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ADVANCING HUMAN RIGHTS IN PATIENT CARE THROUGH STRATEGIC LITIGATION: CHALLENGING MEDICAL CONFIDENTIALITY ISSUES IN COUNTRIES IN TRANSITION

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ABSTRACT

The concept of human rights in patient care offers a framework, relevant to both patients and providers, for identifying and addressing human rights violations within a state's health system. While a range of legal and non-legal mechanisms are available to advance this concept (and, indeed, are generally used to best effect in combination as part of a wider advocacy strategy), this paper considers the use of strategic litigation to hold states to account and encourage broader systemic change. As an illustration of such an approach, this article focuses on the issue of breaches of medical confidentiality—a pervasive problem in certain countries in Eastern Europe and Central Asia, with serious implications for vulnerable or marginalized individuals. This paper presents an overview of the European Court of Human Rights' approach to this topic and discusses the potential for further strategic litigation in Eastern Europe and Central Asia.

INTRODUCTION

Developing and maintaining an effective national health system that functions optimally for both patients and providers is an ongoing project in all countries, with challenges arising as a result of the number of stakeholders and institutions involved, as well as the complex issues present. These difficulties are exacerbated within those states "in transition," such as those countries shifting from philosophical and legal landscapes where collective interests have historically trumped individual rights, as authorities work to define adequate frameworks for protecting basic rights in the delivery of health care services.[1]

While health care delivers positive benefits to many people, persistent failings as well as more blatant violations continue to occur across health settings.[2] These range from extreme abuses (including torture and cruel, inhuman, and degrading treatment) to systemic violations (including those of patient rights to health, informed consent, confidentiality, privacy, and non-discrimination). At the same time, health providers sometimes experience mistreatment in the form of unsafe working conditions, sanctions for providing evidence-based health care, restrictions on freedom of association, and denial of due process in the context of patient complaints.

The "human rights in patient care" concept offers a framework, relevant to both patients and providers, for addressing the areas within a state's health system that fall below what can be expected in best practice.[3] Specifically, human rights in patient care covers (1) the patient rights to: liberty and security of the person; privacy; information; bodily integrity; life; the highest attainable standard of health; freedom from torture and cruel, inhuman and degrading treatment; participate in public

policy; and non-discrimination and equality; and (2) the provider rights to: work in decent conditions; freedom of association; and due process and related rights. Central to this approach are the use of human rights, with their focus on patients as active agents in health care settings and as the ultimate beneficiaries of services, and particular attention towards patients who face high levels of vulnerability, marginalization and social exclusion. Human rights provide a lens through which violations can be identified and practical steps taken—whether through legal or non-legal means—to transform adverse situations, as well as to hold states and other duty bearers accountable for abuses.

This paper focuses on strategic litigation as a way to advance human rights in patient care. A brief overview of similar cases involving human rights in patient care decided in various jurisdictions introduces the opportunities associated with linking litigation and broader structural change. The paper then turns to the potential of litigation in response to breaches of medical confidentiality—a specific and pervasive human rights in patient care problem within certain transitional countries in Eastern Europe and Central Asia. The approach of the European Court of Human Rights regarding this issue is presented, along with discussion of tactics for encouraging similar litigation in Eastern Europe and Central Asia.

USING STRATEGIC LITIGATION TO ADVANCE HUMAN RIGHTS IN PATIENT CARE

Using strategic litigation to take action in response to human rights abuse is an increasing practice around the world and allows concrete instances of mistreatment to be examined by decision-making bodies.[4] Given the proliferation of such litigation over the past few decades, useful guidance can be obtained from previous cases, both in terms of how different jurisdictions have moved human rights issues forward and the creative ways in which claimants have framed their arguments and remedy requests.

Strategic litigation refers primarily to the use of litigation in a tactical manner, most notably in seeking to address significant and/or systemic violations of human rights. The aim is to produce an outcome that goes beyond the individual claimant and case to enhance human rights protection for other people affected by similar human rights violations.[5] Examples of cases with broad impact exist across the range of human rights in patient care, as set out below.

