The Role of Legal Proxies in End-of-Life Decisions in Albania: the need for an ad hoc Law

Denard Veshi, Ervin Pupe, Maksim R. Haxhia, Carlo Venditti, Raffaele Picaro, Enkelejda Koka, Edmond Konini, Michele Biring-Pani*

ABSTRACT: Western European public policy includes end-of-life situations. Ergo, an in-depth investigation here analyzes the Albanian legislature relating to end-of-life decisions by concentrating on the role of legal proxy in end-of-life decisions. This paper explores the Albanian legal system, national medical jurisprudence, with special attention paid to the Code of Medical Ethics. Also included are publications written by the two main advisory public bodies on health issues: the National Ethics Committee and the National Committee of Health. Following a discussion of the fundamental role of a legal proxy in end-of-life decisions, and taking into account the experience of some Western European countries, some policy suggestions become clear. In the conclusion, this paper emphasizes the need for ad hoc legislature to establish the role of legal proxy in end-of-life decisions as well as the utilization of the international framework as a source of guidance to address the shortcomings in the national system in the interim.

KEYWORDS: Albania; end-of-life decisions; living will; surrogate; Western European Countries

* Denard Veshi: Chair of the Jean Monnet EU Centre of Excellence, University of New York Tirana. Mail: denardveshi@unyt.edu.al. Ervin Pupe: Judge, High Court of Albania. Mail: ervin.pupe@gjykataelarte.gov.al. Maksim R. Haxhia: Senior Partner, Haxhia & Hoxhaj Law Firm at Law, Tirana. Mail: maks@lawfirmh-h.com.al. Carlo Venditti: Full Professor, University of Campania Luigi Vanvitelli. Mail: carlo.venditti@unicampania.it. Raffaele Picaro: Full Professor, University of Campania Luigi Vanvitelli. Mail: raffaele.picaro@unicampania.it. Enkelejda Koka: Head of Department of Law, University of New York Tirana. Mail: enkelejdaKoka@unyt.edu.al. Edmond Konini: General Secretary, Albanian Chamber of Advocacy. Mail: edmond.konini@dhka.org.al. Michele Biring-Pani: Lecturer, University of New York Tirana. Mail: michelepiani@unyt.edu.al. The study was supported by Erasmus+ Jean Monnet Activities. Denard Veshi, Ph.D., is the winner of 610655-EPP-1-2019-1-AL-EPPJMO-MODULE and of 610495-EPP-1-2019-1-AL-EPPJMO-CoE in addition to be member of 620226-EPP-1-2020-1-AL-EPPJMO-MODULE. D. Veshi, Ph.D., would like to thank the student research team (Bashkim Kuka, Emila Hoxha, Rea Ajazi, and Xhesika Serjani) for their comments and suggestions in the first presentation of this scientific contribution as well as for the aid in the translation of the Albanian legislation. The article was subject to a double-blind peer review process.

PhD Veshi, Prof. Dr. Haxhia, PhD Koka, Ad. Konini, and MSc. Biring-Pani wrote paragraph 1. Introduction; Assoc. Prof. Dr. Pupe wrote paragraph 2. The importance of a legal proxy in end-of-life decisions; Prof. Dr. Venditti wrote paragraph 3. Legal proxy in end-of-life Decisions in Albania: Policy Suggestions; Prof. Dr. Picaro wrote paragraph 4. Conclusion.

1. Introduction

In the last three decades, Albania has increased the protection of the right to health. Indeed, Albanian legislators made an historical decision by recognizing dignity in the constitution for the first time in 1998. The current constitution’s preamble acknowledges dignity and continues to be one of the essential axioms among the Albanian constitutional principles. Several multilateral conventions protect the patient’s right to self-determination such as the European Convention on Human Rights and Biomedicine (Oviedo Convention), the European Convention of Human Rights (ECHR), and the Charter of Fundamental Rights of the European Union. Albania ratified all three of these international conventions, the latter of which has had the equivalent authority and conditions as other European Union (EU) treaties (Article 6 TEU) since December 1, 2009. In addition, in the majority of the basic national laws of the EU-27, the right to health is also a constitutional right. However, national policies on end-of-life situations vary among parliaments due to the diverse moral compasses of politicians.

