court may decide positively on the appeal. In this case there are two options. The Court can issue a decision on the adoption of the appeal and then return the case to the first instance Court for a retrial, where, in some cases, the judicial panel can decide to repeat the hearing before the first instance panel but in different composition. The second instance Court may issue a decision for the acceptance of the appeal. When it finds that the legal and factual situation is already well enough established in the second instance, it may issue a verdict on the matter. However, this case is less common than the fact that the second instance Court gives it back for retrial.

Appeal can also be filed against the second instance verdict, but only if in the first instance the defendant was acquitted, and then in the second instance, the court reversed the verdict and issued the verdict finding the defendant guilty. Then we actually have the procedure in the third instance, where the Court of Appeals decides, and apply the rules same as for the second instance procedure.

8.5.9. EXTRAORDINARY LEGAL REMEDIES

Extraordinary legal remedies should also be listed here, which can be filed even if the verdict is final. It is, for example, the *renewal of a procedure*. This request may be filed after the convicted person had served its sentence, and even after its death, by the public prosecutor. Reasons for the renewal of a procedure are: if the verdict was based on a false identification or false testimony of a witness, expert witness, or someone else. Also, if the verdict was issued as a result of a criminal activity of the judge, public prosecutor or any other relevant body that participated in the procedure; if new facts are brought to the Court, or the Court discovered new evidence that can be used and possibly could lead to a different verdict; if the defendant was already convicted for the same offense, or more persons have been convicted of an offense that could have been done by only one person, and so on. Judicial panel, that decided in the first instance, will decide on the request for the renewal of a procedure. The rules of the procedure are similar to the procedure for the ordinary appeal.

Another extraordinary legal remedy is the *request for the protection of lawfulness*. It is filed against the verdict that has become final. This request may be filed by the Public Prosecutor of the Republic, or the convicted, but only through its counsel. This request is filed because of the violation of the law;

because the law applied by the Constitutional Court is declared unconstitutional; because of a violation of a human right and freedom of the defendant, which are guaranteed by the Constitution or the Republic of Serbia²³⁸, or the European Convention on Human Rights²³⁹. The Supreme Court of Cassation decides on the request, in a regulated procedure.

All in all, we should have in mind: in this area, Serbia is in the process of significant systemic reform. There is not enough time to be able to answer the question of whether and how the system works, how participants are managed in the procedure, above all, prosecutors and lawyers. That should be taken into account when considering the current Criminal procedural system in Serbia.

8.6. Alternative Mechanisms to Protect/Enforce Rights and Responsibilities

In addition to criminal charges and request for compensation for damages in the civil procedure, patients are entitled to several methods for the protection and the realization of their rights.

The right to object:

Law on protection of Patients' Rights established the basic right of patients to object, if they consider that they were denied medical care in a Health care institution or any other legal entity that provides Health care services, or they were denied medical care by some of the Health care providers. Patient may object under Article 30 of the Law on protection of Patients' Rights²⁴⁰:

- ▶ Health care worker who manages the work process,
- ▶ Director of the Health care institution,
- ▶ Counselor for protection of patients' rights.

Competent for deciding on the patients' objection is the Counselor for protection of patients' rights who is named by the Local government units.

8.6.1. COUNSELOR FOR PROTECTION OF PATIENTS' RIGHTS

The objection to the Counselor for protection of patients' rights (hereinafter: Patients' counselor) is submitted by the patient itself or its legal representative, in writing or orally on the record.

About the objection for denied medical care decides the relevant Minister concerning Rule book for objection, the form and content of the request, and on the records and reports of the Patients' counselor²⁴¹.

Patients' counselor acts on the territory of the Local government units, and may be responsible for several units. He gives advice and provides necessary information about patients' rights, and to successfully perform this function, the Law expressly provides that Health care institutions and all other

²³⁸ Official Gazette 98/2006.

²³⁹ European Convention on Human Rights, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf (accessed January 11, 2015)

²⁴⁰ Official Gazette RS 45/2013.

²⁴¹ Official Gazette RS 45/2013.

