

Elder Abuse – A New Social Reality from the View of Social Gerontology and Social Responsibility

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Abstract

Elder abuse is a perpetual challenge in every society. The elderly are impacted by and suffer through different types of elder abuse: physical abuse, sexual abuse, emotional, and psychological abuse, financial abuse and exploitation, abandonment, neglect, and self-neglect. Having experienced of a multiple victimizations of different kinds can be defined as poly-victimization. Late life poly-victimization can occur in a variety of ways and may involve one or multiple perpetrators. The major challenges in combating elder abuse are not only to identify the victim and the abuser as early as possible and to report such kind of abuse, but also to establish elder advocacy and support in practice. In order to improve the safety and independence of the older persons who are victims of abuse, the society has to be socially responsible and has to implement an »ombudsman for the elderly«, who will protect the health, safety, welfare, and the rights of people who are 60 years or older. This review article aims to define the common types of elder abuse and its prevention, recent systematic studies of the literature on elder abuse, as well it also suggests implementation of the »ombudsman for the elderly« in the Slovenian social reality.

Key words: elder abuse, elder advocacy, social gerontology, social responsibility, ombudsman for the elderly.

1 Introduction

The demographic facts of an aging society found their way in the academic sphere. Researchers from the field of social gerontology focus on the processes of aging from the interdisciplinary viewpoints of intergenerational solidarity, social and consequently other forms of inclusion, accepting own aging and old age as a natural process and stage of life and, more importantly, as a meaningful one. It is an interdisciplinary, integrative approach, discussing and studying theoretical and practical issues in the area of the aging society, wherein the older persons are becoming a highly vulnerable groups, same as children, women, people with disabilities and disorders or patients. The patients group, to which sooner or later each and every one of us belongs, is protected in Slovenia by legislation with the Act on Patients' Rights (ZPacP). However, the elderly population, which, demographically speaking, predominates in Slovenia, and unfortunately very often falls victim to economic, sexual, and/or social discrimination, has no ombudsman despite the fact that the law allows it. In this paper, we focus on the different types of elderly abuse and the necessity of implementation of an ombudsman for elderly rights.

2 Good example of a protective institution - Patient Rights Ombudsman

The individual right to health and health care and healthy life and working environment is one of the fundamental Constitution's postulates in the Western democracies. In the Article 51, the Constitution of the Republic of Slovenia (Official Gazette, no. 33/91-I) regulates the right to health care: "Everyone has the right to health care under conditions provided by law". Several other rights are linked to this general health care element, especially in the fields of health care and insurance, which the state in its state-forming inertia is obliged to ensure in its regulation, such as the Act on Patients' Rights (ZPacP, Official Gazette, no. 15/2008).

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The paramount task of Patient Rights Ombudsman (PRO) was and remains the realization and actualization of rights' protection in cases where individual user of health care services, or a patients, are stripped of his or their rights or their rights are violated. Following the stipulations of the ZPacP, an Ombudsman can provide patients with general information, offer legal help and representation and concrete directions in execution of right in the field of health care, health care insurance, and health care services. PROs are individuals, with at least university education, moral and professional respect and reputation, and are not employed in the public health care institution or concessionaires and are not a concessionaire themselves. The process of the PRO is confidential, formal, and free to users who seek their help. PROs can act informally concerning minor violations of patient's rights.

The following are the duties and responsibilities of PROs:

- Counseling the patients in an appropriate and adequate way on the content of rights, ways, and possibilities of its assertion before or during treatment and in violation of rights
- Direction, information, and advice on assertion of patients' rights and suggestion for concrete and possible solutions
- Offering legal representation and help with legal remedy enforcement, following ZPacP
- Holding all necessary inquiries on supposed violation of rights by health care services providers for the patient,

- Referring the patient to the right legal authority or physical person or professional bodies
- Following patient's authorization, enforcing legal remedies and offer advice, explanation, and other statements in the name of and for the benefit of the patient for fast and successful dispute solution.

