INTERNATIONAL SCIENTIFIC CONFERENCE

LAW BETWEEN THE IDEAL AND THE REALITY

THEMATIC CONFERENCE PROCEEDINGS

2023.

University of Priština in Kosovska Mitrovica
FACULTY OF LAW

INSTITUTE FOR COMPARATIVE LAW
Belgrade

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DOCTOR'S FREEDOM TO CHOOSE THERAPY, BETWEEN IDEAL AND REALITY-LEGAL CHALLENGES DURING *SARS-COV-2* PANDEMIC

Summary

The COVID-19 pandemic has brought numerous challenges for all professions. However, healthcare professionals have been under the greatest pressure. From greater exposure to the risk of infection, injury or even death in the fight against COVID-19, to the inability to adequately provide medical care to the patient due to lack of adequate therapy or time to devote to each patient individually. In a situation where patient mortality is increased and when the circumstances caused by the pandemic raised the question of timely obtaining protocols for assessment, triage, testing and treatment of patients, as well as accurate instructions on providing patients and the public with information concerning SARS-CoV-2 virus prevention, certain healthcare professionals, looking for a way to help patients fight COVID-19, made decisions that needed to be legally examined. Therefore, in this paper, the authors will use the example of the use of the drug "Ivermectin" during the pandemic to analyze the legal framework of the freedom of choice of therapy that a doctor has when treating a patient. The authors will conclude that the bottom line of responsible choice of therapy is conscientious weighing of benefits and risks in each specific case, after the general conditions of performing medical activity have been met, and that the doctor is obliged to act with due care required by the medical standard. From the legal point of view, the law does not determine what and how doctors should act, but only checks whether they act in line with what and how their profession requires.

Key words: ethics, COVID-19 pandemic, doctor’s responsibility, Ivermectin, Serbian Medical Chamber.

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1. INTRODUCTION

All future books on epidemiology history will surely mention 2020, and the COVID-19 pandemic will be discussed as one of the most significant health challenges ever. According to data from the Institute for Public Health of Serbia, the World Health Organization confirmed the transmission of the SARS-CoV-2 virus between humans on January 23, 2020, and declared the pandemic on March 11, 2020 (Report on Infectious Diseases in the Republic of Serbia for 2020 of the Institute for Public Health of Serbia; 2020, 27). The first confirmed case of the infectious disease COVID-19 in the Republic of Serbia was registered on March 6, 2020, and an epidemic of greater epidemiological significance was declared on March 19, 2020. Based on the data provided by the World Health Organization, at the beginning of December 2021, over 267 million confirmed cases of the infectious disease COVID-19 and over five million deaths were registered throughout the world (Report on Infectious Diseases in the Republic of Serbia for 2020 of the Institute for Public Health of Serbia; 2020, 27 and 28). Today, three years later, although the number of infected and deceased is decreasing and many countries are lifting protective measures against covid, the World Health Organization says that "the pandemic may not end until the end of 2023" (UN News, 2022).

The suffering of millions of people around the world, death and numerous medical challenges have resulted in many lessons. We can say that the COVID-19 pandemic presented a public health crisis that made it difficult to respect the right to health (Sándor, 2021, 385). Moreover, responses to the pandemic have caused significant dilemmas in the protection of a wide range of human rights that are fundamental to the physical and mental health and social well-being of the individual. In order to draw ultimate lessons from health policy and epidemiology, it is necessary to collect sufficient data, which requires some time. Nevertheless, at least when it comes to the Republic of Serbia, some lessons had to be learned during the pandemic itself. The aim of this paper is to explain, through the example of the use of the medicine "*Ivermectin*" during the COVID-19 pandemic what the right to doctor’s freedom to choose the therapy implies and limitations of that freedom.