The importance of legal proxy in end-of-life decisions has long been recognized by the ethics and legal communities. Here, a thorough analysis of end-of-life decisions in Albania concentrate on the role of legal proxies. Unfortunately, Albania’s legislation lacks a particular provision regarding Advance Directives (ADs) in general, let alone legal proxies. This contribution searches for case-law dealing with end-of-life situations in the Albanian but fails to uncover any such cases. Additionally, no publications could be found governing end-of-life situations or ADs after looking at the two principal national health advisory organizations: the National Ethics Committee and the National Committee of Health. Furthermore, this paper takes into account the Albanian legal system by concentrating on

---

7 Article 6/1 Law no. 107 of March 30th, 2009.
the Criminal Code and the Civil Code as well as on the Law of HealthCare. The Code of Medical Ethics uncovers the only piece of Albanian legislation which mentions legal proxies in end-of-life situations. Of course, international conventions ratified by Albania are also examined in detail, including the Oviedo Convention and the Recommendation REC(2009)11.

The following section, Section 2, discusses the value of legal proxies in end-of-life decisions by looking at the advantages of legal proxies compared to “living wills”. In addition, the standpoints of bioethical and legal communities along with national codes are taken into consideration to demonstrate the central role of a legal proxy in end-of-life situations. Afterward, in Section 3, various laws in Western European countries are explored to formulate policy recommendations. In the conclusion, the authors argue that the current absence of an ad hoc law ruling end-of-life decisions does not (adequately) protect patient autonomy and, consequently, the patient’s right to self-determination. Policy recommendations are suggested as well as practical advice on execution. However, in the interim, national judges should utilize the international legislature as well as the constitutional interpretation of current law until the Albanian Parliament issues legal guidance on end-of-life situations.

2. The importance of a legal proxy in end-of-life decisions

This section focuses on the central reasons for legal proxies and their significance in end-of-life decisions. After recognizing legal proxies as part of the broader term ADs, it becomes clear how legal proxies complement living wills. Indeed, this section will explore the meaning of ADs, comparing both living wills and surrogates. The flaws of living wills, in this section, uncover the necessity for the nomination of a legal proxy, highlighting the advantage of surrogacy.

ADs, simply put, is defined as a set of medical preferences declared by a citizen exercising the right to autonomy for future clinical treatment or treatments in case the patient becomes incapacitated and, therefore, unable to express these preferences at that time. This medical declaration may take on two forms: the “living will” or the “surrogate will”. Both forms complement one another from a medical and legal standpoint.

In the first form, citizens may write what is known as a “living will”. This document contains the directives for clinical preferences regarding treatments that the citizen wishes to undergo or not, as well as conditions for specific medical care, in case of future incapacity. Several problems emerge through this type of AD. First, the directions contained in the document might not be specific enough or clear enough and are not useful for decision-making purposes. Second, it is difficult to imagine which decisions are to be made at some future point in time because the health condition is un-
known\textsuperscript{13}. Third, future technology and advancements in the medical field further cloud the prediction of medical options. That is, between the time the citizen writes the living will and the time it is executed, medical treatments may have developed and advanced, making options written in the living will obsolete\textsuperscript{14}. Lastly, a “static” document does not contain the necessary flexibility to encompass changes in patient preferences over time, especially when faced with the reality of certain critical illnesses and vital health conditions\textsuperscript{15}.

In the second form, the citizen gives healthcare decision-making power to another citizen, a “surrogate”, in what is known as a “surrogate will”. A surrogate must not only be aware of the patient’s preferences, but the surrogate must also be clear on the patient’s underlying principles and values\textsuperscript{16}. The surrogate is an extension of the patient autonomy and the exercise of the patient’s right to self-determination\textsuperscript{17}. Additionally, surrogates must select medical options for the unconscious patient which the patient would have selected if able and lucid.

