

Chapter 7

Challenges to the Fundamental Rights and Freedoms Including Patient Rights During the COVID-19 Pandemic in Turkey

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ABSTRACT

The COVID-19 virus, which first appeared in Wuhan, China in December 2019 and spread quickly to the whole world in a few months, was defined as a pandemic by the World Health Organization on 12 March 2020. This process has inevitably brought along problems in many areas, including health, education, social, economics, law, psychology, politics, and international relations. The pandemic era is a period when we appreciate more than ever how valuable our fundamental rights and freedoms are. Of these rights, the right to health and patient rights are significantly adversely impacted. This chapter will evaluate human rights, especially patient rights, mostly affected during this pandemic period in Turkey. This chapter further presents that other states are also continuing to experience effects of the pandemic. Both Turkey and other states must be prepared for the patients to properly benefit from the healthcare system in future outbreaks and pandemics. Otherwise, human and patient rights will continue to suffer.

INTRODUCTION

The COVID-19 virus, which first appeared in Wuhan, China, in December 2019 and spread quickly to the whole world in a few months, was defined as a pandemic by the World Health Organization (WHO) on 12 March 2020. This process has inevitably brought along problems in many areas, including health, education, social life, economics, law, psychology, politics, and international relations.

Law and legal legislation prevailing in all areas of our lives have become much more critical in this pandemic period. Legal legislation regulates the abnormal (extraordinary) period and the ordinary period regime (the normalcy). Although the pandemic is an extraordinary event, in Turkey, a state of emergency

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was not declared yet. Government officials have been trying to manage the pandemic under standard legislation. This situation rightly causes many worries and criticisms.

Prohibitions, precautions, and measures are taken to protect public health within the country, to prevent the spread of the epidemic, and to reduce the rate of spread and bring it under control, which puts inevitably public health and public order on one side of the scale and individual rights and freedoms on the other. During the pandemic period, individual rights and freedoms were compromised in favor of public health.

States are not only responsible to protect their citizens' health on the national domain but also on the international domain. In today's global world, health issues could not be considered only on a national level, but they should be viewed from an international perspective. In this subject, International Health Regulation established in 1969 by the World Health Board and then expanded, is the most important regulation, which imposes legal responsibilities to the states to protect the health of their population and to prevent pandemics. Theoretically, states that could not avoid the spread of the pandemic should be responsible towards the rest of the world. However, in practice, there is not a legal institution and a judgment mechanism in the international domain, which could hold states in question, responsible because of this tort. The WHO's structure needs to be improved in this aspect. (Kasaroğlu, 2020)

The pandemic era is a period when we appreciate more than ever how valuable our fundamental rights and freedoms are. During this period, fundamental rights and freedoms are undoubtedly negatively affected. Of these rights, the right to health and patient rights are significantly adversely impacted.

During the pandemic period, curfews and legal restrictions were imposed on citizens, and travel freedom was limited. Quarantine restrictions have been imposed on COVID-19 patients, their relatives, and their contacts. Due to insufficient hospital beds and intensive care units, hospitalized patients' rights are adversely affected as patients cannot have access to the right of health care. From time to time, privacy is violated by the unauthorized sharing of personal health information and photos. Patients' relatives right to receive information about their patients, visit them, and saying goodbye was violated. On the other hand, some rights of health workers have also been affected; their days off are canceled, and they are forced to work long hours and in unsafe environments. When the COVID-19 vaccine was available and started to be applied, another current issue that should be mentioned is whether compulsory vaccination is possible.

This study will first examine the policies and the measures taken by the Turkish government during the pandemic. Afterwards it will discuss the effects of the pandemic concerning health law and especially patient rights, who are mostly affected during this pandemic period.

BACKGROUND

It is not the first time that the world has gone through infectious diseases and epidemics. Humanity has faced and fought against a wide variety of epidemics in the history of the world. First of all, it is necessary to focus on the definitions of terms outbreak, epidemic, and pandemic, which can often be confused.

An outbreak is an infectious disease that is observed much more frequently than the normally expected frequency in a particular society (Hacimustafaoglu, 2018). According to the Turkish Language Institution, the definition of the outbreak is "the spread of one disease or another condition and the transmission to many people at once" (sozluk.gov.tr).

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