



ANALYSIS OF LEGAL ISSUES FACED BY THE VICTIMS OF MEDICAL SERVICES

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HUMAN RIGHTS CENTER



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INTRODUCTION

Throughout the course of several years, Human Rights Center provides free legal aid to victims of medical services. Although most of the cases were successfully finalized by the lawyers of HRC, in providing legal aid significant legal issues were identified hindering the protection of the rights of victims.

The present analytical document aims to assess the systematic deficiencies and legal problems outlined in the legal disputes involving citizens affected by medical services. The study demonstrates how important is to protect the right to health, the right to a fair trial, availability of a good health system and efficient investigative bodies.

The document discusses the right to health as provided by international and national laws; the most problematic cases processed by Human Rights Center are selected and described, based on analysis significant systemic and procedural flaws are identified. The paper underlines the totality of basic problems identified in the result of analyses of medical cases including the delayed proceedings for establishing the professional liability of the medical personnel; further, the cases of insufficiently strict measures applied to and lenient professional liabilities imposed on medical personnel when the tragic event occurs because of improper management of medical activities; further, the problem issues relating to conducting a forensic medical examination in unreasonable time and other issues.

The conclusion summarizes the legal problems. Furthermore, based on international law and judgments of the European Court of Human Rights, the paper reviews the positive obligations of the State.

Finally, the recommendations are provided through which HRC viewpoints elimination of the medical and legal problems described in the paper.

RIGHT TO HEALTH

The right to healthcare is enshrined in the norms of international law and also in national law. According to the Constitution of Georgia, all citizens have the right to affordable and quality health care services. The State must control the quality of medical services, the activities of the healthcare facilities; trade in medical drugs and other activities¹. For the above purposes, the Ministry of IDPs, Labor, Healthcare and Social Protection monitors the activities of medical facilities². Within the Ministry, the Agency for Regulating Medical and Pharmaceutical Activities

¹Constitution of Georgia, Article 28.

²Law of Georgia on Healthcare, Article 63.

is operable which is an entity under public law (hereinafter referred to as the Regulation Agency) and controls the quality of medical services provided to patients by legal and natural persons and takes measures laid down in the law when studying and reacting to the applications and complaints lodged by citizens³.

Each citizen of Georgia has the right to receive the medical services according to the professional and service standards accepted in the country⁴. In the course of such service provision, a contractual relationship takes place between the patient and the medical facility which should be based on the principles of good faith and justice⁵. When being treated in a medical facility, the harm to health caused by intentional or negligent actions should be compensated⁶, while the burden of proof to prove that the medical facility is not guilty of the damage lies with the medical facility itself⁷.

Consequently, the patient or his/her assignee may approach the court requesting the compensations for pecuniary and moral damages where the State failed to properly monitor and regulate the medical activities, and where a medical error action has violated the rights of the patient or where the medical facility operates with deficiencies. Further, the court may remedy the suspension or revocation of medical licenses to the personnel and oblige the State to change the medical and sanitary standards⁸.

Georgia ratified the European Social Charter in 2005. The Charter further enhances the rights enshrined in the ECHR in terms of social and economic rights. To ensure the effective exercise of the right to protection of health, Article 11 of the European Social Charter provides that the State must take appropriate measures designed to remove as far as possible the causes of ill health, to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health⁹.

According to the ECHR, the protection of the right to health enshrined in the European Social Charter is directly linked to the enhancement of the prohibition of torture and the right to life as provided by the ECHR¹⁰. This definition implies that the right to health care as assessed in the

³ Order №01-64 / “6” of the Minister of Labor, Health and Social Affairs of Georgia establishment the legal entity under public law - the State Agency for Regulating Medical Activities and approving the Regulation of the Agency: Paragraphs 1(1); 2(1); 2(3)(b); 2(3)(e)

⁴ Georgian Law on Patient Rights, Article 5.

⁵ Civil Code of Georgia, Articles 346.

⁶ Civil Code of Georgia, Articles 992.

⁷ Civil Code of Georgia, Articles 1007.

⁸ Georgian Law on Patient Rights, Article 10.

⁹ European Social Charter, Article 11.

¹⁰ European Convention of Human Rights, Articles 2 and 3.

European Social Charter additionally imposes a number of positive obligations on the State and once again emphasizes the importance of effective protection of this right¹¹.

States should ensure the availability of streamlined healthcare system capable to respond accordingly to the challenges and risks associated with health issues under human control¹².

PROBLEM CASES PROCESSED BY HRC

Despite the fact that the legislation ensures the right to healthcare, in practice there are frequent cases when the patient rights are violated on the one hand and the administration of justice becomes complicated on the other hand. HRC has been processing problematic disputes related to medical activities for years. The current paper assesses only the most problematic medical disputes.