2. LEGAL CHALLENGES CAUSED BY DECLARATION OF PANDEMIC

The legal situation in Serbia during the pandemic was significantly determined by the state of emergency that was declared on March 15, 2020 (Decision on Proclamation of State of Emergency, 2020). The decision to declare a state of emergency was made by the President of the Republic, the Speaker of the National Assembly and the Prime Minister, and all measures deviating from the human and minority rights and freedoms guaranteed by the Constitution were prescribed by the executive power. The Constitution of the Republic of Serbia allows that during a state of emergency, the Government can prescribe measures deviating from certain human and minority rights guaranteed by the Constitution, among

which are the right to secrecy of letters and other means of communication, protection of personal data, freedom of opinion and expression, freedom of the media or the right to information (Constitution of the Republic of Serbia, Art. 99). The decision to declare a state of emergency was preceded by the Decision to declare the disease COVID-19 caused by the SARS-CoV-2 virus an infectious disease, which the Minister of Health used to issue an Order on Prohibition of Gatherings in the Republic of Serbia in closed public spaces, based on Article 52 of the Law on the Protection of the Population from Infectious Diseases (Order on the Restriction and Prohibition of the Movement of Persons on the Territory of the Republic of Serbia dated 12.03.2020; Law on the Protection of the Population from Infectious Diseases, art. 52).

Less than two months later, on May 6, 2020, the National Assembly abolished the state of emergency in Serbia, and all measures that deviated from constitutionally guaranteed human and minority rights during the state of emergency ceased to apply (Decision on Lifting the State of Emergency, 2020). Among others, the Decree on measures during a state of emergency, which stipulated the largest number of restrictions on human rights, ceased to be valid, after which the regular legal regime continued to be fully applied.[1] Nevertheless, the fact that Serbia was in a state of emergency certainly influenced the way legal norms were interpreted in the given circumstances. We will mention only a few situations: the unconstitutional introduction of a state of emergency, disproportionate measures restricting freedom of movement, which in the case of elderly citizens according to international standards can be characterized as deprivation of liberty, attempts to centralize information by adopting the Conclusion prohibiting the publication of information from any source other than the official one, the limitation of rights to a fair trial, the possibility of double punishment for disobeying the movement ban measures are just some of the measures that directly violated the principles of the rule of law and human rights (Belgrade Center for Human Rights, 2020, 22). Measures that were supposed to provide clear results in suppressing the spread of the virus, but also clear and unambiguous instructions to citizens on how to behave in such a situation, were, unfortunately, more adapted to the political than to the epidemiological situation in the country, which will prove to be an extremely irresponsible move which led to a multiple times higher death toll during the pandemic (Baletić, 2022).

[1] On May 6, the National Assembly adopted the Law on the Validity of Decrees passed by the Government with the co-signature of the President of the Republic during the state of emergency, which, in the first article, determines which decrees passed during the state of emergency cease to be valid. It is prescribed which decrees remain in force until the adoption of the corresponding laws. Althoughthe decrees in question are mostly related to the economy, it is envisaged that the Decree on the Application of Deadlines in Administrative Procedures during the state of emergency will also remain in force.

According to official data, since the beginning of the pandemic in Serbia, more than two million people have been infected with the corona virus, more than 17,000 have died, and more than 12 million people have been tested (Statistical data of the Ministry of Health on the COVID-19 virus in the Republic of Serbia, p.1.). More than 3 million people (about 47 percent) received both doses of the vaccine (Vaccination against COVID-19 in the Republic of Serbia, p.1). Although vaccination against COVID-19 was started during the pandemic, conspiracy theories, a strong anti-vaccination movement, slow distribution of vaccines, tests and great pressure on health care contributed to the rapid spread of the virus. At the beginning of the pandemic, there was talk of a lack of beds in the intensive care units, but it soon became clear that there is not so much a shortage of equipment and medicines as of experts, i.e. nurses and doctors. Only from March 2020 to February 7, 2021, 89 doctors, 13 dentists and two pharmacists died in Serbia as a result of the corona virus - 104 in total, according to the data of the Union of Doctors and Pharmacists of Serbia (Union of Doctors and Pharmacists of Serbia, 2022, p.1). These data pointed to the fact that the mortality of health professionals from COVID-19 in Serbia is higher than in the countries of the region. However, it has also been shown that a certain number of doctors not only do not want to be vaccinated, but also actively participate, via social networks, in the anti-vaccination campaign (Radio Free Europe, 2022). A certain number of doctors also decided to participate in various forums and Viber groups which promoted the use of the medicine *Ivermectin*, a medicine which, when it comes to the treatment of COVID-19, is still in the clinical phase of testing as part of COVID-19 therapy (BBC News in Serbian, 2022).Several circumstances were disputable: the fact that health professionals recommend a medicine that is primarily registered in veterinary medicine for the treatment of COVID-19; the way in which they marketed that therapy, that is, information about the use of *Ivermectin* among citizens - outside the doctor's office; and the timing - in the very midst of the pandemic. Therefore, in the following part, we will explain the limits of doctors’ freedom to choose the therapy for the patient, using the example of the "*Ivermectin* case".