Surrogacy, although not a perfect solution, is best suited to mitigate issues with living wills\textsuperscript{18}. Lawmakers are cognizant of such limitations and problems of living wills as well as the benefits of a legal proxy. The surrogate in Germany, for example, is obliged to check the compatibility of the patient’s preferences with the current times and medical situation at hand (\textit{Bürgerliches Gesetzbuch}, Article 1901a). In England, Article 25(2)(b) of the Mental Capacity Act 2005 invalidates any living will if, after its creation, the citizen appoints to a proxy an enduring power of attorney that grants the authority to accept or reject medical treatment related to advance directives. Additionally, until March 2015, France went a step further in its Article 1111-4 of the \textit{Code de la Santé Publique}, stating that only when there is an absence of a surrogate and/or family members will the patient’s living will be considered. However, after 2015, according to the new law, patients shall designate a surrogate when hospitalized. An empirical study in France led to this since it revealed that this method is likely to be more effective since patients report the use of a legal proxy more than three times more often than a “living will”\textsuperscript{19}. Similarly, Italian law follows suit. Article 6 (2) of the Italian law no. 219 of December 22\textsuperscript{nd}, 2017 establishes a legal proxy and limits the authority and interaction of healthcare providers with others by stating that the surrogate is «the only legally authorized person to interact with the physician and undertakes to act in the exclusive and best interest of the patient, operating always and only according to the intentions legitimately expressed by the subject in the living will» [author


\textsuperscript{17}A.E. BUCHANAN, et al., \textit{Deciding for others: the ethics of surrogate decision making}, Cambridge, 1989.


\textsuperscript{19}C. ROGER, et al., \textit{Practices of end-of-life decisions in 66 southern French ICUs 4 years after an official legal framework: a 1-day audit}, in \textit{Anaesthesia Critical Care & Pain Medicine}, 34, 2015, 73 ff.
translation]. Ergo, the healthcare legal proxy must always act in accordance with the patient’s wishes and intentions, especially if expressed also in a living will, and has the full legal right according to the Italian law to engage with the medical staff\textsuperscript{20}. While the living will is a “static” piece of writing, a legal proxy offers the possibility of updating the patient’s wishes and preferences to the situation at the time of execution. A look at case law uncovers national court rulings that this is essential. One court in Germany ruled to appoint a legal proxy, even in light of the existence of clear advance medical directives for the interpretation and guidance on their application (Bundesverfassungsgericht, Bvr 618/93, 2 August 2001 (2001) BVerfG NJW 2002, 206). That case involved a Jehovah’s Witness who had clearly rejected blood transfusions when conscious and lucid. This particular medical treatment, the blood transfusion, became necessary while she was incapacitated temporarily. Although given the clear membership to the Jehovah’s Witness, the judge ruled that his wife be appointed as his healthcare surrogate. The wife interpreted his wishes as changing due to the particular circumstances and permitted the blood transfusion to take place. Despite the fact the wife acted against his assumed husband’s wishes, he did not, notably, sue his wife.

Although the appointment of surrogate has its own advantages, patients must trust their healthcare legal proxy fully and choose carefully. The selection of a surrogate is risky because surrogates are authorized the medical decision-making ability at some level of their own discretion\textsuperscript{21}. Even though, these risks are well-known\textsuperscript{22}, patients trust their surrogates because trust is part of human nature\textsuperscript{23}. The idea of surrogacy identifies people as stories, viewing their lives narratively\textsuperscript{24}. Solutions that lack a narrative perspective do not adequately identify a person and ultimately fail\textsuperscript{25}. Additionally, the substitute judgment principle encompasses this concept well\textsuperscript{26} since the proxy must advocate for the options that best further portray the patient’s life story\textsuperscript{27}. For example, the concluding chapter of an incapacitated person’s life should protect the patient’s autonomy by narrating a quick death if the patient was vibrant in life, instead of persisting through life by artificial means\textsuperscript{28}.

