

# THE WILL OF THE PATIENT EXPRESSED IN ADVANCE AND ITS LEGAL CONSEQUENCES

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**Abstract.** *The regulation of the will of the patient expressed in advance is controversial and insufficient in the Latvian legislation. The legal regulation on the will of the patient expressed in advance stipulates clearly only the form of the will of the patient; it has to be established without sufficient reference to its legally binding force.*

*The aim of the research is to carry out a legal analysis of the institution of the patient's will expressed in advance, to identify legal flaws related to it and to propose particular solutions to eliminate the identified limitations. To achieve the aim, the following research tasks are set: 1) to analyze the legal nature of the patient's will expressed in advance; 2) to explore the content and term of the patient's will expressed in advance; 3) to assess the establishment of the patient's will expressed in advance and its termination. The following research methods are used in the research: semantic method, grammar method, historical method, analytical method, comparative method, systemic method, teleological method.*

*In a result of the research the author has formulated the principles of the will of the patient expressed in advance that could be introduced in the legal regulation on the issue, thus improving the legal protection of the patient. Analysing the legal nature of the patient's will expressed in advance and taking into account its peculiarity, the content boundaries of this particular type of the expression of the patient's will were defined identifying the extent of the patient's self-determination. Assessing various possibilities of choosing the term defining the patient's will expressed in advance, the author has sustained the most appropriate version of the term considering both national and international legal regulation, and notions of the legal doctrine. Another issue of a similar significance that was analysed in the research were the methods used in the legal practice of the world countries to determine the patient's will expressed in advance; the author has analysed and offered the determination method, which is the most appropriate for the legal system of Latvia. In the conclusion, types of termination of the patient's will expressed in advance and their legal consequences were analysed. Furthermore, the author proposes an applicable project of the amendments to the legal regulations in order to implement the theoretical conclusions of the research related to the patient's will expressed in advance into the legal system of Latvia.*

**Keywords:** *establishment of the will, patient, will expressed in advance, registry of the will.*

**JEL code:** *K32 Environmental, Health, and Safety Law*

## **Introduction**

The nature of legal relationships between a patient and a healthcare practitioner/ establishment has changed along with the development of the medical law – a new area covering civil and administrative aspects in

the field. For a long time the patient has been treated as a person who is a subject to the choice of a doctor (paternalism) in healthcare. Nevertheless, the paternalism, or a patronage attitude towards the patient, is not supported anymore in the science of law in general. On the contrary, the trend has occurred where the legal arrangements are focused towards the patient as an independent legal entity with a specific set of rights, obligations and responsibilities.

Nowadays the will of the patient is considered to be a core of the legal relations between a patient and a healthcare practitioner/ establishment; all further legal relations between the parties are subject to it. However, the institution of the will of the patient is multifaceted and includes a range of various legal nuances and issues.

One of the criteria to classify the expression of will of the patient is a way the will of the patient is established. The will of the patient could be categorized as follows in accordance with the above mentioned criterion. The first, the will of the patient could be expressed directly, including (a) the will of the patient for the current moment; (b) the will of the patient expressed in advance. The second, the will of the patient could be derivative from the legal presumption, i.e., the presumed will (interests) of the patient – what action would have been approved by the patient in accordance with his interests, and the presumption of the will of the patient.

The aim of the research is to carry out a legal analysis of the institution of patient's will expressed in advance, to identify legal flaws related to it and to propose particular solutions to eliminate the identified limitations. To achieve the aim, the following research tasks are set: 1) to analyze the legal nature of the patient's will expressed in advance; 2) to explore the content and term of the patient's will expressed in advance; 3) to assess the establishment of the patient's will expressed in advance and its termination. The following research methods are used in the research: semantic method, grammar method, historical method, analytical method, comparative method, systemic method, teleological method. Research hypothesis: if the existing deficiencies of the legal regulations related to the patient's will expressed in advance are eliminated, the patient's legal status in the legal medical relations will be improved and stabilized.

The research is elaborated mainly on the basis of the legal regulations of Latvia and foreign countries, materials of the foreign case-law, and a few researches of the legal science available that are related with the patient's will and its civil judicial remedy.