3. HOW *IVERMECTIN* BECAME LEGAL ISSUE

When the media announced that there is a Viber group "Doctors and parents for science and ethics - *Ivermectin* recommendations" which includes about 11,000 members and in which some Serbian doctors and some professors of the Faculty of Medicine of the University of Belgrade share scientifically unfounded information and advice about the use of the medicine *Ivermectin* for the treatment of COVID-19, it took almost a year for anyone from the competent institutions to react. *Ivermectin* is a medicine that is on the "D" list of medicines of the Republic Health Insurance Fund (RHIF), which means that it belongs to the group of unregistered medicines that do not have a license to be sold in Serbia, and are necessary for diagnosis and therapy (Valid "D" list of medicines RHIF, 2022).In Serbia, it is registered for both human and animal use, and *Ivermectin* tablets are prescribed to people

exclusively for the treatment of certain skin diseases, and in that case it is given only with a prescription, at the expense of the RHIF. However, during 2021, citizens of Serbia bought it "illegally", in agricultural pharmacies but also in some regular pharmacies and consumed it to treat the Coronavirus. What particularly contributed to the popularity of *Ivermectin* was the aforementioned Viber group, which included several dozen doctors and where the doctors themselves claimed that the medicine had helped them personally.

In a large number of countries, this medicine was in great demand for the treatment of Covid-19, so the health authorities in the United States of America[2], Great Britain and the European Union conducted numerous studies and determined that there is not enough evidence for the use of this medicine against COVID-19, and the United States Food and Drug Administration (FDA)[3] (Official announcement FDA, 2021), the European Medicines Agency (EMA) (Official announcement EMA, 2021), the World Health Organization (WHO) (Official announcement WHO, 2021), and other leading scientific communities around the world unanimously appealed not to use *Ivermectin* to treat COVID-19 (Alam, M. T. et al. 2020, 2; Vučić, 2021, 1). *Ivermectin* is therefore not approved for the treatment of COVID-19 patients both in Serbia and in the world by any relevant official health institution or agency. Despite this, thousands of supporters in Serbia, including numerous doctors and many anti-vaccination activists, continued to vigorously advocate the use of *Ivermectin* without suffering consequences from the competent institutions, and certain pharmacies, for financial and other reasons, sold this medicine to citizens without requiring a prescription, and often actively participated in its promotion without any scientific grounds.Finally, in November 2021, the Faculty of Medicine in Belgrade announced that *Ivermectin* is not effective in the treatment of COVID-19, referring to the expert opinions of the officials of the Institute of Microbiology and Immunology of Serbia and the Clinic for Infectious

[2] It is true that *Ivermectin* is included in various clinical trials around the world, testing its effectiveness in destroying the coronavirus. However, the US Food and Drug Administration states that none of these studies have so far confirmed its effectiveness. Some studies have even been overturned, namely the largest and most "revolutionary" one, which claimed that *Ivermectin* significantly reduces mortality. The largest and highest quality study published so far on *Ivermectin* is the TOGETHER trial from McMasters University in Canada and it showed that there is no benefit from this medicine in the fight against COVID-19. The British BBC, dealing with this issue, states that more than a third of a total of 26 large studies on the use of the medicine for the treatment of COVID-19 were found to "have serious errors or signs of potential fraud", and that none of the others show convincing evidence of effectiveness.

[3] The US Food and Drug Administration (FDA) has approved Ivermectin for human use to treat certain types of parasites, such as those that cause river blindness, an infection transmitted by a certain species of river fly. The FDA also points out that medicines for animals are different from medicines for human use because the concentration of the medicine used to treat animals such as horses or cows is much stronger. The FDA also lists side effects that can occur when using ivermectin: rash, nausea, poisoning, vomiting, dizziness, stomach pain, facial swelling, diarrhea, etc.