Furthermore, studies reveal the overwhelming preference of patients for decision-making capabilities to loved ones\textsuperscript{29}. In the Mediterranean culture, there is a strong sense of connection to the community. Therefore, it is often easier for the surrogate to identify with the patient, the patient’s de-

\textsuperscript{20} D. VESHI, E. KOKA, C. VENDITTI, \textit{op. cit.}
\textsuperscript{23} A. BAIER, \textit{op. cit.}
\textsuperscript{24} A. MACINTYRE, \textit{After Virtue: a Study in Moral Theory}, Notre Dame, 1984.
\textsuperscript{25} P. RICOEUR, \textit{Oneself as Another}, Chicago, 1990.
sires, and to make medical decisions on their behalf. In Southern Europe, studies show that family members tend to care for one another, and, furthermore, the patient’s family are often told more information about the patient’s health than the patient.

To sum up, the “living will” falls short of expectations. A legal proxy achieves its success by its ability to adapt and interpret patient’s preferences in advanced directives. Several national laws have codified the importance of legal proxy in end-of-life decisions.

3. Legal proxy in end-of-life Decisions in Albania: Policy Suggestions

The surrogate will appoint a legal proxy in writing for matters relating to health. This legal proxy is authorized to select healthcare options for the agent if and when the agent becomes incapacitated. The patient’s right to self-determination extends through the legal proxy and therefore remains protected. The surrogate must channel the patient and act in the patient’s place while suspending his own judgment to decide as the patient would. Ergo, the legal proxy selects options the patient would also choose, if possible, however, not necessarily the personal preferences of the surrogate. Albania does not have an ad hoc law ruling the role of legal proxy in end-of-life decisions. Generally, a power of attorney can act while the agent is fully, legally competent (Article 76(1)(c) of the Albanian Civil Code). In Switzerland, the surrogate could be nominated also from the Patientenverfügung: D. Veshi, G. Neitzke, Advance directives in some western European countries: a legal and ethical comparison between Spain, France, England, and Germany, cit.

---

33 In English, German and Romance-speaking countries, the phrases used to indicate the surrogate are: in France, personne de confiance (Article 1111-6 of the French Public Health Code; official translation: “patient’s personal advocate”); in Germany, Bevollmächtigter (Article1901a of the BGB; official translation: “authorised representatives”); in Ireland, the «attorney» (Article 59 of the Assisted Decision-Making (Capacity) Act 2015 (Ire)); in England, the «donee of lasting power of attorney for donor’s personal welfare» (Article 9 of the Mental Capacity Act of 2005 (UK)); in Scotland, «welfare attorney» (Article 16 of the Adults with Incapacity (Scotland) Act 2000 (UK)); and in Spain, «representative» (Article 11 of the Law No 41 of 14 November 2002). In the other countries where we did not find an official translation, the legal notions used to indicate this legal proxy are: Bevollmächtigter in Austria (Article 284f of the Civil Code); fiduciario in Italy; procurador de cuidado de saúde in Portugal; and Vertrauensperson or Vorsorgebeauftragter in Switzerland (Article 378 of the Swiss Civil Code). In Switzerland, the surrogate could be nominated also from the Vorsorgeauftrag (precautionary mandate); in this case, the surrogate has the power to manage even the patient’s property. A surrogate nominated in the Vorsorgeauftrag must take decisions about the patient’s health in accordance with the surrogate nominated in the Patientenverfügung:
34 A.E. BUCHANAN, op. cit.
an Civil Code (CC))\(^{36}\). Although widespread in other countries\(^{37}\), an ad hoc law governing the surrogate’s role in end-of-life decisions would necessarily establish an exception to this. In addition, such an ad hoc law would also establish an exception to another similar law which states a surrogate is legally valid only for those exchanges with a monetary value (Article 10 CC) and codified in the law (Article 64(2) CC).

Although the Albanian legal framework does not establish specific rules regarding the role of legal proxy in end-of-life decisions, the Albanian Code of Medical Ethics of November 2011 establishes some rules regarding this issue. Issued by the Albanian Order of Doctors, the Code of Medical Ethics\(^{38}\) is a legal document for all physicians (Article 3). Thus, violations can result in disciplinary actions (Article 68 Code of Medical Ethics and Article 1 Regulation of April 8th, 2016 of the Albanian Federation of Physicians).

