



THE FULFILMENT OF PATIENTS' RIGHTS IN THE PROVISION OF TELECONSULTATIONS DURING THE COVID-19 EPIDEMIC STATE FROM THE VIEWPOINT OF ADMINISTRATIVE DECISIONS IN PROCEEDINGS IN CASE OF PRACTICES VIOLATING COLLECTIVE PATIENT'S RIGHTS



Realizacja praw pacjenta przy udzielaniu teleporad w stanie epidemii COVID-19 z perspektywy decyzji wydanych w postępowaniach w sprawach praktyk naruszających zbiorowe prawa pacjentów

Katarzyna Maria Zoń

Department of Law, Faculty of Law and Communication in Wrocław, SWPS University, Poland

Katarzyna Maria Zoń –  0000-0001-5175-2091

Abstract

The article analyses the issues of the fulfilment of patients' rights in the provision of teleconsultations in primary healthcare during the COVID-19 epidemic state from the viewpoint of the public law protection instrument being the institution of practices violating collective patients' rights. This study aims to determine the practices of healthcare providers, which were verified by the Patients' Rights Ombudsman in proceedings in case of practices violating collective patient's rights. Moreover, the paper aims to identify particular manifestations of the violation of collective patients' rights. According to the analysis, the aforementioned proceedings focused essentially on two categories of practices of healthcare providers. The first one involves the limitation or deprivation of patients of real possibility to register for an appointment within publicly funded healthcare which are exemplified by such practices as: not answering or rejecting the patients' call and excessive waiting time for someone to answer the phone. The other group of practices constitutes the lack of full information about the conditions of providing teleconsultations in primary healthcare, which was required according to the organisational standard (absence of one, several, or all prescribed elements) on the website and on the premises of the clinic. Taking the above into consideration, it should be pointed out that the competence of the Patients' Rights Ombudsman in conducting proceedings in case of practices violating collective patients' rights has a real impact on the protection of patients' rights in systemic terms.

Streszczenie

W artykule objęto analizą problematykę realizacji praw pacjenta przy udzielaniu teleporad w podstawowej opiece zdrowotnej w dobie stanu epidemii COVID-19 z perspektywy publicznoprawnego instrumentu ochrony praw pacjentów, jakim jest instytucja praktyk naruszających zbiorowe prawa pacjentów. Celem pracy było wskazanie zachowań podmiotów leczniczych związanych z realizacją tego rodzaju świadczeń zdrowotnych, które Rzecznik Praw Pacjenta weryfikował w postępowaniach w sprawach praktyk naruszających zbiorowe prawa pacjentów. Ponadto prowadzone rozważania zmierzały do zidentyfikowania konkretnych przejawów naruszeń zbiorowych praw pacjentów. Z przeprowadzonej analizy wynika, że przedmiotem tych postępowań były zasadniczo dwie kategorie zachowań podmiotów leczniczych. Pierwszą z nich stanowiło ograniczenie lub niezapewnienie pacjentom faktycznej możliwości rejestracji w celu uzyskania świadczeń opieki zdrowotnej finansowanych ze środków publicznych w podstawowej opiece zdrowotnej. W tym zakresie praktyki te przejawiały się przykładowo w nieodbieraniu czy odrzucaniu połączeń pacjentów oraz w zbyt długim czasie oczekiwania pacjenta na odebranie połączenia. Druga grupa zachowań obejmowała natomiast niedostępność na oficjalnej stronie internetowej czy w siedzibie podmiotu leczniczego pełnej informacji o warunkach realizacji teleporady w podstawowej opiece zdrowotnej zgodnie z treścią standardu organizacyjnego, co wyrażało się między innymi w braku umieszczenia jednego, kilku czy wszystkich wymaganych elementów. Mając to na uwadze, należy podkreślić, że kompetencja Rzecznika Praw Pacjenta w zakresie prowadzenia postępowań w sprawach praktyk naruszających zbiorowe prawa pacjentów realnie wpływa na ochronę praw pacjentów w ujęciu systemowym.