## **Establishment of the will of the patient expressed in advance**

The patient has the right to express the will in advance, i.e., before the circumstances requiring to express the will arise. These are the rights of the patient, not the obligation (German Civil Code, 1896, §1901a(1), (4); Finland's Act on the Status and Rights of Patients, 1992, s.6, 8; Österreichs Patientencharta, 2001, Art.18, 31; Patientenverfügungs-Gesetz von Österreich, 2006; Virginia Health Care Decisions Act, Code of Virginia). Besides, there is only one requirement to the person expressing the will in advance – he/she has to have a legal capacity to act (German Civil Code, 1896, §1901a, Part 3; Patientenverfügungs-Gesetz von Österreich, 2006, §2, Part 2, §3; Giesen, 1988, 476). There is no requirement that the person at the moment of expressing the will should already have a legal status of a patient, that is, to have a particular medical condition or a specific degree of its severity.

When expressing the will in advance, the legal capacity of the person to act is presumed (There was the case to examine if the patient with mental disorders had the capacity to express her will in advance. The commission ruled that the legal capacity of the person had to be presumed, and if there was someone suggesting the contrary then the suggesting person had the obligation to prove it himself/ herself (*T.U. (Re)*, The Consent and Capacity Board of Ontario province, Canada, 2005)). Thus, it can be concluded that any person is entitled to use his rights of self-determination to affirm his will regarding the medical treatment by expressing the will in advance.

The will of the patient expressed in advance could be established in two ways used in different countries. The first, directly: if the specific procedure for the expressing the will in advance is established in the country, thus establishing the legal force of the will towards the third parties without additional legitimating (the public way) (for instance, in Austria – the patient by expressing the will in written at the attorney's office, the notary or the special institution established at the hospital (Patientenverfügungs-Gesetz von Österreich, 2006, §6, Part 1); in Denmark – by registering the will in the register of the advance express will (Health Act of Denmark, 2005, *art.5*); in the Virginia state, USA, the will has to be expressed either in writing in the presence of two witnesses, or, in the exceptional cases (for instance, in the stage of death), orally in the presence of two witnesses and the doctor – by registering the prior express will in the register at the notary's (Virginia Health Care Decisions Act, Code of Virginia, art. 54.1-2983, art. 54.1-2984); in Georgia – in written (Law on the Rights of Patient of Georgia, 2000, art. 24.1.); in Germany – the will expressed in written or orally to the doctor or other medical person who records the will of the patient in the written

form (German Civil Code, 1896, §1901a, Part 1; Patientenautonomie- und Integritätsschutzgesetzprojekt von Deutschland, 2005, §1, Part 1); in the South Africa – the patient has to inform himself/ herself the provider of the medical service about his will regarding actions after the death of the patient (Patient's Rights Charter of South Africa, 1999, art. 3.7)). The second: indirectly – the legal substitute of the patient has rights to represent the will of the patient if the will was expressed in advance (orally, in written or by implicit actions) (the private way). In Latvia, a possibility exists to register the will of the patient expressed in advance regarding the use of the body, tissues and organs after the death in the Population Register of Latvia (see: Law on the Protection of the Body of Deceased Human Beings and the Use of Human Tissues and Organs in Medicine, 1993, art. 3, art. 4). The substitutes of the patient have another type of the rights: to disclose the will of the patient expressed in advance without special legitimatisation in the custody court or in the court (for instance, see: Law on the Protection of the Body of Deceased Human Beings and the Use of Human Tissues and Organs in Medicine, 1993, art.4 (by analogy)). However, this approach should not be supported because of its relatively high subjectivity, especially, when the substitutes of the patient do not have the will of the patient expressed in written. The reasonable solution would be achieved if the national register of the wills of the patients expressed in advance were established containing all types of the expressed wills of the patients. The register would be accessible to the persons related to the medical treatment of the patient; the information should be defined as having restricted access.

### **Legal nature of the will of the patient expressed in advance**

The legal nature of the will expressed in advance is being evaluated controversially. An opinion exists that the expressed will could be evaluated either as a will that is expressed for the current moment by the patient or as an indirect proof of the presumed will. However the will of the patient expressed in advance should be equated to the will stated for the particular current moment and the principle of the private autonomy of the legal entity (as well the patient) should be set as a priority, since it is controversial, to what extent the involvement of the third persons (relatives, etc.) is justified to interpret the will of the patient (Mona, 2008, 251-254, 256). Herewith the clarification is required. The will expressed in advance arises directly from the patient, in contrary to the presumed will. In consequence, the patient can express the will both at the current moment, and in advance for the future; the running of time creates subordinate, subsidiary nature of the will expressed in advance regarding the will expressed at the current moment. Therefore it is necessary to

distinguish types of the advance expressions of will along with derivative legal consequences.