In fact, a physician is obliged to exercise his own judgment to apply the patient’s best interest in the case of a terminally ill patient who is unconscious. According to Article 39 of the Code of Medical Ethics\(^{39}\), it is the physician alone who selects the medical therapy, after consulting with other medical staff and the patient’s next of kin. Notably, the medical staff and the patient’s next of kin must offer advice, which is in the patient’s best interest, whether or not this advice follows the patient’s preferences. Consequently, physicians do not take into account living wills. This infringes upon the principles of self-determination and patient autonomy for two main reasons. First, living wills are not considered at all. This is in contrast with article 9 of the Oviedo Convention, which declares “the previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account”. The Code of Medical Ethics should be aligned not only with the national legal system (constitution, law and bylaws) but must also be in accordance with any international agreements ratified by the country (Article 116 Albanian Constitution). The Oviedo Convention came into effect in Albania in July 2011. Consequently, Article 39 of the Code of Medical Ethics contradicts the Oviedo Convention, which also means that is not in harmony with the constitutional principle established in Article 116 of the Albanian constitution.

Second, physicians, ancillary staff, and patient relatives should consider the patient’s wishes, and only act according to the patient’s best interests when those wishes are unclear. In other words, a surrogate must select clinical treatment options based upon the patient’s best interest only when missing necessary information to make a substitute medical decision. A patient’s best interest considers the patient’s total wellness. Thus, a surrogate must take into account the patient’s emotional, physical, and social health, not merely the illness, injury, or infirmity. Metrics for considering a patient’s

\(^{36}\) The proxy terminates when [...] c) the representative or the representee die, or when one of them loses the capacity to act.


\(^{38}\) The Order of Doctors was formed for the first time in 1993.

\(^{39}\) Accelerating the end of life or provoking death is contrary to medical ethics. If the patient is unconscious, with no hope of living, the doctor must act at his discretion for the best possible [treatment]. He, in consultation with other colleagues and close relatives of the patient, decides on the therapeutic attitude to be maintained.
best interest must include the life expectancy and prognosis, the quality of life, clinical treatment protocols, as well as the comfort of the patient. Specifically, proxies must take into consideration: (1) the patient’s present levels of physical, sensory, emotional, and cognitive function; (2) the quality of life, life expectancy, and prognosis for recovery with and without treatment; (3) the various treatment options and the risks, side effects, and benefits of each; (4) the nature and degree of physical pain or suffering resulting from the medical condition; (5) whether the medical treatment being provided is causing or may cause pain, suffering, or serious complications; (6) the pain or suffering to the patient if the medical treatment is withdrawn; and (7) whether any particular treatment would be disproportionate in terms of the benefits to be gained by the patient vs the burdens caused to the patient.40

Doing so ensures the protection of patient autonomy and is aligned with the Rec (2009) 11 of the Council of Europe, which is the first document on a European level, which provides guidance for member states in the law reform allowing provisions to be made for future incapacity (Explanatory Report, par. 13). Although this is a soft-law document41 such unenforceable international documents may affect national behavior42. Indeed, also the ECtHR utilized soft-law documents as legal justification43. For example, neither the UK nor France, at the time, had ratified the Oviedo Convention when the ECtHR invoked it in cases against those countries (ECtHR, Application No. 61827/0044 and Application No. 53924/00).

Apart from medicine, no other industry requires ethics and law to work quite as closely together. Consequently, the international legal framework demands patient autonomy, especially with respect to end-of-life decisions. Both fields of ethics and law utilize the same concepts of rules, principles, rights, procedures45. In liberal substantive theory, patient rights, especially autonomy, are integral aspects of clinical practice. However, law and ethics differ from one another due to their outcomes. Ethics creates generally-accepted principles, while laws establish particular rules. Additionally, due to ethical dilemmas and competing principles, a standard ethical paradigm is absent46. Consider, for example, the principles of patient autonomy and beneficence. In autonomy, self-determination is the priority whereas it is life that is valued in beneficence. The value of life is limitless. Consequently, specific circumstances and facts are indispensable47.