An ombudsman operates within geographical jurisdiction of an individual regional entity of the Health Care Institute (now regional entity of the National Institute of Public Health). The Act on patient Rights states the elected public advocate must be available to patients for the minimum of 12 hours and the maximum of 24 hours per week. Patient Rights Ombudsmen began their operation on February 11, 2008. According to the number of citizens, the number of public advocates for a certain area is normalized. Thus, Ljubljana has three advocates, Maribor and Celje two each, and the other areas have one each. In their work, the PROs encounter different age structures of patients, who seek their help.

Aging is an interactive process, wherein individuals are influenced by their environment all the while individuals impact the environment in which are ageing (Phillipson, Baars, 2007). In the system of health care and health insurance, all stakeholders are equal in the eyes of the health care and health insurance providers. The aforementioned principle, which is sadly often disregarded in practice, considers both comparable groups of older as well as younger patients. The Act on Patient Rights is non-discriminatory and does not differ patients in regard of their sex, nationality, race, or ethical origin, religion or belief, disability, age, sexual orientation, or other circumstance; however, many of Act's stipulations are linked with the individual's status of a minor, who are entitled to special legal care (Ambrožič, 2012). The rights, stipulated in the Act on Patient Rights, demand such indiscrimination and equal treatment, and represent a new, fair, and internationally comparable approach to assertion of patient right and realization of patients' safety.

Specific legal acts and legislation in the field of patient rights was accepted in many EU member states: Belgium (Patient Rights Act, 2002), Cyprus (Patient Rights Act, 2005), Denmark (Patient Rights Act, 1998), Finland (Act on Patient Rights and Patient Status, 1992), Norway (Act on Patient Rights, 1999), France (Patient Rights Act, 2002), Greece (Patient Rights Act, 1997), Lithuania (Act on Patient Rights and damage restitution for affected patients, 1996), Latvia (Act on Medical Care, 1996), Hungary (Act on Patient Rights and Obligations, 1997), and the Netherlands (Act on Medical Care, 1994) (Ambrožič, 2012). In article 159 of the Constitution of Republic of Slovenia (Official Gazette, no. 33/91-I) it is stated that assertion of human rights and responsibilities in relation to state authorities, bodies of local self-government, and holders of public authorization is stipulated by law by the Human Rights Ombudsman.

3 Good example of a protective body - Human Rights Ombudsman

In Slovenia, the assertion of human rights and obligations is protected by the Human Rights Ombudsman (HRO). HROs, their four deputies or their professional colleagues receive reports when a person believes his or her rights have been violated by an act of an authority figure, local self-government, or public authorization holder. HRO's operation is stipulated by the Act on Human Rights Ombudsman from 1994.

Human Rights Ombudsman can:

- Point out the violation to the violator to eliminate committed incorrectness or suggest damage retribution
- In the name of the individual and with their authorization file applications for the assessment of constitutionality and lawfulness of certain regulations or acts, or pass a constitutional appeal due to right or rights' violation
- Make appeals to the government or the parliament to change legislation and other regulations
- Suggest to all institutions falling under their jurisdiction to improve their operations and client relations
- Give their opinion to anyone about human rights violations cases, regardless of the type of the procedure, or the phase of the proceeding it is in (Poslovník Varuha človekovih pravic, 2005).

However, HROs are not authorized to intervene or remove the incorrectness or violation instead of the state authority, local self-government institution, or holder of public authorization who committed the incorrectness or violation. It is the duty of the violator to eliminate the violation. Similarly, HROs cannot proceed matters that are in proceeding before court except in special circumstance. Legally, HROs have no authorization over the private sector and, therefore, cannot intervene in cases, when the violator of rights is a private company or organization. In such cases, HROs are authorized to put pressure on state institutions, local self-government bodies, and public authorization holders, who oversee the operations of private companies and organizations and private undertakings. Collaborating with non-government organizations (NGOs) and humanitarian organizations, HROs oversee thefts or taking one's freedom and treatment of those, whose freedom was taken or restricted. HROs have no authorization for governmental decision-making, but can oversee, warn an urge, and counsel (E-uropean Justice, Evropski portal e-pravosodje, 2016). However, the human rights advocate body is normatively well established, as it gives the holder of the function authorization and wide legal jurisdiction in their operation (Letnar Čerňič, 2015).