The will of the patient expressed in advance could be determined indirectly as well, i.e., via the substitute of the patient. The concept of the substitution in the civil law is comparatively restricted, as it is defined that the substitute cannot act on behalf of the person expressing the will. It would be contrary to the real meaning of the substitution, since the substitute formulates his own, independent expression of the will acting on behalf of another person (Balodis, 2007, 160). The same way in the medical treatment, the substitute of the patient representing the patient expresses his own independent will, though, in the interests of the patient (Law on the Rights of Patients of Latvia, 2009, art. 6, Part 7, art.7, Part 1) thus stating the presumed will of the patient. Nevertheless if the will of the patient expressed in advance has been determined via the substitute of the patient that is still the will of the patient expressed himself/ herself and not the one of the substitute (A patient's son as his legal representative requested to terminate feeding of the father by tube and provided the advance express will of the father to refuse the insertion of the feeding tube, that was in writing, typed, dated and with the signature of the patient. Both court of the first and the second instances dismissed the claim of the representative of the patient as being not in a compliance with the interests of the patient. Though the Senate assigned the case for the new proceeding pointing out that it was not the decision of the representative of the patient in this case (The Judgement of the Federal Supreme Court of Germany, 2003, point III 2b)a), 2b)). Therefore the substitute of the patient does not have to prove the compliance of his decision with the interests of the patient but the fact that the patient had expressed the will in advance. Since only the patient himself has the right to express the will in advance (see: Patientenverfügungs-Gesetz von Österreich, 2006, §3; Ernst, 2008, 240) as that is the direct will of the patient that could be considered as well as a restriction of the substitution of the patient since the substitute of the patient rather defends the will of the patient expressed in advance instead of establishing his own expression of will thus exposing the presumed will of the patient.

Though, there is a controversial case regarding the principle of the personal nature of the will of the patient expressed in advance in the court practice. Parents of the minor patient as his legal substitutes applied to the Citizenship and Migration Affairs Office in 2006 with a request to register the will of their son to prohibit using his body, tissues and organs after death in the Population Register. The Office declined the mentioned request indicating that "only the person having a legal

capacity to act can prohibit or consent to handling own body after death by verifying it documentary” (The Judgement of the District Administrative Court (Riga) of Latvia, 2008, point 2). The patient’s mother submitted the claim to the court requesting to cancel the decision of the Office. The court sustained the claim by pointing out the following arguments: (1) the wish of the mother is established to entrench the prohibition to use the body, tissues and organs of her son after his death; this has to be considered as a justified arrangement of the defence of the rights and interests of the patient (The Judgement of the District Administrative Court (Riga) of Latvia, 2008, point 7, point 10); (2) the defence of the rights of the minor patient stipulated by the law is smaller in range rather than the one of the person having a legal capacity to act ((The Judgement of the District Administrative Court (Riga) of Latvia, 2008, point 7, point 8, point 9). The presumption of the prohibition stipulated in the law refers only to the removal of the tissues and organs of the minor deceased person for transplantation thus it does not include all possible actions with the body, tissues and organs, as well it comes to the legal force only after the death of the person (Law on the Protection of the Body of Deceased Human Beings and the Use of Human Tissues and Organs in Medicine, 1993, art. 11). The person is defended from the use of tissues and organs for scientific research and study purposes if: 1) the prohibition is registered in the Population Register; or 2) the person has the next of kin relatives (Law on the Protection of the Body of Deceased Human Beings and the Use of Human Tissues and Organs in Medicine, 1993, art. 9). If the minor person has lost the parents, his status is endangered); (3) “the parents exercise the rights of the representation of the child until he/she reaches the majority age thus ensuring overall defence of the interests of the child” (The Judgement of the District Administrative Court (Riga) of Latvia, 2008, point 9). However the principle constituting that only the patient himself/herself can express the will in advance is not refuted in the particular case. The prohibition of using body, tissues and organs of deceased human being that has to be included in the Population Register should be interpreted more broadly. The base for the registration of the prohibition should be both the expressed will of the patient (the person having a legal capacity to act), and the expressed will of the substitute of the patient stating the presumed will of the patient (the person having no legal capacity to act) thus presenting legal solution, taking into account that the mechanism for protection of the legal rights of the person stipulated in the law is insufficient in the particular case.