40 T.M. POPE, The best interest standard: both guide and limit to medical decision making on behalf of incapacitated patients, in Journal of Clinical Ethics, 22, 2011, 134 ff.
41 The term soft law refers to quasi-legal instruments that do not have any legally binding force. Their infringement does not imply any kind of sanction.
43 D. VESHI, Studio relativo alla Raccomandazione CM / Rec (2009) 11 in merito agli Stati di lingua latina (Italia, Francia, Portogallo e Spagna), tedesca (Austria, Germania e Svizzera) e inglese (Irlanda e Regno Unito di Gran Bretagna e Irlanda del Nord), in Rivista Italiana di Medicina Legale nel Campo Sanitario, 36, 2015, 1277 ff.
44 The UK has not ratified the Convention on Human Rights and Biomedicine of 1997 yet
The recommendation defines «continuing power of attorney» as «a mandate given by a capable adult with the purpose that it shall remain in force, or enter into force, in the event of the granter’s incapacity» (principle 2.1). This definition incorporates several types of attorneys, not only powers of attorney that continue after the granter’s incapacity, but also the powers of attorney which enter into force after granter’s incapacity has been established. These documents are always unilateral legal transactions, which do not establish a contract with any other person. Physicians or surrogates can interpret or ascertain them; however, this does not constitute a contract. Furthermore, these documents are effective only in case of the granter’s incapacity, which is assessed by an impartial expert.

By considering the main principles of the Rec (2009) 11, the Albanian Law should consider the possibility to nominate more than one surrogate. In addition, in the case of the absence of a surrogate, the Law should consider the possibility of an autonomic system of identification by underlying the role of the family. Moreover, the Law shall also take into consideration the identification of an impartial authority to resolve any disagreement between surrogate and physicians or to oversee the surrogate’s activity.

Appointing multiple healthcare legal proxies should be an option for Albanian citizens. English-, German-, and Romance-speaking countries do not include this choice in their legislation apart from the Mental Capacity Act. Problems might arise if the single legal proxy is unable to be reached, located, or otherwise unavailable. In circumstances involving multiple children, the ability to appoint multiple proxies may indeed prove useful. Additionally, multiple proxies dilute or balance authoritative power issues among families.

The Albanian parliament, without a clear surrogacy policy, might either apply an automatic surrogacy strategy or ad hoc rules. An automatic surrogacy strategy has been applied in Italy, France, Spain, Portugal, and Switzerland. Such a strategy coincides the societal value of equality. Of high national regard, the values of respect for family and privacy as well as subsidiarity correspond well with this.

---

48 This difference has been shown even by the fact that the bankruptcy of the attorney will end economic powers, but not welfare powers. The same principle has been expressly recognized established in England and Wales (Article 13(3)), in Scotland (Article 16(7)) and in Ireland (Article 49 (5)(c)).

49 Council of Europe. 2014. Guide on the decision-making process regarding medical treatment in end-of-life situations of May 2014, p. 16.

50 Within the English-, German-, and Romance-speaking countries, England is the only country to enshrine this possibility (Article 10(4)). The maximum number of LPAs is 5 (Article 6 The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations).

51 D. VESHI, E. KOKA, C. VENDITTI, op. cit.


Further, family proxies are viewed as the most economical and pragmatic in general by many politicians and bioethicists\(^5^7\). Lastly, in general, patients tend to appoint relatives as their surrogates\(^5^8\).

This strategy is not without its drawbacks. First, with the current divorce rates, in Albania, the nuclear family is not as conventional as in the past\(^5^9\). Second, citizens might wish to avoid a relative with values inconsistent with or in direct contradiction to the agent, leading to a system where citizens could “opt-out” such relatives\(^6^0\). Third, motivation for a written AD would decrease if an order of surrogates is already determined by law\(^6^1\).