4 Slovenian aging society – a long-live society

It is essential to start understanding and equating the concept of an aging or long-lived society with a society of new challenges and opportunities for all society members regardless of their age or age group. We speak of a long-living society when the population group, aged 65 years or older, increases among the whole population. The so-called third generation constitutes a good third of Slovenian society and with that a good third of potential older users of goods and services. According to the data of the Statistical Office of Republic of Slovenia (SURS, 2016), as of January 1, 2016, the population group, aged 65 and older, makes 23.4% of the whole population. SURS projections show this share will increase to 29.2% by the year 2046 and to 29.9% by 2056. More so, SURS data shows there are about 438,000 recipients of retirement pensions, which amounts to 22% of the entire Slovenian population. Within the next 50 years, life expectancy on a global scale will increase for 10 years, which is projected to be round the age of 76 in the years between 2045 and 2050, while life expectancy at birth will reach 80 years on average for the more developed and 71 for less developed regions (Klančnik, Pavšič Mrevlje, 2013).

A prolonged life expectancy and consequently an increase of the world population with chronic disease importantly impacts quality of life of older persons as well as resource consumption, intended for health care. Health care service providers must develop and

improve the culture in the sense of improving health care worker-patient relationships and responsibility, and awareness of quality of their work and efficient operation with human, financial, and material resources. Accordingly, health care needs implementation of reporting on dangerous situations without legal consequences and embarrassment for the reporter, while providing the patients with an overview of the organization of work and documentation on control and inspections. Good interpersonal relations, respect of diversity and interdisciplinary team are fundamental conditions for quality team work (Resolucija o nacionalnem planu zdravstvenega varstva 2008-2013, 2008).

5 Elder abuse

“Elder abuse is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person” (World Health Organization WHO, 2016). This type of violence constitutes a violation of human rights and includes physical, sexual, psychological, emotional, financial and material abuse, abandonment, neglect, and serious loss of dignity and respect. Globally, the number of cases of elder abuse is projected to increase, as many countries have rapidly ageing populations whose needs may not be fully met due to resource constraints. It is predicted that by the year 2050, the global population of people aged 60 years and older will more than double, from 900 million in 2015 to about 2 billion. In some countries, the health sector has taken a leading role in raising public concern about elder abuse, while in others the social welfare sector has taken the lead (World Health Organization WHO, Violence Prevention Alliance, 2016).

In USA legislatures in all 50 states passed some form of elder abuse prevention laws that broadly defined, what abuse may be:

- Physical Abuse - inflicting physical pain or injury on a senior, e.g. slapping, bruising, or restraining by physical or chemical means.
- Sexual Abuse - non-consensual sexual contact of any kind.
- Neglect - the failure by those responsible to provide food, shelter, health care, or protection for a vulnerable elder.
- Exploitation - the illegal taking, misuse, or concealment of funds, property, or assets of a senior for someone else's benefit.
- Emotional Abuse - inflicting mental pain, anguish, or distress on an elder person through verbal or nonverbal acts, e.g. humiliating, intimidating, or threatening.
- Abandonment - desertion of a vulnerable elder by anyone who has assumed the responsibility for care or custody of that person.
- Self-neglect - characterized as the failure of a person to perform essential, self-care tasks and that such failure threatens his/her own health or safety (ACL, 2016).

Klančnik and Pavšič Mravlje (2013) find the number of all offences involving older victims more than doubled from 2001 (3,373 victims) to 2011 (7,132 victims) in Slovenia.