- **CASE N1**

In 2016, the director of clinic Lancet (currently Vivamedi) spread information that allegedly some transplant specialists from Turkey were visiting the clinic¹³. In the same year, two couples applied to the clinic for a medical examination. The medical staff concealed from patients, donors and family members the information about the risks associated with liver transplantation and deceitfully assured them that they had permission from the board to perform liver transplant surgery. The director and the clinic staff in alliance with the director defrauded one of the patients acquiring from him GEL 9924. Further, they have deceitfully executed a contract with the second patient according to which the patient had to pay USD 40,000 to the lawyer of the clinic.

The liver transplant operation was performed by a surgeon without a Georgian State Certificate in any of the medical specialties. Both patients died as a result of liver transplant operations.

There are a number of violations evident in the case: Procedures necessary for transplantation were not observed; treatment was provided and record of medical manipulations was maintained in violation of the laws; the Law of Georgia on Medical Activities was violated providing that specialist of foreign countries may operate only under a permission issued by the Board for Professional Development¹⁴.

¹¹ [The Right to Health and European Social Charter](#), Secretariat of the ESC, 2009, p. 2

¹² European Social Charter: Conclusions XV-2, European Committee of Social Rights, 2001. Denmark, pp. 126-129; United Kingdom, p. 599

¹³ See article by [interpressnews.ge](#) from (26.01.2018); (last seen: 2/14/2023).

¹⁴ Georgian Law on Medical Activities, Article 11(5)

Such an operation should be conducted only by a doctor holding a proper license¹⁵. According to the Law of Georgia on Human Organ Transplantation, when the donor is a spouse of the recipient, the organ may be removed only following the approval by the Transplantation Board¹⁶. The director and medical staff of the clinic were also aware of the necessity to acquire the consent from the Transplantation Board before performing the surgery. Nevertheless, the operations were conducted without obtaining any permit. Thus, the medical facility has violated the Law of Georgia on Healthcare and failed to observe the standards, procedures and norms established by the law¹⁷. Consequently, two human beings have been slaughtered.

HRC approached the Regulatory Agency with a formal written request to study the facts of death of the patients. As a result, in November 2016, the regulation Agency prohibited clinic Lancet from transplanting organs.

Since the elements of the crime were evident in the case, HRC applied to the Prosecutor's Office of Georgia. The Prosecutor's Office in turn issued an arrest warrant against the managing partner of clinic Lancet under Articles 180(3) and 247(1) and the director was arrested for concealing the information about the circumstances creating threats to health and life of the patient and for defrauding the patient and acquiring thus sum of money. In 2017, Tbilisi City Court found the director guilty of the offense and ordered clinic Lancet to pay in total GEL 150,000 to the families of the deceased. The proceedings are launched also against the medical staff, however the persons involved in the surgery have disappeared.

- **CASE N2**

HRC provides legal aid to a father of a child of 8 who since the age of 3 months has been in a state of coma in palliative care within the intensive care unit of Iashvili Clinic.

In 2014, the infant of 3 months was hospitalized in Iashvili Clinic in the Intensive Care Unit with symptoms of extreme shortness of breath. Iashvili Clinic failed to take timely measures causing the deterioration of the health condition of the child. The delay in the necessary actions to be taken by the doctors, the incompetence and negligent approach resulted in coma of the child. As a result, since 2014, the family has been caring for a child left comatose.

According to the opinion issued by the Regulation Agency in 2016, some violations were identified under the Law of Georgia on Medical Activities¹⁸, the case was referred to the Board of Professional Development competent to determine the issue of professional liability against five physicians. In 2018, the Board specified the professional liability of four physicians. Out of them,

¹⁵ Law of Georgia on Human Organ Transplantation, Article 18 (f)

¹⁶ Law of Georgia on Human Organ Transplantation, Article 18 (g)

¹⁷ Law of Georgia on Healthcare, Article 53(3)

¹⁸ Georgian Law on Medical Activities, Article 74(2)

two doctors were given a letter of reprimand, while the medical license was suspended to one of them for two months and the same was suspended to another physician for one month.

The investigation is still going on studying the case of damaging the health of the child caused by negligence. The final decision to be adopted by the investigation depends on the complex expert examination which could not be issued for 5 years due to the problems of engaging an expert.

- **CASE N3**

In 2020, a 26-year-old woman suffering from gallstone was subjected to a gallbladder removal operation in the Central Hospital of Tbilisi. The patient's condition was getting worse the next day. Nevertheless, doctors instructed her to leave the bed and walk in the hospital ward. The lady was complaining to the medical staff about having intolerable pains and high temperature, however the staff failed to pay due attention to her. The young woman informed her family members about her unbearable condition through phone. After further deterioration of the condition, the patient was taken for the repeated surgery. The doctors informed the family members that they managed to restart her heart which stopped during the repeated surgery. Doctors asserted that the patient developed sepsis. However, the woman died comatose after fighting against death for several days.