Various courts and treaty bodies have considered the accessibility and quality of health care, contributing to states' understanding of the substantive components of the right to health.[6] In the first maternal mortality case decided by a United Nations treaty body, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) held that a failure to prevent—through correct diagnosis and timely obstetric care—an avoidable death during pregnancy constituted discrimination in conjunction with the right to health.[7] The UN Human Rights Committee found Peru's health care approach, in denying a minor a requested abortion of an anencephalic fetus despite such action endangering her physical and psychological health, to be a breach of the prohibition against cruel, inhuman, and degrading treatment.[8]

At the national level, the Delhi High Court determined that access to maternal health care should be facilitated by the state, rather than the poor being burdened with having to justify their eligibility for such services.[9] In a decision with major implications for health policy in India, where a maternal death occurs every five minutes, the court noted the lack of effective implementation of existing health and nutrition schemes and stated that the schemes themselves needed reformation. This required clarification and additional data collection, leading to significant change in practice across India. The Constitutional Court of Colombia has adopted a creative approach to enable structural change through the review of *tutela* actions (special constitutional writs of protection of human rights). This review allows the court to distinguish between the legal issues of specific cases with associated remedies versus systemic flaws in the health care system generally.[10] The European Court of Human Rights (European Court) takes a similar approach with its pilot judgment scheme, through which the court considers an individual case as representative of a widespread problem and makes recommendations as to the appropriate general measures to be taken to eliminate further violations.[11]

The issue of emergency medical treatment, with resulting impact on state budgetary policy, has been addressed in various cases, with courts finding that access to emergency maternal health care is not dependent upon the patient's ability to pay for such

treatment, and that (in the absence of an explicit right to health) the right to life includes an obligation to provide timely emergency medical treatment, irrespective of state financial resource constraints.[12]

Cases have been used to challenge specific harmful practices against patients. For example, successful challenges to the practice of sterilization of women without consent, in connection with their HIV-status or membership of a particular ethnic minority, have been made before the CEDAW Committee, the European Court, and before a number of national courts.[13] To various extents, the cases resulted in more specific guidance to the relevant states regarding the process for obtaining informed consent (for example, concerning the language used, the use of acronyms, and the settings for discussions about treatment options and risks); required improvement in procedure throughout the country; and highlighted the serious consequences of acting without informed consent.

In linking health and privacy concerns, the Lagos State High Court found that unauthorized testing for HIV, subsequent employment termination, and denial of medical care on the basis of the applicant's HIV status were unlawful.[14] This was the first judicial pronouncement of its kind in Nigeria, and noteworthy, given the broader implications for protection from discrimination of other persons living with HIV. In Zambia, two former air force officers were awarded damages for their claims that they were tested and treated for HIV without their knowledge.[15] The decision reopened national debates about the requirement for informed consent.

Strategic litigation has also been used to significant effect by persons with disabilities. The Inter-American Court of Human Rights considered a case involving a person with a psychiatric disorder who was subjected to ill-treatment and violent attacks from clinic personnel. The domestic investigation into the abuse and the criminal proceedings which followed were unduly prolonged and ineffective.[16] Brazil was held liable for violating a number of human rights, including the rights to physical integrity, life, due process, and access to justice. As this was the first time the court had made a pronouncement related to people with mental disabilities, it was an important step for public policy on mental health. In a case before the Canadian Supreme Court involving deaf patients' access to health care, the claimants alleged that the absence of interpreters subjected them to increased risk of misdiagnosis and ineffective treatment. The court held that the right to equality obliges governmental actors to allocate resources to ensure that disadvantaged groups can take full advantage of public benefits.[17] Given the many compliance options open to the government, the court made a declaration suspended for six months, resulting in the state establishing a new program in consultation with the relevant communities.[18]

FOCUS: MEDICAL CONFIDENTIALITY IN TRANSITIONAL COUNTRIES

With a clear potential for a broad impact in relation to human rights violations, it is useful to consider how strategic litigation may be applied to address a specific pervasive human rights issue in patient care within transitional countries in Eastern Europe and Central Asia—namely, the unauthorized disclosure of confidential medical information.