There is an ambiguous approach defining what the situations are when the will should be expressed in advance. There is a principle

dominating in some countries defining that the patient expresses the will in advance to avoid the situation he/she could become unable to express his consent to the medical treatment (Patientenverfügungs-Gesetz von Österreich, 2006, §2; Österreichs Patientencharta, 2001, art. 18; in Switzerland – Mona, 2008, 250; German Civil Code, 1896, §1901a, Part 1; Law on the Rights of Patient of Georgia, 2000, art. 24.1. See: Simon, Meran, Fangerau, 2004, 721). It could be agreed that the mentioned expressed will is focused to the future (see: Brauer, 2008, 231), though this approach is to be considered as a restricted one. The patient can express the will in advance: the first, regarding the actions during the life of the patient, including in particular: (a) the circumstances when the patient is still capable to express the will himself (e.g. the instructions for the contractual substitute of the patient for the case the medical treatment of the patient will be necessary); (b) the circumstances when the patient is not capable to express the will himself; the second, regarding the actions after the death of the patient (e.g. regarding the own body, the information not to be disclosed). Thus the patient has the right to express the will in advance just in case (The indirect conclusion about the mentioned approach could be made as well as based in the Latvian legislation on medical treatment (Law on the Rights of Patients of Latvia, 2009, art. 7, Part 2; Law on the Protection of the Body of Deceased Human Beings and the Use of Human Tissues and Organs in Medicine, 1993, art. 3, art. 4), regardless the time when the will takes an effect.

The will of the patient expressed in advance is of a conditional nature. It comes into effect after it is expressed (if there are special requirements regarding the form of the expressing the will – after their satisfaction), however enters into the force after the condition occurs (for instance, the necessity of the medical treatment, the lack of capacity of the patient to express the will, the death of the patient). In addition, only the will expressed regarding the acts after the death of the patient has an absolute, inevitable nature since the death of the patient will definitely occur whereas just duration of life of the patients would differ. Therefore the will of the patient expressed in advance has a conditional, expectant nature.

The legal force of the will of the patient expressed in advance has a binding effect to the range of legal entities – it has to be determined when analysing the subject. The Latvian law refers to the substitutes of the patient (Law on the Rights of Patients of Latvia, 2009, art. 7, Part 2) who has the primary right to make a decision regarding the medical treatment of the patient who does not have a capacity to act. However the decision of this kind could be made as well, for instance, by the medical council (see: Law on the Rights of Patients of Latvia, 2009, art. 7, Part 7, Part 8,

Part 9). The will of the patient expressed in advance is binding to any person who has direct or indirect relation to the medical treatment of the patient and who has the obligation to fulfil the will of the patient (This approach as well is supported by Article 9 of the Convention on Human Rights and Biomedicine (Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, 1997)).

### **Content and definition of the will of the patient expressed in advance**

There is a twofold approach on the subject of the acts during the life of the patient regarding the methods of medical treatment when analysing the substantive restrictions of the will of the patient expressed in advance. On the one hand, there are countries stipulating no restrictions to the mentioned expression of will of the patient, thus allowing the patient to decide about the methods of medical treatment without any restraint (Patientenverfügungs-Gesetz von Österreich, 2006, §4; Österreichs Patientencharta, 2001, art. 18; Virginia Health Care Decisions Act, Code of Virginia, art. 54.1-2983; German Civil Code, 1896, §1901a, Part 1; Law on the Rights of Patients of Latvia, 2009, art. 7, Part 2), whereas the doctor has the responsibility to provide the information on the expected use of the medical treatment methods in the future (German Civil Code, 1896, §1901b, Part 1; Law on the Rights of Patients of Latvia, 2009, art. 4, Part 3). On the other hand, there are countries where the restrictions are though laid down to identify the circumstances when the refusal of the life sustaining medical treatment expressed in advance is acceptable (For instance, in Denmark the patient can express his will to refuse the life sustaining treatment (just sustaining life, not treating) by the order in the circumstances: (1) when death is inevitable; (2) if the patient is not be able to support himself/ herself physically and mentally independently due to the health conditions in a result of an illness, an old age, an incident or other reasons (Health Act of Denmark, 2005); in Georgia – regarding the resuscitation, the life sustaining treatment and palliative care: (1) if it is the final stage of an incurable illness; (2) if the illness inevitably results in severe health conditions (Law on the Rights of Patient of Georgia, 2000, art. 24.1.). Even though the principle of private autonomy of the patient is recognized in the medical treatment, the restraint should be supported with the purpose to protect the patient from himself/ herself while expressing the will in advance. That should be interpreted not as a prohibition to refuse, rather as a restriction to include the refusal within the advance expression of the will, taking into account its legal nature.