HRC was waiting for a year for the respective opinions of the expert examination and the Regulatory Board. According to the opinion, the release of bile into the stomach continued, the surgery damaged the posterior wall of the duodenum, and biliary peritonitis was developed. The doctors failed to notice all the above. Further, some significant procedural violations are evident in the case including the inconstancies in the operative report and anesthesia documentation.

The investigation is still going on into the case death of the young woman. An expert examination has been scheduled, however no expert is willing to be involved in the examination. The experts of the relevant medical field refrain from participating in the examination because they feel solidarity with their colleagues. Because of the fact that alleged elements of the crime have been already identified, finding medical experts to contribute to the preparation of the opinion of the expert examination becomes even more difficult.

- **CASE N4**

In January 2018, a 13-year-old boy became comatose in the Marneuli Medical Center Adik after having been operated on gland removal. The boy's condition became so serious that medical staff had to transfer the patient to Tbilisi, Tsitsishvili Children's Clinic, but doctors failed to save the patient. An investigation on the fact of death is still going on in Marneuli Police Department. In September 2018, forensic medical examination was scheduled in Samkharauli National Forensic

Bureau but the main problem was to find experts for this. The investigation has repeatedly requested the Ministry of Justice to identify the experts, but every doctor refused to take part in the examination. Finally, thanks to HRC active involvement in the case, the experts were found, who would participate along with the experts of Samkharauli Bureau in the scheduled investigative action. Thus, the process of providing the forensic expert examination opinion took more than four years and was finalized only in March 2022. It took more than a year for the father of the victim to be acknowledged as a legal successor. Unfortunately, no persons are identified by the investigation to be held criminally liable.

The Regulatory Agency referred the case to the Professional Development Council to assess the case of juvenile death, so the Agency suspended the license to the doctor specialized in anesthesiology for 3 months and assigned the doctor to take 2 months of professional rehabilitation courses.

MAIN PROBLEMS IDENTIFIED THROUGH ANALYSIS OF THE MEDICAL DISPUTES

Following a close examination of the medical cases processed by HRC, some systemic problems are evident, among the problems must be mentioned the cases when disproportional professional liabilities were imposed on the medical staff as compared to the occurred results, further problems are linked with procrastinated provision of the opinions by the forensic medical examination and Regulatory Agency.

- **SYSTEMIC DEFICIENCIES IN THE ACTIVITIES OF MEDICAL FACILITIES AND INVESTIGATIVE BODIES**

Based on the experience of HRC in processing the medical cases, we may assume that there are a number of systemic problems linked to the mistakes of both the medical facilities and medical staff as well as the investigative bodies and criminal investigators.

Medical staff violated the law in a systemic manner. Patients may receive from medical careproviders comprehensive, timely and clear information related to planned prophylactic, diagnostic, treatment and rehabilitation services, associated risks and possible benefits¹⁹, however, in practice doctors often do not warn patients about the risks and effects of the procedures.

When carrying out medical activities, health care workers shall be guided by the norms of professional ethics acting only in the patient's interests which excludes acting with self-interest²⁰.

¹⁹ Georgian Law on Patient Rights, Article 18(1)(c)

²⁰ Law of Georgia on Healthcare, Article 30(1)(2)

However, **in practice, there are frequent cases when medical staff acts with personal commercial interests.** For example, in the case studied by HRC concerning the unlawfully performed liver transplantation operations, the doctors concealed from patients and their family members the risks associated with the operation, on the one hand, and deceitfully concluded with them agreements in order to obtain large sums of money. In 2022, HRC was processing another case involving the doctors using patients for personal commercial interests. . An IDP eligible for free medical care was requested by the Caucasus Medical Centre to pay GEL 4467.50 for two days of treatment. No medical interference was performed on the patient. The doctors requested the sum of money for general medical examinations conducted 20 times. According to the calculations provided by the Caucasus Medicine Center, the interval between the 20 examinations was 5 minutes costing GEL 134 each. The forged data clearly indicates that doctors were acting in self-interest.

HRC was studying another case revealing **the systemic problem of incompetence of medical staff.** For example, in one of the cases happening in 2017, the right leg (thigh) was amputated to a patient. After the operation, the patient suffered from breathing problems, however, the doctors improperly assessed the risks and because of ineffective intensive care the patient died. Another patient also fell victim to the incompetence of doctors when the patient suffered from coughing and breathing problems due to food aspiration. According to the general practitioner, the patient needed a permanent supply of oxygen, however, the need was ignored by the medical staff causing the hospitalization of the patient. Therefore, **we must assume that significant problems stem from frequent cases of misdiagnosis and consequently from wrong treatments.**

Further, the significant number of procedural violations in the medical field must be mentioned, meaning that quite often medical history is not maintained in a way to depict current and already conducted procedures. For example, in the case where a young woman died after the gallstone operation, some significant inconsistencies are evident between the operation report and anesthesia documentation.