Keywords: Patients' Rights Ombudsman, patients' rights, telemedicine, COVID-19

Słowa kluczowe: Rzecznik Praw Pacjenta, prawa pacjenta, telemedycyna, COVID-19

DOI 10.53301/lw/172366

Received: 15.08.2023

Accepted: 15.09.2023

Corresponding author:

Katarzyna Maria Zoń

Department of Law, Faculty of Law and Communication
in Wrocław, SWPS University, Wrocław

e-mail: kzon@swps.edu.pl

Introduction

The problems of the fulfilment of patients' rights in the provision of teleconsultations in primary healthcare during the COVID-19 epidemic state may be analysed in multiple aspects. Presenting this issue in the light of the decisions issued by the Patients' Rights Ombudsman (hereinafter: the Ombudsman) in cases concerning practices violating the collective rights of patients during the special epidemic situation¹ is justified by the significant increase of the role of teleconsultations in providing healthcare services for patients during that time². Growth of the number of this type of healthcare services led to a potentially increased risk of violating the patient's rights during their provision, so that it became necessary to develop some fundamental principles for applying such services. The organisational requirements were reflected in the content of the Ordinance of the Minister of Health of August 12 2020 on the organisational standard of teleconsultations in primary healthcare (hereinafter: the Ordinance) [1] that became effective on August 29 2020 and was later amended three times during the period of the state of epidemic. The amendments introduced during the state of epidemic were aimed at solving the most significant problems related to the provision of teleconsultations that emerged as a result of using this manner of providing health services. Another argument that supports the reasonability and validity of the presented analyses is the fact that, although the state of epidemic (and the state of epidemic threa³) were revoked, teleconsultations remained an element of the primary healthcare system. Therefore, the Ordinance continued to be important for the assessment of the fulfilment of the organisational requirements by the healthcare provider in providing the analysed form of healthcare services.

The aim of the study was to indicate such behaviour of the healthcare providers related to providing teleconsultations in the special epidemic state that were considered by the Ombudsman to violate the collective rights of patients. In the Introduction, the author explains the nature of proceedings in case of practices violating collective patients' rights. The relevant regulation is provided in Chapter 13 of the Act of 6 November 2008 on Patients' Rights and the Patients' Rights Ombudsman (hereinafter: the Act) [2] and constitutes a fundamental component of the protection of patients' rights under public law.

¹ In Poland, the state of epidemic lasted from 20 March 2020 to 15 May 2022.

² Medical consultation in an outpatient setting (including night and holiday care) provided at a distance, i.e. via ICT systems or telecommunication systems, has been a publicly funded service since 5 November 2019.

³ In Poland, the state of epidemic was revoked on 16 May 2022, and on 1 July 2023 the state of epidemic threat was also cancelled.

In this section of the study, the author uses the formal and dogmatic method that was justified by the need to analyse the existing legal regulations in the scope described above. Then, based on the results of own research⁴ and the data from the registers of decisions issued by the Ombudsman in cases of practices violating the collective rights of patients, presented in form of a table containing a list of several decisions [3], the conducts of healthcare providers being the subject of such proceedings were distinguished. The most commonly used practices were categorised and divided into groups.

Based on selected, decisions within the distinguished categories, specific symptoms of the conduct of the healthcare entity were also characterised. Decisions on the refusal to initiate proceedings in case of practices violating collective patients' rights and decisions imposing financial penalties were excluded from the scope of the deliberations.

The analysis of empirical research was conducted mainly with use of the qualitative method, including the quantitative method at the same time. The application of both these approaches allowed for a more comprehensive elaboration of the available data. The Summary contains the main conclusions from the conducted research.

Practices violating collective patients' rights: definition and the outline of the course of the proceedings

Proceedings in case of practices violating collective patient's rights are an element of the public law protection of the rights of patients treated as a collectivity that includes both current and potential patients. The violation of these rights occurs when the consequences of the actions may threaten or be realised in the sphere of every patient who is in a similar situation [4]. In this context, it is essential to determine that the action of the healthcare provider was addressed to an unspecified set of entities, not to a overdetermined recipient. What is important is not the count, but the nature of confirmed violations and the possibility, also potential, to cause negative effects in a specific group [5]. This results from the fact that collective patients' rights are not a sum of individual rights, but are linked to systemic conditions that enable the fulfilment of individual rights and to the creation of a factual state that characterises the manner of providing healthcare services to everybody who might use them [6].