The patient can assign his own substitute when expressing the will in advance (German Civil Code, 1896, §1901c; Österreichs Patientencharta, 2001, art. 29; Virginia Health Care Decisions Act, Code of Virginia, art. 54.1-2983; Law on the Rights of Patient of Georgia, 2000, art. 24.2; Law on the Rights of Patients of Latvia, 2009, art. 6, Part 7 - („(...) a patient has authorized another person (...)). These rights of the patient could be interpreted twofold. On the one hand the patient has the right to conclude an authorisation agreement in advance, thus appointing the contractual substitute of the patient for the case of the medical treatment (Since 01 January 2013 the conclusion of the future authorization agreement is particularly stipulated in Latvia (Civil Law of Latvia. Part Four. Obligations Law, 1993, art. 2317<sup>1</sup>-2317<sup>7</sup>)). On the other hand, the circumstances are possible when the initiative for the appointment of the substitute for the acting in the case of the legal incapacity of the patient could arise only from the will of the patient expressed in advance. So therefore the question arises in what way this kind of the appointment should be evaluated and what are its legal consequences (For instance, in Germany the person holding the advance express appointment could head for the custody/ trusteeship court that in compliance with the express will of the patient would appoint him/her to act as the substitute of the patient (German Civil Code, 1896, §1901c)). Even if the will of the patient expressed in advance has a binding force though it does not extend so far to oblige the mentioned person to take the responsibility to become the substitute of the patient. There are two approaches possible: (1) if the mentioned person afterwards agrees with the assignment it shall be considered that the authorisation contract is concluded (Civil Law of Latvia. Part Four. Obligations Law, 1993, art. 1535); (2) the assignment by the patient shall be considered as a proxy that could legally exist even without the contract (Civil Law of Latvia. Part Four. Obligations Law, 1993, art. 2291; Torgans, Grutups, Visnakova et al., 1998, 576). If the person mentioned in the assignment by the patient agrees in writing to take the liability to be the substitute of the patient that should be considered as an authorisation contract for better compliance with the interests of the patient. That would be inaccurate to consider the assignment of the substitute expressed in advance by the patient to be the same as the assignment of the legal substitute of the patient since the legal substitution is established by the law, whereas the will of the patient provides the contractual substitution which has the priority over the legal one.

There are various terms in different countries to define the will of the patient expressed in advance (For instance: the order (die Verfügung (Patientenverfügungs-Gesetz von Österreich, 2006); the living will

(Health Act of Denmark, 2005); the last will (Заклучение Уполномоченного Этического Совета Европейской Ассоциации паллиативной помощи по вопросу паллиативной помощи и эвтаназии, 2003); the biological testament (Ванчугова). The invention of the term would make easier the legal regulation of this institution. Application of the term “the testament” is not supported since that includes mainly the succession of the property rights, besides only in the case of death (Civil Law of Latvia. Part Two. Inheritance Law, 1992, art. 418. See: Höfling, 2006, 27). Terms “the living will” and “the last will” are vague and could generate ambiguity in their application. The term “the order of the patient” could be more relevant to describe the will of the patient expressed in advance since it is not in contrary with the characteristics of the will of the patient expressed in advance: (1) it is expressed directly by the patient; (2) it is expressed in advance; (3) it could be established; (4) it is not implied; (5) it is independent of the presence of the patient though the patient cannot express the will (except the contractual substitution); (6) it ceases in the particular cases (in a result of subjective, objective circumstances). Besides the term “order” is used in the Latvian legislation (The order of the last will in the Inheritance Law (the testament, the inheritance agreement) (for instance, Notariate Law of Latvia, 1993)). Therefore the will of the patient expressed in advance shall be described using the term “the order of the patient”.