Some systemic problems are also evident in the stage of investigation of the cases involving the patients with infringed rights. More specifically, the investigators do not possess enough knowledge and experience necessary to investigate medical cases complicating the possibility to formulate right questions and to push the investigation into the right direction. In practice, there are often cases when investigators are not interested in performing significant investigative activities, such as interrogation of medical staff as witnesses. For example, the medical nurses and assistant to the surgeons have never been interviewed in the case of the death of a minor following the gland operation in 2018. Therefore, even based only on the cases studied by HRC, we may assume the adequate quality of the investigation is not maintained with regard to the medical cases.

Stemming from the above. We may say that systemic flaws are evident both in the operation of medical facilities as well as that of the investigative bodies.

- **ISSUES RELATED TO DETERMINING MEDICAL PROFESSIONAL LIABILITY**

According to the Constitution of Georgia, the state is obliged to monitor all medical facilities and the quality of medical services in the country²¹. Thus, the activities of the medical facilities are monitored by the Ministry for IDPs, Labour, Health Care and Social Affairs²². While the state supervision over the medical activities is carried out by the same Ministry through the Professional Development Council²³. The activities of the Professional Development Council in terms of organizational and technical perspective is provided by the Regulatory Agency²⁴, which is a state agency founded and acting as a controlling body in order to achieve the above goals²⁵.

In cases where a medical error violates the patient's rights or a medical facility operates with deficiencies, the Law of Georgia on Health Care empowers the patient, his/her relative or agent to file a complaint with the body of healthcare management or other body of dispute settlement against a doctor, nurse, and other medical worker or against the medical facility institution²⁶. Thus, the Regulatory Agency is authorised to study the complaints lodged by the citizens²⁷, while based on the findings of the Agency the Professional Development Board is authorized to decide the issue of professional liability of the medical staff²⁸.

1) Delayed decisions

In practice, the process of determining the medical liability after the rights of the patient have been violated is procrastinated.

Although as a rule the Regulatory Agency timely retrieves from the medical facility the medical documents relating to the complaints, the process of examining the complaints and adopting respective decisions by the Regulatory Agency is rather procrastinated. Further, where the case

²¹ The Constitution of Georgia, Article 28 (2)

²² Law of Georgia on Healthcare, Article 63

²³ Georgian Law on Medical Activities, Article 66.

²⁴ Order №122/5 of the Minister of Labor, Health and Social Affairs of Georgia founding the Professional Development Board under the auspices the Ministry of Health and Social Affairs and approving its Regulations, Article 1.

²⁵ Order №01-64/5 of the Minister of Labor, Health and Social Affairs of Georgia founding the State Regulatory Agency LEPL and approving its Regulations", Article: 1 (1); 2 (2).

²⁶ Law of Georgia on Healthcare, Article 104.

²⁷ Order №01-64/5 of the Minister of Labor, Health and Social Affairs of Georgia founding the State Regulatory Agency LEPL and approving its Regulations", Article 2. (3)(c); 2. (4) (z⁴)

²⁸ Order №122/5 of the Minister of Labor, Health and Social Affairs of Georgia founding the Professional Development Board under the auspices the Ministry of Health and Social Affairs and approving its Regulations, Article 2. (k).

is referred to the Professional Development Board to determine the issue of professional liability of the physician, convening of the Board is delayed and consequently adoption of the decision.

The cases studied by HRC indicate that in total the adoption of the decisions by the Regulatory Agency and Professional Development Board for determining the professional liability is a long process. For example, on January 12, 2022, HRC approached the Regulatory Agency requesting to immediately study the actions of the medical workers in one of the cases. More than a year has passed since then, but the decision on professional liability has not yet been adopted.

It took on average six months to assess the complaints by the agents of deceased patients and adopt the decision determining the professional liability of the respective medical staff. On the face of it, six months is not such a long period, however due to the specific nature of some of the cases every day is crucial. For instance, the Regulatory Agency received the complaint in May 2019 regarding the patients deceased as a result of unlawful transplant operations, while the adoption of the decision to restricting the authorisation of the clinic to perform transplant operations was only adopted in November. For during the period every day there was a risk of increasing the number of new patients falling victim to the manipulation. It is noteworthy, that the party concerned may attend the meeting of the Board, however the party was never informed about the date of the meeting.

According to the order by the Minister of Labor, Health and Social Affairs of Georgia, the sessions of the Professional Development Board should be held at least once in 2 months²⁹, all the same, all things considered, the practical intensity of convening the sessions of the Professional Board is ineffective in terms of timely adoption of the decisions.

2) Improper professional liability

The professional liability envisaged by the law where the independent medical malpractice is carried out may include: Written reprimand issued against the physician; suspension of the license; revocation of the license; restrictions in prescribing certain medical drugs and other actions³⁰. The Professional Development Board, after studying each specific complaint, shall make decisions about what kind of professional liability to impose on the relevant medical staff.