5.1 Non-Governmental Organization International Network for Prevention of Elder Abuse INPEA – a good practice example

International Network for Prevention of Elder Abuse (INPEA) is an organization, founded in 1997, which is dedicated to the global dissemination of information as part of its commitment

to the world-wide prevention of the abuse of older people (INPEA, 2016). INPEA launched the First World Elder Abuse Awareness Day (WEAAD) on June 15, 2006. In December 2011, the United Nations officially designated WEAAD on June 15, as a United Nations International Day of Commemoration. INPEA has Regional Representatives in all UN Regions, as well as numerous National Representatives. INPEA engages Member States of the United Nations at various Commission Meetings, such as the Commission for the Status of Women and at the Human Rights Council (WHO, 2016). Since 2015, Slovenia also has a national representative, Mr. Borut Ambrožič, a former Ombudsman for Patients' Rights.

6 Institution of Elderly Ombudsman: a demographic necessity

Generally acknowledged fundamental human rights and general freedoms are reflected in the field of the treatment of an individual within the health care system. In health care, human rights and freedoms are set by law in the Law on Patient Rights (ZPacP), Law on Mental Health (ZDZdr), Law on Protection of Personal Data (ZVOP), Act on Human Rights Ombudsman (ZVarCP), Law on Health Care and Health Insurance (ZZVZZ) and other regulatory provisions. Slovenian legal space knows quite a few formal-protective bodies in the field of health care, to which a person can turn when assuming the role of a patient, such as Human Rights Ombudsman, Patient Rights Ombudsman, and Advocate for Rights in the Field of Mental Health.

In Slovenia, the operation of HROs is oriented toward assertion of human rights for the vulnerable population groups, to which undoubtedly the elderly population belong. In Slovenian legislation, a HRO is a type of parliamentary ombudsman, working on the national level, but the Law on Patient Rights (ZVarCP) authorizes them for the local level as well. The latter was applied only in the municipality of Maribor so far, where a HRO was appointed on the local level for the needs of citizens of Maribor and statistical region of Podravska.

Human rights violations HROs process are not the only violations of the rights of the HROs processes. Thus, extra care is needed in each and every individual process. The Republic of Slovenia already has taken a standpoint on existing mechanisms for protection of the right of elderly it is not sufficient and that it would be sensible to pass an international legally binding document for the rights of the older population. However, we have not reached the level of demographic and socially responsible behavior and awareness that the older persons need and deserve a similar protective body as Patient Rights Ombudsman or Ombudsman for the rights in the field of mental health.

In Article 159 of the Constitution of the Republic of Slovenia, the legislator is given a possibility to legally appoint a special – individual advocate for citizens' rights for different fields. There were many different initiatives for appointing such advocates or ombudsmen already, for instance Banking Ombudsman, Ombudsman for consumers, for media, people with disabilities, children, etc. Some were realized, others remained an initiative but were never actualized. The Ombudsman for Children's rights, gained the most support lately and was put into action as a temporary project at the Human Rights Ombudsman Office. On a non-governmental level, an Advocate for the rights of animals was appointed by the Association for animal freedom.

7 Conclusion

Based on the existing Slovenian legislation and regulation, when dividing the society in private, non-governmental – civil, and public sector, we find enforcement of special individual advocates or Ombudsmen for certain fields of operation or certain population groups is possible based on constitution or legislation (by the legislator), inferior acts and regulation (by the local self-governments), or founding acts (by non-governmental or private organizations). Each form brings about special term and conditions according to purpose, aims, organization, work environment, and financing of such protective institution. However, Slovenia has no governmentally accepted actual strategy for the aging society, nor an advocate or an Ombudsman for the elderly. Further research and studies should focus on the current needs of the older population for such representatives in Slovenia to detect and further prevent elder abuse, violation of their rights and freedoms, and be and remain socially responsible toward this ever-growing population group – the elderly persons.

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