Overview of issue

The UN Global Commission on HIV and the Law (henceforth the Global Commission) has identified as an area of concern the limited legislative protection of medical confidentiality for persons living with HIV, as well as frequent violations of confidentiality, across Eastern Europe and Central Asia.[19] For example, according to a survey of people living with HIV in Russia, 41% of those surveyed alleged that their HIV status had been disclosed without their consent.[20]

An Open Society Foundations (OSF) study into the laws and practice in seven countries (Armenia, Georgia, Kazakhstan, Kyrgyzstan, Macedonia, Moldova, and Ukraine) makes a similar finding and reports on violations of the right to privacy in a number of contexts, including "prison settings in Georgia, disclosure in the media of confidential medical information in Macedonia, Georgia and Kyrgyzstan, the demand for information not essential for the provision of the given medical service in Macedonia, as well as the unwarranted disclosure of such information to family members in Ukraine and Armenia and donors in Russia."[21]

In Macedonia, the Health Education and Research Association has noted numerous cases where both Roma and non-Roma patients were tested for HIV without their knowledge, let alone their consent.[22] In

Kyrgyzstan, investigations conducted by organizations working with marginalized members of society, including people with physical and mental disabilities, sex workers, and people who use drugs, revealed evidence of widespread human rights violations across the health care sector, including breaches of medical confidentiality.[23] A report from the Central and Eastern European Harm Reduction Network (CEEHRN) affirms the prevalence of violations of medical confidentiality in the context of sex workers attempting to access treatment for sexually transmitted infections in Bulgaria, Belarus, Kazakhstan, Lithuania, and Tajikistan.[24] It also refers to studies that find regular breaches of medical privacy of sex workers in Latvia and Hungary.[25]

The Global Commission observes that in each of the countries reviewed, legislation provides for medical confidentiality, but this confidentiality can be and is easily overridden in practice—for example, at the request of law enforcement agencies or health care facilities, or due to implementation issues.[26] OSF comments that the right to privacy and medical confidentiality in the countries studied is "universally curtailed by other legal provisions," such as public health or public safety concerns or in support of law enforcement or other authorities.[27] In the context of drug users, Bernd Rechel notes that in the countries of the former Soviet Union, violations of medical privacy are common because "drug treatment services have historically close ties with law enforcement agencies."[28] In Croatia, ambiguously drafted laws allow any health worker to access a patient's medical records, whether authorized or unauthorized.[29] While Macedonia has extensive legislative protection, the implementation of many key provisions is lacking, both in terms of quality and availability of services or mechanisms; these implementation gaps disproportionately affect vulnerable and marginalized groups such as women, the rural population, and Roma.[30]

Despite the widespread violations of medical confidentiality, especially in the context of persons living with HIV, legal action is rarely taken, meaning that medical workers escape liability for their actions.[31] In Moldova, the Global Commission found that victims of breaches of medical confidentiality regarding HIV status are deterred from action, among other reasons, because the police to whom they would report such a breach lack sensitivity about HIV and knowledge of legal protection for medical confidentiality. Victims also fear negative treatment from doctors when accessing healthcare in the future.[32] During recent human rights in patient care litigation workshops attended by the author in Ukraine, Georgia, and Armenia, a number of participants presented medical confidentiality case studies. Among the barriers to legal protection they mentioned were fear of backlash, lack of knowledge about rights protection, and the difficulties associated with proving that medical information was unlawfully disclosed.