Diseases (official announcement of the Institute of Microbiology and Immunology of Serbia and the Clinic for Infectious Diseases, 2021). At the same time, the Medical Chamber of Serbia (hereinafter: MCS) initiated proceedings before the courts of honour of the MCS against 18 doctors on reasonable suspicion of advising and treating patients suffering from COVID-19 with the medicine *Ivermectin* (Official announcement of the MCS, 2021).The MCS initiated the procedure ex officio, following a report from the health inspection. Unfortunately, the public has not yet been informed about the outcome of that procedure. Therefore, in the following part, we will explain what was disputed in this case from a legal point of view.

4. DOCTOR'S FREEDOM TO CHOOSE THERAPY AND ITS LIMITATIONS

The problem of determining a doctor's freedom to choose therapy is one of the more sensitive issues of medical law, which frequently causes serious disputes between doctors and lawyers. Each therapy aims to cure the patient. Causal therapy, which acts on the cause of the disease itself, is usually considered the most effective. When this is not possible, symptomatic therapy is applied, aimed at eliminating the symptoms of the disease. Therapeutic procedures may differ according to the causes of the disease. On the other hand, surgical treatment differs from orthopaedic treatment or the application of a specific regimen, medications, etc. (Đurđević, 1998, 227.). Which therapeutic method will give the most adequate result depends on the circumstances of the case. In principle, the freedom of a doctor to choose a therapy is based on the freedom to perform doctor's duty (Simić, 2019, 58 and 59).

The right of every citizen to health care and the right of the state to legally regulate the health care of the population, set limits to any arbitrariness of doctors. When choosing between several possible treatment methods, the doctor must, on the one hand, weigh the chances and risks, taking into account the physical, psychological and social characteristics of the patient, and on the other hand, evaluate future events, the course of which often depends on the uncertain occurrence of numerous other events, whereby experience teaches us, as Radišić states, that they are possible or even probable, but not completely certain (Radišić, 2017, 27). The nature of such extra-legal and prognostic elements does not allow their normative definition, and justifies the acceptance of the existence of a free space for the doctor to decide. The most that the legislator can objectively do is to regulate the external framework in the therapeutic freedom of the doctor, with the eventual ban of a particular possible method.

Doctor's freedom to choose therapy also has its contractual basis. The subject of that contractual relationship, except exceptionally (for cosmetic surgeries), is not the result of the work, but the work itself (Simić, 2019, 64 and 65). Therefore, by the contract, the doctor does not guarantee that the patient would be cured, or the absence of undesirable side effects, but only that they will perform the necessary medical procedures according to the

rules of the profession. The doctor proposes and implements procedures that are necessary for reliable diagnosis and treatment that is in accordance with the principles of medical ethics and the principles of humanity, conscientiously and with due care (Code of Medical Ethics of the MSC, Article 4).The freedom to choose therapy is therefore an integral part of the doctor's main contractual obligation to treat the patient. On the other hand, the Law on Health Care prescribes where the patient is treated; more precisely, that the provision of health care by a health professional is prohibited outside a medical institution, i.e. private practice (Law on the Protection of the Population from Infectious Diseases, Art. 160, Paragraph 2), and that if a health professional acts contrary to that position, the competent chamber of health professionals will revoke the health professional's license, in accordance with the law. Therefore, the prerequisite for treatment and the choice of any therapy is that the treatment, i.e. provision of health care is carried out in a health institution, i.e. private practice. The law does not recognize social networks as a place where therapy can be prescribed to a patient or as a place to treat patients.

From the point of view of modern medicine, and bearing in mind the dynamic development of medical science and technology that constantly makes new procedures and means of treatment available to doctors, it is understandable that the doctor is the one who, as a rule, determines the type and scope of their actions. Therefore, the doctor, based on their medical knowledge and experience, decides on the method of treatment. In their work, the doctor is obliged to adhere to the valid standards of medical science and ethical principles, within which they are free to choose those methods of prophylaxis, diagnostics, therapy and rehabilitation that they consider the most effective for the specific patient (Code of Medical Ethics of the MCS, Article 44, par. 2). The doctor's duty to apply only proven and scientifically proven methods does not mean that they must be guided *solely* by the ruling point of view within official medicine. Of course, this does not mean that they have the right to deviate from the standard method of treatment and not take into account the proven findings of medical science. The doctor must therefore have a real basis for the application of the method in whose effectiveness they are convinced.