In reference to the issues related to definitions, pursuant to Art. 59 section 1 of the Act, the term of prac-

⁴ The study visit at the office of the Ombudsman for Patients' Rights was one of the elements of the realisation of the scientific activity entitled Implementation of patients' rights in the COVID-19 epidemic era and provision of teleconsultation in primary health care (preliminary research).

tices violating collective patients' rights includes two categories of behaviour that violates the law (unlawful, organised actions or omissions of entities providing healthcare services as well as the organisation a protest action or strike by the organiser, confirmed by a final court decision, contrary to the provision on the resolution of collective disputes, with the additional aimed at depriving or limiting patients of their rights, in particular if such actions are indeed to financial benefits. This means that the entity does not fulfil the patients' rights at all or ensures the fulfilment of these rights only to a certain extent, while acting in the above purpose. In the context of entities that provide healthcare benefits, the legislator emphasises the connection between the violation of patients' rights and the organisational sphere of the entity, pointing out that it refers to such manner of organising its activities that enables the violation of patients' rights or does not prevent it [7]. The application of such practices is prohibited by virtue of law (Art. 59 section 2 of the Act).

As it has been mentioned above, the institution of practices violating collective patients' rights is a component of the protection of patients' rights under public law. The Ombudsman has the necessary competences to make an imperious reaction in the event if such practices are suspected. The aim of the administrative proceedings conducted in this extent is to verify a specific charge concerning the form of conduct attributed to the given entity and to determine whether an administrative offence has been committed, based on the statutory prerequisites specified in Art. 59 section 1 of the Act [6]. The proceedings in case of practices violating collective patient's rights may be initiated both *ex officio* and upon the motion, and it is conducted by the Ombudsman with the support of the Division for Practices that Violate Collective Patients' Rights that operates within the structure of the Legal Department of the Ombudsman's Office [8]. The proceedings are initiated by means of a decision, of which all parties are notified. The parties include every subject that files a motion to issue a decision on a practice violating collective patients' rights or an entity against which the proceedings are initiated (an entity that provides healthcare services or an organiser of a strike). Obligatory grounds for the refusal to start proceedings exist if the conduct obviously does not fulfil the statutory prerequisites to consider a practice as violating collective patients' rights, or if the party who filed the motion for a decision declaring a practice to violate the patients' collective rights has not substantiated the circumstances of the deprivation or limitation of patients' rights. The Ombudsman may refuse to initiate proceedings if he considers it justified. This is made in form of an administrative decision, which may be appealed to the administrative court. On the other hand, the cessation of the given practice does not constitute grounds for the refusal to initiate proceedings. This circumstance is justified by issuing a decision that declares the practice to violate collective patients' rights and determines that the practice has been discontinued (Art. 64 section 4 of the Act). However, in this aspect it should be emphasised that the legislative authorities have foreseen a one-year limitation period of the initiation of the proceedings. The period starts at the end of the year when the given practice was discontinued (Art. 67 of the Act).

The efficient exercise of the statutory competence in terms of conducting proceedings in case of practices violating collective patient's rights would not be possible if the Ombudsman was not granted the right to demand the entities listed in the Act to present documents and information about the circumstances of the application of practices that are reasonably suspected of violating the collective patients' rights. In order to ensure the effective fulfilment of this obligation by the entity to which the demand was addressed, if the entity fails to comply and to submit the documents and information specified in Art. 61. of the Act, the Ombudsman shall impose a decision imposing a financial penalties up to PLN 50 thousand by the way of administrative decision.