On the examples of the cases studied by HRC, we may conclude that the kinds of professional liabilities ruled by the Professional Development Board do not correspond to the gravity of the offenses committed by the medical staff.

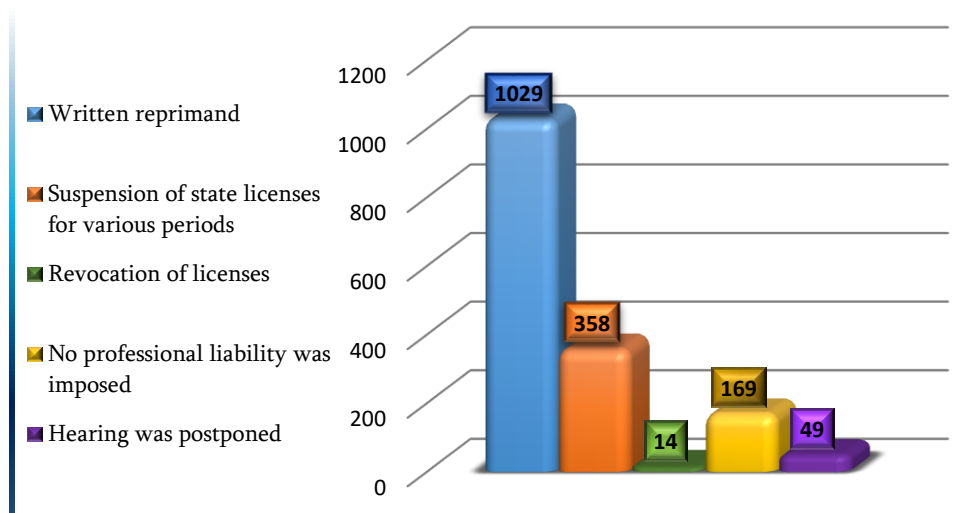
²⁹ Article 3(1) of the Order №122 / 5 of the Minister of Labor, Health and Social Affairs of Georgia founding the Professional Development Board under the Auspices of the Ministry of Labor, Health and Social Affairs of Georgia and approving its Regulations on the establishment of the professional and approval of its Regulations. (1)

³⁰ Georgian Law on Medical Activities, Article 74(1)

For example, when the minor of 13 died because of the failure of the medical staff, the Professional Development Board suspended the license for 3 months to the doctor forbidding him to perform activities in anesthesiology and obliged him to take 2-month professional rehabilitation courses. Moreover, in the case of the infant hospitalized in Iashvili Clinic whose health was severely damaged due to the failure of the medical staff as a result of which the patient has been comatose for 8 years now, the maximum liability action taken by the Board was suspending the license to one of the doctors for 2 months. Such professional liability actions prove disproportional against the consequences caused by the delinquency of the medical staff. Furthermore, such decisions place the life and health of all potential patients at risk.

For more visibility, HRC requested statistical information from the Regulatory Agency regarding the decisions adopted by the Professional Development Board from 2017 to 2022. According to the information obtained from the Agency, in the last six years the Board has reviewed 1619 cases in relation to 1618 doctors. From the types of liabilities imposed on the medical staff: Written reprimands were issued against 1029 doctors; licenses were suspended for various periods to 358 physicians; while the license was revoked only to 14 doctors. According to the decision by the Board, no professional liability was imposed on 169 doctors, while the hearing of the issues against 49 physicians was postponed. Stemming from the above, we find that in 86% of the decisions on liability during the last 6 years the medical staff were given written reprimands as the most frequent actions by the Board (Charter N1).

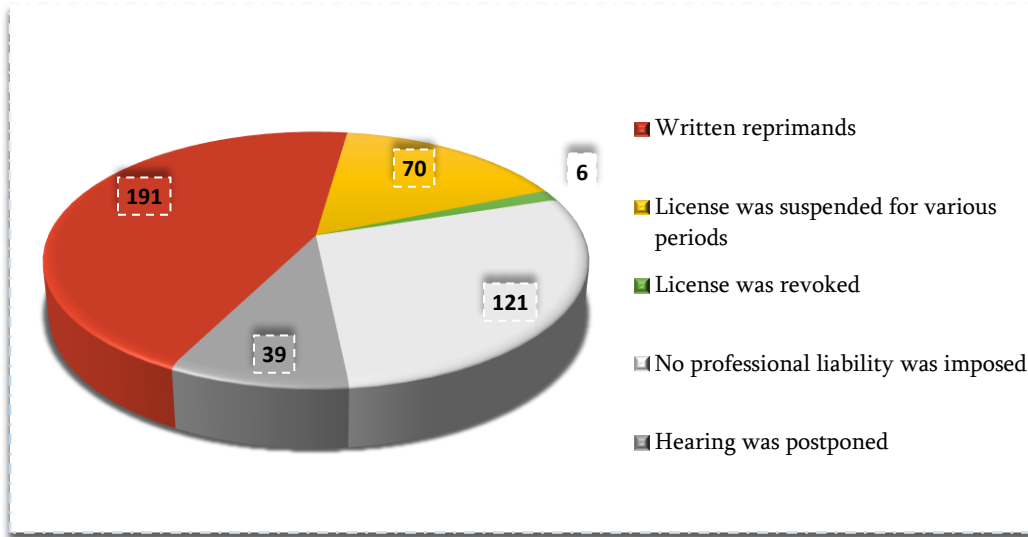
Charter N1. Decisions by the Professional Development Board determining professional liabilities to doctors in 2017- 2022