The social and political context is, of course, important to consider. In post-communist countries, the Soviet past has had a strong influence on current law and judicial procedure. For example, the USSR Constitution protected privacy in principle, providing that "[t]he privacy of citizens, and of their correspondence, telephone conversations, and telegraphic communications is protected by law."[33] In reality, rights were only enforced by Soviet-era courts where a specific statute existed establishing those rights, with the courts unwilling to make proactive interpretation of the statutory framework.[34] Such traditions mean that concepts of privacy or confidentiality, while not absent, are of less focus or perhaps less expected than in the West.[35] Pavel Titchtchenko and B. G. Yudin illustrate this state of affairs with an anecdote about an anonymous HIV testing site, where the client confirms the testing is anonymous and then asks whether he should bring his passport. His question, they explain, "is a result of long social training, and it will be a long time before people believe that physicians have a right not to inform state authorities against their clients and that there is a strong legal protection for such rights."[36]

Guidance from the European Court of Human Rights' approach to breaches of medical confidentiality

The European Court has considered the issue of breaches of medical confidentiality on a number of occasions (albeit not necessarily in relation to transitional countries). The court's approach can provide useful guidance in terms of the potential of litigation.

The confidentiality of health information falls within Article 8 of the European Convention on Human Rights (ECHR), which provides:[37]

> Everyone has the right to respect for his private and family life, his home and

> his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In *I v. Finland*, the court confirmed that "… protection of personal data, in particular medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 … [and] [r]especting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention."[38]

The court has also stated that "[w]ithout such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health and, in the case of transmissible diseases, that of the community."[39]

Article 8 prohibits arbitrary interference by the state into the private life of individuals, but is not an absolute right and can be subject to restrictions. Whether a restriction is analyzed in terms of positive duty or in terms of an interference to be justified, it is necessary to give regard to "… the fair balance that has to be struck between the competing interests of the individual and the community as a whole."[40]

In analyzing claims of breaches of medical confidentiality, the court makes the following enquiries: whether the interference with the applicant's right to privacy is set out in (or "prescribed" by) law, whether it is for a legitimate aim necessary in a democratic society, and whether the measure is proportionate to the aim. As it is relatively easy for a state to argue that the relevant restriction falls within one of the listed exceptions (which are worded in quite general terms), the court rarely spends much time assessing the nature of the limitation and, in fact, often finds that a measure is justified by reference to a number of specific aims. In the majority of cases, the main criteria will be the issue of proportionality.

For example, proportionality was considered in *Avilkina et al. v. Russia*, in which the applicants—all Jehovah's Witnesses—complained about the disclosure of their medical files to the Russian prosecution authorities following their refusal to have blood transfusions during their stay in public hospitals. In addition to finding that there had been no pressing social need to disclose confidential medical information in the circumstances, the court considered that the means employed by the prosecutor in conducting the inquiry, involving disclosure of confidential information without any prior warning or opportunity to object, need not have been so oppressive for the applicants. As the authorities had made no effort to strike a fair balance between, on the one hand, the applicants' right to respect for their private life and, on the other, the prosecutor's aim of protecting public health, there had been a breach of Article 8.[41]

When striking the balance between individual privacy concerns and community public health interests, the court has been particularly careful to highlight the specific vulnerability of persons living with HIV in cases concerning breaches of medical confidentiality. Specifically, it has noted that matters of medical confidentiality "… are especially valid as regards protection of the confidentiality of information about a person's HIV infection," given the sensitive issues surrounding this disease.[42] The court has elaborated that the unauthorized revelation of such information "… may dramatically affect [a person's] private and family life, as well as the individual's social and employment situation, by exposing that person to opprobrium and the risk of ostracism."[43] Further, given the extremely intimate and sensitive information related to HIV status, any action taken by individual states to communicate or disclose such information without the consent of the patient calls for the most careful scrutiny on the part of the court.[44]

In *Z v. Finland*, the court found a violation of Article 8 on account of the publication of the applicant's identity and medical condition in a Helsinki Court of Appeal judgment.[45] The case concerned the disclosure of medical information about the applicant, a person living with HIV, in the context of proceedings concerning a sexual assault. Although the information was to be kept confidential for a 10-year period,

the court was not persuaded that the domestic courts had attached sufficient weight to the applicant's interests. In reaching this conclusion, the court noted that, as the relevant information had been produced in the proceedings without her consent, the applicant had already been subjected to a serious interference with her right to respect for private and family life; further interference in releasing the information to the public, even after 10 years, would be a disproportionate interference.