The proceedings end with issuing an administrative decision that considers the given practice to be in violation of collective patients' rights, or, if the Ombudsman decides that these practices were not applied, a decision discontinuing the proceedings as unsubstantiated. According to Art. 65 of the Act, in the extent that has not been regulated in the chapter on the proceedings in case of practices violating collective patient's rights, the provisions of the Act – the Code of Administrative Procedure of 14 June 1960 are applied [9]. If the Ombudsman finds that practices violating collective patients' rights were applied, he issues one of the following two forms of substantive decision. The first one is the decision declaring the practice to violate the collective patients' rights and orders the entity to cease to use such practice. In this decision, the Ombudsman may also indicate the actions that are necessary to remedy the effects of violation of collective patients' rights, and provide time limits for taking such actions. If the entity fails to take those actions, the Ombudsman shall impose a fine in the amount up to PLN 500 thousand (Art. 68 of the Act). The second type of decision is the decision that declares the practice to be in violation of collective patients' rights and determines that its application has been discontinued (Art. 64 section 1 of the Act). In literature, it is noted that the decision considering a practice to be in violation of the collective rights of patients, as a form of authoritative reaction by an administrative authority, is intended to lead to the restoration of a state of lawfulness and, moreover, to prevent similar infringements in the future [10].

To illustrate the scale of use of this form of public law protection of patients' rights, it is worth presenting some statistical data. For example, in 2020, the total number of all conducted cases, signals and reports addressed to the Ombudsman was 135 625 [11]. In that period, the Ombudsman initiated 138 proceedings in case of practices violating collective patients' rights, out of which 79 were connected to the COVID-19 epidemic, and issued 136 decisions, in which he assessed the violation of the collective rights of patients (40 connected to the epidemic) [11]. In 2021, the number of signals addressed to the Ombudsman increased to 163 910, and the Ombudsman initiated 181 proceedings in case of practices violating collective patients' rights. A majority of these proceedings concerned access to primary healthcare during the COVID-19 epidemic. In 121 out of 199 issued decisions, the Ombudsman declared the practices to be in violation of collective patients' rights [12].

However, it is worth remembering that the analysed form of protection of collective patients' rights does not exclude the application of other statutory legal measures. This refers, in particular, to the regulations on combating unfair competition and the regulations on competition and consumer protection or on counteracting unfair commercial practice (Art. 59 section 3 of the Act).

Detailed analysis

Applying the above general considerations to the issues discussed in this paper, it should be pointed out that the matter of the completed proceedings related to the provision of teleconsultations in the primary healthcare during the COVID-19 epidemic state (202 proceedings out of a total of 432 collective proceedings terminated during this period) were exclusively practices violating collective patients' rights in the form of unlawful, organised actions or omissions aimed at depriving or limiting the patients' right to health services under Art. 8 of the Act (Art. 59 section 1 (1) of the Act) [3].

As far as proceedings that are directly related to the provision of teleconsultations are concerned, two main categories of their matters may be distinguished, i.e. behaviour consisting in limiting or failure to provide patients with the real possibility to register to receive healthcare services financed from public funds in primary healthcare, including teleconsultations (105 proceedings altogether) and failure to publish the complete information about the terms and conditions of providing teleconsultations in primary healthcare on the website or on the place of the healthcare provider, according to the Ordinance (10 proceedings) [3]. Some of the conducted proceedings (38) concerned both types of conduct [3]. Apart from that, the Ombudsman also verified the charges of limiting or depriving the patients of access to in-person appointment with a physician in primary healthcare and of providing healthcare services only in form of teleconsultations (49 proceedings), which shows an indirect link to this form of services [3]. For each of the distinguished groups, the specific manifestations were analysed and characterised, based on selected examples of proceedings conducted by the Ombudsman.

Ensuring a possibility to register to receive healthcare services in primary healthcare

The first of the distinguished categories of conduct includes the verification by the Ombudsman of the actions of healthcare providers that consist in limiting or depriving the patients of a real possibility to register (on the phone or by electronic means of communication) to receive publicly funded healthcare services in primary healthcare. In this scope, creating barriers or preventing access to healthcare services also applied to providing these services in form of teleconsultations. This form of conduct of healthcare providers manifested in various ways. Sometimes, the patients were deprived of both indicated ways of registering, while in other cases only registration on the phone was limited, without ensuring electronic registration at the same time. This group also includes these actions of healthcare providers that consisted in enabling patients to register for a consultation

only within a specified period of time (e.g. only for the current week).