### **Termination of the will of the patient expressed in advance**

Two tendencies could be identified when analysing the termination of the will of the patient expressed in advance. The first, the will ends when its purpose is achieved (fulfilled). The second, there are particular cases when the will of the patient could cease without achieving its purpose. The patient has the right to withdraw the will expressed in advance (Patientenverfügungs-Gesetz von Österreich, 2006, §6, Part 1, §10, Part 2; Patientenautonomie- und Integritätsschutzgesetzprojekt von Deutschland, 2005, §1, Part 3: the patient having a legal capacity to act in any time and in any form) nevertheless only by himself and not granting these rights of withdrawal to the substitute of the patient (The Judgement of the Federal Supreme Court of Germany, 2003, point III 2b), 2bb)). The development of the medicine as well could become a base for the termination, in the case if the level of development of science has changed significantly since the will of the patient expressed in advance was established (Patientenverfügungs-Gesetz von Österreich, 2006, §10(1)3)). On the one hand, that is a positive approach to evaluate the circumstances that have changed in favour of the patient. On the other

hand, it is controversial to admit if these changed circumstances would have influenced the decision of the patient in all cases. There is a more flexible solution offered stipulating that the will of the patient expressed in advance terminates in the case when, in a result of the development of medicine, the new possibilities have occurred since the will of the patient was established and the patient being acquainted with these possibilities would have made another decision (Bockenheimer-Lucius, 2007, 6). The term of validity of the will of the patient expressed in advance has to be established as well stipulating the rights for its renewal and the suspension of the prescription period due to the objective circumstances (Patientenverfügungs-Gesetz von Österreich, 2006, §7, Part 1, Part 2, Part 3 (5 years); Patientenautonomie- und Integritätsschutzgesetzprojekt von Deutschland, 2005, §1(2)2 (2 years)). The provision of the term of the validity should be sustained since it has an effective function of control over the significance and importance of the will of the patient. Therefore it could be concluded that the will of the patient expressed in advance ceases even if the provided purpose is not achieved due to the subjective or objective circumstances in the cases precisely and exhaustively defined in the law.

The will of the patient expressed in advance is governed not sufficiently in the legislation of Latvia. Though considering the significance of this institution, it is necessary to elaborate detailed principles of the will of the patient expressed in advance in accordance with the legislation system of Latvia and to incorporate them into the legal regulations.

The author proposes the following solution:

To amend the Law on the Rights of Patients with the Article 6<sup>2</sup> to be read as follows:

„Article 6<sup>2</sup>. Will of the patient expressed in advance (the order of the patient)

- (1) Any person having a legal capacity to act has the right to express his will (the order of the patient) regarding the medical treatment in advance thus defining the medical treatment of the patient, handling the body of the deceased patient after death and the information concerning the patient.
- (2) The patient draws up the will in writing, dates it and registers in the Patient Order Registry. The holder of the Registry is the Ministry of Health of the Republic of Latvia.
- (3) The will of the patient expressed at the current moment has a priority over the order of the patient.
- (4) The patient has the right to draw up the order just in case, disregarding the time the order will take an effect.

- (5) The order of the patient becomes valid since the moment it is registered in the Patient Order Registry. The order is determined by the occurrence of the condition what for it was drawn up.
- (6) The patient with the order can refuse the resuscitation treatment methods or the life sustaining medical treatment in the circumstances when:
  - 1) death of the patient is inevitable or
  - 2) illness, old age, accident has resulted in the health condition of the patient when he/she is unable to take physical and mental care of himself/ herself independently.
- (7) With the order the patient can appoint his own substitute to make decisions about the medical treatment in the case the patient becomes legally incapable to act. The person appointed by the order of the patient has the rights to apply in writing to the custody court in order to be confirmed as a contractual substitute of the patient.
- (8) The order of the patient is binding to the persons related to the medical treatment of the patient and the persons having liability to comply with the will of the patient.
- (9) The patient has the rights to withdraw the order informing in writing the Patient Order Registry at any time.
- (10) The court can rule on the termination of the order of the patient after receiving the application of the persons responsible in the case when due to the development of the medicine the new medical treatment possibilities have occurred and the patient being acquainted with these possibilities would have made another decision.
- (11) The validity term of the order of the patient is 5 years.
- (12) The patient has the right to renew the order of the patient informing the Patient Order Registry in writing.
- (13) The prescription period of the order of the patient is suspended for the term, while the patient is not able to express his will regarding the medical treatment.”