Only in 2022 the professional Development Board examined 427 cases of professional liability from which the liability was imposed only on 267 doctors. From which: 191 doctors were given written reprimands, licenses were suspended to 70 doctors for various periods and licenses were

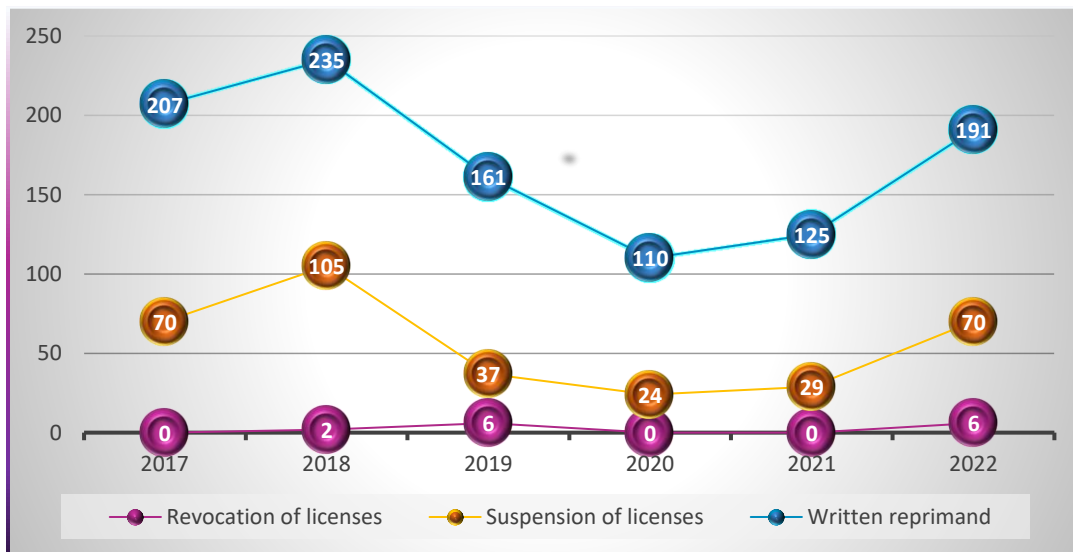
revoked to 6 doctors. In rest of the cases: Hearing of 39 cases were postponed, while no liability was imposed on 121 physicians (Charter N2).

Diagram 2. Decisions adopted by the Professional Development Board determining professional liabilities to doctors in 2022



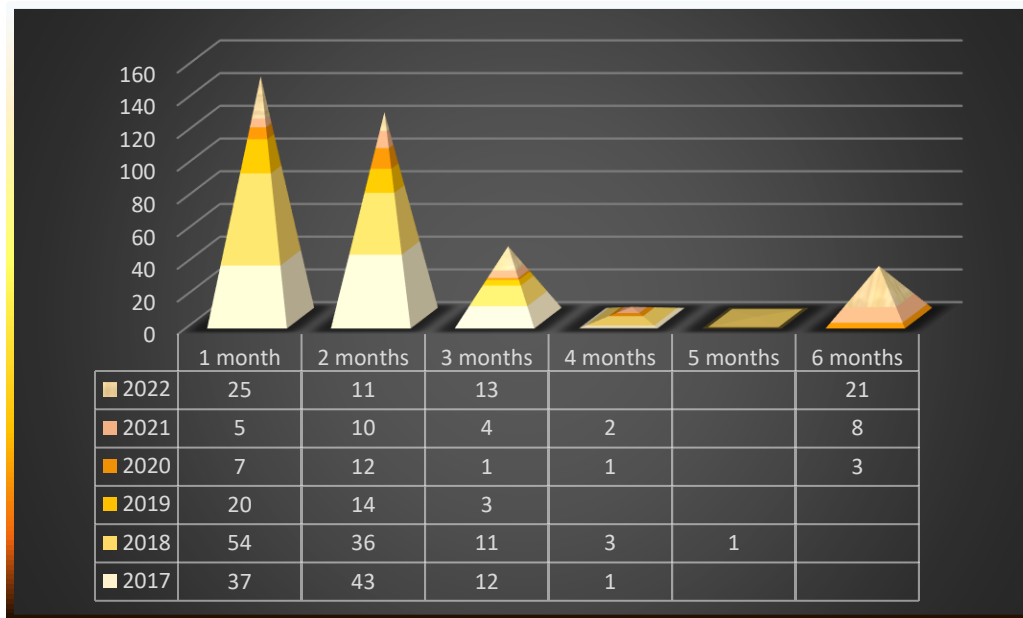
Particularly small is the number of decisions revoking the license by the Board between 2017-2022 amounting only to 0.9% of the liability actions imposed on the medical staff. It is noteworthy that in the course of three years -2017, 2020 and 2021, license was revoked to no medical professional as an action of professional liability. For the other three years, only in 14 cases the license was revoked to medical professionals (Charter N3).