The analysis of the scale and content of the decisions issued, it should be noted that in general, the Ombudsman considered such practices to be in violation of collective patients' rights. In order to illustrate the above trend, it is worth referring to several proceedings that confirmed the patients' reports about problems with registering for an appointment on the phone. Therefore, the Ombudsman declared the practice used by this entity, consisting in the fact that patients who contact the healthcare provider in order to receive publicly funded healthcare services had limited possibilities to register on the phone, to be violating the collective right of patients to healthcare services that are provided with duty of care (Art. 8 of the Act), and ordered the entity to cease it. In justification it was pointed out that the calls to the registration phone numbers were generally not answered, the line remained busy, and incoming calls were rejected, or the waiting time exceeded 30 minutes. In this case, the Ombudsman decided that the organisational omission of the entity (failure to ensure an actual possibility to contact the clinic) caused a significant limitation of the patients' rights. In a similar factual situation, failure to ensure the possibility to register in all working hours of the clinic was additionally considered as a practice violating collective patients' rights. The Ombudsman pointed out that making only one telephone number available to the patients, which is answered by only one nurse, is insufficient when a large number of patients are trying to contact the service provider. In these circumstances, the entity should have taken adequate actions, i.e. implement the appropriate organisational and technical solutions to improve the efficiency of the registration process.

In another case, the practice that was declared to violate the collective right of patients to receive healthcare services provided with duty of care (Art. 8 of the Act) by the Ombudsman was the way of organising the process of providing healthcare services in which the patient was able to register for a consultation only for the current week. In the execution of this decision, the entity informed that the mode of registration was changed to continuous, which enabled it to fulfil the patients' rights in this respect.

Providing information about the terms and conditions of teleconsultations in primary healthcare

In the second identified group of proceedings, the subject was the failure to publish (on the official website or on the place of the healthcare provider) information about the terms and conditions of providing teleconsultations in primary healthcare that would meet the requirements specified in the Ordinance [13]. According to these provisions, the healthcare provider is obliged to inform the patient in scope of the specifically listed elements. The aim of imposing this obligation was to guarantee the patients access to completed detailed, and clear information about the principles of providing teleconsultations in primary healthcare, in a convenient form, taking into consideration the patient's right to express their will to contact the health professionals in person during the consultation.

The irregularities that were identified in the course of the analysed proceedings concerned both the failure to include in the information all the conditions listed in §3 section 1 of the Ordinance and the absence of only of above (for example the specification of services that are provided only in direct contact with the patient) or several components (such as the information about the ways of establishing contact between the primary healthcare service provider and the patient to provide a teleconsultation, the ways of providing teleconsultations, instructions on filing e-prescriptions, e-referrals or e-orders for medical devices, referrals to additional tests and about the possibility to create an Internet Patient Account).

In the light of the analysed group of proceedings, it is important to remember the amendments to the Ordinance that applied to the information which should be provided to the patient. The scope of this information differed in specific periods of the state of epidemic. Therefore, the introduced amendments required healthcare providers to update the provided information, as the Ordinance is a benchmark for the assessment of the correctness and completeness of the fulfilment of their information duties. The analysis of specific proceedings revealed that publishing the content of the Ordinance by the healthcare provider is not sufficient and does not mean that the informational obligation was fulfilled. As the Ombudsman pointed out, this regulation only define the scope of information that should be included in the organisational standards. Therefore, it is essential that the healthcare provider should create a document based on the Ordinance that would contain the information about the conditions of providing teleconsultations for patients at this specific entity.