Health care providers will, at the request of Patients' councilor acting on the objection of the patient, no later than five working days, have to submit all required information, data and opinions.

By this objection, Patients' councilor immediately, but no later than five working days, determines all the relevant facts and circumstances related to the allegations in the objection and makes the record. Based on the record and findings of the relevant facts and circumstances relating to the objection of the patient, Patients' councilor constitutes an appropriate report. Immediately or not later than three working days, the report is delivered to the patient, the Head of the organizational unit and the director of the Health care institution or the founder of a private practice. Within five days, they should inform the Patients' councilor about the patients treatment and measures undertaken in connection with the objection.

If the patient is not satisfied with the report of the Patients' councilor or there is no reply, then the patient may address to the Health Council, Health Inspection and the competent organ of the organization of its Health insurance.

8.6.2. HEALTH COUNCIL

Health Councils are established in local government units and they consist of Representatives of the local government units, representatives of associations of citizens from among patients, Health care institutions and competent branch of the National Health Insurance Fund. In the Law on protection of Patients' Rights (in Articles 42 and 43) the Council has entrusted some of the powers relating to the protection of patients' rights, such as the handling of complaints about the violation of individual rights of patients; making recommendations to the directors of Health care institutions or the founders of private practice; considering the reports of the Councilor for protection of patients' rights; monitoring the exercise of the rights of patients in the territory of the local government unit.

8.6.3. COUNCELOR FOR PROTECTION OF INSURED PERSONS' RIGHTS

Patients who believe that their rights of Health insurance have been damaged or violated, can contact the employee in the National Health Insurance Fond, so called Councilor for protection of Insured persons' rights, pursuant to Article 4 of the Regulations on the procedure for the protection of the rights of the insured persons of the National Health Insurance Fund.²⁴² Patients' rights councilors are appointed by the National Health Insurance Fund and allocated to the Health care institutions. Councilor for protection of Insured persons' rights allows communication between the insured and the organizational units of the Health Insurance compiling the necessary reports and informing them about the perceived irregularities in service provision.

Every insured person who believes that have been violated any of the rights under the insurance, has the right to submit an application to the Councilor for protection of Insured persons' rights, which will further request the necessary information from the responsible person or the Head of the organizational units of the Health care services to which the application is related. In a further period of five working days, the Councilor for protection of Insured persons' rights, will notify, in writing, the applicant of the measures that have been taken. The Councilor puts forward the submitted application and the National Health Insurance Fond for an appropriate action toward Health care provider.

²⁴² Official Gazette RS 68/2013.

If unsatisfied with the responses, the patient may contact directly the organizational unit of the National Health Insurance Fond.

8.6.4. PROTECTION BY THE BRANCH OF THE NATIONAL HEALTH INSURANCE FOND

Regulations on the procedure for the protection of Insured persons' rights of more precisely list the obligations of the Fund and its duties with respect to the rights of the insured persons. One of the tasks of the National Health Insurance Fond, among other things, is to control whether the Health care institutions, with which it has concluded contracts, properly and successfully carry out their contractual obligations related to the provision of Health care services. In case that the Health care institution denies or limits some of the rights for a patient from its Health insurance, the patient can address with the National Health Insurance Fond (Article 213 of the Health Insurance Law).²⁴³

If a patient in his application indicates that he was denied or prevented a right to Health insurance in a Health care institution, the relevant branch or the Fund, as well as the Provincial Fund will give the patient advice and guidance on the next steps and concerning Health care institution, it has the authority to undertake certain measures.

Security supervisor in the exercise of control can (under Article 190 of the Health Insurance Law):

- ▶ order Health care institution to correct defects and to return wrongfully charged money from the patient,
- ▶ propose the termination of the contract with the Health care institution,
- ▶ propose to reduce the amount that the Fund provides for the Health care institution for the cost of services that are not provided to the patient or
- ▶ propose a misdemeanor charge against the Health care institution.