Charter N3. Types of professional liabilities imposed on doctors by the Professional Development Board between 2017 and 2022



As already mentioned, in 2017-2022, following the decisions of the Professional Development Board the license was suspended to 358 doctors for various periods. From these, the license was suspended for a month to 148 doctors, 126 doctors for two months, 44 doctors for three months, 7 doctors for 4 months, 1 doctor for five months, and 32 doctors for 6 months. It is noteworthy that the duration of suspension of the license to the doctors in 88% of the cases was for one to three months. This means that most of the decisions are aimed at suspending the state license for as short a time as possible (Charter 4).

Charter N4. Cases of suspension of the license by the Professional Development Board by various period for 2017-2022



Despite the fact that the sanctions imposed by the Professional Development Council are already small not corresponding to the extent of independent medical malpractice, in reality, there are frequent cases when enforcement of the decisions imposing such minimum liabilities never takes place.

Lawyers of HRC monitored that doctors whose licenses have been temporarily suspended are still in service and usually continue their medical activities. There is also another contradiction when a doctor considers the suspension of the license as an opportunity to take a leave.

Since the Regulatory Agency does not provide monitoring of the doctors who were sanctioned for misconduct, the risk is high that the medical staff would still act with negligence. Therefore, we may assume that the State fails to provide proper supervision and regulation of medical activities.

- **FORENSIC MEDICAL EXAMINATION CONDUCTED WITH UNREASONABLE DELAY**

By an order of the Minister of Labor, Health and Social Affairs of Georgia, the procedure for conducting forensic medical examination and rules for practicing medical staff is prescribed. According to the order, the forensic medical expert is a person with special knowledge, skills, and experience assigned by the court to provide examination and produce an opinion. The forensic medical expert provides assistance to the court in identifying, examining and showing evidence³¹. On the other hand, the forensic medical examination includes the forensic examination of the person / body, identifying the nature and severity of injuries, and other issues³².

The opinion of the forensic medical examination has a significant role in resolving civil disputes as well as identifying the culpability of the person in criminal cases. Moreover, there are cases in practice when investigations are on hold, on the other hand, and the courts refuse to admit the case for court hearings without the opinion of the relevant expert.

Participating in the forensic medical examination is voluntary for medical specialists, meaning that there is no obligation imposed on any person to be engaged in the work of the Commissions of the Forensic Bureau. Although some qualified doctors of the relevant field are considered as potential experts, the doctors decide themselves whether to be engaged or not in the examination. Thus, the current regulations and established practice for scheduling the expert examination makes the possibility to prepare an opinion of medical expert examination completely dependent on the good will of the doctor.

The review of the cases processed by HRC proves that doctors quite often refuse to participate in forensic medical examinations. The reason for this is usually a desire to maintain a good relationship with a colleague. Colleagues are trying to protect the honor to each other and not to reveal their medical errors. Such a behavior may serve as a guarantee to feel safe from own mistakes in the future. All the same, although the collegial relationships should be based on the principle of observing the professional values including the willingness to participate in any kind of forensic medical examination, in practice, we have a different picture when on the one hand the patient rights are violated while on the other hand we have difficulties in finding medical professionals to identify the violations through forensic medical examinations.

Procedural rights are enshrined in the Constitution of Georgia stipulating that every person may apply to the court to protect their interests on the one hand and on the other hand to enjoy the

Order of the Minister of Labor, Health and Social Affairs of Georgia regarding the Procedure for conducting Forensic Medical Examination and Rules for Practicing Medical Staff, Article 2.

³²Order of the Minister of Labor, Health and Social Affairs of Georgia regarding the Procedure for conducting Forensic Medical Examination and Rules for Practicing Medical Staff, Article 1.

right to a fair trial held within a reasonable time³³. The same is provided by the European Convention on Human Rights, according to which every person shall enjoy the right to hearing of his case by an independent and impartial court in a reasonable time³⁴. The reasonable time shall commence from the moment the case is submitted to the court³⁵ and shall end after the decision is rendered by the court³⁶.