Similarly, in *C.C. v. Spain*, the applicant alleged that the right to respect for his private life had been violated by the disclosure of his identity, coupled with his state of health, during legal proceedings he had initiated against an insurance company for failure to pay compensation after he was declared unfit for work.[46] In determining the purpose and necessity of the interference, the court noted that the applicant's medical record was necessary to determine the question as to whether the insurance company should or should not pay compensation because of a permanent inability to work. However, given the specific circumstances of the case, including the principle of special protection of the confidentiality of information relating to HIV, the court found a violation of Article 8 as the publication in full of the applicant's identity and health status in the judgment was not justified by any compelling reason.[47]

Concerning breaches of confidentiality by medical professionals, in *I v. Finland*, a woman who worked in the same public hospital where she was being treated for HIV-related issues claimed a violation of the right to privacy on the basis that the hospital had failed to maintain a system of data protection rules and safeguards to prevent the unauthorized disclosure of her confidential medical information.[48] After indications that her colleagues had become aware of her medical condition, the hospital took ad hoc measures to protect the applicant against unauthorized disclosure of her sensitive health information (for example, amending the patient register so that only treating personnel had access to her patient record, and registering the applicant under a false name and social security number). However, the court held that these mechanisms came too late for the applicant, and found an Article 8 violation.

Using strategic litigation to address medical confidentiality breaches in transitional countries

Although not many cases on medical confidentiality exist so far in relation to transitional countries, some important examples can be found.

In 2006 in Ukraine, the Pecherskyi District Court in Kyiv considered an administrative challenge to a government order which provided instructions for filling in medical certificates.[49] The case was filed by Ms. Svitlana Yuriyivna Poberezhets against the Ministry of Health of Ukraine, the Ministry of Labor and Social Policy of Ukraine, the Social Insurance Fund for Temporary Disability, and the Social Insurance Fund for Industrial Accidents and Occupational Diseases of Ukraine. At the relevant time, if a person sought to receive disability benefits in Ukraine, a medical certificate had to be provided to her employer. On the basis of the Ukrainian Constitution (which provides that: "[t]he collection, storage, use and dissemination of confidential information about a person without his or her consent shall not be permitted, except in cases determined by law, and only in the interest of national security, economic welfare and human rights"), the ECHR, and various Ukrainian civil codes, Ms. Poberezhets challenged the requirement for health institutions to include information concerning the patient's diagnosis and a "code of disease" according to the International Classification of Diseases and Causes of Death.[50]

The court found that there were no security, economic welfare, or human rights grounds to justify the release of information.[51] As Article 8 of the ECHR and various provisions of the Ukrainian Civil Code make clear that a person's medical information is private confidential information, the requirement set out in the order was in violation of the Ukrainian Constitution. The court found the relevant order to be unlawful, creating a precedent on the topic of medical confidentiality. Following the court's decision, subsequent legislative amendments were made to the order, ensuring that a diagnosis and a code of disease can be indicated on the medical certificate only with the written consent of the person.

A case in Central Asia marked the first legal decision in Kyrgyzstan related to HIV/AIDS and centered on a finding of a violation of medical confidentiality. In

this case, the physician at the Regional HIV/AIDS Prevention Centre was approached by television reporters with a request to prepare a video of the center's work to be broadcast on the eve of World AIDS Day. Despite the patient's refusal to participate, the physician suggested that the reporters film a former injecting drug user who had sought medical assistance at the clinic. From the physician's office, with the doctor present, the reporters filmed the patient sitting outside and clearly identified him as a person living with HIV/AIDS.