If the parent branch of the National Health Insurance Fund in acting on presumption of the patient, finds that everything was in accordance with the regulations, or that Health care institutions and Health care providers acted in accordance with the Laws, the patient has no right to appeal.

On the other hand, if the branch notes that Health care service was not covered by the Health insurance to which denial of a patient complains, the patient remains with a possibility to appeal to the decision rejecting the application.

8.6.5. QUALITY CONTROL OF HEALTH CARE INSTITUTIONS AND PRIVATE PRACTICE WORK

Law on Health Care (Article 205)²⁴⁴ provides the possibility of external and internal quality control of Health Care institutions, private practice and Health care providers. Internal control of the quality of professional work in a Health Care institution shall be conducted on the basis of the annual program checks that should improve the quality of professional work of the Health care institution.

²⁴³ Official Gazette RS 107/2005, 109/2005 – corr. 57/2011, 110/2012 - decision of the Constitutional Court, 119/2012, 99/2014, 123/2014 and 126/2014 - decision of the Constitutional Court.

²⁴⁴ Official Gazette RS 107/2005, 72/2009 - Law, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013 – Law and 93/2014.

External control of the quality of professional work is conducted by the Ministry of Health at the request of citizens, institutions, organizations, Health insurance organs and state authority, and is performed by the supervisors appointed by the Ministry of Health. Upon completion of the quality control, supervisors make a report in which they identify gaps and deficiencies in professional work, as well as expert opinion about the possible consequences of such work in Health care institutions. Completed report the supervisor submits to the Ministry, Health care institution, private practice, as well as competent Chamber if the control is performed of the work of a Health care provider (Article 210 of the Law on Health Care). Along with the report, the supervisor proposes appropriate measures that should be taken. Based on the report and the measures proposed by the supervisor, the Minister will issue a decision that may (Article 211 of the same Law):

- ▶ temporarily prohibit, in whole or in part, the performance of certain tasks of a Health Care institution or private practice;
- ▶ temporarily prohibit, in whole or in part, the work of the organizational work of the Health care institution or private practice;
- ▶ temporarily prohibit the operation of the Health Care institution or private practice;
- ▶ propose to a competent Chamber to suspend the license of a Health care provider, under the conditions stipulated by this Law.

8.6.6. HEALTH INSPECTION

The official name of the Health inspection is the Department of Health Inspection, which is a part of the Department for the Inspection of the Ministry of Health.

Patients' right to address to the Health inspection is provided by the Law on protection of Patients' Rights²⁴⁵ (Article 41) and by the Law on Health Care²⁴⁶ (Article 243).

The purpose of conducting supervision over the work of Health care institutions and private practices is in the establishing of the lawfulness of their work. In order to achieve this, Health care institutions are obliged to provide Health inspectors with access to their documents, inspection of premises and to take other actions to be able to carry out supervision.

Upon completion of the control, the Health inspector makes a report on factual findings, which is then delivered to the Health care institution or private practice over which he exercised supervision. Then, a Health inspector will issue a decision ordering the measures, actions and deadlines that must be performed. Over this decision, an appeal can be filed to the Minister.

The Health inspector, upon completion of the control, issues a decision that may (Article 249 of the Law on Health Care):

- ▶ order the removal of shortcomings in the work of Health care institution immediately or within a period which shall not be less than 15 days nor more than six months; this may mean, for example, that the outpatient Department of the Health center, to be ordered to make a ramp at the entrance to make Health care more accessible to persons with disabilities;

²⁴⁵ Official Gazette RS 45/2013.

²⁴⁶ Official Gazette RS 107/2005, 72/2009 - Law, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013 - Law and 93/2014.

- ▶ temporarily prohibit work or perform certain tasks in a Health care institution for at least 60 days and a maximum of six months;
- ▶ temporarily prohibit work or performance of certain tasks to a Health care provider for a period of 30 days to six months;
- ▶ prohibit the independent work of Health care provider who is not licensed;
- ▶ propose a competent Medical chamber to revoke the license of a Health care provider.

Independently of these measures, the inspector may file charges against institutions and Health care providers for every violation of the rights of patients like a misdemeanour procedure.