Following the review of the cases by HRC, it is evident that certain procedural actions are not taken in a timely manner and also the administration of justice is delayed. For example, in connection with the case of a 3-month-old infant whose health was damaged due to the negligence of the doctors in 2014, up to the date it is still impossible to make a final decision by the investigation, as the process of finding a medical expert to participate in the relevant investigative actions is on for 5 years. We have the same situation in 2020 with the case of a young woman deceased as a result of a gallbladder removal surgery revealing the alleged elements of crime committed by the medical staff so clearly that the professionals of the relevant field specialists acknowledge the culpability of the colleague even before engaging in the expert examination and refuse to be involved in the process. Unfortunately, the same problem was identified in the case of the minor of 13 dying after gland operation in January 2018, while the opinion of the forensic medical examination was prepared only in March 2022.

The above problems cause not only the delay in preparation of the expert opinions in the stage of investigation but also hinder the administration of justice in general. Under the norms of international law, the European Court of Human Rights states that hearing the case in reasonable time is a general principle obliging the contracting State to organise its legal systems so as to ensure compliance with the requirements of Article 6 (1) of the ECHR³⁷.

CONCLUSIONS

In assessing the quality of healthcare in the country, one of the primary indicators is the totality of causes leading to death of humans. In order for the system to be considered streamlined, the indicator must correspond to the minimum standard at the European level³⁸. Based on the analysis of the assessed cases, there are frequent instances of death of patients as a result of elementary operations, such as the removal of the gallbladder or gland surgery.

³³Constitution of Georgia, Article 31

³⁴European Convention of Human Rights, Article 6 (1).

³⁵ König v. Germany, (ECtHR) 1978, para. 98

³⁶ Neumeister v. Austria, (ECtHR) 1968, para. 19

³⁷ Bara and Kola v. Albania, (ECtHR) 2021, para. 94

³⁸ European Committee of Social Rights, European Social Charter Conclusions 2005, pp. 336-338

Further, the assessed cases show the medical staff often fails to handle the condition of the patient due to low competence; consequently, the medical staff fails to take the effective intensive care measures against the symptoms facilitating the increase in fatal cases. Stemming from the above, the quality of medical care is not adequate to the international health care standards and requires special measures from the relevant agencies of the State.

The Professional Development Board fails to take appropriate measures and react in time against the serious flaws in the activities. In such cases, the professional liability of physicians is usually limited to written reprimands or suspension of license for 3 months. Meanwhile, the process of identifying professional liability takes on average six months. This puts at risk the rights of all potential patients to life and health on the one hand, while on the other hand, encourages incompetent attitudes toward the work by the medical staff.

At the stage of investigation, when the patient rights are already violated and the forensic medical examination cannot be conducted due to the failure of finding the relevant experts, the procedural rights guaranteed by the Constitution and the ECHR are violated and reasonable timeframes for administering the justice are not observed. Although the hearing of the case in the court could be complicated, procrastinated procedural inactivity may not be justified³⁹. Moreover, the complexity of the case may explain some procrastinations in procedural actions, still this could not be served as an excuse for delays with unreasonable time of the court proceedings⁴⁰. Therefore, in the disputes where HRC is involved, the procrastination of the cases in the stage of investigation due to the failure to engage the experts may not be accepted and justified.

In each particular case, the rationality of the duration of the proceedings should be determined by the overall assessment of the facts available in the case files⁴¹. For example, even where the every stage of case proceedings is conducted at an acceptable pace, but the total duration of the process exceeds the limits of hearing the case in a reasonable time, the State shall be obliged to change the approach and ensure the organization of the judiciary in a way to effectually observe the right to a trial held in a reasonable time as enshrined in Article 6 of the ECHR⁴².

³⁹ *Adiletta and Others v. Italy*, (ECtHR) 1991 para. 17

⁴⁰ *Rutkowski and Others v. Poland*, (ECtHR) 2015, para. 137

⁴¹ *Boddaert v. Belgium*, (ECtHR) 1992, para. 36

⁴² *Dobbertin v. France*, (ECtHR) 1993, para. 44; *Francesco Lombardo v. Italy*, (ECtHR) 1992, para. 23

RECOMMENDATIONS

- The most important thing is to increase the quality of the investigation through intensive trainings involving in order to avoid the following common mistakes in the proceedings of the medical disputes: Refraining from interrogating necessary witnesses, formulating significant questions in wrong way, etc.
- Furthermore, it would be necessary to empower the Professional Development Board to monitor the enforcement of the decisions imposing professional liability on the medical staff, as there are frequent cases in practice when the doctors with suspended license appear to the work place and continue the medical practice as a regular thing. Therefore, it is necessary for the decision by the Board to carry proportional strictness, while on the other hand some measures must be taken to control the enforcement of the decision adopted by the Board.
- In order to solve the problems of delayed forensic medical examinations, it would be necessary to create an independent body composed from independent medical professionals capable to engage medical experts in forensic examinations in a shortest time without any obstacles. The availability of such a body must facilitate forensic medical examination conducted in a timely manner and administration of justice in a reasonable time.