Example problems that healthcare providers had with the implementation of particular organisational requirements are illustrate by the following cases. The decision that states that the failure to inform patients (at the place of performing services and on the website of the healthcare provider) on the conditions of providing teleconsultations (pursuant to §3 section 1 of the Ordinance) is a practice violating collective patients' rights to receive healthcare services (Art. 8 of the Act) and that ordered the entity to cease the practice, reveals that, apart from the content, the manner of fulfilment of the organisational duty foreseen in the Ordinance is also important. The Ombudsman emphasised that it was not sufficient to provide patients with brief information that does not include all the required elements. In the second of the referenced proceedings, the healthcare provider also failed to provide patients with complete information about the conditions for the provision of teleconsultations. In this case, the missing information concerned services that are provided only in direct contact with the patient (§3 section 1 (a) of the Ordinance) and about the possibility to receive healthcare services in direct contact with the patient if a healthcare service that is necessary due to the patient's condition cannot be provided in form of teleconsultation (§3 section 1 (e) of the Ordinance). In the justification, the Ombudsman pointed out that the internal procedure of the entity concerning the standard of teleconsultations in primary healthcare did not contain correct and complete required information about the conditions for the provision of teleconsultations, as it did

not include all the elements that were provided for in the Ordinance. The decision issued in this case was reversed as a result of indictment of the decision by the healthcare provider and eventually repealed [14]. Currently the case is being considered by the Supreme Administrative Court as a cassation appeal was lodged against the judgement of the Voivodeship Administrative Court in Warsaw.

Ensuring the possibility to register to receive healthcare services in primary healthcare and publishing information about the conditions for providing teleconsultations in primary healthcare

Considering the above, it should be noted that the functioning of certain healthcare providers was verified in a single procedure both in terms of providing a possibility to register to receive healthcare services in primary healthcare and providing information about the conditions of teleconsultations.

For example, limiting the possibility to register on the phone and failure to make available the information about the conditions for the provision of teleconsultations in primary healthcare that would meet the requirements specified in §3 section 1 (a–d) and (f) of the Ordinance, at the place of providing healthcare services and on the website of the healthcare provider were considered to violate collective patients' rights. The identified organisational irregularities that consisted in limiting access to registration took the form of not answering calls to the registration telephone numbers, which directly affected the level of the health safety of patients. In the justification for the decision, the Ombudsman stated that the possibility to contact the entity that provides healthcare services must be actual, not only formal.

In the context of the analysed group of conducts, it is worth referencing the case, where the charges of limiting access to phone registration was not confirmed, but the patients did not have the possibility to register by means of electronic communication. Apart from that, the entity did not publish the information about the conditions of providing teleconsultations pursuant to §3 section 1 (a–f) of the Ordinance on its official website. Both these practices were declared to violate the right of the patients to receive healthcare services provided with duty of care (Art. 8 of the Act). The Ombudsman determined that the healthcare provider does not provide electronic registration for healthcare services, because it did not state a dedicated e-mail address, neither on its website, nor in the content of the standard. Additionally, the healthcare provider failed to publish detailed information on the conditions of providing teleconsultations on its generally accessible website. The detected irregularities manifested in the fact that the standard of the entity was only an internal procedure (not an information for patients about the conditions of providing teleconsultations at the clinic), and, apart from that, the document did not include all the required elements (§3 section 1 of the Ordinance).

Providing healthcare services in primary healthcare in form of in-person visits

Finally, it is worth broadening the above considerations by adding the proceedings conducted in cases of prac-

tices that violate the collective rights of patients, whose subject was indirectly linked to the issue of teleconsultations. In this respect, the charges of limiting or depriving the patients of access to in-person visits at the primary healthcare physician was verified, including providing healthcare services only in form of teleconsultations. The issue of refusal to enable consultations in direct contact with the physician was often reported as addressed to patients who had not been vaccinated against COVID-19.

In the example case, where the application of these practices was not confirmed, the Ombudsman determined that patients were taken in regardless of their vaccination status, and that unvaccinated persons were not refused on-site visits. In conclusion, the Ombudsman stated that the healthcare provider did not discriminate patients in terms of providing healthcare services based on the vaccination criterion, and thus it did not use an organised practice that would lead to an authoritative refusal to enable unvaccinated patients to consult physicians in person. In another decision issue in a similar case, it was additionally emphasised that the manner of realisation of the healthcare service was determined only by medical criteria and the condition of the patient, and not by the vaccination status.