Following a broadcast of the video, the patient experienced a range of immediate and aggressive reactions from residents of the small town in which he lived. He was insulted, jeered at, pointed at, refused service at stores and other facilities, driven out of public places, ostracized by friends and family, and prevented from seeing his own children or visiting his village. His children faced insults and other acts through association, and his family left the village to escape the victimization.

After ceasing to take his medicine and attempting suicide, the patient sought legal advice from the Public Foundation Legal Clinic (ADILET). Although the patient tragically died the day after the initial consultation, ADILET initiated legal proceedings claiming a breach of medical confidentiality under relevant criminal law provisions. The trial, heard by courts at the local and regional level, was complicated by a number of obstacles, including difficulties in calling expert witnesses (due to strong professional solidarity among physicians) and threats that hospital officials who testified would lose their jobs. Further barriers to justice included the patient's family's lack of faith in an independent trial and fair adjudication.

According to ADILET, despite such difficulties, the physician ultimately entered a guilty plea, receiving a criminal penalty and a long-term ban on medical practice in 2007.[52] While the case did not involve general remedies, it set an important precedent in relation to the protection of private medical information as well as discrimination against persons living with HIV—the first such case not only in Kyrgyzstan but also across Central Asia.

At the regional level, the European Court considered the disclosure of the respective applicants' HIV status by the media in two cases against Lithuania, decided in 2008. *Armoniene v. Lithuania* concerned the publication of an article about the applicant's husband, revealing that he was HIV-positive (as well as other allegations).[53] In *Biriuk v. Lithuania*, the applicant complained about a published article that disclosed private health information, including confirmation from doctors that she was HIV-positive, as well as references to her sexual life.[54]

In each case, the European Court took particular note of the fact that applicant or the applicant's family lived not in a city but in a village, which increased the possibility that the disclosed HIV status would be known by neighbors and immediate family, "thereby causing public humiliation and exclusion from village social life."[55] It also attached specific significance to the fact that the health information had been confirmed by employees of the AIDS center (*Armoniene*) and the medical staff of the relevant hospital (*Biriuk*), noting that such action could impact negatively on the willingness of others to take voluntary tests for HIV.[56] In considering the legitimate interest, the court found that the sole purpose of both publications was "apparently to satisfy the prurient curiosity of a particular readership" and constituted no justification which would outweigh the applicants' private lives.[57]

ENHANCING THE STRATEGIC VALUE OF LITIGATION

While litigation will not always be the most appropriate approach in a particular situation, it can be a powerful tool to hold states to account. The act of taking a case has itself the potential to highlight the issue of medical confidentiality and create a pressure point within a wider advocacy movement on the topic. The cases referred to above demonstrate the potential for achieving decisions which provide guidance to states in relation to this issue, with potential impact for a wider group of people affected by similar breaches.

So how to increase the potential for further strategic litigation within Eastern Europe and Central Asia? The first step is likely to be increasing awareness about human rights in patient care issues, combined with appropriate procedures for vulnerable victims to enable them to seek redress for breaches. This can be coupled with the translation and dissemination

of comparative judgments, and targeted training to encourage creative approaches by both lawyers and judges in upholding such rights.

Advocates may be able to enhance the strategic value of any case by adopting certain tactics. From the start, it is important to determine the case objective in a way that highlights the systemic or structural problem associated with medical confidentiality breaches in a country, whether the aim is to challenge an actual law or policy that explicitly or indirectly violates the right to privacy; to encourage interpretation of certain legislative provisions; or to facilitate a more robust implementation of the existing legal framework.