Broad freedom of choice of therapy necessarily requires specific obligations of the doctor regarding their due care, which should minimize harmful effects on the patient and ensure compliance with minimum quality standards of treatment. Those standards, which depend on the rules that apply in the specific field of medicine, require taking into account both recognized professional knowledge and new medical discoveries. Every decision the doctor makes on the application of a certain therapeutic procedure implies not only their good knowledge, but also expert knowledge of other possible measures.The doctor acts with due care only if they made a decision knowing both the risks and benefits of the method they opted for, as well as the characteristics of other methods that came into consideration (especially generally recognized and attested ones). Even a doctor who gives priority to a certain therapeutic procedure must verify in each specific case whether they should choose another method of treatment, which would increase the chances of healing and reduce the

risks for the patient. If none of the more recognized treatment methods promises better chances of healing, the doctor is obliged to choose the one that is the least risky and painful, that is, in case of equally risky methods - the one that has the best odds of success. Finally, once they have already decided on a certain therapy, the doctor is obliged to carry it out without any contradictory actions.

The doctor's freedom of therapy is therefore not limitless. Jurisprudence set narrow limits to this freedom in order to guarantee a minimum medical standard and protect the patient from therapeutic adventures (Franzki, 1994, 173; Radišić, 2017, 28). True, the courts do not interfere in disputes between doctors who represent the views of different schools of medicine. However, it can still be said that the following legal point of view is valid: the more certain the knowledge of medical science, and the more reliable the successful outcome of a standard therapeutic procedure, the more the doctor is bound to it and has a stronger obligation to state the reasons why they seek to digress from it (Franzki , 1994, 173; Radišić, 2017, 28).The medical standard does not always include only one single rule of correct behaviour, but may also indicate the possibilities of different treatment methods. The doctor is free to choose those diagnostic and therapeutic measures that they believe are the most appropriate and effective for the specific patient. They do not always have to choose the "safest path," but a greater risk must have its justification in the particularities of the specific case or in more favourable prognosis of healing (Laufs, 1999, 626; Radišić, 2017, 28).The doctor's freedom of therapy has its limits where the superiority of another procedure is generally recognized. Not applying it in such a case would be a mistake that even the patient's consent could not rule out (Rumler-Detzel, 1998, 1009; Radišić, 2017, 28). In principle, a doctor can also apply new treatment methods that are still in the testing phase, if they are able to justify it by responsibly weighing the chances and risks for the patient (Steff, Pauge, 2006, 93; Radišić, 2017, 28). On the other hand, if the new method is less risky, if it burdens the patient less or offers a better chance of healing, and the medical science does not essentially dispute it, then the outdated method no longer meets the quality standard and its application should be considered a mistake (Jaziri R, Alnahdi S.,2020, 7; Radišić, 2017, 28). Also, the doctor must be aware of the limits of their professional abilities and capabilities and should not exceed those limits (Code of Medical Ethics of the MCS, Article 12). The doctor also has the right to refuse treatment and refer the patient to another doctor if they believe that they are not skilled enough or do not have the technical capabilities for successful treatment, or if the patient refuses to cooperate, except, of course, in the case when it is necessary to provide emergency medical assistance (Code of Medical Ethics of the MCS, Art. 57).

Therefore, we can say that the medical standard in the actions of doctors during the treatment of a patient does not oblige doctors to unconditionally respect the standard of treatment, because that would be incompatible with the principle of freedom of choice of therapy methods (Laufs, 1999, 627). Deviation from the standard is not characterized as an error in the case when the doctor considers that the condition of the patient requires it. Blind

adherence to a medical standard may even constitute medical malpractice. According to the German theory, the medical plausibility of the reasons for deviating from the standard is a decisive factor (Hart, 1998, 13; Radišić, 2017, 28). As Radišić states, the freedom to choose a therapy and the space for evaluation are necessary both for the protection of the patient and the doctor, because there is no standard patient, with a standard disease, who could only be cured by a standard doctor, with a standard procedure" (Radišić, 2017, 28).