As it has been mentioned before, depriving patients who were not vaccinated against COVID-19 from their right to receive healthcare benefits in primary healthcare in form of in-person visit were considered as practices violating collective patients' rights (Art. 8 of the Act) as an exception. A clear example of the use of forbidden practices that meets the prerequisites provided in Art. 59 section 1 of the Act consisted in placing a note on the door of a clinic, stating that patients who were not vaccinated against COVID-19 would only be admitted for teleconsultations. Due to the fact that the entity had removed the note, the Ombudsman issued a decision under Art. 64 section 4 of the Act, declaring the said practice to violate collective patients' rights and that it had been discontinued starting from 16 November 2021.

Conclusions

Among all the statutory competences of the Ombudsman, the ones that play the main role in ensuring the efficient protection of rights of both current and potential patients are the proceedings in case of practices violating collective patients' rights. The actions taken to this scope are of an imperious nature, and the deciding that are issued in the form of administrative decisions may be appealed to the administrative court. The considerations presented in this study reveal that the healthcare providers complied with the decisions issued in specific cases and, in general, did not file appeals, which confirms that the conducted proceedings had been justified.

The research also demonstrated that, in terms of providing teleconsultations in primary healthcare during the COVID-19 epidemic state, violations of collective patients' rights took the form of unlawful organised actions or omissions of entities providing healthcare services, aimed at limiting the patients' right to receive healthcare services or to deprive them of this right (Art. 8 of the Act). This was the first type of practices specified in Art. 59 section 1 of the Act.

Considering the above discussion, one may distinguish two categories of conduct of healthcare providers that were verified by the Ombudsman in the course of proceedings that referred directly to providing healthcare services in form of teleconsultations. The first category were behaviours that manifested itself in limiting or depriving patients of the actual possibility to register in order to receive publicly funded healthcare services in primary healthcare (including teleconsultations). The decisions of the Ombudsman lead to the conclusion that it is necessary for the healthcare provider to ensure an real possibility to contact it (on the telephone or by electronic means of communication). The healthcare provider is obliged to organise its activities in such a way that will guarantee that the patient will be able to receive access to healthcare services in primary services in this aspect. In particular during an epidemic, this requires taking into account the dynamic nature of the situation and responding quickly to the necessity to meet increased health-related needs reported by the patients of the given clinic. Ensuring the accessibility of healthcare services at the stage of registration has a direct impact on the level of the patients' health security. In this context, it is worth noting that the exceptional epidemic situation only highlighted the difficulties that had already existed before.

On the other hand, the second group of actions verified by the Ombudsman referred to the failure to publish the complete information about the terms and conditions of providing teleconsultations in primary healthcare (to the extent specified in the Ordinance) on the official website or on the place of the healthcare provider. The analysis of the proceedings revealed that the correct fulfilment of the information duty by a healthcare provider requires, first of all, for these conditions to be available for the patients. Apart from that, the provided information has to be complete, detailed, and clear, so that the patient may use it to find out how the given entity carries out this form of healthcare services. Therefore, every healthcare provider should develop a document containing information about the conditions of providing teleconsultations, compliant with the scope provided in the Ordinance. Quoting the content of the regulation does not meet this requirement. Additionally, the amendments to the Ordinance that were introduced during the COVID-19 epidemic state concerned, among others, the catalogue of provided information, so that it became necessary to update the organisational standards developed by the healthcare providers on an ongoing basis.

During the proceedings in case of practices violating collective patients' rights, the Ombudsman also considered the charges of limiting the patients' rights to consult a doctor on site in primary healthcare or depriving them of this right, which, in consequence, meant that healthcare services were provided only or to a dominant extent in form of teleconsultations. The discussed conducts of healthcare providers that were signalled in the context of refusals addressed to patients who had not been vaccinated against COVID-19, were essentially not confirmed during the verification. Therefore, one may assume that, in general, healthcare providers did not discriminate their patients based on their vaccination status, and the form of providing services was determined by medical issues and the patient's condition.