Referencing relevant international and comparative standards and jurisprudence can support and strengthen a case. Already existing case law on this subject could be used to support national-level cases, depending on the receptiveness of judges and the national legal system to such material. Significantly, a carefully crafted remedial strategy, involving not only redress for the individual applicant but requests for general measures to prevent such violations in the future (for example, introducing or amending relevant legislation or policies, regulating media activity, or increasing oversight of the medical profession), can be the difference between a "normal" case and one which influences systemic change.[58] This tactic may be accelerated by the selection of appropriate respondents who have the ability and knowledge regarding how to make the requested legislative changes (as demonstrated in the Ukraine case) or provide other requested remedies.

Finally, even with a successful decision, implementation is a key challenge for human rights cases, with the outcome depending to a large degree on the political and financial will of the state. In almost all circumstances, strategic litigation is most useful as part of a wider advocacy strategy involving political lobbying and other advocacy, media involvement, awareness-raising and other educational activity, community mobilization and monitoring, and so on.[59] The importance of a comprehensive approach is illustrated by the fact that there are still forms in Ukraine which require the disclosure of medical information and need to be addressed (for example, prospective students are required to submit medical certificates to educational institutions' selection committees to confirm their fitness to undertake study; among other things, the certificate includes the name of the person, all diseases since childhood, results of laboratory investigations, and vaccinations. Medical certificates are kept by the institutions for three years).[60] Similarly, a successful outcome in the Kyrgyzstan case has not been, by itself, enough to prevent continued breaches of medical confidentiality. In addition, the extent of impact should be assessed and actual beneficiaries identified, to ensure that the case outcomes correlate with its objectives.[61]

CONCLUSION

The concept of human rights in patient care offers a useful framework for assessing the human rights abuses that continue to occur, to varying degrees of severity, in the health care systems of all countries, particularly transitional states. Within the range of legal and non-legal mechanisms that are available to promote this concept and safeguard human rights, case examples from comparative jurisdictions demonstrate that strategic litigation can be used to highlight severe or systemic violations and to hold states to account.

This consideration of a number of precedent cases in Eastern Europe and Central Asia, as well as some leading cases adjudicated on this topic by the European Court, reveals the potential of further litigation in relation to breaches of medical confidentiality. However, to benefit from strategic litigation on a wider scale, the task remains to ensure that patients are aware of and are able to use available litigation options, that lawyers and the judiciary have access to training on human rights in patient care issues, and that advocates apply appropriate tactics to bolster the strategic value of such cases.

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25. Ibid., p. 41.

26. UN Global Commission on HIV and the Law (see note 19), p. 36.

27. L. Beletsky et al. (see note 2), p. 54.

28. B. Rechel, "HIV/AIDS in the countries of the former Soviet Union: Societal and attitudinal challenges," *Central European Journal of Public Health* 18/2 (2010), pp. 110–115.

29. Ibid., p. 36.

30. F. Gerovski and G. Alcheva, "Implementation of patients' rights legislation in the Republic of Macedonia: Gaps and disparities," *Health and Human Rights: An International Journal* 15/2 (2013) (see elsewhere in this issue).

31. UN Global Commission on HIV and the Law (see note 19), p. 28.

32. Ibid., p. 27.

33. USSR Constitution of 1977, Art. 56. English version available at http://www.departments.bucknell.edu/russian/const/1977toc.html.

34. FXB Center for Health and Human Rights and Open Society Foundations, "Example 1: Litigating to protect private patient medical records in Ukraine," in *Health and human rights resource guide* (FXB Center for Health and Human Rights/ Open Society Foundations, September 2013).

35. P. D. Tichtchenko and B.G. Yudin, "Towards a bioethics in post-Communist Russia," *Cambridge Quarterly of Healthcare Ethics* 1/4 (1992), pp. 295–303.

36. Ibid.

37. For an overview of right to privacy provisions in international and regional human rights instruments, as well as the national legal frameworks protecting the right to privacy in Armenia, Georgia, Kazakhstan, Kyrgyzstan, Macedonia, Moldova, Russia and Ukraine, see the country practitioner guides on human rights in patient care. Available at http://www.health-rights.org/guides/.