A person who is not satisfied with the outcome of addressing the Health inspection, can always turn to the Ombudsman (Protector of Citizens).

8.6.7. PROTECTOR OF CITIZENS

The Ombudsman (hereinafter: Protector of Citizens) is established as an independent state body that protects the rights of citizens and controls the work of state bodies and organs, enterprises and institutions entrusted with public authority.

Article 24 of the Law on the Protector of Citizens²⁴⁷ provides that the Protector of Citizens may initiate a procedure on citizens' complaints or on its own initiative. Any person or legal entity, domestic or foreign, who consider that an act of the state administration violated its rights may file a complaint to the Protector of Citizens (Article 25 of the same Law). Before submitting a complaint to the Protector of Citizens, a person must try to exercise their rights in an appropriate legal procedure, that will also be the first instruction of the Protector. The deadline for filing a complaint is one year from the day of the violation of persons rights. About the initiation and the completion of the procedure, the Protector of Citizens informs the complainant and the state body against which the complaint was filed, which must respond to the demands of the Protector of Citizens.

The state body can remove these deficiencies and inform the Protector of Citizens, who will then finish the procedure. Otherwise, the Protector of Citizens makes recommendations for eliminating work defects of that body. If the state body fails to comply with the recommendation, the Protector of Citizens may inform the public, the Parliament and the Government, but also recommend establishing the responsibility of the official in charge of that state body (Article 31, paragraph 5 of the Law on the Protector of Citizens).

Furthermore, the Protector of Citizens has the right to propose laws within its jurisdiction, giving opinions on the proposals and drafts of these laws. According to the Law on protection of Patients' Rights²⁴⁸ the Health Council is obliged to submit an annual report to the Protector of Citizens on its activities and measures taken to protect patients' rights (Article 42, paragraph 2).

²⁴⁷ Official Gazette RS 79/2005 and 54/2007.

²⁴⁸ Official Gazette RS 45/2013.

8.6.8. COMMISSIONER FOR PROTECTION OF EQUALITY

The Commissioner for Protection of Equality is an independent, autonomous and specialized state authority established on the basis of the Law on Prohibition of Discrimination from 2009. The task of this state authority is to prevent all forms, types and cases of discrimination, to protect the equality of natural persons and legal entities in all spheres of social relations, to oversee the enforcement of antidiscrimination regulations, and to improve realization and protection of equality.

The Commissioner for Protection of Equality is competent to carry out the procedure based on complaints in cases of discrimination against persons or groups of persons connected by the same personal characteristic. The Commissioner is competent to receive and consider complaints of discrimination, to issue opinions and recommendations in concrete discrimination cases, and to stipulate measures defined by the Law.

In addition, the Commissioner is obliged to inform the complainant about his or her rights and possibilities to initiate a court procedure or another protection measure, including the reconciliation procedure. The Commissioner is also authorized to file complaints for protection from discrimination, with approval of the discriminated person.

The Commissioner is also competent to file offence reports against discrimination acts prohibited by the antidiscrimination regulations.

The Commissioner is authorized to warn the public about the most common, typical and severe cases of discrimination, to monitor the enforcement of laws and other regulations, to initiate adoption or amendments of regulations with the aim of making them more enforceable and improving protection from discrimination, and to recommend measures for achieving equality to public authorities and other parties concerned.

8.6.9. MEDICAL CHAMBERS

Any Health care worker must be a member of the Chamber of medical workers. There are 5 types of chambers of Health care professionals: medical, dental, pharmaceutical, chamber of biochemists and the chamber of nurses and medical technicians (Article 2 of the Law on Chamber of medical workers).²⁴⁹

Chambers with their ethical codes govern the rules of professional conduct of medical workers (including the rules of conduct towards patients) and issue to its members work permits (licenses) (Article 7 of the Law on Chamber of medical workers). Code of Professional Ethics of each chamber determines relationships of its members, as well as rules for treating patients. Ethical rules are different in certain respects, but all codes stipulate that the medical worker is obligated to responsibly and professionally perform its job, respect the dignity and equal rights of every patient and reject any request that might be unethical or harmful to the patient.