Another model Albanian lawmaker could enact applies treatment only in cases where it is in the patient’s best interest; thus, the Albanian parliament establishes \textit{ad hoc} rules. Established in the Mental Capacity Act of 2005, this paradigm is applicable in the absence of a living will, surrogate, or a deputy nominated by the Court of Protection. Under this model, only medical treatment deemed to be in the “best interest” of the patient is delivered to the incapacitated legal adult patient. Expanded to encompass also the wishes and values of the patient, in England, the concept of “best interest” is broader than medical interests and includes the patient’s own wishes and values (Article 4(6) of the Mental Capacity Act).

Moreover, the Albanian law should also consider establishing an unbiased arbitration body to supervise legal proxies as well as settle disputes between medical staff and families. Two possible remedies emerge for disputes between proxies and physicians. One, settle the dispute within the healthcare provider. Two, settle the conflict using a legal arbitrator. The former option, utilized in Portugal for cases objecting to suggested treatments, yields faster results relying on clinical standards and principles. The latter, utilized in Germany and Great Britain is more unbiased and objective\(^6^2\).

A lack of oversight of the legal proxy’s actions by any authoritative body is glaring. The Mental Capacity Act of 2005, in Article 23, offers a model for the possible adoption by Albanian legislator under which the proxy’s actions are controlled by the Court of Protection. Under this model, the proxy’s actions are supervised only by a judge who must act, not according to medical advice, but instead ac-

\(^5^6\) R.J. Jox, \textit{op. cit.}


\(^6^0\) R.J. Jox, \textit{op. cit.}


According to the patient’s self-determination right and who is unbiased to any disputes arising between doctors and the legal proxy\textsuperscript{63}.

There are two main reasons why a third party is necessary for settling conflicts between proxies and medical staff and to oversee the activity of surrogates. One, research demonstrates some proxies might face decreased mental competency due to the increased emotional demands of surrogacy while already struggling with certain previously diagnosed psychological conditions such as stress, depression, and anxiety\textsuperscript{64}. Two, the patient’s welfare is on occasion subordinate to a proxy’s own, sometimes conflicting\textsuperscript{65}.

To sum up, in codifying the role of the surrogate in end-of-life decisions, the Albanian legislator should take into consideration not only the international framework – the Oviedo Convention and the Rec (2009) 11 of the Council of Europe – but also the experience of other Western European countries.

4. Conclusion

Appointing a surrogate to act in end-of-life situations is imperative. This appointment best mitigates well-known issues arising from a “static” document created at one time. In further support, judges and legislative bodies have already ruled accordingly.

Ergo, the fundamental role of a proxy within healthcare should be acknowledged by the Albanian Parliament. Legislators can draw on the experience of other European countries. Albanian lawmakers should expand further in this area and enable the selection of multiple healthcare proxies by patients. In addition, since the automatic proxy scheme has its disadvantages, the Albanian law may include it since family is an important institution, which has special constitutional protection (Article 53 Constitution). Furthermore, an objective third party should be established to supervise the legal proxy and adjudicate or arbitrate cases between medical staff and proxies.

Until then, Albanian judges should protect the patient’s autonomy by considering the application of the international framework, in particular, the Rec (2009) 11 of the Council of Europe. Although this is a soft-law document, the Rec (2009) 11 shows the common European standard in this area. As a result, it may be applied by the ECtHR as a main source to rule a specific case\textsuperscript{66}.

Concluding, by considering the experience of other Western European countries, Albania should codify the role of legal proxy in end-of-life decisions since different empirical studies as well as the legal literature has underlined that their nomination protects patient autonomy and, consequentially, the patient’s right to self-determination.

\textsuperscript{63} D. VESHI, G. NEITZKE, The Role of Legal Proxies in End-of-Life Decisions in Italy: A Comparison with Other Western European Countries, cit.

\textsuperscript{64} M.D. SIEGEL, et al., Psychiatric illness in the next of kin of patients who die in the intensive care unit, in Critical care medicine, 36, 2008, 1722 ff.

\textsuperscript{65} T.M. POPE, Legal fundamentals of surrogate decision making, in Chest, 141, 2012, 1074 ff.

\textsuperscript{66} D. VESHI, op. cit.