38. *I v. Finland,* App. No. 20511/03 (July 17, 2008) (ECtHR) para. 38.

39. *Z v. Finland*, App. No. 22009/93 (February 25, 1997) (ECtHR) para. 95; *C. C. v. Spain*, App. No. 1425/06 (October 6, 2009), (ECtHR) para. 31 [in French].

40. *Biriuk v. Lithuania*, App. No. 23372/03 (November 25, 2008) (ECtHR), para. 36.

41. *Avilkina & Ors v. et al. v. Russia,* App. No. 1585/09 (June 6, 2013) (ECtHR).

42. *Biriuk v. Lithuania* (see note 40), para. 39.

43. Ibid., and *C.C. v. Spain* (see note 39), para. 33.

44. *C.C. v. Spain* (see note 39), para 34. See also *Kiyutin v. Russia*, App. No. 2700/10 (March 10, 2011) (ECtHR) and *I.B. v Greece*, App. No. 552/10 (October 3, 2013) regarding the European Court's approach to the particular vulnerability of persons living with HIV.

45. *Z v. Finland* (see note 39).

46. *C. C. v. Spain* (see note 39).

47. Ibid., para. 40.

48. *I v. Finland* (see note 38).

49. The Order of the Ministry of Health of Ukraine, the Ministry of Labor and Social Policy of Ukraine, the Social Insurance Fund for Temporary Disability, the Social Insurance Fund for Industrial Accidents and Occupational Diseases of Ukraine,

On approving the form and technical description of a medical certificate and the instructions for filling in the medical certificate, No. 532/274/136-oc-1406, dated November 3, 2004, registered with the Ministry of Justice of Ukraine on November 17, 2004 under No. 1454/10053 and published in the official bulletin '*Ofitsiynyi Visnyk Ukrayiny*' [The Official Herald of Ukraine] No. 47, dated December 10, 2004, p. 58, clause 3111 [Original in Ukrainian].

50. Ukrainian Constitution of 1996, Art. 32. Ukrainian legislation included the Civil Code of Ukraine of 16 January 2003, the Basic Law of Ukraine on Health Care of 19 November 1992, the Law of Ukraine "On Information" of October 2, 1992. Available at http://www.president.gov.ua/en/content/chapter02.html.

51. Pecherskyi District Court of Kyiv, Decision No. 2-A-216-1/06.

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53. *Armoniene v. Lithuania*, App No. 36919/02 (November 25, 2008) (ECtHR).

54. *Biriuk v. Lithuania* (see note 40).

55. *Armoniene v. Lithuania* (see note 53), para. 42; *Biriuk v. Lithuania* (see note 40), para. 41.

56. *Armoniene v. Lithuania* (see note 53) para. 44; *Biriuk v. Lithuania* (see note 40), para. 43.

57. *Armoniene v. Lithuania* (see note 53), para. 43; *Biriuk v. Lithuania* (see note 40), para. 42.

58. K. Roach, "The Challenges of Crafting Remedies for Violations of Socio-economic Rights" in M. Langford (ed), *Social rights jurisprudence: Emerging trends in international and comparative law* (Cambridge, UK: Cambridge University Press, 2008), pp.46–58.

59. For an overview of issues in relation to implementing international and regional human rights decisions see, for example, D. C. Baluarte and C. M. De Vos, *From judgment to justice: Implementing international and regional human rights decisions* (New York, USA: Open Society Foundations, 2010). Available at http://www.opensocietyfoundations.org/reports/judgment-justice-implementing-international-and-regional-human-rights-decisions.

60. Personal communication, information supplied by Ukrainian NGO "Foundation of Medical Law and Bioethics of Ukraine."

61. For a discussion of the various effects, including unintended effects, of using the courts to enforce socio-economic rights, see V. Gauri and D.M. Brinks (eds), *Courting social justice: Judicial enforcement of social and economic rights in the developing world* (Cambridge, UK: Cambridge University Press, 2008).