Addressing to the competent Medical Chamber

If the damaged patient decides to address the competent Chamber, it has two possibilities: to address the Court of Honour of the competent Chamber and to seek initiation of disciplinary procedure against a medical worker (Articles 39, 40 and 41 of the Law on Chamber of medical workers),

to ask the Commission for mediation in the Medical chamber to initiate and conduct the mediation, if the other party agrees to the procedure (Articles 37 and 38 of the Law on Chamber of medical workers).

Mediation procedure

Mediation procedure is conducted only in the medical chamber by the Commission for mediation, while other chambers only appoint the mediator who will lead the procedure. The deadline for the completion of the mediation procedure is 30 days. The outcome of the mediation is the settlement of the parties that has the character of extrajudicial settlement.

Possible outcomes of the mediation settlements are: obligation of the medical worker to publicly apologize to the person who has suffered the damage caused by his negligent or improper treatment or to provide adequate compensation for the damage. If the mediation procedure fails, the patient may initiate a disciplinary or judicial procedure.

Disciplinary procedure before the Court of Honour

If in the mediation procedure on the basis of complaints from citizens, Chamber suspects that a member committed misconduct or damaged its reputation, the Chamber will initiate a disciplinary procedure against a member before the Court of Honour, which is organized as a Court of the first and the second instance (Article 42 Law on Chamber of medical workers). Also, the patient can address the Court of Honour directly.

The Court of Honour can issue a public reprimand to the medical worker, a fine, a temporary prohibition of independent work or performing certain tasks or activities in general. When the Court of Honour determines that the medical worker does not abide the law, it can be punished with a fine, and he may, temporarily or permanently, be revoked of its license.

If a person is not satisfied with the decision of the Court of Honour of the first degree, it can appeal to the Court of Honor of the second degree, which is located at the headquarters of the Chamber (Article 42 of the Law on Chamber of medical workers).

Revocation of the license

The Chamber is obliged to *temporarily revoke* the license of the medical worker if: it made a professional error which distorts or deteriorates the Health status of a patient; if it was sentenced to one of the measures of temporary prohibition of independent work by the Court of Honour; if it is convicted of a criminal offense that makes it unworthy to perform the profession of medical workers; if in the provision of medical services it misused the funds of Health insurance.

The chamber will *permanently revoke* the license of a medical worker who has been convicted by final verdict to imprisonment for a serious crime against human health, therefore, if as a result of these acts (including the malpractice and failure to provide medical assistance) someone is seriously injured, its Health is severely damaged or it dies (Article 198, Paragraph 1 of the Law on Health Care).²⁵⁰

Permanent revocation of the license does not mean that the medical worker can never work in Health care again. It can perform certain tasks, but only under the supervision of a Health care professional who is licensed and who is like a "tutor" appointed by the Director of the Health care institution, or founder of private practice (Article 198, paragraph 2 of the Law on Health Care).

²⁴⁹ Official Gazette RS 107/2005 and 99/2010.

²⁵⁰ Official Gazette RS 107/2005, 72/2009 - Law, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013 - Law and 93/2014.

8.6.10. THE OFFICE FOR PATIENTS' RIGHTS PROTECTION

The office for Patients' Rights Protection was organized as a separate organizational unit of the Belgrade City Administration. Its main tasks are to inform patients about their rights and how they can exercise it, and may also act on written and oral complaints of patients. Its jurisdiction is limited to the territory of Belgrade.

The complaint of the patient may refer to a Health care institution, Health care services, private practice or any other legal entity that provides Health care services.

Advisors who work in the Office will immediately act on the complaint, examine the accuracy of the statements and then make a report which is sent to the patient and the person in charge of the institution. If the advisor determines that the patient's rights have been violated, the responsible person is obliged to inform the advisor about the measures taken in relation to the complaint. If the patient is not satisfied with the outcome of the complaint procedure, it may address the Health Council and the Health Inspection.