As a rule, the doctor resorts to deviations from the recommended medical standard when adjusting the therapy to the established diagnosis. In order to apply an uncommon method of treatment, it is necessary that the doctor not only informed the patient about it, but also that this method of treatment became the content of the doctor-patient contract on treatment (Judgment of the German Federal Supreme Court of 23.09.1990. p. 633.). From the point of view of the doctor's responsibility, the permissibility of such deviations is assessed according to the same rules that apply to the so-called experimental treatment, i.e. the application of a new therapy that has not yet been sufficiently tested (Radišić, 2017, 28; Stjepanović, B, Čović, A., 2022, 171).The basic assumption in the admissibility of experimental treatment lies in a balanced ratio of benefits and risks. It starts from the severity of the disease and the prospects for its healing. Experimental therapy can be accessed only after examining the patient, taking anamnesis, obtaining informed consent from the patient and providing information about alternative treatment options as well as the reason and grounds for experimental therapy in accordance with the Law on Patients' Rights. Similar to the problem of experimental treatment, the freedom to choose a certain therapy is subject to special rules when it comes to the so-called comparative therapeutic studies and scientific-medical experiments.Their specificity lies in the fact that the goal of undertaking a certain therapy (in order to administer a certain medicine, or a medical procedure on a patient, etc.) is not primarily aimed at curing or reducing the pain of a specific patient, but serves to provide an answer to a certain question of "principle", that works in the general interest. The admissibility of comparative therapeutic studies and clinical trials of medicines and medical devices presupposes a whole series of conditions that are always prescribed by law (Agency for Medicines and Medical Devices).[4]The doctor must constantly make sure that the risk to the patient's health has not increased beyond the expected limit, and if this is the case, such treatment or research must not be continued, both for the sake of the patient and for the sake of the entire health care (Popović, 2021, 225). A

[4] Medicines and medical devices, which are used in human medicine, are tested in accordance with the principles of ethics and with the mandatory protection of personal data of persons who are subjected to testing.

Medicines used in clinical trials must be manufactured in accordance with Good Manufacturing Practice guidelines and marked with the inscription: for clinical trials.

The Agency for Medicines and Medical Devices receives requests from sponsors for conducting clinical trials of medicines, namely: phasesI, II, III and IV.

doctor must always be aware that any frivolous, dishonourable, humiliating and other action inappropriate for a doctor affects other doctors and health care as a whole (Code of Medical Ethics of the MCS, Art. 22).

5. CONCLUSIONS

Bearing in mind the described limits of the freedom to choose therapy, when it comes to the group of doctors who, through the Viber group and social networks, advised citizens to take the medicine *Ivermectin* for the treatment of COVID-19, we can conclude the following. Each doctor is free to choose those diagnostic and therapeutic measures that they believe are the most effective for a specific patient. Within the limits of their professional competence, hey are autonomous and independent in the performance of their calling, and they bear personal responsibility for their work before patients and society (Article 13, Code of Medical Ethics of the MCS, Statute of the MCS, Article 195).They do not always have to choose the "safest path," but any greater risk must have its justification in each specific case and must lead to more favourable prognosis of healing. The essence of a responsible choice of therapy is a conscientious weighing of the benefits and risks in each specific case, after the general conditions of medical practice have been met. Therefore, if a new medicine is introduced, beyond the existing treatment protocol for COVID-19, the benefit and risk for each specific patient must be considered, because there is no "standard patient" who is treated with "standard therapy".