Considering the above, it should be emphasised that conducting proceedings in case of practices violating collective patients' rights is an important aspect of the activities of the Ombudsman. Legal regulations in the scope of the analysed public law instrument has a real influence on the protection of the patients' rights in the systemic approach. This results from the fact that the aim of issuing a administrative decision declaring a practice used by a healthcare provider as violating the collective rights of patients is not only to restitution of the lawful status, but also to prevent similar infringements in the future. The effectiveness of the Ombudsman's actions reflects the fact that proceedings in case of practices violating collective patients' rights were seldom conducted twice against the same healthcare provider.

The analysed data may also lead to a more general conclusion. A large number of the collective proceedings that were initiated during the state of epidemic concerned access to primary healthcare, which is an important element of the healthcare system, whose aim is to ensure comprehensive care of the patient close to their place of residence. Moreover, these healthcare services are used by the largest part of the population. Taking the above into consideration, it should be noted that the availability of services provided in primary healthcare is of key importance from the point of view of the patient's access to healthcare. Due to that, collective proceedings and the decisions are particularly important for overall health security.

Funding

The publication was created with support from the grant from the National Science Centre (MINIATURA 5 competition) for scientific activity entitled: Implementation of patients' rights in the COVID-19 epidemic era and provision of teleconsultation in primary health care (preliminary research), reg. No. 2021/05/X/HS5/00589.

References

1. Ordinance of the Minister of Health of August 12 2020 on the organisational standard of teleconsultations in primary healthcare (consolidated text Journal of Laws of 2022, item 1194)
2. Act of November 6 2008 on Patients' Rights and the Patients' Rights Ombudsman (consolidated text Journal of Laws of 2022, item 1876, with amendments)
3. Register of decisions issued in cases of practices violating collective patients' rights. <https://www.gov.pl/web/rpp/rejestr-decyzji-wydanych-w-sprawach-praktyk-naruszajacych-zbiorowe-prawa-pacjentow> (access: 03.08.2023)
4. Judgment of the Supreme Administrative Court of September 28 2021, II GSK 363/21, Legalis No. 2627789
5. Judgment of the Voivodeship Administrative Court in Warsaw of January 31 2018, VII SA/Wa 2720/17, Legalis No. 1731788
6. Romańska M. Odpowiedzialność administracyjna za naruszenie zbiorowych praw pacjenta. In: Barczak-Oplustil A, Sroka T, eds. Odpowiedzialność publicznoprawna. Tom 6. Warszawa, C.H. Beck, 2023: 1411–1418
7. Syska M. Komentarz do art. 59. In: Bosek L, ed. Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz. Warszawa, C.H. Beck, 2020
8. Regulamin organizacyjny dla Biura Rzecznika Praw Pacjenta. § 19 ust 3 <https://www.gov.pl/web/rpp/regulamin-i-schemat-organizacyjny> (access: 07.08.2023)
9. Act of 14 June 1960 – Code of Administrative Procedure (consolidated text Journal of Laws of 2023, item 775)
10. Syska M. Komentarz do art. 64. In: Bosek L, ed. Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta. Komentarz. Warszawa, C.H. Beck, 2020
11. Patients' Rights Ombudsman. Report on the fulfilment of patients' rights in the territory of the Republic of Poland (for the period from January 1 2020 to December 31 2020). <https://www.gov.pl/web/rpp/sprawozdanie-za-2020-rok> (access: 04.09.2023)
12. Patients' Rights Ombudsman. The report of the Patients' Rights Ombudsman on the fulfilment of patients' rights in 2021. <https://www.gov.pl/web/rpp/sprawozdanie-za-2021-rok> (access: 04.09.2023)
13. Zoń KM. Cywilnoprawne uwarunkowania udzielenia przez lekarza świadczeń zdrowotnych w modelu telemedycyny w prawie polskim. Warszawa, C.H. Beck, 2022
14. Judgment of the Voivodeship Administrative Court in Warsaw of May 26 2022, V SA/Wa 4013/21, Central Database of Judgments of Administrative Courts (access: 07.08.2023)