### **Conclusions and suggestions**

The regulation of the will of the patient expressed in advance is controversial and not sufficient in the legislation of Latvia. It is necessary to develop and to implement the detailed regulation of this institution as well as to create the national registry of the will of patients expressed in advance, thus, the civil protection of the will of the patient would be improved.

Analysing the legal nature of the patient's will expressed in advance and taking into account its peculiarity, the content boundaries of this particular type of the expression of the patient's will were defined identifying the extent of the patient's self-determination. Assessing various possibilities of choosing the term defining the patient's will expressed in advance, the author has sustained the most appropriate version of the term considering both national and international legal regulation, and notions of the legal doctrine. Another issue of a similar significance that was analysed in the research were the methods used in the legal practice of the world countries to determine the patient's will expressed in advance; the author has analysed and offered the determination method, which is the most appropriate for the legal system of Latvia. In the conclusion, types of termination of the patient's will expressed in advance and their legal consequences were analysed.

Furthermore, the author proposes an applicable project of the amendments to the legal regulations in order to implement the theoretical conclusions of the research related to the patient's will expressed in advance into the legal system of Latvia.

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## **PACIENTA IEPRIEKŠ IZTEIKTĀ GRIBA UN TĀS TIESISKĀS SEKAS**

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### **Kopsavilkums**

Latvijas normatīvajos aktos pacienta iepriekš izteiktā griba regulēta strīdīgi un nepietiekami, nosakot tikai pacienta iepriekš izteiktās gribas konstatācijas veidu netieši un nepietiekamu norādi uz minētā pacienta gribas izteikuma saistošo spēku.

Pētījuma mērķis ir veikt tiesisku analīzi pacienta iepriekš izteiktās gribas institūtam, konstatēt ar to saistītos tiesiskos trūkumus un piedāvāt konkrētus risinājumus konstatēto trūkumu novēršanai. Minētā mērķa sasniegšanai, pētījumam ir izvirzīti sekojoši uzdevumi: 1) analizēt pacienta iepriekš izteiktās gribas tiesisko raksturu; 2) pētīt pacienta iepriekš izteiktās gribas saturu un terminu; 3) izvērtēt pacienta iepriekš izteiktās gribas konstatāciju un tās izbeigšanos. Rakstā ir izmantotas šādas pētniecības metodes: semantiskā metode, gramatiskā metode, analītiskā metode, vēsturiskā metode, salīdzinošā metode, sistēmiskā metode, teleoloģiskā metode.

Autore pētījuma rezultātā izstrādāja detalizētus pacienta iepriekš izteiktās gribas principus atbilstoši Latvijas tiesību sistēmai, kas ieviešami normatīvajā regulējumā, tādējādi pilnveidojot pacienta gribas civiltiesisko aizsardzību. Analizējot pacienta iepriekš izteiktās gribas tiesisko raksturu un ņemot vērā tā specifiku, tika noteiktas šī pacienta gribas izteikuma veida satura robežas, konkretizējot pacienta pašnoteikšanās apjomu. Vērtējot starp dažādām iespējām termina izvēlei, apzīmējot pacienta iepriekš izteikto gribu, autore pētījumā izvirzīja atbilstošāko termina variantu, ņemot vērā gan nacionālo un ārvalstu normatīvo regulējumu, gan tiesību doktrīnā paustās atziņas. Ne mazāk būtisks jautājums, kas tika analizēts pētījumā, ir pasaules valstu praksē pastāvošās pacienta iepriekš izteiktās gribas konstatācijas metodes, autorei izkristalizējot un piedāvājot visatbilstošāko minēto konstatācijas metodi Latvijas tiesību sistēmai. Un noslēgumā tika izvērtēti iespējamie pacienta iepriekš izteiktās gribas izbeigšanās veidi un to tiesiskās sekas. Autore piedāvā arī atbilstošu normatīvā akta grozījumu projektu, pētījumā pausto teorētisko atziņu praktiskai iedzīvināšanai Latvijas tiesību sistēmā saistībā ar pacienta iepriekš izteikto gribu.

**Atslēgas vārdi:** gribas konstatācija, gribas reģistrs, iepriekš izteiktā griba, patients.