In the specific case, the doctors did so contrary to the legal obligation that the treatment of the patient must not take place outside the health institution and private practice (Article 160 of the Law on Health Care of the RS) and by doing so violated the provisions of the Statute of the Medical Chamber of Serbia on acting in accordance with the provisions of the law regulating health care, which violated the professional duty of the Medical Chamber of Serbia (Article 195 of the Statute of the Medical Chamber of Serbia). They advised treatment with a certain therapy without first taking the history of the patient/s, without conducting an examination and diagnostics; making a diagnosis; recording the prescribed medical documentation on the patient/s health condition and treatment, etc. which represents the obligations that each doctor assumes when treating a patient or advising any therapy.The Code of Medical Ethics prescribes that every doctor should influence the development of the health culture of the population, in their action in the workplace and in public life, as well as participate in the planning and implementation of measures for the prevention of diseases, and in the suppression of backwardness, superstitions and quackery (Article 10, Code of Medical Ethics of the MCS). Failure to act in accordance with the provisions of the Code of Medical Ethics entails the disciplinary responsibility of the doctor (Article 195, paragraph 1, point 2, of the Statute of the Medical Chamber of Serbia).

The duty of every doctor during the pandemic was to educate the population about the true purpose of *Ivermectin* and the reasons why it is not a prevention or an adequate remedy

against the coronavirus, instead of advising its use. If they believed that the medicine *Ivermectin* should be included in COVID-19 therapy, they should have known that all medicines and medical devices used in human medicine are examined in accordance with the principles of ethics and that the Agency for Medicines and Medical Devices is the competent institution that receives requests from sponsors for conducting clinical trials of medicines. Also, they could have addressed the Ethics Committee of Serbia.[5]As a competent body, it takes care of the provision and implementation of health care in accordance with the principles of professional ethics, respect for human rights and values, and the rights of the child, at the level of the Republic of Serbia. It is competent, among other things, to give opinions on disputable ethical issues that are important for the implementation of scientific, medical and public health studies in healthcare institutions in the Republic of Serbia and to give opinions on clinical trials of medicines in a procedure that is carried out simultaneously with a procedure of consideration of the request for approval of the clinical trial of a medicine before the Agency for Medicines and Medical Devices of Serbia.

And finally, if all these mistakes have already been made, the only right thing would be to make those mistakes public because it will contribute to the demystification of medicine and the strengthening of trust between doctor and patient, which is the basic assumption of treatment (Radišić, 1998, 241; Simić, 2019, 239). The feeling of guilt because of a mistake will rarely be able to suppress the fear of responsibility that does not allow the truth to be revealed. It depends, mostly, on certain characteristics in the personality of the doctor himself: on the extent of their humanity and reason, on their conscientiousness and love for the profession and the patient. However, it is rightfully said that "only a good man can be a good doctor".

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СЛОБОДА ЛЕКАРА ДА ИЗАБЕРЕ ТЕРАПИЈУ, ИЗМЕЂУ ИДЕАЛНОГ И РЕАЛНОСТИ - ПРАВНИ ИЗАЗОВИ ПАНДЕМИЈЕ ИЗАЗВАНВИРУСОМ *SARS-COV-2*

Апстракт

Пандемија COVID-19 донела је бројне изазове за све професије. Ипак, здравствени радници били су под највећим притиском. Од повећане изложености ризику од заразе, повреде или чак и смрти у условима борбе против COVID-19, до немогућности да на одговарајући начин пруже медицинску негу пацијентима због недостатка адекватне терапије или времена да се посвете сваком пацијенту посебно. У ситуацији када је повећана смртност пацијената и када се због околности изазваних пандемијом поставља питање благовременог добијања протокола за процену, тријажу, тестирање и лечење пацијената, као и тачних инструкција о пружању информација о превенцији вируса SARS-CoV-2 пацијентима и јавности, поједини здравствени радници су трагајући за начином да помогну пацијентима у борби против COVID-19 доносили одлуке које је потребно правно испитати. Ауторке ће зато у овом раду на примеру употребе лека „Ивермектин“ током пандемије и анализирати правне оквире слободе избора терапије коју лекар има током лечења пацијента. Ауторке ће закључити да суштина одговорног избора терапије представља савесно одмеравање користи и ризика у сваком конкретном случају и то након што су испуњени општи услови обављања лекарске делатности као и да је лекар дужан да поступа са пажњом коју медицински стандард од њега тражи. Са правног становишта гледано, право не одређује лекарима шта и како треба да раде, него само проверава да ли раде оно и онако шта и како захтева њихова струка.

Кључне речи: етика, пандемија COVID-19, одговорност лекара, ивермектин, Лекарска комора Србије.

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